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**TARIFF AUTHORITY FOR MAJOR PORTS**

G.No.37

New Delhi,

20 January 2021

**NOTIFICATION**

In exercise of the powers conferred by Section 48 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal received from V. O. Chidambaranar Port Trust (VOCPT) as regards amendment in the date of implementation of a few amendments approved by this Authority vide Order No.TAMP/19/2020-VOCPT dated 28 October 2020 with reference to its earlier proposal dated 07 April 2020 regarding a few amendments in its existing Scale of Rates (SOR) as in the Order appended hereto.

**(T.S. Balasubramanian)**  
Member (Finance)

**Tariff Authority for Major Ports**  
**Case No. TAMP/19/2020-VOCPT**

V.O. Chidambaranar Port Trust

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Applicant

**QUORUM**

- (i). Shri. T.S. Balasubramanian, Member (Finance)
- (ii). Shri. Sunil Kumar Singh, Member (Economic)

**ORDER**

(Passed on this 28<sup>th</sup> day of December 2020)

This case relates to a request received from the V. O. Chidambaranar Port Trust (VOCPT) dated 23 November 2020 as regards amendment in the date of implementation of a few amendments approved by this Authority vide Order No.TAMP/19/2020-VOCPT dated 28 October 2020 with reference to its earlier proposal dated 07 April 2020 regarding a few amendments in its existing Scale of Rates (SOR).

2. To recapitulate, this Authority has passed an Order No.TAMP/15/2019-VOCPT dated 10 October 2019, approving the revised SOR and Performance Standards on the proposal received from the VOCPT for general revision of its SOR. The revised SOR along with Performance Standards approved by this Authority was notified vide Gazette No.363 dated 22 October 2019. Subsequently, the speaking order was notified in the Gazette vide No.440 dated 02 December 2019.

3.1. Subsequently, the VOCPT vide its letter dated 07 April 2020 filed a proposal for a few amendments in the SOR approved vide Order dated 10 October 2019. Following the prescribed consultation process with the stakeholders and after holding a joint hearing held on the said proposal of VOCPT, this Authority passed an Order No.TAMP/19/2020-VOCPT dated 28 October 2020 disposing of the proposal of VOCPT for a few amendments to its existing SOR. The said Order is already in process of notification in the Gazette of India.

3.2. In the meantime, the Order of this Authority approving the amendments to the SOR was communicated to VOCPT vide our letter dated 03 November 2020 as an advance information.

4. Based on the said Order sent as advance information to the Port, the VOCPT has, now, vide its email dated 23 November 2020 sought amendments in the date of implementation of the amendment approved by this Authority in the Order dated 28 October 2020. The main submissions made by the VOCPT are summarised below:

- (i). This Authority has approved the SOR amendment proposal dated 07 April 2020 vide Order dated 28 October 2020 and informed that the amendments approved shall come into effect after expiry of 30 days from the date of Notification of the Order in the Gazette of India and action is being taken by this Authority to notify the said order and formal communication in this regard will be sent once the order notified in the Gazette of India.
- (ii). VOCPT while submitting the proposal dated 07 April 2020 enclosed the Board Resolution No.110 of the Board Meeting dated 27 February 2020 wherein Board resolved to approve the proposed amendments and also to implement the modifications from the retrospective date as stated in point (i), (iii) [it is iv of item no.14 of its Board Resolution] and (v). The implementation dates as per the approval accorded by the Board of Trustees of VOCPT and recorded in the Board Resolution is furnished hereunder:

Sl. No.	Description	Date of Implementation
1.	The unit rate of rent one month or part thereof as available now was modified as "a continuous period of 30 days from the date of each allotment."	21.11.2019
2.	10% reduction in Pilotage and Berth Hire charges for vessels in the 0 to 20,000 GRT slab.	01.01.2020
3.	For reduction in Labour Levy by ₹15/- for foreign vessels and ₹9/- for coastal vessels of more than 11.5 m draught at 9 <sup>th</sup> berth by the HMC.	01.01.2020

- (iii). In this connection, this Authority, vide Annexure-I of the Order dated 28 October 2020, communicated that “As regards, the approval sought from 01 January 2020 for the proposed reduction there is no approval required as such of this Authority as the port has the flexibility to do so”. Considering the request made by the port to implement the reduction w.e.f. 01 January 2020 with the approval of VOCPT Board in case of Sl. No. 2 & 3 of the above table and 21 November 2019 in respect of Sl. No.1 in the above table and also since the said reduction is already implemented for a period of nearly for one year i.e., 01 January 2020, this Authority is requested to give specific approval for the implementation of reduction of tariff items as mentioned above retrospectively with effect from 01 January 2020, since the proposal is submitted as a reduction in tariff and not as a discount offered which may be a user discriminatory. Further, the proposal is to apply the reduction in rates till the expiry of the validity of the SOR of VOCPT i.e. upto 21 November 2022.
- (iv). It is also relevant here to inform that Shri. N. Sivasailam, Special Secretary (Logistics), Ministry of Commerce and Industry vide letter dated 29 October 2019 observed that the manner in which the discount applied and administered has no impact on logistic cost borne by the EXIM client since offering post facto discount only benefits the trade intermediaries and suggested that any further concession on tariff shall be notified and payable upfront or in advance leaving no scope for collecting the discounts post facto over an extended period, for which, the MOS has informed to examine. Considering the above, in line with the suggestion by the Ministry and to reduce the logistic cost by reducing the tariff on upfront mode, this Authority is requested to give specific approval for the implementation of reduction of tariff retrospectively w.e.f. 01 January 2020.

5. The VOCPT has, thus, requested to approve the implementation dates as tabulated in Para 4 (ii) for the three amendment items in the Order dated 28 October 2020.

6. With reference to the amendments sought by the VOCPT of approving the date of implementation for the three items in the amendment Order approved by this Authority vide Order dated 28 October 2020, this Authority is constrained to state the following:

- (i) The original proposal of VOCPT dated 07 April 2020 to TAMP does not seek specific approval of the said three amendments from the date of implementation accorded by its Board of Trustees vide Resolution No.110.

During the processing of its original proposal dated 07 April 2020, the VOCPT had, as regards the amendment proposed for 10% reduction in Pilotage and Berth Hire charges for vessels in the 0 to 20,000 GRT slab, intimated that it has already implemented the revised reduce rates with effect from 01 January 2020 based on approval of the Board of Trustees.

- (ii). With regard to implementation date of 10% reduction in Pilotage and Berth Hire charges for vessels in the 0 to 20,000 GRT slab, it is relevant here to state that this Authority in Annex-I of the Order dated 28 October 2020 has observed that there is no approval of this Authority required for reduction implemented with effect from 01 January 2020 as the rates approved by this Authority are ceiling tariff and the port has flexibility to charge tariff lower than the tariff approved by this Authority.

- (iii). Further, it is relevant here to bring to the notice of the port that the Ministry of Ports, Shipping and Waterways (MOPSW) (formerly known as Ministry of Shipping) vide its letter No PR/11012/1/99-PG dated 21 August 2003 has issued a policy direction to this Authority under Section 111 of the MPT Act to fix the SOR as ceiling rates and to so specify in notification fixing rates so that the major ports have the flexibility to charge at reduced rates, if they so desire, to compete with others.

In compliance of the said policy direction, this Authority has passed a common adoption Order No.TAMP/53/2003-Genl. dated 28 August 2003 stating that the rates prescribed in the SOR are ceiling levels; likewise, rebates and discounts are floor levels. The Port Trusts may, if they so desire, charge lower rates and / or allow higher rebates and discounts.

The said provision was prescribed in the Tariff Guidelines 2005, Tariff Policy 2015 and also in clause 7 of the prevailing Tariff Policy 2018. This clause is uniformly

prescribed since 2003 in the SOR of all the Major Port Trusts including the VOCPT and the BOT operators operating in Major Port Trusts.

Thus, in short all the Major port Trusts as well as BOT operators have flexibility to charge the rates lower than the rates approved by this Authority.

- (iv). Despite this flexibility available to the port, the port has now sought approval of this Authority for three amendments so as to indicate the effective date of the reduced rates from the date the port has implemented it based on the approval of its Board. The port has applied the amendments on the three items from 21 November 2019/ 01 January 2020 and a fait accompli situation is placed before this Authority to ratify the action of the port of applying the amendments viz. (a) definition of month for levy of license fee as a continuous period of 30 days from the date of each allotment instead of one calendar month prescribed in its SOR implemented by the port with effect from 21 November 2019, (b) amendments regarding collection of 10% reduced pilotage fee and (c) berth hire for vessel upto 20,000 GRT and reduction in Labour Levy by ₹15/- for foreign vessels and ₹9/- for coastal vessels of more than 11.5 m draught at 9th berth both implemented by the port with effect from 01 January 2020 based on approval of its Board.

As the port is well aware, the Orders passed by this Authority are generally prospective in effect as per the stipulation in the Guidelines. Hence, it would have been appropriate for the VOCPT that the proposal for amendment/ revision is filed before this Authority prior to its implementation.

- (v). In the instant case, since the port has now sought specific approval of this Authority for the date of implementation being the date when the said three amendments were implemented by the VOCPT, recognising that the proposal of the port is based on the approval of the Board of Trustees of the VOCPT vide its resolution dated 27 February 2020 and also recognising that the port has already implemented from the said dates based on the approval of its Board, this Authority ratifies the said action of the port till the date the Order dated 28 October 2020 comes into effect, relying on the decision taken by the port and approval accorded by the Board of Trustees of VOCPT.

7.1. In the result, and for the reason given above and based on collective application of mind, this Authority ratifies the action of the port of implementing the following amendments in the existing SOR of the VOCPT approved by this Authority vide Order No.TAMP/19/2020-VOCPT dated 28 October 2020 from the date of implementation approved by the Board of Trustees of the port:

<b>Sl. No.</b>	<b>Description</b>	<b>Date of Implementation based on approval of Board of Trustees of VOCPT</b>
1.	The unit rate of rent one month or part thereof as available now was modified as "a continuous period of 30 days from the date of each allotment."	21.11.2019
2.	10% reduction in Pilotage and Berth Hire charges for vessels in the 0 to 20,000 GRT slab.	01.01.2020
3.	For reduction in Labour Levy by ₹15/- for foreign vessels and ₹9/- for coastal vessels of more than 11.5 m draught at 9 <sup>th</sup> berth by the HMC.	01.01.2020

7.2. This Order may be read with the amendments to the existing SOR approved by this Authority vide Order No.TAMP/19/2020-VOCPT dated 28 October 2020.

**(T.S. Balasubramanian)**  
Member (Finance)