

(Published in Part - III Section 4 of the Gazette of India, Extraordinary)
TARIFF AUTHORITY FOR MAJOR PORTS

G.No.135

New Delhi,

7 April 2017

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 Visakhapatnam Port Trust (VPT) for levy of additional cess for supply of Tarpaulins and manpower for covering of dry bulk cargoes stacked in the vicinity of Visakhapatnam Port as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports
Case No. TAMP/34/2016-VPT

Visakhapatnam Port Trust

- - -

Applicant

QUORUM

- (i). Shri. T.S. Balasubramanian, Member (Finance)
- (ii). Shri. Rajat Sachar, Member (Economic)

ORDER

(Passed on this 8th day of February 2017)

This case relates to the proposal dated 15 June 2016 received from Visakhapatnam Port Trust (VPT) for levy of cess for supply of Tarpaulins and manpower for covering of dry bulk cargoes stacked in the vicinity of Visakhapatnam Port.

2. The main points made by VPT in its proposal dated 15 June 2016 are summarised below:

- (i). The dry bulk cargoes such as Coal, Iron ore, etc., which are being openly stacked at various stack yards in the vicinity of the port are prone to dust emission particularly during the heavy winds which is an environmental concern.
- (ii). Visakhapatnam Port has undertaken various controlling measures to control the dust emissions by sprinkling of water on stacks, on roads and especially covering of tarpaulins of cargo stacks.
- (iii). Out of the various environmental measures, covering of stackyards is being done by the concerned handling agents of importers/ exporters. In spite of issuing circulars by Traffic Department, it is observed that covering of stacks is not being done regularly. Due to this, VPT has been receiving several complaints from the nearby residential colonies. As an interim short-term measure, it has been decided to cover all the dry bulk stacks with good quality of tarpaulins to prevent emission of dust into the town of Visakhapatnam which is the prime concern of the public. Therefore, in order to ensure covering of stacks always, VPT is taking care to cover stacks with tarpaulins and to recover the charges from the concerned on tonne basis.
- (iv). Besides, the port is committed towards achieving Green Port position with barest minimum pollution indices. Various measures have been taken by the port directly and through BOT/PPT Operators in order to achieve the above objective in the medium and long term measure. The short-term of covering all the stack of dry bulk cargoes with the tarpaulins have been taken by Mormugao Port Trust and has been reported successful and had been found to be an effective mitigative measure for pollution control.
- (v). In view of the above, VPT proposes to introduce an additional cess of ₹5/- per tonne towards pollution control for coverage of stacks with tarpaulins. To take care of the financial implications for this additional facility to be provided by the port and the BOT/PPP Operators the cost per tonne for providing additional facility is estimated as follows:

(a).	Cost of Silpaulin or equivalent Tarpaulins of size 60' X 40' (20 Nos.).	
	And 60' X 60' (20 Nos.) of total quantity 11,149.59 sq.m at 120 GSM at a cost of ₹38.08 ps. per sq.m	₹4,24,576/-
(i).	Average stock per sq.m	3 tonnes
(ii).	Life of tarpaulin	1 year

(iii).	Total cargo to be covered with tarpaulins in a year duly considering a dwell time of 40 days for coal and number of turns of tarpaulins as 8 times in a year.	11,149.58X8X3
		2,67,590 tonnes
	Therefore, cost of tarpaulin per tonne	4,24,576 / 2,67,590
		₹1.59/-
(b).	Labour charges for the services	₹80,68,946/-
	Therefore, labour charges per tonne	₹80,68,946/- / 2,67,590 tonnes.
		₹30.15
(c).	Total (a) + (b)	₹31.74

3. The VPT has issued a circular no.567 dated 05 September 2015 in consultation with all the port users and they in principle agreed to cover the stacks with tarpaulins and requested the management to give a circular to the trade including BOT/PPP Operators. Subsequently the VPT has issued a circular No.572 dated 30 September 2015 stating that VPT proposes to TAMP for levy of cess of ₹5/- per MT and levy the same in anticipation of approval and authorised the BOT operators/stevedores/Handling Agents to charge a cess of ₹5/- per MT and the cess will be levied on all dry bulk import and export cargoes. The BOT/PPP/Stevedores/Handling agents were requested to take immediate necessary action to ensure coverage of all cargo stacks with tarpaulins.

4. The above proposal has been worked out as cost of tarpaulin per tonne is ₹1.59/- and the labour charges per tonne is ₹30.15 ps. However, VPT has indicated the trade vide Circular dated 27.08.2015 the cost of coverage of tarpaulins is ₹5/- per tonne which is worked out as follows:

(i).	Average stock per sq.mtr.	: 3 tonnes per sq.mtr.
(ii).	Cost of tarpaulin per sq.mtr.	: ₹38.08 ps.
(iii).	Life of tarpaulin	: 1 year
(iv).	Dwell time (coal)	: 40 days
(v).	No. of turns of tarpaulin	: 8 times in a year
(vi).	Cost per tonne	: ₹1.19 ps.
(vii).	Labour charges for services	: ₹4.51 ps. (Approx.)
(viii).	Total	: ₹5.77 ps. per tonne
(ix).	Levy in the form of cess	: ₹5/- per tonne

5. In view of the above, it is proposed to levy ₹5/- per tonne if the port users are reluctant to cover their stacks with tarpaulins. Otherwise, VPT will cover the stacks with tarpaulins and recover ₹1.59 per tonne towards tarpaulin covering and labour charges per tonne at ₹30.15 ps on no profit and no loss basis. The VPT has requested to communicate the orders of this Authority.

6. The VPT has submitted a copy of Minutes of the Meeting held on 27 August 2015 in the VPT Board Room regarding discussion about various Environmental issues with Coal importers and their handling agents.

7.1. In view of information gaps observed in the VPT proposal, the VPT was requested vide our letter dated 4 July 2016 to furnish information/ clarification, which was followed by reminder dated 9 September 2016.

7.2. The VPT vide its letter dated 18 October 2016 has furnished its response. A summary of the information/ clarification sought by us and reply furnished by VPT is tabulated below:

Sl. No.	Information/ clarification sought by us	Reply furnished by VPT
(i).	The proposal of VPT is to levy cess for covering dry bulk cargo stacked in vicinity of port with tarpaulins. This	It is to clarify that the proposal for revision of SOR was sent in December 2015, whereas as per the Policy for determination on Tariff for

	<p>service appears to be an integral part of cargo handling and cargo stacking services for handling dusty dry bulk cargo. The port has recently in its general revision proposal, amongst other items, proposed 50% increase in the wharfage rate for all cargo items including dry bulk cargo, and 300% increase in license (storage) fee. The VPT to confirm and show that such increase proposed by the VPT in the cargo handling activity and (which has been approved by the Authority) does not capture this expenditure which is an integral part for cargo handling service for dry bulk (dusty) cargo</p>	<p>Major Ports, 2015, expenditure of the years 2011-12, 2012-13 and 2013-14 was considered for arriving at annual revenue requirement in the recent proposal for General Revision of Scale of Rates. The proposal for General Revision of Scale of Rates was sent by VPT in December 2015, whereas the proposal for Tarpaulins was sent in 2016. The expenditure for covering the stacks with Tarpaulins was not captured while sending the proposal in December, 2015 for revision of VPT SOR.</p>
(ii).	<p>The wharfage rate in the revised SOR for some of the dusty dry bulk cargo like thermal coal, iron ore. (Conventional handling), limestone, gypsum is ₹22.50/ tonne, ₹20.25/ tonne, ₹36.00/ tonne, ₹36.00/ tonne. As against the said wharfage rate, the VPT has proposed ₹1.59/ tonne, towards tarpaulin covering charge and ₹30.15/ tonne towards labour charge aggregating to ₹31.74/ tonne if port undertakes to cover dry bulk cargo with tarpaulin. Such high rate proposed (only for covering cargo with tarpaulin) need to be adequately justified when compared to the revised wharfage rate for dry bulk cargo.</p>	<p>It is to state that to cover the stacks with Tarpaulins by VPT, quotations have been obtained for cost of Tarpaulins as well as labour cost, as per which the cost of Tarpaulins has been worked out to ₹1.59 ps. per tonne and ₹30.15 ps. per tonne towards the cost of labour. The same has been informed to the Trade during PWC Meeting. During the discussions, one of the trade firms/ stevedoring firms has informed that M/s.Vizag Seaport Pvt. Ltd. has implemented the covering of stacks with Tarpaulins on a trial basis, wherein it was worked out to ₹5.00 per tonne and VPT's proposal for charging ₹31.64 ps. per tonne is not at all justified. During the Meeting held on 27.08.2015, the directions of APPCB were intimated to the Stevedores/ PPP Operators and other trade fraternity to cover 100% of the dry bulk cargo with Tarpaulins. The Trade further reiterated stating that the proposed charges of VPT @ ₹31.64 ps. per tonne is not at all justified as it has worked out to only ₹5.00 per tonne, if they cover it on their own. If the situation warrants that VPT has to cover the stacks with Tarpaulins, a rate of ₹31.64 ps. is to be charged, in case the stacks are not covered by the Stevedores. However, VPT allowed the Trade to cover the stacks.</p>
(iii).	<p>The concluding para in the proposal states levy of ₹5 / tonne is proposed if port users are reluctant to cover their stacks with tarpaulins. Otherwise, VPT will cover and charge ₹1.59/ tonne and ₹30.15/ tonne. The proposal in concluding appears to be confusing. The proposal of VPT is not clear.</p>	<p>(a). It is to state that the situation which led to accord such permission to collect ₹5.00 per tonne to cover the stacks with Tarpaulins along with detailed justification is furnished hereunder: “Most of the dusty cargo stackyards are maintained more than 6 meters height. Tarpaulins were not provided for the stackyards which are not provided with MDSS.”</p>
(iv).	<p>The port has stated that it has issued Circular No.567 dated 5 September 2015 and 572 dated 30 September 2015 to all port users for levy of cess of ₹5/- per MT and authorised BOT operators/ Stevedores/ Handling Agents to charge the same on all dry</p>	<p>(b). In spite of the pollution measures undertaken by VPT, APPCB has further informed vide letter dated 12.12.2014, that VPT failed to comply with the directions of APPCB dated 16.04.2012 and directed to show cause as to why action should not be initiated against VPT under the provisions</p>

	<p>bulk import and export cargo. In this regard, the following points may be clarified.</p>	<p>of Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974 and amendments thereof and under the provisions of Hazardous Waste (Management, Handling & Transboundary Movement) Rules, 2008 and further directed to attend hearing on 19.12.2014 failing which further action will be initiated against VPT in the interest of public health and environment.</p>
	<p>(a). As per, clause 5.7.2. and 5.7.3. of the Working Guidelines, to Tariff Policy, 2015, the port is to forward the proposal for notification of rate for the new facility or a new service to the TAMP at least 60 days prior to the expected date of commissioning of the new cargo facility/ service. Simultaneously, with the submission of proposal, the proposed rate can be levied on an ad hoc basis till the rate is finally notified. It is, however, seen that the VPT has issued the circular to all port users on 5 September 2015 to levy the cess of ₹5 per MT, without filing the proposal with TAMP. The VPT to clarify how the approach adopted by VPT falls in line with the clause 5.7.2 and 5.7.3 of the Working Guidelines.</p>	<p>(c). VPT is having large extent of land where the land is allotted to various Stevedores for stacking of the cargo for export as well as transportation of the cargo from VPT to destination places. As the areas allotted by VPT are not fully covered by MDSS, the areas are a source for pollution generation.</p> <p>(d). VPT has also put its best efforts to procure two Fog Canon machines and deploying the same in the areas where the cargoes are stacked. The issues regarding the steps to be taken to mitigate pollution, has been discussed in every PWC Meeting held by VPT on a monthly basis and the Stevedores were instructed to make arrangements for covering the stacks to mitigate the pollution caused to the nearby residents in the port vicinity as well as in the city. In spite of the instructions given by VPT to the Stevedores, the Stevedores expressed that they have been putting their best efforts in stacking the cargoes. However, to cover the stacks with Tarpaulins, the cost is not in-built in their Stevedoring Agreement had with various importers/ exporters.</p>
	<p>(b). As per the Section 42 (3) and (4) of the Major Port Trust (MPT) Act 1963, the BOT operators authorised by the Major Port Trust to provide services listed in the relevant section of the Act cannot charge or recover any tariff unless it is notified by the Authority in the Gazette of India. For this purpose, BOT operator who is governed under the Tariff Guidelines 2005 needs to approach the Authority with a proposal seeking approval of the rates. The VPT may please explain as to how its circulars issued on 5 September 2015 and 30 September 2015 authorising the BOT operators to collect the levy of ₹5/tonne is in line with the statute position.</p>	<p>(e). It is also pertinent to mention that a case was filed against VPT in the National Green Tribunal (SZ) Chennai during April, 2015 by the Chaitanya Sravanthi, an Organisation registered with Societies Registration Act 21 of 1860, praying the Hon'ble Tribunal to issue an Injunction order restraining VPT not to operate any Coal cargo whether by the importers or exporters out of its unit at port area and also issue an order on APPCB to take action against VPT for carrying operations.</p>
	<p>(c). As regard the PPP operator governed under the tariff guideline of 2008 and 2013, the upfront tariff is already approved by the Authority based on which the VPT would have invited bids and awarded the project. The VPT is well aware that the upfront/ reference tariff fixed under tariff guidelines of 2008 and 2013 is only subject to annual indexation at the level prescribed in the relevant guidelines. In case the VPT has authorised any BOT / PPP operators governed under 2008/ 2013 guidelines to levy the cess, such authorization to charge levy will not be in line with the guidelines position and the Authority may not be in a</p>	<p>(f). The Task Force team constituted by APPCB is monitoring the Port pollution regularly by visiting VPT operational areas and stackyards. They have been continuously mentioning in their reports that VPT has not complied with the directions on the coverage of dusty cargo stacks with Tarpaulins. Further, since VPT operational areas are near to the Airport, the stackyards are clearly visible while the flights are taking off and landing at Visakhapatnam. The Hon'ble Chief Minister of Andhra Pradesh has been mentioning the pollution of Port at various forums.</p>

	position to ratify that action of the VPT.	(g). Since the situation warrants immediate measures for covering the stacks with Tarpaulins and the Trade is not taking any steps towards this end, VPT has thought of covering the stacks with Tarpaulins by engaging a Contractor and to charge the same on the Stevedores on per tonne basis and accordingly, the estimate/ working has been done, wherein, the cost per tonne has been worked out to ₹31.64 ps. and the Trade was informed accordingly, stating that if the stacks are not covered with Tarpaulins, VPT will take steps and charge the Stevedores @ ₹31.64 per tonne.
(v).	The VPT to furnish a copy of the Board Resolution approving the said proposal of VPT.	<p>(h). During the discussions one of the trade firms/ stevedoring firms has informed that M/s.Vizag Seaport Private Limited has implemented on a trial basis wherein it was worked out to ₹5.00 per tonne and VPT charging @ ₹31.64 per tonne is not at all justified.</p> <p>(i). Since the situation has aggravated, the M.P. of Visakhapatnam has personally visited VPT and meeting was convened with the Chairman and other officials of VPT and also with the Trade fraternity on 27.08.2015.</p> <p>(j). During the meeting held on 27.08.2015, the directions of Andhra Pradesh Pollution Control Board (APPCB) have been intimated to the Stevedores/ PPP Operators and other Trade fraternity to cover 100% the dry bulk cargoes with Tarpaulins w.e.f. 25.09.2015.</p> <p>(k). The Trade further reiterated, stating that the proposed charges of VPT @ ₹31.64 per tonne is not at all justified, as it is working out only to ₹5.00 per tonne if they cover it on their own.</p> <p>(l). Accordingly, to mitigate the dust pollution, a decision was taken to cover all the dry bulk stacks with Tarpaulins by the Trade. Then, the Trade has requested that the coverage of stacks with Tarpaulins will cost them for deployment of men as well as materials for this purpose and the cost was not under the Stevedore's Agreement entered with their importers/ exporters. Therefore, a decision was taken to allow them to collect ₹5.00 per tonne and they requested VPT to take a decision to issue a Circular to collect ₹5.00 per tonne for coverage of cargo with Tarpaulins.</p> <p>(m). Further, the BOT/ PPP Operators also informed that huge stacks are accumulated in their stacking areas as the cargo is stacked for more than the free time as envisaged in the Concession Agreement and the ground stock is accumulating to 1.82 to 2.00 Million Tonnes and thereby the infrastructure made available for suppression of dust, such as MDSS, Sprinklers, etc., are not able to cope up with the suppression</p>

		<p>of the dust and they are not in a position to incur additional expenditure on account of covering of stacks with Tarpaulins.</p> <p>(n). Considering the gravity of the situation and the urgent need to cover the stacks with Tarpaulins to mitigate the dust pollution, it was agreed to authorise the BOT/ Stevedores/ PPP Operators to charge a cess of ₹5.00 per M.T. and the cess will be levied on all dry bulk, import and export cargoes. BOT/ PPP Operators/ Stevedores/ handling agents were requested to take immediate necessary action to cover all cargo stacks with Tarpaulins.</p> <p>Had VPT not taken steps as mentioned above, the situation which arose for Chennai Port Trust, i.e., banning of handling of coal cargo by the National Green Tribunal, may not be ruled out at VPT.</p> <p>(o). In view of the exigency of environmental issues, in-principle sanction of Chairman/ VPT was obtained since the said proposal is mutually agreed by the Trade, the cost of coverage of cargo with Tarpaulins. The Trade have been notified through Circulars No.575 the cost of coverage of Tarpaulins which includes labour when it is performed by the Port Users. In case the Port Users are reluctant or fail to cover the Tarpaulin on bulk cargo stacks, VPT is left with no option except to cover it, duly undertaking the jobs of processing tender/ finalization, drawing labour on permanent basis and keeping sufficient buffer stock of Tarpaulins by the contractors and the rate worked out to ₹1.59 ps. per tonne towards the cost of Tarpaulins and ₹30.15 ps. per tonne towards the cost of labour. However, VPT preferred port users to cover the stacks by themselves which worked out to ₹5.00 per tonne.</p> <p>(p). The subject proposal was placed before the Board in the Meeting held on 09.09.2016 and Board ratified the action taken. Copy of the Resolution is furnished.</p>
--	--	---

7.3. The VPT has requested to approve the proposal in view of the directions of APPCB to VPT to comply or else there is every possibility of stalling of bulk cargo handling operations in view of environmental problems being faced by the population in the vicinity of port. Further, it is to state that had VPT not taken steps as mentioned above, the situation which arose for Chennai Port Trust, i.e., banning of handling of coal cargo by the National Green Tribunal, may not be ruled out at VPT.

8.1. On perusing the information/ clarifications furnished by the VPT vide its letter dated 18 October 2016, there were still some information gaps observed which were conveyed to VPT vide our letter dated 8 November 2016. The VPT vide its letter dated 8 December 2016 has furnished its response. A summary of the gaps observed by us and reply furnished by VPT are tabulated below:

Sl. No.	Information gaps observed by us	Reply furnished by VPT
(i).	It is seen that with reference to the points mentioned in our letter dated 4 July 2016	As regards issuance of circular no.567 dated 5.9.2015 and 572 dated 30.9.2015

	<p>at para 2 (iv)(a) and (b), the port has not addressed adequately in its letter dated 18 October 2016. Hence, the point made therein are reiterated. Further, the point mentioned in para 2(iv)(c) of our said letter is also reiterated.</p>	<p>mentioned at para 2(iv) (a) and (b) of the TAMP letter dated 4.7.2016, it is to reiterate that a detailed explanation was given at paras 5 to 19 of VPT letter dated 18.10.2016, wherein it was clearly elucidated regarding the emergency situation which arose due to continuous monitoring by the Hon'ble Chief Minister of Andhra Pradesh with regard to the pollution at VPT, during various forums as well as the emergency meeting held by the Member of Parliament of Visakhapatnam, who had personally visited VPT and convened a meeting on 27.08.2015 with Chairman, other officials of VPT and the trade fraternity.</p> <p>During the above meeting, it was instructed to the Trade fraternity to ensure 100% coverage of all their dry bulk cargo stacks with tarpaulins, w.e.f. 25.09.2015 and accordingly the circular mentioned above was issued after the approval of Chairman/ VPT. Further, during the VPT Board meeting held on 09.09.2016 the Board ratified the action taken, which was also communicated to TAMP vide VPT letter dated 18.10.2016 (para 20).</p>
(ii).	<p>Further, in our letter dated 4 July 2016 at para 2(iii), it was brought out that the proposal of VPT in the concluding para appears to be confusing and the port was requested to make it explicit. This point is also not sufficiently addressed by the port. Hence, the point 2(iii) of our letter dated 4 July 2016 is reiterated.</p>	<p>With regard to para 2(iii) of the TAMP letter dated 04.07.2016, explicit clarification was given at para 19 of this office letter dated 18.10.2016, which clearly stated as follows:</p> <p>“In view of the exigency of environmental issues, in-principle sanction of Chairman/ VPT was obtained since the said proposal is mutually agreed by the Trade. After approval of Chairman/ VPT, the trade have been notified through Circular no.572 duly authorizing the BOT Operators/ Stevedores/ Handling Agents to charge a cess of ₹5/- per MT and the cess to be levied on all dry bulk import and export cargoes. The BOT/ PPP/ Stevedores/ Handling Agents were also requested to take immediate necessary action to ensure coverage of all bulk cargo stacks with tarpaulins”.</p> <p>Further, in case the Port users are reluctant or fail to cover the bulk cargo stacks with Tarpaulins, they were informed that, VPT would be left with no option except to cover it, by undertaking the jobs of (1) processing tender/ finalisation, (2) drawing labour on permanent basis & (3) keeping sufficient buffer stock of Tarpaulins by the contractors. The rate worked out for the above is ₹1.59 ps/ tonne towards the cost of Tarpaulins and ₹30.15 ps/ tonne towards cost of the labour, thus accruing to a total of ₹31.74</p>

	<p>(₹1.59 + ₹30.15). However, VPT preferred the port users to cover the stacks by themselves as the cost they would incur would be ₹5.00/ tonne only and they were also authorized to collect the same from their principals vide the Circular No.572.</p>
--	--

8.2. The VPT has reiterated that had port not taken the emergency measures elucidated above as well as in its letter dated 18.10.2016, the situation which arose for Chennai Port viz., banning of handling coal cargo, may not be ruled out at VPT also.

9. In accordance with the consultative procedure prescribed, a copy of the proposal of VPT dated 15 June 2016 alongwith VPT letter dated 18 October 2016 was forwarded to the concerned users/ user organisations seeking their comments. The comments received from the users/ user organisations were forwarded to VPT as feedback information. The VPT has not furnished its reply in spite of the reminder dated 26 December 2016.

10.1. A joint hearing in this case was held on 24 January 2017 at the VPT premises. At the joint hearing, the VPT and users / user associations have made their submissions.

10.2. At the joint hearing, Visakhapatnam Stevedores Association (VSA) and the users/ user associations objected the proposal of the VPT to levy ₹31.74/ tonne, if the port has to render the services of covering cargo by tarpaulin. Based on the demand made by users/ user associations, the VPT agreed to withdraw the proposed rate. But, if trade does not do this activity, the port desires that there has to be some mechanism to enforce it. Hence, if it is not done by trade, port decides to get it done and recover the cost at actuals.

11. The proceedings relating to consultation in this case are available on records at the office of this Authority. An excerpt of the comments received and arguments made by the concerned parties will be sent separately to the relevant parties. These details will also be made available at our website <http://tariffauthority.gov.in>.

12. With reference to the totality of information collected during the processing of this case, the following position emerges:

- (i). The proposal of the Visakhapatnam Port Trust (VPT) dated 15 June 2016 seeks approval of this Authority for levy of cess for covering all dry bulk cargo stacked in vicinity of port with Tarpaulins.
- (ii). The VPT has cited the following main reasons for seeking approval of this Authority for levy of cess by Stevedores/ Handling Agents/ BOT operators authorised by the VPT for covering dry bulk cargo stacked in vicinity of port with tarpaulins against levy of cess of ₹5 per tonne:
 - (a). The VPT is handling dusty cargos like Coal, Iron Ore, Fertilizers, Fertilizer raw materials and Manganese Ore etc. All these duty cargos are generating dust and creating pollution, which is hazardous to the life of people living in the vicinity of port.
 - (b). In spite of issuing circulars by Traffic Department, the covering of stacks is not being done regularly by the port users. Several complaints from the nearby residential colonies are being made for creating pollutions.
 - (c). The Andhra Pradesh Pollution Control Board (APPCB), noted that VPT is violating the directions of the APPCB issued from time to time and has issued show case notice as to why action should not be initiated against the port under the relevant Acts in the interest of Public Health and Environment.
 - (d). The Task Force team constituted by APPCB is monitoring the Port pollution regularly by visiting VPT operational areas and stackyards. They have been continuously mentioning in their reports that VPT has not

complied with the directions on the coverage of dusty cargo stacks with Tarpaulins. Further, since VPT operational areas are near to the Airport, the stackyards are clearly visible while the flights are taking off and landing at Visakhapatnam.

- (e). The Hon'ble Chief Minister of Andhra Pradesh has also stated that huge uncovered coal and other duty cargo at VPT is prime reason for unrest of the surrounding people. The Hon'ble M.P. of Visakhapatnam Constituency also discussed about various environmental issues with VPT officials, coal importers and their handling agents.
- (f). A case has been filed against the VPT in the National Green Tribunal, Chennai praying the Hon'ble Tribunal to issue an injunction Order restraining the port not to operate any coal cargo and issue an Order to APPCB to take action against VPT for carrying operations.
- (g). A resident filed a complaint to Hon'ble Minister for Environmental and Forest requesting to stay all the coal handling and connected activities within port area of VPT within 48 hours from the date of receipt of complaint, till the establishment of entire infrastructure and compliance of statutory regulations.

It is in this backdrop, the VPT has filed the current proposal. The port has also forwarded the minutes of meeting had by the port with the stakeholders wherein it is recorded that all importers and exporters of bulk cargo present in the meeting have agreed to the proposed rate of ₹5 per tonne by 25 September 2015.

- (iii). The proposal of the port of June 2016 is in two parts. The Port in the proposal has sought approval for the authorisation granted by the port in September 2015 to Stevedores/ Handling Agent/ BOT operators/ PPP operators to collect cess of ₹5/ tonne for covering all dry bulk cargoes stacked in vicinity with Tarpaulins. The other part of the proposal of the port of June 2016 seeks approval of this Authority for the port to levy charge ₹31.74 / tonne comprising ₹1.59 tonne towards the cost of Tarpaulins + ₹30.15 tonne towards cost of the labour in case the Port users are reluctant or fail to cover the bulk cargo stacks with Tarpaulins, and port is forced to undertake this activity. The port in many places has stated ₹31.64/ tonne instead of ₹31.74/ tonne. As per the break up given by the port, arithmetically it works out to ₹31.74/ tonne and hence the corrected figure is considered while analysing the case.

The VPT vide its letter dated 18 October 2016 has furnished the information/ clarification sought vide our letter dated 4 July 2016. Subsequently, the VPT had furnished further clarification vide its letter dated 9 December 2016 on few information gaps which were not addressed by the port earlier. At the joint hearing held in this case on 24 January 2017 whilst the Visakhapatnam Stevedores Association (VSA) and the trade accepted the proposal of the port authorising Stevedores/ Handling Agent/ BOT operators/ PPP operators to collect cess of ₹5/ tonne for covering all dry bulk cargoes stacked in vicinity with Tarpaulins, they strongly objected the proposal of the VPT to levy ₹31.74/ tonne, if the port has to render the services of covering cargo by tarpaulin. The VSA pointed out that the proposed rate of ₹31.74/ tonne to be collected by the port is unrealistic and low. They have argued that the VPT has, for arriving at the proposed rate, considered the life of tarpaulin to be 1 year whereas based on their experience does not last for more than 3 vessels. According to VSA, if this position is corrected, the rate works out to ₹120/- per tonne instead of ₹31.74 per tonne proposed to be levied by the port. The port has justified its calculation saying that the port envisages to use tarpaulin of 120 GSM whilst the stevedores may be using lower GSM.

Ironically, it is seen from the position reported by the VPT that during the discussions the port had with the trade, the trade stated that the proposed charges

of VPT @ ₹31.64 per tonne is not at all justified as it has worked out to only ₹5.00 per tonne, if they cover it on their own.

Notwithstanding the above position, in view of the strong objection of the VSA and the trade on the proposal of the VPT to levy ₹31.74/ tonne, if the port has to render the services of covering cargo by tarpaulin and based on the demand made by users/ user associations, the VPT at the Joint hearing withdrew its proposal to collect ₹31.74 tonne. At the same time, the VPT has categorically stated that the Stevedores/ Handling Agents/ PPP operators/ BOT operators should cover dusty cargo with tarpaulin. If the trade does not do this activity, the port has emphatically stated that there has to be some mechanism to enforce discipline in the port which is mainly to control environmental pollution measure. Hence, the port has proposed that in case the trade does not cover the dusty cargo in the vicinity of the port with tarpaulin, the port will get it done and recover the cost at actuals from the concerned.

- (iv). Clause 5.7.1. of the Working Guidelines issued by this Authority to operationalise the Tariff Policy 2015, stipulates the methods for tariff determination whenever a specific tariff for a service/ cargo is not available in the SOR, of a particular port. In that case, the concerned Major Port Trust can adopt tariff if any fixed for comparable cargo/ equipment/ service in any other Major Port Trust, else file the proposal for notification of tariff for the said new cargo/ equipment/ service with reference to optimal capacity assessed following the principles of 2008 guidelines or based on rated capacity or technical specification of service/ facility/ equipment. If determination of tariff based on the above prescribed options is not possible, then the Major Port Trusts can propose rates based on Cost plus 16% return formula giving sufficient reasons.

From the cost details furnished by the port, it is seen that the total the cost per tonne is worked out by port at ₹5.77 per tonne. The cost calculation does not capture any return as the port does not envisage any capital cost for providing this service.

The port has proposed the rate at ₹5 per tonne. It is to be seen that the proposal of the VPT is mainly to curb environmental pollution created by handling of dusty cargo at VPT. Moreover, the proposal filed by the port is after series of discussion with the trade. The trade has agreed to the proposal of the port for collection of ₹5/- per tonne for providing the service of covering dusty cargo with tarpaulin to mitigate the environmental pollution in the port for the reasons stated in para 2 above. Moreover, the port had already issued circular in September 2015 authorising Stevedores/ Handling Agents/ BOT operators to cover dusty cargo with tarpaulin and had also authorised them to collect ₹5/- per tonne for rendering this service. The port has informed that M/s.Vizag Seaport Private Limited has implemented on a trial basis wherein it was worked out the rate at ₹5.00 per tonne.

The port has also drawn reference to the Mormugao Port Trust (MOPT) where covering all stack of dry bulk cargoes with the tarpaulins as a short term measure was initiated and reported to be successful and effective measure for mitigating pollution. As rightly stated by the VPT, the MOPT has in the current general revision proposal proposed dust suppression levy of ₹4 per tonne on all cargoes excluding containers and liquid cargo handled at MOPT berths (excluding PPP Operators) which was duly approved by this Authority.

In view of the above position and recognising that the covering of dusty cargo stacks with Tarpaulins is to mitigate environmental pollution and is mooted in view of serious observations by the APPCB and also recognising that the proposed rate is agreed by the trade and has been approved by the VPT Board, this Authority is inclined to endorse the proposal of the port for levy of fee of ₹5 per tonne leviable by the stevedores and the handling agents for covering dry bulk cargo stacking in the vicinity of the port with Tarpaulins. As regards the proposal of the port

authorising BOT/ PPP operators to collect ₹5 per tonne for covering dry bulk cargo stacking cargo with Tarpaulins, it is discussed in the subsequent paragraphs.

- (v). (a). The port has issued Circular No.567 dated 5 September 2015 to all port users authorising BOT/ PPP operators to charge cess of ₹5/- per MT on all dry bulk import/ export of coal with effect from 25.9.2015. Subsequently the VPT has issued another circular No.572 dated 30 September 2015 stating that VPT proposes to TAMP for levy of cess of ₹5/- per MT and levy the same in anticipation of approval. The VPT in the said circular has authorised the BOT operators/ stevedores/ Handling Agents to charge a cess of ₹5/- per MT on all dry bulk import and export cargoes.
- (b). It is seen from the circular No.567 dated 5 September 2015 and 572 dated 30 September 2015 issued by the port, that the port has, apart from authorising Stevedores/ Handling Agents to levy cess of ₹5/- per MT, also authorised BOT operators to charge the same for covering of dry bulk import and export cargo with tarpaulin.

The port has stated that the tariff goes exorbitantly high if ports give the work of covering cargo with tarpaulin on contract. So the port felt that let Stevedoring/ PPP operators/ BOT operators do the work of covering cargo with tarpaulin themselves and, therefore, authorized them to collect ₹5/ tonne by issuing a circular trade.

As per the Section 42 (3) and (4) of the Major Port Trust (MPT) Act 1963, the BOT operators authorised by the Major Port Trust to provide services listed in the relevant section of the Act cannot charge or recover any tariff unless it is notified by this Authority in the Gazette of India. For this purpose, BOT operator who is governed under the Tariff Guidelines 2005 needs to approach this Authority with a proposal seeking approval of the rates. As regards the BOT operators governed under the tariff guidelines of 2008 and 2013, based on the upfront tariff approved by this Authority the VPT would have invited bids and awarded the project. The VPT is well aware that the upfront/ reference tariff fixed under tariff guidelines of 2008 and 2013 is only subject to annual indexation at the level prescribed in the relevant guidelines. The VPT was requested to explain as to how its circulars issued on 5 September 2015 and 30 September 2015 authorising the BOT operators to collect the levy of ₹5/ tonne is in line with the statute and the guideline position.

The port has clarified that earlier the Ministry of Environment (MOE) did not insist to cover cargo with tarpaulin. Spraying water was sufficient. Now, MOE is insisting to cover cargo with tarpaulin. The upfront/ reference tariff sought by the port at the relevant point of time in the past did not envisage covering of cargo with tarpaulin as this is the requirement insisted by MOE now which was not there earlier as reported by the port. This position is relied upon by this Authority.

The port has stated that considering the gravity of the situation and the urgent need to cover the stacks with Tarpaulins to mitigate the dust pollution, the port has authorised the BOT/ PPP Operators to charge a cess of ₹5.00 per M.T. on all dry bulk, import and export cargoes for covering it with tarpaulin. The port has categorically stated that had VPT not taken steps as mentioned above, the situation which arose for Chennai Port Trust, i.e., banning of handling of coal cargo by the National Green Tribunal, could not be ruled out at VPT.

In view of the strong reasons cited by the port and also for the reasons brought out in para 12(ii) above, this Authority being a national level Regulatory Body cannot ignore the environmental concern voiced by the

other regulatory body on the Environment. In fact, the proposal mooted by the port is a measure to control environmental pollution for various reasons cited by the port and also recognising that the proposal is after consultation with the trade and is approved by its Board, this Authority approves the proposal of the port authorizing the BOT operators to collect ₹5/- per tonne for covering dry bulk cargo with tarpaulin. This Authority while approving the said proposal of the port categorically makes it clear by way of abundant caution that this should not be cited as a precedent by any other Major Port or BOT operators governed under the 2008 guidelines and 2013 guidelines for seeking tariff for any other item or service for whatsoever reasons. This proposal of the VPT for coverage of the BOT operators for levy of ₹5 per tonne is approved solely to address the environmental issue raised by the APPCB.

- (c). Recognising that the proposal filed by port is after detailed discussion with the trade to take care of environmental issues in the port and the trade has given consent on the proposal of the VPT authorising Stevedores/ Handling Agents, BOT operators to collect ₹5/- tonne for covering dry bulk cargo with tarpaulin and also that the proposal of the VPT has been approved by the Board of Trustees, this Authority is inclined to approve the proposal submitted by the port. This Authority does not go into the details about the mutually agreed conditions and situation under which the rate has been agreed by the concerned parties. Any matter which may arise on this account will be for the port and the concerned parties to resolve mutually between themselves.
- (d). As per clause 5.7.2. and 5.7.3. of the Working Guidelines to the Tariff Policy, 2015, the port is to forward the proposal for notification of rate for the new facility or a new service to this Authority at least 60 days prior to the expected date of commissioning of the new cargo facility/ service. Simultaneously, with the submission of proposal, the proposed rate can be levied on an ad hoc basis till the rate is finally notified. It is, however, seen that the VPT has issued the circulars to the concerned port users on 5 September 2015 and subsequently a modified circular in 15 September 2015 authorising the Stevedores/ Handling Agents/ BOT operators to immediately cover the dry bulk cargo with tarpaulin and levy the cess of ₹5 per MT for that service.

However, the VPT approached this Authority with the proposal only in June 2016 instead of filing the proposal immediately at that point of time. When requested the VPT to clarify how the approach adopted by VPT falls in line with the clause 5.7.2 and 5.7.3 of the Working Guidelines, the VPT has cited various reasons and exigency in view of which the port has issued the circular to the trade. The port has further stated that Trade has requested the port that the coverage of stacks with Tarpaulins will cost them for deployment of men as well as materials for this purpose and the cost was not under the Stevedore's Agreement entered with their importers/ exporters. Therefore, the port has stated that port has issued circulars allowing them to collect ₹5.00 per tonne. The port has sought ratification of its action of authorizing stevedores/ handling agent/ PPP operator to charge ₹5/ tonne in emergent circumstances. In view of the emergent circumstance brought out by the port and recognising that the rate is arrived after discussion by the port with the concerned parties and agreed by them, this Authority ratifies the above action taken by the port which is mainly to control environment pollution.

- (vi). As stated earlier, VPT categorically stated that the Stevedores/ Handling Agents/ PPP operators/ BOT operators should cover dusty cargo with tarpaulin for which it has sought approval of ₹5/ tonne. If the trade does not do this activity, the port has emphatically pointed out there has to be some mechanism to enforce this

discipline in the port which is mainly to control environmental pollution measure. Hence, the port proposed that in case the trade does not cover the dusty cargo in the vicinity of the port with tarpaulin, the port will get it done and recover the cost at actuals from the concerned agency.

Recognising that the proposal of the VPT to recover the cost at actuals is only to enforce discipline and it is only to act as a deterrent so that the Stevedores/ handling agents/ BOT operators provide this service, this Authority approves the same.

13.1. In the result, and for the reasons given above, and based on a collective application of mind, this Authority accords approval to insert the following provision in the existing Scale of Rates of VPT at Section 4 – Cargo related charges as Section 4.8:

“4.8. Levy for Covering Dusty Cargo within the vicinity of the port with Tarpaulin:

4.8.1. Levy of ₹5 per tonne by Stevedores/ Handling Agents and BOT operators authorised by the VPT for undertaking the service of covering all dusty import and export cargo within the vicinity of the port with Tarpaulins.

4.8.2. If Stevedores/ Handling Agents and BOT operators authorised by the VPT do not cover all the dusty import and export cargo within the vicinity of the port with Tarpaulins, then the port will get it done and recover the actual cost of covering all dusty import and export cargo with Tarpaulins from the concerned.”

13.2. The Authority ratifies the action of the port of authorising stevedores/ Handling Agents and BOT operators to collect ₹5 per tonne from the date of levy in terms of the circular issued by the port to the trade in this regard.

13.3. The VPT is directed to amend the existing SOR suitably.

(T.S. Balasubramanian)
Member (Finance)

SUMMARY OF THE COMMENTS RECEIVED FROM THE PORT USERS/ USER ORGANIZATIONS AND ARGUMENTS MADE IN THIS CASE DURING THE JOINT HEARING BEFORE THE AUTHORITY

F.No. TAMP/34/2016-VPT - Proposal received from Visakhapatnam Port Trust (VPT) for levy of additional cess for supply of Tarpaulins and manpower for covering of dry bulk cargoes stacked in the vicinity of Visakhapatnam Port – Reg.

A summary of the comments received from users/ user organisations is given below:

Sl. No.	Comments received from users/ user organisations
1.	Visakhapatnam Stevedores Association (VSA)
(i).	VSA strongly object for the calculation basing on which VPT has proposed ₹1.59 ps per tonne towards tarpaulins and ₹30.15 ps per MT towards labour charges for covering the tarpaulins of the stacks as the same is not at all realistic.
2.	Steel Authority of India Limited (SAIL)
(i).	SAIL has stated that in various Port Working Committee meetings, VPT had intimated port users regarding a case filed in National Green Tribunal at Chennai on coal handling operations of VPT, concern of various Government officials including CM of AP&MP of Vizag on the pollution control measures of VPT etc.
(ii).	All port users were advised by VPT that covering of all dry bulk cargo with tarpaulins is mandatory and that in case VPT takes up the job the cost would be very high. SAIL was advised that all BOT operators/ Stevedores would cover the dry bulk cargo with tarpaulins and all importers would pay an additional amount of ₹5 per ton to their cargo handlers, since the continued handling of dry bulk cargo at VPT is at stake.
(iii).	Considering the situation, SAIL has no option, but to conform to the circular issued by VPT in this regard, and we have been making a payment of ₹5 per ton to the BOT operators/ Stevedores handling SAIL cargo.

2. A joint hearing in this case was held on 24 January 2017 at the VPT premises. At the joint hearing, the VPT and users / user associations have made the following submissions:

Visakhapatnam Port Trust

- (i). The Andhra Pradesh Chief Minister whenever he comes to the Vizag, expresses concern why cargo is not covered with tarpaulin as it leads to environmental pollution. Moreover, we got notice from the Andhra Pradesh Pollution Control Board also.
- (ii). We had serious discussion with trade before filing the proposal. The tariff goes exorbitantly high if we give the work of covering cargo with tarpaulin on contract. So we felt let Stevedoring/ PPP operators/ BOT operators do the work of covering cargo with tarpaulin themselves. We, therefore, authorized them to collect ₹5/ tonne by issuing a circular trade.
- (iii). We have feedback that ₹5/ tonne is reasonable.
- (iv). ₹31.74/ tonne is only to cover the dusty cargo in case the stevedores/ handling agents do not cover cargo with tarpaulin and the port is forced to do it. It is only an indicative ceiling rate. It is a ceiling rate. If the contract rate is less, we will levy reduced rate.
- (v). ₹5/ tonne is a mutually agreed rate. ₹31.74/ tonne is proposed only if port is required to do it forcefully.
- (vi). Earlier the Ministry of Environment (MOE) did not insist to cover cargo with tarpaulin. Spraying water was sufficient. Now, MOE is insisting to cover cargo with tarpaulin.

- (vii). If trade does not cover with Tarpaulin, Andhra Pradesh Pollution Control Board (APPCB) sends notices to the port. Trade should do this to comply with the environmental pollution control measures. If trade does not do, there has to be some enforcement. Else port will get notice from the APPCB. We should not have problem like Chennai port. If stevedores / handling agent does not do it, port will be forced to undertake this activity. We will give it on contract basis.
- (viii). We need ratification of the action of port authorizing stevedores/ handling agent/ PPP operator to charge ₹5/ tonne. TAMP is requested to ratify this action of the port done in an emergent circumstances.
- (ix). In view of objection from trade to the proposed rate of ₹31.74/ tonne, we agree to withdraw it. We want the trade to cover dusty cargo with tarpaulin. If trade does not do, there has to be some mechanism to enforce it. Hence, if it is not done by trade, port will get it done and recover the cost at actuals. We modify our proposal to that extent.
- (x). Proposal is not to earn money. It is for compliance of environmental issue.

Visakhapatnam Stevedores Association (VSA)

- (i). The proposed rate of ₹5/ tonne is ok. We are ok with it.
- (ii). Half of our principals do not pay ₹5/ tonne, though port has issued circular to trade.
- (iii). If VPT renders the service, the rate proposed is ₹31.74 per tonne. Port has taken life of Tarpaulins as 1 year. It does not last for more than 3 vessels based on our experience. ₹31.74/ tonne proposed by VPT is unrealistic and low.
[Traffic Manager, VPT – We are using 120 GSM Tarpaulins. Stevedores may be using lower GSM]
- (iv). Covering cargo with Tarpaulin will not be effective to control dust.
[Chairman, VPT: People in surrounding area are happy after this practice is started].
