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Tariff Authority for Major Ports

G.No.213

New Delhi,

18 June 2020

NOTIFICATION

In exercise of the powers conferred by Section 48 of the Major Port Trusts Act, 1963 (38 of 1963) and in pursuance of Ministry of Shipping letter No.PD-13/1/2018-PPP Cell dated 11 July 2018 on Stressed PPP Projects, the Tariff Authority for Major Ports hereby disposes of the proposal received from the Visakhapatnam Port Trust (VPT) for extension of validity of rationalised storage charge approved by this Authority vide Order No.TAMP/9/2019-VPT dated 24 July 2019 relating to the Vizag General Cargo Berth Pvt. Ltd. (VGCBPL) for mechanized handling of coking coal and steam coal at General Cargo Berth of VPT on DBFOT basis as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports
Case No. TAMP/14/2020-VPT

Visakhapatnam Port Trust

Applicant

QUORUM

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

O R D E R

(Passed on this 1st day of June 2020)

This case relates to the proposal dated 4/5 March 2020 received from Visakhapatnam Port Trust (VPT) for extension of rationalised storage charge approved by this Authority vide Order No.TAMP/9/2019-VPT dated 24 July 2019 amending the Storage schedule approved in the Order No.TAMP/58/2008-VPT dated 11 January 2013 notifying the Scale of Rates (SOR) in the name of Vizag General Cargo Berth Pvt. Ltd. (VGCBPL) for mechanized handling of coking coal and steam coal at General Cargo Berth of VPT on DBFOT basis in pursuance of MOS letter No.PD-13/1/2018-PPP Cell dated 11 July 2018.

2.1. In pursuance of Ministry of Shipping letter No.PD-13/1/2018-PPP Cell dated 11 July 2018 on Stressed PPP Projects, this Authority vide its Order No.TAMP/9/2019-VPT dated 24 July 2019 has, based on the proposal of VPT and after following due consultation process with stakeholders and after holding joint hearing, approved the amendment in the Storage schedule approved by this Authority vide Order No.TAMP/58/2008-VPT dated 11 January 2013 notifying Scale of Rates (SOR) in the name of Vizag General Cargo Berth Pvt. Ltd. (VGCBPL) for mechanized handling of coking coal and steam coal at General Cargo Berth of VPT on DBFOT basis.

2.2. The Order was notified by this Authority vide Gazette No.296 dated 21 August 2019. The amended storage charge was approved by this Authority for a period of one year from 21 January 2019 to 20 January 2020.

2.3. Vide the said Order dated 24 July 2019, this Authority replaced the Schedule 4 of the SOR approved by this Authority in the Order No.TAMP/58/2008-VPT dated 11 January 2013 notifying the SOR in the name of the VGCBPL with the following schedule and notes:

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(in ₹ per tonne per day or part thereof)

Sl. No.	Particulars	Storage Charges applicable for the year 2018-19 after applicable indexation	Existing Storage Charges applicable for the year 2019-20 after applicable indexation	Amended Storage Charges from 21.1.2019 till 31.3.2019	Amended Storage Charges from 1.4.2019 till 20.1.2020
1.	Storage Charges (0-10 days)	No Charges	No Charges	No Charges	No Charges
2.	Storage Charges (11-15 days)	2.06	2.11	No Charges	No Charges
3.	Storage Charges (16-20 days)	4.11	4.21	No Charges	No Charges
4.	Storage Charges 21 st Day onwards	8.22	8.43	8.22	8.43

Notes:

- (i). *20 free days shall be allowed. Free period shall commence from the day following the day of complete discharge of vessel cargo. For the purpose of calculation of free period, Custom notified holidays and Terminal's non-working days shall be excluded.*
- (ii). *Storage charges shall be payable for all days including Terminal's non-working days and Customs notified holidays for stay of cargo beyond the prescribed free days.*
- (iii). *Storage charges on cargo shall not accrue for the period when the terminal operator is not in a position to deliver/ ship the cargo when requested by the user due to reasons attributable to the Terminal operator.*
- (iv). *The above storage schedule shall be valid till 20 January 2020 and it shall automatically lapse and the original storage schedule as approved in the Order dated 11 January 2013 with appropriate indexation rates shall come into effect from 21 January 2020, unless reviewed by VPT and approved by this Authority."*

3. In the backdrop of Note (iv) of the above storage schedule, the VPT has come up with a proposal seeking extension of the validity of the amended storage charge for another one year from 21 January 2020. The main points made by VPT in its proposal dated 4/5 March 2020 are given below:

- (i). Storage schedule for VGCB terminal awarded to M/s.VGCBPL at VPT was revised and notified by the Authority vide Order dated 24 July 2019 based on the guidelines of Ministry of Shipping (MOS) issued vide letter No.PD-13/1/2018-PPP Cell dated 11 July 2018. The revised storage schedule notified therein is applicable for a period of one (1) year from 21.01.2019 to 20.1.2020.
- (ii). The VGCBPL vide its letters dated 11 October 2019 and 2 November 2019 has submitted relevant data for categorization of VGCB as "Stressed Project" as per guidelines of MOS and requested to continue the status of VGCB facility as "Stressed Project" for a further period of one (1) year and also requested to continue extending the benefits of rationalised storage charges and extended free storage days, without any discontinuity.
- (iii). MOS vide para 6 and 7 of its letter dated 11 July 2018 has directed the Major ports to adopt the procedure for rationalisation of storage charges in respect of stressed projects and has also directed to review the situation periodically for optimal utilization of the facility created.

[VPT has furnished copy of the letters dated 11 October 2019 and 2 November 2019 submitted by M/s.VGCBPL. The VPT has also furnished a copy of the letter showing the percentage utilization of VGCBPL during the previous two years i.e. 2018-19 and 2017-18 and a copy of the letter showing the cash losses incurred and net worth of VGCBPL during the said years.]

- (iv). The VPT Board has considered the following three criteria as prescribed in MOS letter dated 11 July 2018 for classification of the VGCBPL project as a 'Stressed Project':
 - (a). The cargo volumes handled at VGCBPL as per VPT letter dated 18 November 2019 during the preceding two financial years i.e. 2018-19 and 2017-18 and percentage utilization of the facility as detailed below:

Year	Cargo throuput (Million tonnes)	% utilisation
2017-18	5.53	54%
2018-19	4.95	49%

The project is sub-optimally utilized as evidenced by the actual cargo handled by the operator during two preceding financial years being less

than 70% of the projection as per DPR/Feasibility report forming part of the bid document.

- (b). Project is incurring cash loss continuously for two preceding financial years i.e. 2017-18 and 2018-19. Cash losses incurred by the Concessionaire and the prescribed criteria of at least 50% erosion of its peak net worth during the operation period as furnished by VGCBPL along with a Certificate dated 30 October 2019 from practicing Chartered Accountant considered by the VPT Board is tabulated below:

Sl. No.	Particulars	FY 2018-19 (₹ in crores)	FY 2017-18 (₹ in crores)
1.	Cash losses incurred by VGCBPL	(2.29)	(26.97)
2.	Net worth of VGCBPL	(11.47)	21.70

- (v). The VPT has placed the request of VGCBPL in the Board of Trustees meeting of VPT held on 30 December 2019 and the Board has resolved the following:

- (i). To consider the proposal of M/s.VGCBPL for classification of the said project as “Stressed project” and to treat the project as stressed project in compliance to the directions of Ministry’s order dated 11.07.2018.
- (ii). To approach TAMP under the provisions available at Article 21.9 of the Concession Agreement covering “Amendments, Modifications or Alternations” with an appropriate proposal for rationalisation of storage charges in consultation with the Concessionaire M/s.VGCBPL so as to achieve the ARR as per the TAMP guidelines/ notifications.
- (iii). To inform the Concessionaire to submit a detailed proposal to TAMP through VPT duly justifying the reasonableness for extension of the benefits of rationalisation of storage charges beyond 20.01.2020 and
- (iv). To consider the proposal for a period of one year from 20.01.2020 and to review thereafter.

- (vi). M/s.VGCBPL vide its letter dated 3 February 2020 has submitted the proposal to VPT for extension of validity of the amended storage charge as follows:

Sl. No.	Particulars	Units	Current Scale of Rates (without rationalisation)	Proposed Scale of Rates
1.	Storage charges 0-10 days	₹ / MT per day	No charge	No charge
2.	Storage charges 11-15 days	₹ / MT per day	2.11	No charge
3.	Storage charges 16-20 days	₹ / MT per day	4.22	No charge
4.	Storage charges 21 st day onwards	₹ / MT per day	8.43	8.43

- (vii). Further, the VGCBPL has justified to the VPT for continuation of rationalised storage charge for the second year as well stating that the project has not made any profits for the past 7 years and the entire loan is still outstanding. Even after getting the approval for rationalisation of storage charge, the project performance was not upto satisfactory level which has been detailed as follows:

- (a). Last year discharge volume is 4.96 MMT against optimal capacity approved at 10.18 MMT.

- (b). VGCBPL had made a net loss of ₹33.17 crores last year. A copy of financials for FY 2018-19 has already been submitted to VPT.
- (c). Entire networth has gone into negative last year due to continuous losses since inception of the project.

Hence, in view of the above situations, VGCBPL has requested to continue the rationalised storage charge for the second year as well in the interest of VGCBPL project which is a major contributor for VPT Ex-chequer.

- (viii). The VPT has stated that the VGCBPL proposal is in line with the recommendations of the Committee constituted by the MOS communicated vide MOS letter dated 11 July 2018 on stressed PPP projects.
 - (ix). The VPT has, therefore, requested to consider the proposal submitted by M/s.VGCBPL for rationalisation of storage charges to improve the capacity utilization of VGCB facility. VPT has also requested to approve and notify the revised storage schedule for the VGCB facility at the earliest to take effect from 21.1.2020 for a period of one year i.e. upto 20.1.2021.
 - (x). The VPT has requested to include the indexation factor in the approval and notification.
4. The VPT has furnished a copy each of the following in support of its proposal as regards the three criteria prescribed by MOS in its letter dated 11 July 2018:

- (i). Copy of VPT letter dated 18 November 2019 showing cargo volumes handled by VGCBPL for the years 2017-18 and 2018-19.
- (ii). A copy of Certificate of practicing Chartered Accountant furnished by VGCBPL as regards cash losses for preceding two financial years i.e. 2017-18 and 2018-19 and erosion of net worth by at least 50%.
- (iii). A copy of approval of Board of Trustees of VPT dated 30 December 2019.

5. Para 6 & 7 of MOS letter dated 11 July 2018 are reproduced below:

- “6. *The Committee headed by AS&FA, MoS is of the view that wherever such issue of abnormal storage charges emerges in stressed projects as defined in Para 3 above, the Ports may approach TAMP under the provisions of “Amendments, modifications or alternations” to the terms and conditions of the concession agreement with an appropriate proposal for rationalization of storage charges in consultation with concessionaries so as to achieve the ARR as per the TAMP guidelines notification. TAMP has to consider such proposals on merit. The Committee also recommended review of the situation by the Concessioneing Authority periodically for optimum utilization of the facility created.*
- 7. *The Major ports are, therefore, directed to adopt the aforesaid procedure including review of the situation periodically for optimum utilization of the facility created.”*

6. The current proposal of VPT is for extension of validity of rationalised (i.e. reduced) storage charge approved by this Authority vide Order No.TAMP/9/2019-VPT dated 24 July 2019. As stated earlier, rationalised storage charge was approved by this Authority in the said Order. The approval accorded by this Authority was after following prescribed consultation process and joint hearing held on 17 June 2019 on the original proposal of VPT dated 7 December 2018 seeking amendment in storage charge in pursuance of MOS letter dated 11 July 2018. Since the current proposal of VPT is only for extension of the amended storage rate approved by this Authority for another one year and the same has been approved by the Board of Trustees of VPT and also recognizing that proposal of the VPT is based on the proposal of VGCBPL which has stated that project continues to be stressed and meets all the three prescribed criteria

prescribed by the MOS for stressed project and hence sought for extension of amended storage charge for another one year, this proposal was not again taken up for consultation.

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

- (i). The proposal of the Visakhapatnam Port Trust (VPT) seeks approval of this Authority for extension of the validity of the rationalised storage charge approved by this Authority vide Order No.TAMP/9/2019-VPT dated 24 July 2019 relating to the amendment in the Storage schedule approved by this Authority vide Order No.TAMP/58/2008-VPT dated 11 January 2013 notifying Scale of Rates (SOR) in the name of Vizag General Cargo Berth Pvt. Ltd. (VGCBPL) for mechanized handling of coking coal and steam coal at General Cargo Berth of VPT on DBFOT basis in pursuance of MOS letter No.PD-13/1/2018-PPP Cell dated 11 July 2018.
- (ii). As regards the stressed PPP project, the MOS, in its letter dated 11 July 2018, has prescribed the following three criteria for classification of PPP project as Stressed Projects by Major Port Trusts:
 - (a). The project is sub optimally utilised as evidenced by the actual cargo handled by the operator during two preceding financial years being less than 70% of the projection as per DPR/Feasibility report forming part of the bid document and
 - (b). Project SPV incurring cash loss continuously for two preceding financial years and
 - (c). That the losses incurred by concessionaire has caused atleast 50% erosion of its peak Net Worth during the operation period.

Para 7 of the said MOS letter dated 11 July 2018 directs the Major ports to adopt the prescribed procedure and review the situation periodically for optimum utilisation of the facility created.

- (iii). The underutilisation of capacity below 70% is supported by the VPT letter and the cash loss for preceding two years 2017-18 and 2018-19 and erosion of net worth of at least 50% is supported by the Certificate from practicing Chartered Accountant furnished by VGCBPL and considered by the Board of Trustees of the VPT. The same is relied upon.

The Board of Trustees of VPT has approved extension of validity of rationalised storage charge as approved by this Authority vide Order dated 24 July 2019 beyond 20 January 2020 for a period of one year.

- (iv). The proposal filed by the VPT is based on the approval of the Board of Trustees of the VPT. It fulfills the three criteria prescribed in the MOS letter dated 11 July 2018 on the Stressed Project and the proposal is for extension of validity of rationalised storage charges approved by this Authority vide Order No.TAMP/9/2019-VPT dated 24 July 2019, and is mutually accepted by both the parties i.e. VPT and VGCBPL. Recognizing that it is intended to utilize the project facilities optimally by rationalising storage charges, this Authority is inclined to approve the current proposal of the port for extension of the validity of rationalised storage charge approved by this Authority in the Order dated 24 July 2019 for a further period of one year i.e. from 21 January 2020 to 20 January 2021.
- (v). The Order dated 24 July 2019 prescribed four conditionalities under the schedule of amended storage charge. The same conditionalities are continued to be prescribed in this Order except modification required to be done in note no.(iv).

The note no.(iv) approved in the Order dated 24 July 2019 states that storage schedule shall be valid till 20 January 2020 and it shall automatically lapse and the original storage schedule as approved in the Order dated 11 January 2013 with appropriate indexation rates shall come into effect from 21 January 2020, unless reviewed by VPT and approved by this Authority.

The Board of Trustees of VPT has accorded approval for extension of validity of the rationalised storage charge approved by this Authority vide Order dated 24 July 2019 for a period of one year beyond 20 January 2020 i.e. from 21 January 2020 till 20 January 2021 and to be reviewed thereafter. That being so, validity of rationalised storage schedule approved by this Authority is extended for a further period of one year from 21 January 2020 till 20 January 2021. Hence, the note no.(iv) is modified to state that storage schedule prescribed shall come into effect from 21 January 2020 and shall be valid till 20 January 2021.

- (vi). It is relevant here to state that the rationalised storage charge prescribed in the Order dated 24 July 2019 captures the indexation factor applicable for the year 2019-20. The BOT operators governed under the 2008 guidelines are entitled for annual indexation @ 60% of the WPI announced by this Authority. The VGCBPL is governed under the upfront tariff guidelines of 2008 and hence is entitled for annual indexation for the year 2020-21 announced by this Authority on the rationalised storage charge approved in the Order dated 24 July 2019. The VPT has also requested to include the indexation factor in the notification. The indexation factor announced by this Authority for the year 2020-21 under the upfront tariff under 2008 guidelines @ 60% of the WPI is 1.13%. Therefore, the indexed rate applying 1.13% indexation factor shall be applicable from 1 April 2020 till 20 January 2021 in this case. Accordingly, an additional column is inserted in the schedule earlier approved prescribing the indexed storage charge from 1 April 2020 till 20 January 2021 with the indexed storage charge at ₹8.53 (i.e. 8.43 x 1.0113) for the last slab.
- (vii). As brought out in the preceding paragraph, the Board of VPT has accorded approval to the proposal for one year beyond 20 January 2020 and review thereafter. That being so, validity of the rationalised storage schedule approved by this Authority shall be for the period of one year from 21 January 2020 till 20 January 2021.

8.1. In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves the proposal of VPT for extension of the validity of the rationalised storage charge approved by this Authority vide Order No.TAMP/9/2019-VPT dated 24 July 2019 for terminal operated by VGCBPL for a further period one year w.e.f. 20 January 2020 and accordingly rates applicable under the Schedule 4 in the Order approved by this Authority vide Order No.TAMP/58/2008-VPT dated 11 January 2013 notifying the SOR in the name of the VGCBPL are amended as given below for the validity period upto 20 January 2021:

(in ₹ per tonne per day or part thereof)

Sl. No.	Particulars	Storage Charges applicable after applying indexation factor <u>as per Order No.TAMP/58/2008-VPT dated 11 January 2013</u>			Amended indexed Storage Charge approved vide <u>Order No.TAMP/9/2019-VPT dated 24 July 2019 for the period 21.1.2019 till 20.1.2020</u>		Amended indexed Storage Charge for the period <u>21.1.2020 till 20.1.2021 in the current extension Order</u>	
		Storage Charge applicable for the year 2018-19	Storage Charge applicable for the year 2019-20	Storage Charge applicable for the year 2020-21	Storage Charge from 21.1.2019 till 31.3.2019	Storage Charge from 1.4.2019 till 20.1.2020	Amended indexed Storage Charge from 21.1.2020 till 31.3.2020	Amended Indexed Storage Charge from 01.4.2020 till 20.1.2021
1.	Storage Charges (0-10 days)	No Charges	No Charges	No Charges	No Charges	No Charges	No Charges	No Charges
2.	Storage	2.06	2.11	2.13	No Charges	No Charges	No Charges	No

	Charges (11-15 days)							Charges
3.	Storage Charges (16-20 days)	4.11	4.21	4.26	No Charges	No Charges	No Charges	No Charges
4.	Storage Charges 21 st Day onwards	8.22	8.43	8.53	8.22	8.43	8.43	8.53

Notes:

- (i). 20 free days shall be allowed. Free period shall commence from the day following the day of complete discharge of vessel cargo. For the purpose of calculation of free period, Custom notified holidays and Terminal's non-working days shall be excluded.
- (ii). Storage charges shall be payable for all days including Terminal's non-working days and Customs notified holidays for stay of cargo beyond the prescribed free days.
- (iii). Storage charges on cargo shall not accrue for the period when the terminal operator is not in a position to deliver / ship the cargo when requested by the user due to reasons attributable to the Terminal operator.
- (iv). The above storage schedule shall be valid from 21 January 2020 till 20 January 2021.

8.2. The VGCBPL is also directed to furnish the quarterly physical performance including the cargo-wise volume handled through VPT within 15 days at the end of each quarter and annual performance, both physical and financial, within 2 months from the end of the financial year to this Authority.

(T.S. Balasubramanian)
Member (Finance)