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TARIFF AUTHORITY FOR MAJOR PORTS

G.No.27

New Delhi,

15 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 Visakhapatnam Port Trust for amendment in the existing Scale of Rates approved vide Order No.TAMP/20/2019-VPT dated 29 November 2019 to prescribe rate for deployment of Fire Tenders for any other purpose/ place other than fire-fighting in ships lying in port limits as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports
Case No.TAMP/42/2020-VPT

Visakhapatnam 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 28th day of December 2020)

This case relates to the proposal received from Visakhapatnam Port Trust (VPT) for amendment in the existing Scale of Rates approved vide Order No.TAMP/20/2019-VPT dated 29 November 2019 to prescribe rate for deployment of Fire Tenders for any other purpose/ place other than fire-fighting in ships lying in port limits.

2. This Authority had vide Order No.TAMP/20/2019-VPT dated 29 November 2019 passed an Order relating to general revision of VPT Scale of Rates. This Order was notified in the Gazette of India on 27 December 2019 vide Gazette No.494. Subsequently, a speaking Order was notified vide Gazette No.20 dated 14 January 2020. The revised SOR notified by this Authority came into effect after expiry of 30 days from the date of notification of the SOR in the Gazette of India and shall be in force for a period of 3 years from the date the revised SOR came into effect i.e. till 26 January 2023. In the said Order, fire tender charge is prescribed at schedule 7.3 which is reproduced below for ease of reference:

“7.3. *Fire Tender Charges:*

| Sr. No. | Description | Unit | Rate (in ₹) |
|----------------|--|-----------------|--------------------|
| 1. | <i>Fire Tender [All types of fire tenders]</i> | <i>Per hour</i> | <i>1000</i> |

Notes:

- (1). *Charges at actuals will be levied for fighting fires in ships lying in the port limits.*
- (2). *Overtime charges of crew will be charged extra.*

Above charges are exclusive of overtime charges.”

3.1. The VPT vide its letter dated 30 September 2020 has now submitted its proposal for prescription of rate for deployment of fire tender for any other purpose/ place other than fire fighting in ships lying in port limits. The main points made by the VPT in support of its proposal are as follows:

- (i). The Fire Tenders are specialized and emergency equipment which are used mainly for combating fires on board vessel, Electrical Sub Stations, on berths, product lines, buildings, etc., and other emergency such as toxic gas release, chemicals leakage and any other accident areas in the port limits.
- (ii). In addition, Fire Tenders along with Fire crew are kept standby at hazardous cargos such as LPG, Crude Oil, MS, HSD, FO, ATF, NAPHTHA, Ammonia Gas, Ammonium Nitrate, Sulphuric Acid, Phosphoric Acid, Caustic Soda, Styrene Monomer and Alcohols etc. handling areas in VPT to tackle any emergencies.
- (iii). Fire Tender is being deployed as standby at hazardous cargo handling area on chargeable basis for which ₹1000/- per hour and staff Double Over Time (DOT) at actuals are charged as “Fire Tender standby charges” as per the existing SOR clause no.7.3.
- (iv). Of late, the Fire Tenders are being deployed continuously to control smouldering from coal stacks of various traders/ Agents who failed to deploy their tankers as part of mitigation of environmental pollution. This has resulted to spare the Fire Tenders to said work, leaving from its main work of fighting fire on board ships and hazardous cargo handling area emergencies.

- (v). In view of the above, as a deterrent clause, following is proposed to be included in the existing SOR as Schedule 7.3.1:

7.3.1. Fire Tenders deployed for any other purpose/ place, other than for fire fighting in ships lying in the port limits.

| No. | Description | Rate |
|-----|-------------------------------|--|
| 1. | If deployed during day time | Double the charges of existing rates as at 7.3 |
| 2. | If deployed during night time | 2.5 times on existing rates as at 7.3 |

Notes: (1). The staff Double Over Time charges to be as per actuals.

3.2. Subsequently, the VPT vide its letter dated 16 November 2020 has submitted that the subject proposal was placed for Board's approval in the meeting no.3 of 2020-21 held on 04 November 2020 and Board of Trustees of VPT has resolved as follows:

- (i). To include Fire Tenders deployed for any other purpose other than Fire Fighting in the Port limits in the existing SOR as Clause No.7.3.1.
- (ii). If Fire Tenders deployed for any other purpose such as Smouldering Coal Stacks or other cargoes, double the charges of existing rates as at 7.3 of SOR and
- (iii). The staff Double Over Time (DOT) charges as per actuals.

3.3. Further, the VPT has submitted that the amount received on account of Fire Tenders deployed at coal stacks for controlling smouldering from April to October 2020 is ₹9,14,516/-.

3.4. In view of the above, the VPT has requested to notify the schedule for implementation by VPT.

4. In accordance with the consultative procedure prescribed, a copy of the proposal of VPT dated 30 September 2020 was forwarded to the concerned users/ user organisations seeking their comments vide our letter dated 16 October 2020. The comments received from the users/ user organisations were forwarded to VPT for feedback information. The VPT vide its letters dated 4 November 2020 and 10 November 2020 has furnished its reply.

5. A joint hearing on this case in reference was held on 10 November 2020 through Video Conferencing. At the joint hearing, the VPT and VSA have made their submissions.

6. 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 parties will be sent separately to the relevant parties. These details will also be made available at our website <http://tariffauthority.gov.in>.

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

- (i). The proposal filed by the Visakhapatnam Port Trust (VPT) seeks approval of the proposed tariff for deployment of Fire Tenders for any other purpose/ place other than fire-fighting in ships lying within port limit. The proposal is mainly to act as a deterrent for deployment of Fire Tenders for purposes other the core purposes viz. fighting of fire on board ships and hazardous cargo in case of emergencies.

The Fire Tenders are specialized and emergency equipment which are used mainly for combating fires on board vessel, Electrical Sub Stations, on berths, product lines, buildings, etc., and other emergency such as toxic gas release, chemicals leakage and any other accident areas in the port limits and are kept as crew standby in handling areas of hazardous cargoes to tackle emergencies.

The proposal is mooted by the port based on its experience that the fire tenders are being deployed continuously to control smouldering from coal stacks on

account of failure of various traders/ Agents to deploy their tankers as part of mitigation of environmental pollution. The activity is primarily the responsibility of the concerned agent/ user. On account of their failure, the port is required to spare the Fire Tenders for these activities leaving its main work of fighting fire on board ships and hazardous cargo in case of emergencies. The proposed tariff is not a mandatory tariff. It is only to act as a deterrent for deployment of Fire Tenders by the port for purposes other than the core purposes for which it stands.

The existing SOR of the VPT approved by this Authority vide Order No.TAMP/20/2019-VPT dated 29 November 2019 is valid for a period of 3 years from the date the revised SOR came into effect i.e. till 26 January 2023.

However, in view of the above submissions made by the port and since the proposal is approved by its Board, there is merit to consider the proposal of VPT for insertion of the schedule 7.3.1 for prescription of rate for deployment of Fire Tenders for any other purpose/ place other than fire-fighting in ships lying within port limit.

(ii). With regard to point made by Visakhapatnam Stevedores' Association (VSA) that this hike in charges will increase the transaction cost, the VPT has confirmed that there is no hike in existing charges and the tariff proposed is not a routine service. The proposed tariff is not mandatory. Deployment of Fire tender by the port is not compulsory and it is to be deployed by the VPT only when agents fail to control fire as during summer season, it is becoming difficult to control when the combustion is high. Thus, it is a penal provision whenever the users fail to control the smouldering and Port is constrained to control it taking into account the safety of Port. There is no financial revenue envisaged from this proposal.

(iii). As regards the point made by the VSA that they do not agree to the proposed tariff for coal stockpiles as handling agents are taking care of sprinkling of water etc. at their cost, the VPT has already clarified that these rates will be applicable only to those handling agents who request VPT for deployment of fire tenders and who fail to control smouldering for coal stockpiles on their own. Thus, it is not a mandatory tariff item.

As regards the point made by the VSA that revenue collected by the port towards pollution control charges at ₹2 per tonne can meet the required cost for fire tender deployment, as stated by the VPT, the prescribed tariff of ₹2/- PMT is collected towards mitigating dust pollution and is in compliance with the norms of Andhra Pradesh Pollution Control Board. Whereas, the proposed tariff is sought to be incorporated for specific requisition of services by the trade and it is as penal nature. The port has categorically stated that the proposed tariff has no relation to the Pollution control charges. Hence, the point made by the VSA is out of place. The proposed tariff item will not add to transaction cost on the trade when not requisitioned.

(iv). Thus, in short, the proposal of the port is neither a mandatory nor a compulsory tariff item. The proposed tariff item is to act as a deterrent so that the trade and the agents do the need full to control the smouldering from coal stacks and the port is not compelled to deploy fire tender leaving its core purpose for deployment. The VPT has proposed to levy at two times the rate prescribed in the existing SOR under schedule 7.3 i.e. ₹2000/- per hour if fire tender is deployed during day time and 2.5 times the rate prescribed in the existing SOR under schedule 7.3 i.e. ₹2500/- per hour if fire tender is deployed during night time for any other purpose/ place, other than for fire fighting in ships lying in the port limits. The port has also proposed to charge double over time charges of staff at actuals. The proposed tariff is not intended for revenue generating source. The revenue earned by the port from deployment of Fire Tenders at the rates as per the prevailing SOR when deployed at coal stacks for controlling smouldering is reported to be ₹15.68 lakhs in the year 2020-2021 for the period of seven months from April to October 2020. In the last tariff revision, the revenue gap left

uncovered is to the tune of ₹211.37 crores and hence the revenue from the proposed tariff item will get subsumed in the revenue gap. The Board of Trustees of the VPT has also approved the proposal.

In view of the above position, this Authority is inclined to approve the tariff proposed by the VPT along with the proposed note for deployment of Fire Tenders for any other purposes/ place other than fire-fighting in ships lying in port limits at the VPT.

- (v). The rates approved by this Authority generally come into effect prospectively after expiry of 30 days from the date of Gazette Notification unless otherwise different arrangement is specifically mentioned in the respective tariff Orders. Accordingly, the proposed rate for deployment of Fire Tenders for any other purpose/ place other than fire-fighting in ships lying in port limits shall come into effect after the expiry of 30 days from the date of Gazette Notification of the Order passed in the Gazette of India. Since the said rate shall form part of the existing SOR of the VPT. The validity of the same shall be coterminous with the validity of the SOR of the VPT.

8.1. In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves insertion of the following schedule 7.3.1 after the existing Schedule 7.3. Fire Tender Charges under Charges for Other Services under Chapter VII in the existing Scale of Rates (SOR) of VPT:

“7.3.1. Fire Tenders deployed for any other purpose/ place, other than for fire fighting in ships lying in the port limits.

| No. | Description | Rate |
|-----|-------------------------------|--|
| 1. | If deployed during day time | Double the charges of existing rates as at 7.3 |
| 2. | If deployed during night time | 2.5 times on existing rates as at 7.3 |

Note: The Double Over Time (DOT) charges of staff to be as per actuals.”

8.2. The rate approved by this Authority shall come into effect after expiry of 30 days from the date of notification in the Gazette of India. The validity of the same shall be coterminous with the validity of the SOR of the VPT.

8.3. The VPT is directed to suitably incorporate the above schedule in its SOR.

(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/42/2020-VPT - Proposal from the Visakhapatnam Port Trust for amendment in the existing Scale of Rates approved vide Order No.TAMP/20/2019-VPT dated 29 November 2019 to prescribe rate for deployment of Fire Tenders for any other purpose/ place other than fire-fighting in ships lying in port limits.

A summary of the comments received from the users/ user organisations and reply furnished by Visakhapatnam Port Trust (VPT) thereon is tabulated below:

| Sl. No. | Comments received from the users/ user organisations | Reply received from the VPT |
|----------------|--|--|
| 1. | M/s.Indian Oil Corporation Limited | |
| (i). | Provision of adequate firefighting facilities at berths used for handling POL and LPG tankers at any port is the responsibility of the concerned Port Authorities. Proper maintenance of these facilities are also done by the Port authorities. | IOCL confirmed that port is maintaining adequate firefighting facilities and it is properly maintained. |
| (ii). | IOCL had never asked for fire tender during our tanker operations in any VPT jetties or any other purposes. | The present proposal is for inclusion of separate charges for the deployment of fire tenders for controlling smouldering at coal or other cargo stacks as and when any user requests for providing fire tenders. Hence separate charges requested for inclusion in SOR at clause 7.3.1. |
| 2. | Visakhapatnam Stevedores' Association | |
| (i). | The charges proposed by VPT are very high and the stakeholders are not in a position to bare such huge hike. | The present proposal is for inclusion of separate charges for the deployment of fire tenders for controlling smouldering at coal or other cargo stacks as a penal provision and when any user fails to control smouldering in the cargo. |
| (ii). | This huge hike in charges will increase the transaction cost in this port. | There is no hike in charges and it is not a routine service. It is a penal provision whenever, the users fails to control the smouldering and Port is constrained to control it taking into account the safety of Port. |
| (iii). | We are not agreeable to apply these charges for coal stockpiles as handling agents are taking care of sprinkling of water etc. at their cost. | These rates will be applicable to those handling agents who request VPT for fire tenders and who fail to control smouldering for coal stockpiles on their own. |
| (iv). | VPT is collecting about ₹2 PMT towards pollution control charges and they can meet the required costs from this revenue. | This charge is collected toward mitigating dust pollution and complying with Andhra Pradesh Pollution Control Board norms. However, the charges sought to be included is for specific requisition of services and as penal provision to such requisition. This will not add to transaction cost on the trade when not requisitioned. |

| | | |
|-------|--|--|
| (v). | VPT to justify the revenue earned on this PC charges and expenditure on this account. | This is a penal provision clause and has no relation to the PC charges/ expenditure. |
| 3. | Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) | |
| (i). | TANGEDCO has entered in to a MOU with Visakhapatnam Port Trust (VPT) for "Movement and Handling of coal by Rail-cum-Sea route from the various collieries of MCL/Ib Valley, through the load port of Visakhapatnam, for further movement to the Thermal Power Stations of TANGEDCO". | The VPT has not responded. |
| (ii). | Based on the MOU a letter was addressed to the Deputy Chairman, VPT, regarding the above request of VPT. | The VPT has not responded. |

2. A joint hearing on this case in reference was held on 10 November 2020 through Video Conferencing. At the joint hearing, the VPT and VSA have made the following submissions:

Visakhapatnam Port Trust (VPT)

- (i). The proposal is a kind of penal nature.
- (ii). Primarily, users have to take care of smouldering from coal stacks. But, of late Deputy Conservator has pointed out that users are not taking care of the smouldering from coal stacks. Port is required to spare fire tender leaving from the main work of fighting fire, if any, on board ships and hazardous cargo in case of emergencies.
- (iii). Hence, the tariff is proposed with double and 2.5 times to act as a deterrent.
- (iv). There is no financial revenue envisaged from this proposal.

Visakhapatnam Stevedores' Association (VSA)

- (i). What is the need for this proposal?
- (ii). Main cargo is coal in VPT. Users have been fighting fire. The VPT fire tender is not deployed. Hence, the proposal is not justified.
- (iii). TAMP has approved tariff for dust control. How is the revenue earned from this tariff used by the port?
- (iv). Users are spraying water on dusty cargo.
- (v). VPT to clarify how many times fire tender is used and expenditure incurred by the port.

VPT

- (i). Deployment of Fire tender by the port is not compulsory. It is to be deployed by the VPT only when agents fail to control fire.
- (ii). It is not revenue generating item.
- (iii). As regards the point made by VSA, till now the port has collected an amount of ₹4.5 lakhs in the year 2020-21 upto October 2020 from fire tender charges.
- (iv). As regards Dust suppression activities, this item is not related to this proposal. However, to the point made by VSA it is to state that port has incurred expense of ₹1.97 crores, Capex ₹2.27 crores amongst other expenses.
- (v). The current proposal is for tariff applicable for controlling the smouldering from coal stack. It is not related to suppression of dust.

VPT

- (i). Basic proposal is for fire tender and not for Pollution Control.
- (ii). During summer season, it is becoming difficult to control when the combustion is high.

VSA

- (i). There is competition from neighbouring port.
- (ii). The appeal is to reduce cost to importer/ exporter so as to attract cargo to the port. For Gangavaram port, there is no tariff regulation. It is extremely important that all efforts are done to attract traffic.
- (iii). Humble request is to look from overall cost from the point of view of importer/ exporter.

VPT

- (i). There are limited fire tenders in the port. This is not a regular service. Clients are to have their own arrangement for smouldering. Fire tender is deployed by the port only if client is not able to control fire due to smouldering.
- (ii). We are doing best to keep rates low.
