

(Published in Part - III Section 4 of the Gazette of India, Extraordinary)
Tariff Authority for Major Ports

G.No.417

New Delhi,

06 October 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/14/2019-VPT dated 24 July 2019 relating to the Scale of Rates (SOR) notified in the name of Adani Vizag Coal Terminal Pvt. Ltd. (AVCTPL) for mechanized handling of steam coal at East Quay 1 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/27/2020-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 7th day of September 2020)

This case relates to a proposal dated 28 July 2020 received from Visakhapatnam Port Trust (VPT) for extension of validity of rationalised storage charge approved by this Authority vide Order No.TAMP/14/2019-VPT dated 24 July 2019 relating to the Scale of Rates (SOR) notified in the name of Adani Vizag Coal Terminal Pvt. Ltd. (AVCTPL) for mechanized handling of steam coal at East Quay 1 berth of VPT on DBFOT basis in pursuance of MOS letter No.PD-13/1/2018-PPP Cell dated 11 July 2018.

2.1. This Authority vide its Order No.TAMP/14/2019-VPT dated 24 July 2019, in pursuance of Ministry of Shipping letter No.PD-13/1/2018-PPP Cell dated 11 July 2018 on Stressed PPP Projects, 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/36/2014-VPT dated 2 January 2015 notifying Scale of Rates (SOR) in the name of Adani Vizag Coal Terminal Pvt. Ltd. (AVCTPL) for mechanized handling of steam coal at East Quay-1 berth of VPT on DBFOT basis.

2.2. The Order dated 24 July 2019 was notified by this Authority vide Gazette No.295 dated 21 August 2019.

2.3. The amended storage charge was approved by this Authority from 20 February 2019 and was valid for one year i.e. upto 19 February 2020.

2.4. Vide the said Order dated 24 July 2019, this Authority replaced the existing Schedule 4 in the Order passed by this Authority vide Order No.TAMP/36/2014-VPT dated 2 January 2015 notifying the SOR in the name of the AVCTPL with the following schedule and notes:

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(in ₹ per tonne per day or part thereof)

Sl. No.	Storage Days	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 20.02.2019 till 31.3.2019	Amended Storage Charges from 1.4.2019 till 19.02.2020
1.	0-5 days	No Charges	No Charges	No Charges	No Charges
2.	6-10 days	2.06	2.11	No Charges	No Charges
3.	11-15 days	4.13	4.23	No Charges	No Charges
4.	16-20 days	8.26	8.47	No Charges	No Charges
5.	21 st day onwards	8.26	8.47	8.26	8.47

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 19 February 2020 and it shall automatically lapse and the original storage schedule as approved in the Order dated 2 January 2015 with appropriate indexation rates shall come into effect from 20 February 2020.”

2.5. Note (iv) of the above Storage Schedule prescribes the validity of the amended storage charges till 19 February 2020 and with effect from 20 February 2020 the original storage schedule as notified vide Order dated 2 January 2015 after applying indexation would become applicable unless reviewed by VPT and approved by this Authority.

3. In this backdrop, the VPT has come up with a proposal seeking extension of the validity of the amended storage charge approved by this Authority vide Order No.TAMP/14/2019-VPT dated 24 July 2019 for another one year from 20 February 2020. The main points made by VPT in its proposal dated 28 July 2020 are given below:

- (i). Storage schedule for AVCTPL terminal awarded to AVCTPL at VPT was revised and notified by TAMP 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 21.02.2019 to 19.02.2020.
- (ii). AVCTPL vide their letter dated 19 December 2019 has requested to VPT to consider their project as a stressed project and forward the proposal for extension of relaxation on storage charges for one more year since there is no significant improvement in financial performance. AVCTPL has submitted the reports of their Auditors with regard to cash losses and net worth during 2016-17, 2017-18 and 2018-19 and other information relating to dwell time, cargo throughput, etc.
- (iii). The request along with the information submitted by AVCTPL was put up to the VPT Board in its Meeting held on 27.3.2020 vide Agenda Item No.S-6. VPT Board has noted the request of AVCTPL and after detailed review and deliberations, resolved, among other things, to (i) consider the proposal and to treat the project as stressed project (ii) to approach TAMP for rationalization of storage charges (iii) to consider the proposal for a period of one year from 20.02.2020 and to review thereafter.
- (iv). The VPT Board has considered the following three criteria as prescribed in MOS letter dated 11 July 2018 for classification of the AVCTPL project as a ‘Stressed Project’:

- (a). The cargo volumes handled at AVCTPL during the preceding two financial years i.e. 2017-18 and 2018-19 and percentage utilization of the facility as detailed below:

Year	Cargo throughput (Million tonnes)	Capacity	% utilisation
2017-18	NIL	6.41	NIL
2018-19	1.42	6.41	22%

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 AVCTPL along

with a Certificate dated 11 December 2019 from practicing Chartered Accountant considered by the VPT Board is tabulated below:

Sl. No.	Particulars	FY 2018-19 (₹ in lakhs)	FY 2017-18 (₹ in lakhs)
1	Cash losses incurred by AVCTPL	(199.11)	(1,333.79)
2	Net worth of AVCTPL	(17,455.61)	(20,384.44)

- (v). The VPT placed the request of AVCTPL in the Board of Trustees Meeting of VPT held on 27 March 2020. Subsequently the Board in its meeting dated 02 June 2020 has resolved the following:
- (a). To consider the proposal of M/s.AVCTPL 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.
- (b). 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.AVCTPL so as to achieve the ARR as per the TAMP guidelines/ notifications.
- (c). To inform the Concessionaire to submit a detailed proposal to TAMP through VPT for extension of the benefits of rationalisation of storage charges beyond 19.02.2020 and
- (d). To consider the proposal for a period of one year from 20.02.2020 and to review thereafter.
- (vi). VPT vide its letter No.CE/PMU/EQ-1/AVCTPL/2020/24 dated 1.7.2020 has forwarded the said resolution of VPT Board to AVCTPL to take necessary action.
- (vii). In response, AVCTPL vide Ref. AVCTPL/Chairman/VPT/2020-21/24 dated 6.7.2020 stated that AVCTPL project qualifies to be declared as stressed project which is confirmed by VPT and requested VPT to support in obtaining order from the TAMP towards extension of AVCTPL as a stressed asset with effect from 20.2.2020 for a further period of one year.
- (viii). The VPT has, accordingly, submitted the proposal for extension of validity of the amended storage charge as follows:

(in ₹ per tonne per day or part thereof)

Sl. No.	Storage days	Proposed Scale of Rates (applicable from 20.2.2020 to 31.3.2020)	Proposed Scale of Rates (applicable from 1.4.2020 to 19.2.2021)
1.	0-5 days	No charges	No charges
2.	6-10 days	No charges	No charges
3.	11-15 days	No charges	No charges
4.	16-20 days	No charges	No charges
5.	21 st day onwards	8.47	8.57 (after escalation of 1.13%)

- (ix). The VPT has, therefore, requested to consider the submissions made by AVCTPL for rationalized of storage charges as resolved by VPT Board to take effect from 20.2.2020 for a period of one year i.e., upto 19.2.2021. The above schedule will be made applicable from 20.2.2020 till 19.2.2021 upon approval from TAMP.

4.1. In pursuance of Para 7 of the MOS letter dated 11 July 2018, the VPT, vide its e-mail dated 28 July 2020 has submitted a proposal for extension of validity for rationalised storage charges of AVCTPL approved by this Authority vide Order No.TAMP/14/2019-VPT dated 24 July 2019 beyond the expiry i.e. from 19.2.2020 for a further period of one year i.e. upto 20.2.2021.

The proposal filed by the VPT is based on the proposal of AVCTPL to VPT which has been approved by the Board of Trustees of VPT vide Resolution No.17/2020-21 dated 2 June 2020 wherein the Board has approved to consider the proposal of AVCTPL for extension of the validity of the rationalised storage charge for a period of one year from 19.02.2020 and to review thereafter.

4.2. 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 19 December 2019 showing cargo volumes handled by AVCTPL for the years 2017-18, 2018-19 and 2019-20 (April to June).
- (ii). A copy of Certificate of practicing Chartered Accountant furnished by AVCPTL 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 vide Resolution No.17/2020-21 dated 2 June 2020.

4.3. Paras 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.*

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

- (i). The current proposal of Visakhapatnam Port Trust (VPT) is for extension of validity of the rationalised (i.e. reduced) storage charge approved by this Authority vide Order No.TAMP/14/2019-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 having a joint hearing on 17 June 2019 on the original proposal of VPT dated 12 February 2019 seeking amendment in storage charge in pursuance of MOS letter dated 11 July 2018. The current proposal of VPT is only for extension of the validity of the amended storage rate approved by this Authority for another one year and the proposal has been approved by the Board of Trustees of VPT. Recognizing that proposal of the VPT is based on the proposal of Adani Vizag Coal Terminal Pvt. Ltd. (AVCTPL) which has justified that project continues to be stressed and meets all the three 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. This is in line with the approach followed in another similar proposal of VPT for extension of validity of the rationalised storage charge for a period of one year for another bulk terminal BOT operator viz. Vizag General Cargo Berth Pvt. Ltd. That being so, this Authority decides to take up this case for disposal.

- (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). As brought out in earlier paragraph 3 (v), the Board of Trustees of VPT, vide its Resolution No.17/2020-21, has reviewed the AVCTPL proposal and has classified the AVCTPL project as Stressed Project as it meets the three criteria prescribed in the MOS letter dated 11 July 2018 for categorisation of the PPP project as stressed. The details considered by the VPT Board for classification of AVCTPL project as stressed are brought out in the earlier paragraphs and hence not reiterated for the sake of brevity. The underutilisation of capacity below 70% is supported by the VPT letters and the cash loss for preceding two years 2017-18 and 2018-19 and erosion of net worth of at least 50% are supported by the Certificate from practicing Chartered Accountant furnished by AVCTPL 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 reduced storage charge as approved by this Authority vide Order dated 24 July 2019 beyond 19 February 2020 for a period of one year.

- (iv). In view of the above position and recognizing that the proposal filed by the VPT is based on the approval of the Board of Trustees of the VPT and 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 the amended storage charges approved by this Authority vide Order No.TAMP/14/2019-VPT dated 24 July 2019, and is mutually accepted by both the parities i.e. VPT and AVCTPL, this Authority is inclined to approve the current proposal of the port for extension of the validity of the amended storage charge approved by this Authority in the Order dated 24 July 2019 for a further period of one year i.e. from 20 February 2020 to 19 February 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 19 February 2020 and it shall automatically lapse and the original storage schedule as approved in the Order dated 2 January 2015 with appropriate indexation rates shall come into effect from 20 February 2020.

The Board of Trustees of VPT has resolved to approach this Authority 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 19 February 2020 i.e. from 20 February 2020 till 19 February 2021 and to be reviewed thereafter.

That being so, validity of amended storage schedule is extended for the period of one year from 20 February 2020 till 19 February 2021. Hence, the note no.(iv) is modified to state that storage schedule prescribed shall come into effect from 20 February 2020 and shall be valid till 19 February 2021.

- (vi). It is relevant here to state that the amended 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 tariff regime of AVCTPL is governed under the upfront tariff guidelines of 2008 and hence is entitled for annual indexation of 1.13% for the year 2020-21 announced by this Authority for the BOT operators governed by the upfront tariff guidelines of 2008 on the rationalised amended 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 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 19 February 2021 in this case. Hence, a column is inserted in the schedule earlier approved prescribing the indexed storage charge from 1 April 2020 till 19 February 2021 with the indexed storage charge at ₹8.57 (i.e. 8.47 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 19 February 2020 and review thereafter. That being so, validity of the amended storage schedule is approved by this Authority for the period of one year from 20 February 2020 till 19 February 2021.

6.1. 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/14/2019-VPT dated 24 July 2019 for the terminal operated by AVCTPL for a period one year w.e.f. 20 February 2020 and accordingly rates applicable under the Schedule 4 in the Order passed by this Authority vide Order No.TAMP/36/2014-VPT dated 2 January 2015 notifying the SOR in the name of the AVCTPL are amended as given below for the validity period upto 19 February 2021:

Sl. No.	Particulars	(in ₹ per tonne per day or part thereof)						
		Storage Charges applicable after applying indexation factor <u>as per Order No.TAMP/36/2014-VPT dated 2 January 2015</u>			Amended indexed Storage Charge approved vide <u>Order No.TAMP/14/2019-VPT dated 24 July 2019 for the period 20.2.2019 till 19.2.2020</u>		Amended indexed Storage Charge for the period <u>20.2.2020 till 19.2.2021 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 20.2.2019 till 31.3.2019	Storage Charge from 1.4.2019 till 19.2.2020	Amended indexed Storage Charge from 20.2.2020 till 31.3.2020	Amended Indexed Storage Charge from 01.4.2020 till 19.2.2021
1.	0-5 days	No Charges	No Charges	No Charges	No Charges	No Charges	No Charges	No Charges
2.	6-10 days	2.06	2.11	2.13	No Charges	No Charges	No Charges	No Charges
3.	11-15 days	4.13	4.23	4.28	No Charges	No Charges	No Charges	No Charges
4.	16-20 days	8.26	8.47	8.57	No Charges	No Charges	No Charges	No Charges
5.	21 st day onwards	8.26	8.47	8.57	8.26	8.47	8.47	8.57

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 20 February 2020 till 19 February 2021.

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

(T.S. Balasubramanian)
Member (Finance)