

(Published in Part - III Section 4 of the Gazette of India, Extraordinary)

TARIFF AUTHORITY FOR MAJOR PORTS

G.No. 160

New Delhi

17 April 2018

NOTIFICATION

In exercise of the powers conferred under 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 the M/s.Essar Vizag Terminals Limited for notification of its Scale of Rates for mechanised iron ore handling facility at Visakhapatnam Port Trust (VPT) through Public Private Partnership on Design, Build, Finance, Operate & Transfer (DBFOT) basis as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

TARIFF AUTHORITY FOR MAJOR PORTS

Case No. TAMP/8/2018-VPT

M/s.Essar Vizag Terminals Limited

Applicant

...
QUORUM:

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

ORDER

(Passed on 5th day of April 2018)

This case relates to the proposal received from the M/s.Essar Vizag Terminals Limited (EVTL) for notification of its Scale of Rates for upgradation of the existing outer harbour mechanized facility (Phase-I) at Visakhapatnam Port Trust (VPT) for Iron Ore handling through Public Private Partnership on Design, Build, Finance, Operate & Transfer (DBFOT) basis.

2. Before bringing out the submissions made by the EVTL in its proposal dated 11 January 2018, it is relevant here to mention that this Authority had passed an Order No.TAMP/32/2010-VPT dated 29 November 2010 fixing upfront tariff based on the proposal filed by the VPT under upfront tariff fixation Guidelines, 2008 for mechanized handling of iron ore at West Quay-1 (WQ1) berth in inner harbor of VPT on DBFOT basis. The said Order was notified in the Gazette of India on 30 December 2010 vide Gazette No.347.

3.1. The EVTL vide its letter dated 11 January 2018 has requested this Authority to notify Scale of Rates in its name. The main points made by EVTL are summarized below:

- (i). EVTL has taken over the Phase-I Outer Harbour Mechanized Facility from VPT through PPP on DBFOT basis w.e.f. 14 May 2015 and has achieved 98% Project completion as on 31 December 2017. In the present scenario, EVTL expects to complete the Phase-I Project by 28 February 2018.
- (ii). In the above context, EVTL draws attention to the applicability of "revised cargo-handling tariff", on successful completion of Phase-I Project, in-line with the Guidelines for upfront tariff setting for PPP projects at Major Port Trusts, 2008.
- (iii). Tariff caps for mechanized handling of iron ore at VPT have been fixed in November 2010 vide tariff Order No.TAMP/32/2010-VPT dated 29 November 2010, which is as follows:

(a). Cargo handling charges – ₹110.67 per metric tonne

(b). Storage charges beyond 15 days of free period (in ₹ per tonne per day or part thereof)

Rate for 1 st Week for the balance cargo remaining after the free period	Rate for second week for the balance cargo	Rate for third week onwards for the balance cargo
0.64	1.28	2.56

(c). Miscellaneous charges – ₹1.13 per tonne or part thereof

- (iv). With reference to TAMP Circular towards indexation factor to arrive at the indexed tariff caps for upfront tariff cases fixed under Upfront Tariff Guidelines 2008 for the FY 2017-18, "revised cargo handling tariff" is as shown below, considering the escalation factor of 25.67% for FY 2017-18, from the date of project completion.

(a). Cargo handling charges – ₹139.08 per metric tonne

(b). Storage charges (in ₹ per tonne per day or part thereof)

Rate for 1 st Week for the balance cargo remaining after the free period	Rate for second week for the balance cargo	Rate for third week onwards for the balance cargo
0.84	1.61	3.22

(c). Miscellaneous charges – ₹1.42 per tonne or part thereof

[The Base year prescribed in the general note to the SOR for applying 60% of the WPI escalation is 01 January 2010].

3.2. The EVTL has furnished the Tariff Appendix of the “Concession Agreement” (CA) between VPT and EVTL for ready reference and has requested to duly review the revision in SOR and to notify the same as required by the Major Port Trusts Act.

4.1. The proposal of EVTL is for notification of SOR in its name in view of clause 2.9.1. of the tariff guidelines of 2008 on successful completion of Phase-I Project i.e. upgradation of existing mechanised iron ore handling facility of Outer harbor.

4.2. On initial scrutiny of the proposal, it was noticed that the proposal of EVTL for notification of its Scale of Rates is not accompanied with the following documents:

- (i). Proposed Scale of Rates (SOR) complete in all respects along with the conditionalities.
- (ii). A copy of the completion certificate issued by the Independent Engineer.

4.3. Accordingly, the EVTL was requested, vide our letter dated 02 February 2018 to furnish the requisite documents/information immediately. The EVTL was also requested to forward a copy of proposed SOR to VPT also for its comments. This was followed by reminders dated 28 February 2018 and 09 March 2018.

5.1. The VPT, being the Concessionaire Port, was requested vide our letter dated 02 February 2018 to furnish information/ clarification on a few points. The VPT was also requested to furnish a copy of the completion certificate issued by the Independent Engineer and furnish comments on receipt of the proposed draft SOR alongwith conditionalities from EVTL at the earliest.

5.2. With reference to our letter dated 02 February 2018 and reminder dated 28 February 2018, the VPT has furnished its response vide its letter dated 07 March 2018. A summary of the information/ clarifications / documents / comments sought by us and reply furnished by VPT is juxtaposed below:

Sl. No.	Information / clarifications sought by us	Information / clarifications of the VPT
1.	The upfront tariff approved by the Authority in the Order No.TAMP/32/2010-VPT dated 29 November 2010 for mechanization of WQ-1 berth in the inner harbour of VPT for handling iron ore is for the project facility envisaged by the VPT with a total estimated Capital cost of ₹275.20 crores as can be seen from the Annex – I attached to the said Order. The EVTL has now filed proposal seeking notification of the SOR for phase I of its project. It is seen from the Concession Agreement entered between VPT and EVTPL dated 13 December 2013 that Phase I is for upgradation of existing	(a). The project "Upgradation of the existing facility in the Outer Harbour and development of new facility in the Inner Harbour for iron ore handling" is awarded on DBFOT basis at Visakhapatnam Port Trust at an estimated cost of ₹845.41 crores to M/s.Essar Vizag Terminals Ltd., on 14 May 2015. The project development is envisaged in two phases: (i). Phase-I: upgradation of the existing mechanised iron ore handling facility in the Outer Harbour initially at estimated cost of ₹395.02 crores and a onetime upfront fee of

<p>mechanised iron ore handling facility and does not involve full fledged capital investment envisaged for this project for which the upfront tariff was sought and approved. From Appendix 4 of page 120-129 of the Concession Agreement, it is seen that most of the investment in equipment which were estimated by VPT in the Project Cost while seeking upfront tariff are envisaged to be deployed in Phase-II. The VPT, being the Concessionaire port may consider to propose suitable reduction in the SOR to enable the Authority to notify SOR for Phase-I of the project subject to production of completion certificate to be issued by the Independent Engineer.</p> <p>Incidentally, in a somewhat similar scenario, the V.O. Chidambaranar Port Trust (VOCPT) while processing a proposal for notification of the indexed upfront SOR in the name of a BOT operator governed under tariff guidelines of 2008, had itself proposed for reduction in the SOR till the completion of conveyor facility and commencement of full fledged operations by the operator.</p>	<p>₹185.87 crores towards value of existing plant, machinery along with Civil structures to be paid by concessionaire to Concessioning Authority.</p> <p>(ii). Phase-II: Development of new facility in the inner harbour at estimated cost of ₹264.52 crores after attaining 12.5 million tonnes at Outer Harbour or 2 million tonnes at Inner Harbour whichever is earlier.</p> <p>(b). Appendix-4(D) of the Concession Agreement states that "In case, minimum throughput as detailed in clause (B) above is not achieved within three (3) years from the date of award of concession, the Additional Guarantee (as stated in Article 4.2 of the Concession Agreement) submitted by the Concessionaire as a token of commitment for commencement and execution of Phase II investment will be returned and the Concessioning Authority shall have the option to take alternative action about WQ1 berth".</p> <p>(c). Proposal for fixation of upfront tariff for the project to be developed in two phases was sent to TAMP vide VPT letter No.IRNP/Stds/I.Ore/Tariff2012 dated 20.11.2012.</p> <p>TAMP vide letters No.TAMP/77/2012-VPT dated 7.12.2012 and 31.12.2012 has stated the following:</p> <p>(i). Tariff caps for mechanised handling of iron ore at VPT have been fixed in November 2010 vide tariff Order No.TAMP/32/2010-VPT dated 29.11.2010 wherein the mechanised handling of iron ore was envisaged with the deployment of equipment like twin wagon tippler, stacker cum reclaimer, ship loader, belt conveyor, payloaders, etc.</p> <p>(ii). As per clause 2.2 of the guidelines for upfront tariff setting, the tariff caps prescribed would be applicable to all projects to be bid out subsequently for identical cargo/service during the next five years. In other words, the upfront tariff fixed for mechanised handling of iron ore in November 2010 will apply to all projects bid out till November 2015.</p> <p>(iii). Tariff caps for handling iron ore at Visakhapatnam port Trust (VPT) has already been fixed in 2010 and that review is to be undertaken only in 2015.</p>
--	---

		<p>(iv). The upfront tariff guidelines do not stipulate fixation of upfront tariff based on the stage wise development of the facility.</p> <p>(d). With reference to the information sought at point (i), it is to clarify that the facilities envisaged to be developed in the current proposal, both in the Outer Harbour (Phase-I) and in the Inner Harbour (Phase-II) are mechanised facilities with similar equipment such as wagon tippers, stackers, reclaimers, ship loader, belt conveyor, etc., contained in the proposal of VPT for which upfront tariff was notified by TAMP vide tariff Order No.TAMP/32/2010-VPT dated 29.11.2010.</p> <p>(e). As such, the same tariff notified for mechanised iron ore handling facility is adopted to the current project also in compliance of clause 2.2 of the 2008 guidelines, since the envisaged cargo and service are identical to the proposal of VPT for which upfront tariff was notified by TAMP vide tariff Order No.TAMP/32/2010-VPT dated 29.11.2010 and bid out.</p> <p>(f). It is also to clarify that the scope of the facility in the outer harbour (Phase-I) is upgradation of the existing facility which includes twin tippler, third tippler, receiving conveyors, stackers, storage yard, bucket wheel reclaimers, shipping conveyor and ship loader. A one time upfront fee of ₹185.87 crores was paid by the Concessionaire to VPT towards the value of the existing plant and machinery along with civil structural excluding land of ore handling complex made available by the Concessioning Authority, before the Date of Award of Concession. The estimated cost for upgradation of this facility was ₹395.02 crores. Thus, the total estimated cost of the mechanised facility was ₹580.89 crores in Phase-I. The capacity of the facility is estimated to be augmented from 12.5 MTPA to 16.2 MTPA.</p> <p>(g). Further, it is to clarify that Phase-I and Phase-II are independent but not inter dependent. Phase-I and Phase-II deliver the output independently. Appendix 4 (D) of the concession agreement clearly states that Phase-II development of new facility in the inner harbor at an estimated cost of ₹264.52 crores after attaining 12.5 million tonnes at outer harbor or 2 million tonnes at inner harbor, whichever is earlier. If the same is not achieved within a period of 3</p>
--	--	--

		<p>years from the date of award, the additional guarantee as stated at Article 4.2 is to be returned and the Concessioneing Authority shall have the option to take alternative action about WQ-1 facility.</p> <p>In view of the above, it is opined that adopting the upfront tariff notified vide tariff order No.TAMP/32/2010-VPT dated 29.11.2010 to the current project in the Outer Harbour (Phase-I) is reasonable and rational and no reduction is warranted. It is, therefore, requested to consider notifying the SOR for the Outer Harbour facility (Phase-I) upon fulfilment of the mandatory requirements by the Concessionaire.</p>
2.	The VPT to furnish a copy of the completion certificate issued by the Independent Engineer in this regard.	The VPT has not responded to this point.
3.	The EVTL has not forwarded proposed draft SOR for the project. The EVTL has been requested to furnish the complete proposed draft SOR to VPT as well as to TAMP. The VPT to furnish its comments on receipt of the proposed draft SOR from EVTL at the earliest.	<p>No comments furnished by the port.</p> <p><i>[The EVTL has forwarded a copy of SOR to VPT vide its letter dated 7 March 2018 and revised SOR vide email dated 16 March 2018.]</i></p>

6.1. In response to our letter dated 02 February 2018, the EVTL has, vide its email dated 09 March 2018 forwarded a copy of proposed draft SOR along with general terms and conditions. The EVTL has also endorsed a copy of the proposed SOR to VPT. The main submissions made by the EVTL are given below:

- (i). Draft proposed Scale of Rates (SOR) is furnished covering all general terms & conditions; terminal information; customer registration procedure; and contact information. The proposed rates mentioned in section A is subject to change for Financial Year 2018-19 based on the further TAMP circular towards indexation factor. The copy of the Draft SOR is also sent to VPT for its review and comments.
- (ii).
 - (a). With regards to Independent Engineer Completion certificate, EVTL has stated that most of the project activities have been individually inspected and punch-points issued by Independent Engineer were also attended to the maximum extent. As on 28 February 2018, EVTL was able to complete 99.34% of project.
 - (b). EVTL foresees the integrated tests by Independent Engineer will be carried-out during the month of March 2018, upon which completion certificate shall be issued by Independent Engineer and the same will be shared immediately on receipt.
- (iii). In this backdrop, the EVTL has requested to review the draft SOR. The EVTL has stated that SOR shall be proposed to be applicable from the date of receipt of Independent Engineer Completion Certificate.

6.2. The draft proposed SOR by EVTL covered 5 Section viz. Section A - Scale of Rates / General Tariff, Section B - General Terms and Conditions, Section C - EVTL Terminal Information, Section D - Customer Registration Procedure and Section E - EVTL Contact Information. Further, in the tariff Schedule apart from proposing indexed tariff for cargo handling charge, storage charges and miscellaneous charges the EVTL has also included tariff for Penalties/ levies from customers for Boulders/ Foreign material, and Penalties/ Levies towards Railway wagon demurrages and system damages charges for reasons attributable to customers.

6.3. It is also seen that the draft proposed SOR forwarded by EVTL various section, definitions, terms and conditions which are not related to tariff fixation and do not form part of the upfront tariff notified by this Authority in the Order dated 29 November 2010. Further, the tariff included by the EVTL as regards Penalties/ Levies from customers for Boulders/ Foreign material, and penalties Levies towards Railway wagon demurrages and system damages charges for reasons attributable to customers are not found to be in the Upfront tariff proposed by VPT and approved by this Authority in November 2010 Order.

7.1. Subsequently, the EVTL has, vide its email dated 16 March 2018 forwarded a copy of revised proposed draft SOR in line with the SOR approved by this Authority vide Order dated 29 November 2010 after applying applicable indexation factor to arrive at the indexed tariff. The main submissions made by the EVTL are given below:

- (i). The draft scale of rates (SOR) is furnished in the format approved earlier vide tariff order no.TAMP/32/2010-VPT dated 29 November 2010. The EVTL requests to approve the Draft SOR and notify the same so that M/s.EVTL may take necessary action at its end.
- (ii). With regard to Independent Engineer Completion Certificate, EVTL has reiterated that it expects the integrated tests by Independent Engineer will be carried-out during the month of March 18, upon which completion certificate shall be issued and the same will be shared as soon as it is issued.

7.2. The EVTL has, vide its letter dated 02 April 2018, forwarded a copy of the provisional completion certificate dated 31 March 2018 issued by the Independent Engineer, M/s.Mecon Ltd. The Provisional Completion Certificate issued by Independent Engineer states that the construction works in respect of Phase-I are found to be incomplete and / or deficient and have been specified in the Punch List appended to the Provisional Certificate, and the Concessionaire has agreed and accepted that it shall complete and / or rectify all such works in the time and manner set forth in the Agreement. The Independent Engineer in the provisional certificate is satisfied that having regard to the nature and extent of such incomplete works, it would not be prudent to withhold commercial operation of Phase – I of the project, pending completion thereof. The Independent Engineer has certified that Phase – I of the project can be safely and reliably placed in commercial service of the users thereof, and in terms of the Agreement, Phase-I of the project is provisionally declared fit for entry into commercial operation on 31 March 2018.

8. The case has been processed based on the final revised draft SOR forwarded by EVTL vide its email dated 16 March 2018 and based on information/ clarification furnished by the EVTL and VPT during the processing of the case.

9.1. As per the Concession Agreement dated 13 December 2013 between the Board of Trustees of VPT and the EVTL, the VPT has awarded the project of Upgradation of existing facility and creation of new facility at VPT for Iron Ore handling on Design, Build, Finance, Operate and Transfer (DBFOT) basis to EVTL. As seen from the copy of VPT letter No.IM&EE/MECH/OHC-WQ-1/1122 dated 14 May 2015 addressed to the EVTL, the VPT has awarded the concession to EVTL with effect from 14 May 2015 for a period of 30 years commencing from the date of award of concession.

9.2. The VPT had earlier forwarded a copy of the Concession Agreement entered between VPT and EVTPL dated 13 December 2013 for a period of 30 years from the date of award of concession. On perusing the said CA, it is seen that the Concession Agreement for the project of mechanization of West Quay-1 (WQ-1) berth in the inner harbour at VPT on DBFOT awarded to EVTL, allows phase wise commencement of operations by the operator.

10.1. As per Clause 2.9.1. of the Tariff Guidelines of 2008 for fixation of upfront tariff, the private operator shall approach this Authority for notification of Scale of Rates containing ceiling rates applicable to his operations before commencement of commercial operations as required under Section 48 of MPT Act and as per Clause 2.9.2. of tariff guidelines of 2008, the

Scale of Rates to be framed by TAMP shall be in line with the tariff caps prescribed for the port and included in the bid document subject to indexation explained in Clause 2.8. Such Scale of Rates and statement of conditions shall be notified by this Authority in the Gazette of India as required by the Major Port Trusts Act, 1963.

10.2. As per clause 2.8 of the guidelines for upfront tariff setting for PPP Projects at Major Ports, 2008, the Tariff Caps are to be indexed to inflation but only to an extent of 60% of the variation in Wholesale Price Index (WPI) occurring between 1 January 2008 and 1 January of the relevant year, and the adjusted tariff will come into force from 1 April of the relevant year to 31 March of the following year.

10.3. As per clause 5 [General Note to Schedule (ii) to (v)] of the Scale of Rates of the upfront tariff Order dated 29 November 2010 fixing upfront tariff for the facility in reference, tariff caps have to be indexed to inflation but only to an extent of 60% of the variation in the WPI occurring between 1 January 2010 and 1 January of the relevant year.

10.4. The base year for the upfront tariff and the corresponding annual escalation with effect from 01 April 2017 were already communicated to all the Major Port Trusts including VPT vide our letter No.TAMP/12/2009-Misc. dated 30 March 2017. The escalation factor to be applied in the case in reference is 25.67% as per our letter dated 30 March 2017 read with clause 5 of the Scale of Rates.

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

- (i). This Authority has passed an Order No.TAMP/32/2010-VPT dated 29 November 2010 disposing of the proposal filed by the Visakhapatnam Port Trust (VPT) under Tariff Guidelines 2008 for fixation of upfront tariff for mechanization of West Quay-1 (WQ-1) berth in the inner harbour of VPT for handling iron ore on Design, Build, Finance, Operate and Transfer (DBFOT) basis which were notified in the Gazette of India Extraordinary (Part III Section 4) on 30 December 2010 vide Gazette No.347
- (ii). The VPT has awarded the project of Upgradation of existing mechanized iron ore handling facility at outer harbour and creation of new mechanized iron ore handling facility at WQ-1 berth of VPT for Iron Ore handling on DBFOT basis to Essar Vizag Terminals Limited (EVTL) and entered into a Concession Agreement with EVTL on 13 December 2013 for a period of 30 years with effect from 14 May 2015, the date of award of concession.
- (iii). As brought out earlier, Clause 2.9.1. of the Tariff Guidelines of 2008 for fixation of upfront tariff requires the private operator to approach this Authority for notification of the Scale of Rates containing ceiling rates applicable to his operations before commencement of commercial operations. Accordingly, the EVTL has approached this Authority with a request to notify the Scale of Rates in its name as required under the Tariff Guidelines of 2008.

The Independent Engineer has stated in the Provisional Certificate issued for the Project that Phase-I of the project is provisionally declared fit for commercial operations on 31 March 2018.

- (iv). Before proceeding to analyse the case, it is relevant here to state that the proposal filed by the VPT in July 2010 was for fixation of upfront tariff for mechanized iron ore handling facilities at West Quay-1 (WQ-1) berth in the inner harbour of Visakhapatnam Port on DBFOT basis under the Upfront tariff guidelines of 2008 issued by the Ministry of Shipping based on the proposal filed by the VPT.

Accordingly, this Authority has, vide its Order No.TAMP/32/2010-VPT dated 29 November 2010 approved the upfront tariff for mechanized iron ore handling

facilities at West Quay-1 (WQ-1) berth in the inner harbour of Visakhapatnam Port on DBFOT basis.

Subsequently, the VPT vide its letter dated 20 November 2011 had filed a proposal for seeking phase wise tariff for mechanized upgradation of existing facilities in outer harbor and creation of new facility in inner harbor stating that facilities envisaged for mechanized handling of iron ore at both outer and inner harbor are identical. In its letter dated 18 December 2011, VPT had sought upfront tariff in phases seeking interim tariff initially after commissioning of existing facility at outer harbor and combined tariff after commissioning of full fledged facility at WQ1 in inner harbor. The port had in its proposal stated that the facilities envisaged for mechanized handling of iron ore at both outer harbor and inner harbor are the same.

As per clause 2.2. of the upfront tariff guidelines, upfront tariff caps prescribed is applicable to all projects to be bid out subsequently for identical cargo/ services during the next five years. Further, the upfront tariff guidelines of 2008 do not stipulate fixation of interim tariff in the beginning and final tariff at a later point of time after commissioning of operation at the facility. The VPT, on examining the above guidelines position pointed out to VPT by TAMP, had vide its letter dated 31 December 2011 proposed to withdraw its earlier proposal dated 20 November 2011.

The VPT has, thus, based on the upfront tariff notified by this Authority vide Order No.TAMP/32/2010-VPT dated 29 November 2010 awarded the project to EVTL for upgradation of the existing facility in the Outer Harbour for mechanized iron ore handling and for development of new facility in the Inner Harbour for mechanized iron ore to EVTPL on DBFOT basis. It is seen from the Appendix 4 of Concession Agreement entered between VPT and EVTPL dated 13 December 2013 forwarded by the port that the development of the project is in two phases. Phase I is for Upgradation of existing mechanised iron ore handling facility of Outer Harbour and Phase-II is for creation of mechanised facility at WQ-1 berth of Inner Harbour for handling iron ore.

The EVTL has approached this Authority for notification of SOR in its name in view of clause 2.9.1. of the tariff guidelines of 2008 on successful completion of Phase-I Project. Since the notification of indexed tariff sought by the EVTL was for phase I of the project developed by them, the VPT, being the Concessionaire port was requested that port may consider to propose suitable reduction in the SOR to enable this Authority to notify SOR for Phase-I.

In this regard, the VPT has clarified that facilities envisaged to be developed in the current proposal, both in the Outer Harbour (Phase-I) and in the Inner Harbour (Phase-II) are mechanised facilities with similar equipment such as wagon tippers, stackers, reclaimers, ship loader, belt conveyor, etc., contained in the proposal of VPT for which upfront tariff was notified by TAMP vide tariff Order No.TAMP/32/2010-VPT dated 29 November 2010. As such, the same tariff notified for mechanised iron ore handling facility is adopted to the current project also in compliance of Clause 2.2 of the 2008 guidelines, since the envisaged cargo and services are identical to the proposal of VPT for which upfront tariff was notified by TAMP vide tariff Order No.TAMP/32/2010-VPT dated 29 November 2010 and bid out. The VPT has also clarified that the scope of the facility in the outer harbour (Phase-I) is upgradation of the existing facility which includes twin tippler, third tippler, receiving conveyors, stackers, storage yard, bucket wheel reclaimers, shipping conveyor and ship loader which were covered in its proposal seeking upfront tariff fixation for iron ore facility in November 2010 Order. In view of the above position the VPT has opined that adopting the upfront tariff notified vide tariff order No.TAMP/32/2010-VPT dated 29 November 2010 to the current project in the Outer Harbour (Phase-I) is reasonable and rational and no reduction is warranted. The clarification furnished by the VPT is relied upon.

As per clause 2.9.1 of the upfront tariff guidelines of 2008, the operator before commencement of commercial operation needs to approach this Authority for notification of Scale of Rates as required under Section 48 of the Major Port Trusts Act, 1963. Accordingly, the EVTL has approached this Authority for notification of the Scale of Rates as required by clause 2.9.1. This Authority is bound to notify the Scale of Rates in the Gazette of India as mandated by the clause 2.9.2 of the Tariff Guidelines of 2008.

Relying on the clarification of the port, the case has been processed for notification of the Scale of Rates in the name of BOT operator based on the final revised draft SOR forwarded by EVTL vide its email dated 16 March 2018 and based on information/ clarification furnished by the EVTL and VPT during the processing of the case.

The EVTL has sought notification of SOR for phase I of the project. The phase wise development of the project flows from the C.A. signed between the port and the EVTL. However, the project awarded by the VPT to EVTL is based on bids invited by the port taking into consideration the upfront tariff notified by this Authority in November 2010 which is for the mechanized handling of iron ore facility. The port has categorically stated that facilities envisaged to be developed both in the Outer Harbour (Phase-I) and in the Inner Harbour (Phase-II) are mechanised facilities with similar equipment. Therefore, the indexed SOR in the name of the EVTL is notified for the mechanized handling of iron ore facility at VPT awarded to EVTL based on the upfront tariff Order of November 2010 Order and not for phase wise notification of SOR as sought by the EVTL.

- (v). Both the EVTL and the VPT were requested to furnish copy of completion certificate issued by the Independent Engineer. The VPT has not responded. The EVTL has confirmed that most of the project activities have been individually inspected and punch-points issued by Independent Engineer were also attended to the maximum extent. The EVTL has reported that 99.34% of project is completed as on 28 February 2018. Subsequently, the EVTL has furnished a copy of the Provisional completion certificate of the Independent Engineer.

This Authority relies on the provisional certificate issued by the Independent Engineer certifying that Phase I of the project is safe and reliable and fit for entry into commercial operations from 31 March 2018.

In order to make the approved SOR available to EVTL in time so that it can levy the SOR for the services rendered by it, the proposal of EVTL for notification of the Scale of Rates in its name at this juncture is approved. The indexed SOR approved by this Authority will come into force from the date the Project can be safely and reliably placed in commercial service of the users thereof, and that the Project has been declared fit for entry into commercial operation as per the Completion Certificate i.e. from 31 March 2018. The EVTL and VPT are advised to share the copy of the final Completion Certificate issued by the Independent Engineer immediately on its receipt.

- (vi). As per Clause 2.9.2. of the Tariff Guidelines of 2008, the Scale of Rates to be framed by this Authority for the private operator as per Clause 2.9.1 should be in line with the tariff caps prescribed for the Port and included in the bid document, subject to indexation as stipulated in clause 2.8 of 2008 guidelines. Clause 2.8 of the 2008 guidelines stipulates that tariff caps will be indexed to inflation to an extent of 60% of the variation in WPI occurring between 1 January 2008 and 1 January of the relevant year.

Article 8.1 of the Concession Agreement (C.A.) entered between the VPT and EVTL governs levy of the tariff for the PPP Project of Upgradation of existing facility at outer harbor and creation of new facility at VPT at inner harbor for

mechanized Iron Ore handling. As per Article 8.1 of the C.A., the Concessionaire i.e. EVTL shall be entitled to recover tariff from the users of the Project Facilities and Services as per the Tariff Notification, an extract of which is set out in Appendix-12. Appendix 12, Item B appended to C.A gives reference to the Notification details of the Upfront Tariff approved by this Authority vide Order No.TAMP/32/2010-VPT dated 29 November 2010 and an extract of the SOR notified by this Authority is attached to the said Appendix 12.

- (vii). As per clause 5 [General Note to Schedule (ii) to (v)] of the Scale of Rates of the upfront tariff Order dated 29 November 2010 fixing upfront tariff for the facility in reference, tariff caps have to be indexed to inflation but only to an extent of 60% of the variation in the WPI occurring between 1 January 2010 and 1 January of the relevant year.

The base year for the upfront tariff and the corresponding annual escalation with effect from 01 April 2017 were already communicated to all the Major Port Trusts including VPT vide our letter No.TAMP/12/2009-Misc. dated 30 March 2017.

With reference to the indexation of the upfront tariff fixed vide Order dated 29 November 2010 as required under Clause 2.8. of the 2008 Guidelines, it is noteworthy that the EVTL, while filing of its draft proposed SOR, has applied escalation factor at 25.67% on the base upfront tariff of the base year January 2010. It is relevant here to state that recently vide our letter dated 22 March 2018, the indexation factor to be applied for the year 2018-19 has been announced by this Authority with reference to the January 2018 with the base year of January 2008, January 2009, January 2010, January 2011 and January 2012. The escalation announced by this Authority for the year 2018-19 for base year January 2010 vis-à-vis 1 January 2018 is same at 25.67%. Thus, the annual escalation factor applied by EVTL to arrive at the SOR is found to be in order.

- (viii). It is seen from the draft SOR filed by the EVTL that the tariff items notified vide Order of November 2010 have been subjected to change in view of the application of applicable escalation factor. For the subsequent years as well, the indexation to the extent of 60% of the WPI has to be with reference to the variation occurring between 01 January 2010 as notified in the upfront tariff schedule vide Order No.TAMP/32/2010-VPT dated 29 November 2010 and 01 January of the relevant year and not with reference to the indexed Scale of Rates to be approved. The General note to Schedule (2) to (4) proposed by EVTL retaining the general note approved in the Order dated 29 November 2010 is, therefore, suitably modified clarifying this position. This is in line with the prescription made in the Scale of Rates of other BOT operators whose tariff fixation is governed under 2008 guidelines who have commenced the operations. Considering that a General Note is prescribed in the November 2010 Order and also considering that a General Note is prescribed in the upfront tariff schedule of other major port trusts, the following General note to Schedule (2) & (4) is, therefore, incorporated under Schedule 5 of the Scale of Rates to be approved for EVTL in line with the prescription in the Order dated 29 November 2010 of VPT and the Scale of Rates of the other BOT operators governed under 2008 tariff guidelines:

“5. GENERAL NOTE TO SCHEDULE (2) TO (4) ABOVE:

The tariff caps prescribed in the Scale of Rates of Essar Vizag Terminals Limited takes into consideration the upfront tariff approved by this Authority vide Order No.TAMP/32/2010-VPT dated 29 November 2010 and applying indexation to the extent of 60% of the variation in Wholesale Price Index (WPI) occurring between 1 January 2010 and 1 January of the relevant year. For the subsequent years as well, upfront tariff approved in the Order No.TAMP/32/2010-VPT dated 29 November 2010 will be indexed to inflation but only to an extent of 60% of the variation in Wholesale Price Index (WPI) occurring between 1 January 2010 and 1 January of the relevant year. Such automatic adjustment of tariff caps will

be made every year and the adjusted tariff caps will come into force from 1 April of the relevant year to 31 March of the following year.”

(ix). All other definitions and conditionalities governing the application of the rates as approved in the Scale of Rates of the Order dated 29 November 2010 are retained subject to the following:

(a). It is seen from SOR of the Order dated 29 November 2010, definitions of Foreign going vessel and Coastal vessel was not prescribed. Now EVTL has proposed to incorporate definitions of Foreign going vessel and Coastal vessel. Considering that the definitions of “Foreign going vessel” and “Coastal vessel” are prescribed in the upfront tariff schedule of other major port trusts and other upfront Orders of VPT as well, and recognising that these are relevant for application of the SOR by EVTL, the definition of the terms “Foreign going vessel” and “Coastal vessel” is prescribed in the SOR notified in the name of EVTL except modification explained in immediate subsequent paragraph.

The Government of India in the Ministry of Shipping (MOS) undercover of its letter No.PT-11033/51/2014-PT dated 11 November 2014 has forwarded a copy of the guidelines on priority berthing of coastal vessels at Major Port issued vide letter No.PT-11033/51/2014-PT dated 4 September 2014 to this Authority. Accordingly, this Authority vide its Order No.TAMP/52/2014-Genl. dated 28 November 2014 has, *inter alia*, approved the replacement of definition of ‘Coastal Vessel’ prescribed in the existing SOR of all the Major Port Trusts as follows:

“Coastal vessel” shall mean any vessel exclusively employed in trading between any port or place in India to any other port or place in India having a valid coastal licence issued by the Director General of Shipping/ Competent Authority.

Therefore, the definition of Coastal Vessel proposed by the EVTL has been slightly modified adding the words “Director General of Shipping” in line with the above mentioned definition of ‘Coastal Vessel’.

The definition of "Foreign-going vessel" is found to be in line with the definition uniformly prescribed in the SOR of other Major Ports and upfront tariff Order and hence is prescribed as proposed by EVTL.

(b). All other conditions proposed by EVTL are as per the Order dated 29 November 2010 and hence same is prescribed.

(x). As per clause 3.8.5 of the 2008 guidelines, if any question arises requiring clarifications or interpretation of the Scale of Rates and the statement of conditions, the matter shall be referred to this Authority and its decision in this regard will be binding on the operator.

(xi). The EVTL is expected to perform at least at the performance standards / norms brought out in the bid documents / Concession Agreement. The actual performance of the EVTL will be monitored by this Authority. If any complaint regarding quality of service is received, this Authority may enquire into such allegation and forward its findings to the VPT. If any action is to be taken against the EVTL, the VPT shall initiate appropriate action in accordance with the provisions of the Concession Agreement.

(xii). During the commercial operation at the terminal, within 15 days from the end of every quarter, the EVTL is directed to submit to this Authority through the VPT a report containing the physical and financial performance during the preceding three months.

11.2. In the result, and for the reasons given above, and based on collective application of mind, this Authority approves notification of Scale of Rates in the name of Essar Vizag Terminals Limited for mechanized handling of iron ore facility operated by EVTL on DBFOT basis at VPT attached as **Annex**.

11.3. The Scale of Rates notified for EVTL will come into force from the date the Project can be safely and reliably placed in commercial service of the users thereof, and that the Project has been declared fit for entry into commercial operation as per the Provisional Certificate issued by the Independent Engineer i.e. from 31 March 2018.

(T.S. Balasubramanian)
Member (Finance)

ESSAR VIZAG TERMINALS LIMITED
TARIFF SCHEDULE FOR MECHANISED HANDLING OF IRON ORE

1.1. DEFINITIONS

In this Scale of Rates unless the context otherwise requires, the following definitions shall apply:

- (i). **"Day"** shall mean the period starting from 6.00 A.M. of a day and ending at 6.00 A.M. on the next day.
- (ii). **"Coastal vessel"** shall mean any vessel exclusively employed in trading between any port or place in India to any other port or place in India having a valid coastal licence issued by the Director General of Shipping/Competent Authority.
- (iii). **"Foreign-going vessel"** shall mean any vessel other than Coastal vessel.

1.2. GENERAL TERMS & CONDITIONS

- (i). Interest on delayed payments / refunds.
 - (a). The user shall pay penal interest on delayed payments of under this Scale of Rates. Likewise, the terminal operator shall pay penal interest on delayed refunds.
 - (b). The rate of penal interest will be 2% above the prime lending rate of the State Bank of India.
 - (c). The delay on refunds will be counted only 20 days from the day of completion of services or on production of all the documents required from the users, whichever is later.
 - (d). The delay in payments by the users will be counted only 10 days after the date of raising the bills by the terminal operator. This provision shall, however, not apply to the cases where payment is to be made before availing the services where payment of charges in advance is prescribed as a condition in the scale of rates.
- (ii). In calculating the gross weight or measurement by volume or capacity of any individual item, fractions upto and inclusive 0.5 shall be taken as 0.5 unit and fractions of above 0.5 shall be treated as one unit, except where otherwise specified.
- (iii). All charges worked out shall be rounded off to the next higher rupee on the grand total of the bill.
- (iv).
 - (a). The rates prescribed in the Scale of Rates are ceiling levels: likewise, rebates and discounts are floor levels. The terminal operator may, if they so desire, charge lower rates and / or allow higher rebates and discounts.
 - (b). The terminal operator may also, if they so desire rationalise the prescribed conditionalities governing the application of rates prescribed in the Scale of Rates if such rationalisation gives relief to the user in rate per unit and the unit rates prescribed in the Scale of Rates do not exceed the ceiling levels.
 - (c). The terminal operator should notify the public such lower rates and / or rationalisation of the conditionalities governing the application of such rates provided the new rates fixed shall not exceed the rates notified by the TAMP.

- (v). Users will not be required to pay charges for delays beyond reasonable level attributable to terminal operator.

2. CARGO HANDLING CHARGES:

SI. No.	Commodity	Unit	Rate in ₹
(a).	Iron Ore	Per Metric Tonne	139.08

Note:

The handling charges prescribed above is a composite charges for unloading of cargo from wagon through unloading facilities at dumper house, transfer the same upto the point of storage, storage at the stack yard upto a free period of 15 days, reclaiming from stack yard, loading onto the ship, wharfage and all other miscellaneous services not specifically prescribed in the scale of rates.

3. STORAGE CHARGES:

The Storage charges for the cargo stored in the stack yard beyond the free period of 15 days shall be as below:

(Rate in ₹ per tonne per day or part thereof)

SI. No.	Commodity	Rate for first week for the balance cargo remaining after the free period	Rate for second week for the balance cargo	Rate for third week onwards for the balance cargo
1.	Iron ore	0.80	1.61	3.22

Notes:

- (i). 15 free days shall be allowed. Free period for export cargo shall commence from the actual date of the receipt of goods in the Port premises.
- (ii). For the purpose of calculation of free period, Custom notified holidays and Terminal's non-working days shall be excluded.
- (iii). 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.
- (iv). 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.

4. MISCELLANEOUS CHARGES:

The following Miscellaneous charges are applicable for iron ore handled:

SI. No.	Particulars	Rate per tonne or part thereof (in ₹)
(i).	Charges for all miscellaneous services such as sweeping, dust suppression and environment etc.	1.42

5. GENERAL NOTE TO SCHEDULE (2) TO (4) ABOVE:

The tariff caps prescribed in the Scale of Rates of Essar Vizag Terminals Limited takes into consideration the upfront tariff approved by this Authority vide Order No.TAMP/32/2010-VPT dated 29 November 2010 and applying indexation to the extent of 60% of the variation in Wholesale Price Index (WPI) occurring between 1 January 2010 and 1 January of the relevant year. For the subsequent years as well, upfront tariff approved in the Order No.TAMP/32/2010-VPT dated 29 November 2010 will be indexed to inflation but only to an extent of 60% of the variation in Wholesale Price Index (WPI) occurring between 1 January 2010 and 1 January of the relevant year. Such automatic adjustment of tariff caps will be made every year and the adjusted tariff caps will come into force from 1 April of the relevant year to 31 March of the following year.