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Tariff Authority for Major Ports

G.No.198

New Delhi

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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 extends the validity of the existing tariff for use of 100 tonne Harbour Mobile Crane approved by this Authority vide Order No.TAMP/21/2015-VPT dated 15 March 2015 at West Quay - 7 and 8 berth in the inner harbour for cargo handling operations by authorised service provider on license basis at Visakhapatnam Port Trust as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports
Case No. TAMP/70/2017-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 29th day of March 2019)

This case relates to the proposal dated 15 September 2017 received from the Visakhapatnam Port Trust (VPT) for notification of tariff for use of 100 tonne Harbour Mobile Crane at WQ-7 and WQ-8 berth in the inner harbour for cargo handling operations on license basis considering the tariff contained in Order No.TAMP/21/2015-VPT dated 15 May 2015 as reference tariff.

2.1. The main points contained in the VPT proposal are as follows:

- (i). The port proposes to install one 100 tonne Harbour Mobile Crane at WQ-7 & 8 berth in the inner harbour for cargo handling operations on license basis.
- (ii). TAMP vide its Order dated 15.5.2015 has notified tariff for the use of 100 tonne HMC at East and West Quay berths for handling dry/ break bulk cargoes following the Tariff Policy, 2015. As per Para 10 of the said Order, the tariff for 100 tonne HMC is valid for a period of three years.
- (iii). The present proposal is also for installation of similar capacity HMCs on similar operational system. The Technical specifications of the proposed HMCs and draft Scale of Rates are furnished.
- (iv). Tariff for the current proposal considering the tariff contained in TAMP Order No.TAMP/21/2015-VPT dated 15 May 2015 may be notified as reference tariff.

2.2. The tariff proposed in the draft Scale of Rates and Performance Standards are as under:

- (i). Charges for use of 100 tonne Harbour Mobile Crane installed by the Private operators:

- (1). For Dry Bulk Cargo

Average Berth Day Output (in Metric Tonne)	Ceiling Rate Per Tonne (in ₹)	
	Foreign	Coastal
12500	55.18	33.11
12501-13500	57.94	34.77
13501-14500	60.70	36.42

Note: To calculate the incremental ceiling rates as shown above, the base rate was enhanced to 105% for first thousand tonnes and for the 2nd thousand tonnes the rate was enhanced to 110% of the

base rate. The same methodology shall also be adopted to calculate the rate beyond 14,500 tonnes.

(2). For Break Bulk Cargo

Average Berth Day Output (in Metric Tonne)	Ceiling Rate Per Tonne (in ₹)	
	Foreign	Coastal
6,000	114.97	68.98
6,001-7,000	120.72	72.43

Note: To calculate the incremental ceiling rates as shown above, the base rate was enhanced to 105% for first thousand tonnes. The same methodology shall also be adopted to calculate the rate beyond 7,000 tonnes.

(3). For Other Cargo

Average Berth Day output (in Metric Tonne)	Ceiling Rate Per Tonne (in ₹)	
	Foreign	Coastal
3,750	183.95	110.37
3,751-4,750	193.14	115.89

Note: To calculate the incremental ceiling rates as shown above, the base rate was enhanced to 105% for first thousand tonnes. The same methodology shall also be adopted to calculate the rate beyond 4,750 tonnes.

Notes:

- (i). The formula for calculation of average berth-day output is as follows:-

$$\frac{\text{Total Quantity loaded / unloaded by HMC (tonnes)}}{\text{Total time taken from vessel commencement to completion (Hrs.)}} \times 24$$

- (ii). According to the average berth-day output for the vessel from commencement to completion of loading/ discharge of cargo, the appropriate rate of crane hire charge will be chosen for recovery from Port users for the full quantity of cargo loaded/ discharged.
- (iii). If the HMC works with another crane/s, the Berth-day output of the crane will be ascertained on the basis of the quantity as recorded by the HMC's load meter.
- (iv). In case of breakdown of the crane for more than one hour till the vessel leaves the berth, the quantity handled by HMC will be determined taking into account cargo loaded/ discharged prior to break-down divided by crane working hours and multiplied by 24.
- (v). In case of stoppages of operation of HMC for more than two hours at a stretch for reasons not attributable to the HMC, appropriate allowance will be allowed to the crane while calculating the total time of crane operation in the vessel. Stoppages of HMC for less than 2 hours will not be taken into consideration for the above purpose. No allowance will be allowed for stoppages attributable to the HMC. All stoppages in loading/unloading operations during working of HMC are required to be certified by the Stevedore of the vessel in the daily vessel performance report.
- (vi). In case shifting of a vessel becomes necessary due to breakdown/ non-performance of HMC, the shifting charges of the vessel from berth to anchorage will be recovered from the crane operator in addition to the penalty of ₹1,00,000/- (Rupees one lakh only). The shifting charges so recovered will be refunded to the vessel agent while the penalty will be retained by the Port.

- (vii). In case of dispute on the average output, the decision of the Port Trust will be final and binding.
- (viii). From the date of Commercial Operation (CoD) till 31st March of the same financial year, the tariff would be limited to the indexed Reference Tariff relevant to that year, which would be the ceiling. The aforesaid Reference Tariff shall be automatically revised every year based on an indexation as provided in para 2.2 of revised guidelines for determination of tariff for projects at major ports 2013 which will be applicable for the entire license period.
- (ix). The Licensor would be free to propose a tariff along with Performance Standards (the "Performance Linked Tariff) from the second year of operation onwards, over and above the indexed Reference Tariff for the relevant financial year, at least 90 days before the 1st April of the ensuing financial year. Such Performance Linked Tariff shall not be higher than 15% over and above the indexed Reference Tariff for that financial year (and this will be the Tariff Cap). The Performance Linked Tariff would come into force from the first day of the following financial year and would be applicable for the entire financial year.

(ii). **PERFORMANCE STANDARDS**

The performance standards corresponding to the SoR for the crane are as under:

Cargo group	Average berth day output (in Metric Tonne)
Dry Bulk cargo	12,500
Break Bulk cargo	6,000
Other cargo	3,750

The crane operator is to ensure the above standards for all the vessels handled by it at all times. Calculation of average berth day output shall be as per the notes given above.

Performance evaluation will be made for every vessel upon completion of cargo handling basing on the reports furnished by the crane operator in concurrence by the concerned Stevedore. Liquidated damages of 1% shall be levied for every shortfall of 10% in the performance standards for each of the commodity group separately. The liquidated damages so collected shall be paid to the concerned Stevedore.

3.1. With reference to the said proposal, the VPT was requested vide our letters dated 3 October 2017 and 10 October 2017 to furnish information/ clarification on a few points, as the proposal was mix of tariff arrangement proposed by port under two sets of guidelines viz. Tariff Policy, 2015 and Reference Tariff Guidelines of 2013. The VPT vide its letter dated 5 October 2017 and e-mail dated 20 October 2017 has furnished its reply. A summary of information/ clarification sought by us and reply furnished by VPT is tabulated below:

Sl. No.	Information/ clarification sought by us	Information/ Clarification furnished by VPT
(i).	The VPT to clarify under which tariff guidelines the subject proposal is filed by the port i.e. Tariff Policy, 2015 or Reference Tariff Guidelines, 2013 as it appears to be a mixture of Tariff Policy, 2015 and Reference Tariff Guidelines 2013, as observed above.	The proposal for fixation of charges for use of 100 tonne HMC at WQ-7 and WQ-8 berth in the <u>inner harbor on License basis</u> is as per <u>Tariff Policy, 2015</u> . The SOR is accordingly revised duly applying an indexation factor of 2% to the proposed Reference Tariff notified by TAMP vide its Order No.TAMP/21/2015-VPT dated 15 May 2015 and re-submitted with a request to notify the tariff at the earliest.
(ii).	<u>If the proposal of the VPT is under the Reference Tariff Guidelines, 2013</u> If the proposal of the VPT is under the Reference Tariff Guidelines, 2013, then the VPT may propose Reference Tariff adopting the Reference Tariff for 100T HMC fixed by this Authority under the Reference Tariff Guidelines	[The VPT has proposed the

	of 2013 or Upfront Tariff Guidelines of 2008 at VPT or any other Major Ports after applying the applicable escalation. If both this options are not feasible, the port may for justifiable reasons propose rate following the principles of 2008 Guidelines. The VPT may kindly note that Clause 2.2 of the Reference Tariff Guidelines 2013 does not allow port to adopt the rate prescribed under the Tariff Policy, 2015.	conditionalities as per the approved Order No.TAMP/21/2015-VPT dated 15 May 2015 and deleted additional conditionalities proposed in its original proposal dated 15 September 2017 as a note no.viii and ix which make reference to Reference tariff and Performance linked tariff.]
(iii).	<p>The hire charges for 100 tonne HMC approved by this Authority vide Order No.TAMP/21/2015-VPT dated 15 May 2015 based on the proposal filed by the VPT is for 100 Tonne HMC to be deployed at <u>East Quay (EQ) and West Quay (WQ) berths</u> of VPT. As per para 10 of the said Order, the validity of the rates approved is for 3 years up to 27 June 2018.</p> <p>Note (viii) in the Scale of Rates of the said Order stipulates that after completion of one year from the date of implementation of the Order, the rates prescribed for 100 tonne HMC for dry bulk cargo, break bulk cargo and other cargo shall be indexed automatically annually to meet the cost of inflation to the extent of 100% of the Wholesale Price Index (WPI) announced by the Government of India occurring between 1st January 2015 and 1st January of the relevant year. The revised rate shall be effective from 1 April of the relevant year and 31 March of the following year.</p> <p>Since the valid rates for 100T HMC for EQ and WQ berths of VPT approved by this Authority are already in place with clause allowing for automatic indexation in SOR, the VPT to clarify the reasons for seeking notification of the indexed SOR for 100 tonne HMC for the specific berth nos.WQ7 and WQ8 for 100T HMC, which are already covered by the Order dated 15 May 2015.</p>	<p>The two 100 T HMC for which tariff was notified vide the Gazette dated 28.5.2015 have already been commissioned and have been in use since August 2016.</p> <p>The present proposal is for installation of similar capacity HMCs (two numbers) and on similar operational arrangement on license basis to be installed at WQ-7 and WQ-8 berth for which the charges notified by TAMP vide its Order No.TAMP/21/2015-VPT dated 15.5.2015 have been indexed duly applying annual escalation factor by 2% for the year 2017-18 and the proposal was submitted to TAMP vide VPT's letters dated 7.10.2017.</p> <p>As the Port is going for fresh tenders, it is opined to notify the tariff with applicable indexation. Hence the proposal is submitted to TAMP.</p>

3.2. Thus, the proposal of VPT made to this Authority is to notify the tariff approved in the Order No.TAMP/21/2015-VPT dated 15 May 2015 with applicable indexation on the ground that it is going for fresh tenders for installation of 2 HMCs on license basis.

4. Subsequently, in response to our letters dated 3 November 2017, 2 August 2018, 5 October 2018 and 6 November 2018 seeking additional information/ clarifications, the VPT vide its letters dated 25 May 2018, 23 August 2018, 16 October 2018 and 21 December 2018 has responded. The responses of the VPT are summarised below:

- (i). The Authority notification dated 28 May 2015, where in tariff for use of 100 Tonne Harbour Mobile Cranes installed by the private parties is communicated. The present validity of the said notification is going to be completed by 26 May 2018 (correct date is 27 June 2018).
- (ii). The VPT has granted license for Supply, Installation, Commissioning, Operation and Maintenance of 2 numbers of HMC's of capacity not less than 100 MT to M/s.Seapol Port Pvt. Ltd. (SPPL) for a period of 5 years from the date of commissioning under Revenue sharing basis. The commissioning of one crane

was happened on 02.08.2016 and other crane was on 17.08.2016 and accordingly, the services of these two cranes will be continued upto completion of 5 years period i.e. till 01.08.2021 and 16.08.2021.

In view of the above, the VPT requests to extend the validity of the tariff approved earlier with due escalations upto completion period of contract and to convey the sanction of extension of Tariff Order.

- (iii). M/s.Seapol Port Pvt. Ltd. submitted a letter stating that, as the validity of tariff was lapsed, the prime customer M/s.TANGEDCO though availing services of cranes, not paying the charges to the tune of ₹3.60 crores on the plea that there is no tariff existing on the date.
- (iv). As the existing rates were already notified and implemented upto 26 May 2018, an immediate interim/ Adhoc order for continuing the existing tariff keeping in view of the said guidelines, may please be issued till communicating or finalizing the tariff to be collected as the cranes supplier is facing severe cash crunch to continue to operate the cranes and in the absence of crane operations, the cargo handling activity of port will hamper.
- (v). The Board of Trustees of the VPT vide its Resolution no.106/2018-19 has resolved to extend the validity of the tariff as communicated vide Order No.TAMP/21/2015-VPT dated 15 May 2015 with due escalations till the completion of contract period 16 August 2021 and to apply the same tariff for the HMCs which are yet to be commissioned as per the TAMP letter No.TAMP/70/2017-VPT dated 03 November 2017.

5.1. As stated earlier, this Authority vide its Order No.TAMP/21/2015-VPT dated 15 May 2015 has approved tariff for 100 T Harbour Mobile Crane (HMC) to be installed at East Quay and West Quay berth of VPT on license basis for cargo handling operations on revenue share model. The said Order was notified in the Gazette of India vide Gazette No.196 dated 15 May 2015. The rates came into effect after expiry of 30 days from date of notification of the Order in Gazette of India i.e. from 28 May 2015 and validity was prescribed for the period of 3 years i.e. till 27 June 2018. The said Order states that the rate approved shall automatically lapse unless specifically approved by this Authority.

5.2. In the original proposal dated 15 September 2017, the VPT had sought notification of the indexed rate for 100T HMC approved by this Authority in the Order dated 15 May 2015 on the grounds that the port proposed to install two numbers of 100T HMC at WQ-7 and WQ-8 berths on license basis by inviting fresh tender. Since the valid rates for 100T HMC for East Quay (EQ) and West Quay (WQ) berths of VPT approved by this Authority vide Order dated 15 May 2015 having validity till 27 June 2018 were already in place with clause allowing for automatic indexation in SOR, it was brought to the notice of VPT vide our letter dated 03 November 2017 that the port can make use of the indexed rates approved in the said Order for inviting the fresh tender. The Tariff Policy, 2015 does not require notification of rates for individual tenders to be invited by the port.

5.3. Subsequently, the VPT has sought extension of the validity of the hire charge for 100T HMC approved by this Authority in the Order dated 15 May 2015 for HMC. The port, based on the hire charges for 100T HMC approved by this Authority in the said Order for installation of 100T HMC at East Quay and West Quay berths at VPT on license basis under the then applicable Tariff Policy, 2015, has already granted license to a service provider for supply, installation, commissioning, operation and maintenance of 2 (two) numbers of Harbour Mobile Cranes of capacity not less than 100 MT for a period of five years from the date of commissioning. Out of two cranes, one crane is reported to have been commissioned on 2 August 2016 and other crane on 17 August 2016. Accordingly, the validity of the contract for cargo handling services to be rendered by service provider authorized by the VPT on license basis for the two 100 T HMCs are upto completion of 5 years period i.e. till 1 August 2021 and 16 August 2021. The VPT has, therefore, sought extension of the validity of existing rate for 100T HMC upto the validity of the license given by the VPT for the second crane i.e. 16 August 2021. The VPT has also forwarded a

copy of the approval of the Board of Trustees of the VPT approving extension of the validity of the hire charge for the 100T HMC approved by this Authority in the Order dated 15 May 2015 with due escalation till the completion of contract period i.e. upto 16 August 2021.

5.4. In view of the clarification furnished by the VPT and recognizing that the validity of hire charge for 100T HMC approved by this Authority vide Order No.TAMP/21/2015-VPT dated 15 May 2015 installed at the inner harbour at East Quay and West Quay berths on license basis for cargo handling operations at VPT has already expired on 28 June 2018 and the existing license awarded by the port for operation of 100T HMC by an authorised service provider is valid till 16 August 2021 and also recognising that the proposal of the VPT seeking extension of the existing rate subject to indexation is approved by the Board of Trustees of the VPT, this Authority is inclined to grant approval to the proposal of the port for extension of the validity of the hire charge for 100T HMC approved by this Authority in the Order No.TAMP/21/2015-VPT dated 15 May 2015 from the date of its expiry till 16 August 2021 with applicable indexation in the rate as per note no.(viii) prescribed in the said Order. The extension of the validity of rate will continue to be governed by the conditionalities prescribed in the Order dated 15 May 2015.

5.5. The VPT in its letter dated 16 October 2018 had requested for interim/ Adhoc Order for continuing the existing tariff till communicating or finalizing the tariff to be collected.

For the reasons cited by the VPT, that the crane supplier is facing severe cash crunch to continue to operate the cranes due to TANGEDCO not paying the charges to the operator and the cargo handling activity of port will be hampered in the absence of crane operation, at the request of the VPT, the Competent Authority accorded extension of the validity of the tariff approved for operation of 100T HMC duly indexed for a period of one year from 27 May 2018 to 26 May 2019 (correct date should be 27 June 2018 to 26 June 2019) on provisional basis and the same was communicated to the VPT.

6. In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves the proposal of the VPT for extension of the validity of existing rate for 100T HMC approved by this Authority vide Order No.TAMP/21/2015-VPT dated 15 May 2015 for operation of 100 T HMC at the Inner Harbour of VPT at East Quay and West Quay berths for cargo handling operations at VPT from date of its expiry till 16 August 2021 with applicable indexation in the rate as per note no.(viii) prescribed in the said Order. The extension of the validity of rate will continue to be governed by the conditionalities prescribed in the Order dated 15 May 2015.

(T.S. Balasubramanian)
Member (Finance)