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 amends the Scale of Rates of India Gateway Terminal Private Limited as in the Order appended hereto.

(A.L. Bongirwar)
Chairman
ORDER
(Passed on this 27th day of December 2005)

This Authority has passed an Order on 6 October 2005 fixing the Scale of Rates of the India Gateway Terminal Limited (IGTPL) for its operations at the Rajiv Gandhi Container Terminal in Cochin Port Trust. This Order was notified in the Gazette of India on 21 October 2005.

2. With reference to the said Order, the IGTPL has requested for certain amendments in its Scale of Rates (SOR). The submissions made by the IGTPL and our analysis thereon are given below:

(i). Schedule 3.4 of the approved SOR prescribes levy of wharfage charge for ICD containers at the rate equivalent to laden containers. No specific rate is, however, prescribed for ICD empty containers. As a result, wharfage charges for ICD empty containers will also become applicable at the rate prescribed for laden containers. It has, therefore, requested to specify the rate for ICD empty containers separately at the level approved for normal empty containers.

Analysis:

The IGTPL had basically adopted the tariff structure of the COPT while proposing its SOR. This Authority was constrained to accept the proposed tariff structure since IGTPL was not in a position to propose the rates on a more scientific basis with reference to cost for services provided.

The SOR of COPT specifies wharfage rate for ICD laden container at the rate applicable for normal laden container. It is, however, silent on the rate applicable for ICD empty containers. While adopting the tariff structure of the COPT, the IGTPL has proposed the wharfage rate for ICD container at the level proposed for normal laden container but has not mentioned specifically that it is for a laden container. The same structure as proposed by the IGTPL was approved subject to the moderation in the rates proposed.

Thus as rightly pointed out by the IGTPL, the ICD empty containers will also have to pay the rate applicable for laden container which is unintended. The amendment proposed by the IGTPL to make a separate entry for ICD empty container and prescribe the rate as applicable for normal empty container will remove this ambiguity and also benefit the users. That being so, the proposed modification is accepted. While inserting a new entry for ICD empty container, the existing entry relating to ICD container is also modified as ICD (Laden container).

(ii). Item No (iii) in Schedule 2 – General, of the approved SOR prescribes a provision relating to conversion of container-related charges denominated in US dollar terms in equivalent Indian Rupees based on the market buying rate notified by the Reserve Bank of India, State Bank of India or its associated or any of the Public Sector Banks as may be specified from time to time.

The IGTPL has stated that conversion rates changes depending on every day fluctuation in the forex rates. It has pointed out that the Customs notify foreign exchange conversion rates to be followed for a month, before the beginning of the month itself. This is widely accepted by the export / import community as it is transparent, known well in advance and avoids administrative issues relating to daily fluctuations.

As the trade is already following this rate for Customs assessment, it has requested to grant approval to follow the Customs notified rates for conversion of dollar denominated tariff items into Indian Rupees.
Analysis:

The issue of adoption of the exchange rate notified by the Customs for the purpose of conversion of dollar denominated tariff into rupee terms has been elaborately dealt with in our earlier Order number TAMP/4/98-MISC dated 30 August 2001. Though some of the private terminals had at that point of time preferred adoption of ‘Customs rate’ for conversion purpose, they expressed their willingness to switch over the system approved for the major ports i.e. conversion of dollar denominated charge to Indian Rupees based on the market buying rate notified by the Reserve Bank of India, State Bank of India or its subsidiaries or any other Public Sector banks as may be specified from time to time. This provision is being uniformly applied by all the major ports and the private terminals.

Clause 2.19.1. of the revised tariff guidelines requires all dollar denominated tariff to be recovered in Indian Rupees after conversion of charges in dollar terms into its equivalent Indian Rupees at the market buying rate notified by the Reserve Bank of India, State Bank of India or its associates or any other Public Sector Banks as may be specified from time to time.

Since there is a specific guidelines in this regard and also recognising that it is being uniformly implemented by all other major ports/private terminals, no extra-ordinary circumstances are found to emerge in the instant case to deviate from the generally accepted principle exclusively in the case of IGTPL. That being so, the request of the IGTPL for adoption of Customs rate for the purpose of conversion is not accepted.

(iii). As per item number (viii) under Schedule 2 – General, a premium @ 25% is to be levied over the applicable handling charges prescribed in Schedule 3.1- ‘Gantry crane charge’ and Schedule 3.2 – ‘Charges for container handling equipment’ in case of handling hazardous cargo container /over dimensional containers.

It has requested that the 25% premium for hazardous cargo container / over dimensional containers should be made applicable on the handling charge prescribed in Schedule 3.3 for transhipment containers also.

Analysis:

Revised tariff guidelines permit levy of 25% premium on handling charge in case of hazardous containers. The revised tariff guidelines, however, do not mention anything about levy of premium in the handling charge in respect of over dimensional containers.

Some of the private terminal operators pointed out that handling an over dimensional container involves additional effort in comparison to handling a normal container in terms of manpower, requirement of special gears, etc., due to its over dimensional size. Recognising this fact, this Authority has prescribed a premium 25% in the handling charge for an over dimensional containers at par with the level applicable for hazardous containers in case of other private terminals like Visakha Container Terminal Pvt. Ltd., PSA SICAL Terminals Ltd., and Chennai Container Terminal Ltd. Flowing from the position obtaining at the other private terminals, 25% premium on handling charge was prescribed at IGTPL for handling hazardous cargo containers as well as over dimensional containers also.

The IGTPL has proposed to amend the said note by including levy of 25% premium prescribed in handling charges for transhipment of hazardous and overdimensional containers also. The revised tariff guidelines prescribe levy of premium for handling hazardous containers which is to be applied for all categories of such containers. Since such a premium is levied on general import / export of hazardous or over dimensional containers, it may not be illogical to extend such levy in case of transhipments also. That being so, the proposed amendment to include Schedule 3.3. relating to composite handling charge for transhipment container in the said note for the purpose of levy of premium on the prescribed handling charge in case of
hazardous cargo containers / over dimensional cargo containers is found to be appropriate and hence is accepted.

(iv). The existing Note 6 of Schedule 3.6 states that the storage charges shall be 25% more under the respective slabs for hazardous container. It has requested to allow 25% additional levy for over dimensional containers also and has accordingly suggested to modify the existing note.

Analysis:

The revised tariff guidelines prescribe levy of 25% premium in storage charge on hazardous container but is silent with reference to over dimensional containers. It is relevant to mention that in the case of Visakha Container Terminal Private Limited, the operator had submitted that over dimensional containers occupy additional stacking space than a normal container and hence had proposed a premium of 300% over the applicable storage charge for over dimensional containers. In the absence of any cost details to justify the proposed premium and also recognising that such a premium was not prescribed in the SOR of the other private terminals nor did the revised tariff guidelines mention about it, this Authority has approved a premium of 25% for storage of over dimensional container at par with the level prescribed for hazardous containers. Based on the same analogy, this Authority accepts the amendment proposed by the IGTPL and extends the 25% premium on storage charge presently applicable for hazardous container for over dimensional containers also.

3. It is further observed that note 5 under Schedule 3.6.- Storage charge prescribing a provision of its SOR relating to non accrual of storage charge for the period during which the IGTPL is not in a position to deliver/ship the empty containers when requested by the user, inadvertently limits its application only to empty containers. The word ‘empty’ had been inadvertently included in one of our queries raised to the IGTPL in this regard at the time of processing of the earlier proposal. The word ‘empty’ had, therefore, been maintained in the revised SOR proposed by the IGTPL and also in the SOR approved by this Authority. It is relevant to state that the provision at Note 5 should be applied in all cases where the IGTPL is not in a position to deliver/ship containers whether loaded or empty, at the request of the users. The word ‘empty’ is, therefore, deleted from note 5 under Schedule 3.6. of the approved SOR.

4. Ordinarily, this Authority does not approve the rates and conditionalities with retrospective effect. Even the revised tariff guidelines also lay emphasis on prospective implementation of the rates approved by this Authority. It is, however, relevant to note the amendments made in the Scale of Rates are linked to the rates and conditionalities approved in its earlier Order and are more for removing the ambiguity existed therein. It is, therefore, logical to give effect to these amendments retrospectively from the effective date of implementation of the SOR. That being so, this Authority amends the SOR of IGTPL from the date of implementation of its earlier Order notified in the Gazette of India on 21 October 2005 and should not be interpreted as retrospective approval.

5.1. In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves the amendments in the Scale of Rates of the IGTPL as in the Annex.

5.2. These amendments will come into effect retrospectively from the date of implementation of the Scale of Rates notified in the Gazette of India on 21 October 2005.

(A.L. Bongirwar)
Chairman
AMENDMENT TO THE SCALE OF RATES OF IGTPL
NOTIFIED IN THE GAZETTE OF INDIA ON 21 OCTOBER 2005.

(i). Delete the entry in Schedule 3.4 – Wharfage relating to ICD containers and insert new entries for ICD laden and empty containers as mentioned below:

<table>
<thead>
<tr>
<th>Particular</th>
<th>Normal Containers (in Rs)</th>
<th>Coastal (in Rs)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Container not exceeding 20 feet in length</td>
<td>Container exceeding 20 feet in length and upto 40 feet length</td>
</tr>
<tr>
<td>ICD (Laden Container)</td>
<td>550.00</td>
<td>825.00</td>
</tr>
<tr>
<td>ICD (Empty Container)</td>
<td>115.50</td>
<td>173.25</td>
</tr>
</tbody>
</table>

(ii). The existing Note number (viii) under Schedule 2 – General is substituted by the following:

“(viii). Premium of 25% will be levied over the applicable handling charges prescribed in Schedule 3.1, Schedule 3.2 and Schedule 3.3 for hazardous Cargo Container / Over dimensional Cargo Containers.”

(iii). The existing Note number 6 under Schedule 3.6 Storage Charge is substituted by the following:

“(6). For hazardous container and over dimensional container, the storage charges shall be 25% more under the respective slab as given above.”

(iv). The existing Note number 5 under Schedule 3.6 Storage Charge is substituted by the following:

“(5). The storage shall not accrue for the period during which the IGTPL is not in a position to deliver/ ship containers when requested by the user.”