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**Tariff Authority for Major Ports**

G.No.17

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**NOTIFICATION**

In compliance of the policy direction issued by Government of India in the Ministry of Shipping (MOS) under Section 111 of the Major Port Trusts Act, 1963 (38 of 1963), as conveyed by MOS vide its letter No.IWT-11/28/2018-IWT dated 26 December 2018 and subsequent e-mail dated 31 December 2018, the Tariff Authority for Major Ports hereby notifies the following "Tariff Policy for Major Port Trust, 2018".

The relevant clause of the Tariff Policy for Major Port Trusts, 2018 stipulates that the Tariff Policy will come into effect from the date of issue. The MOS has issued the direction to this Authority vide its letter dated 26 December 2018. Accordingly, this Tariff Policy for Major Port Trusts, 2018 should be deemed to have come into force from 26 December 2018.

**Preamble**

The market conditions for provision of port services have undergone significant change since liberalization in the Port sector and expansion of port infrastructure following the introduction of Public Private Partnerships at Major Ports since 1996. Non-major ports have expanded rapidly and now have a substantial presence. Further, there is no parity in the regulation mechanism between the major port trusts and the non-major ports. Whilst tariffs of Major Port Trusts are regulated following cost plus return approach, non-major ports are not covered by any tariff regulation. A need was, therefore, felt to give flexibility to the Major Port Trusts to react to the market forces and also to encourage Major Port Trusts for better performance within the ambit of Major Port Trusts Act, 1963. In order to accomplish this, the Government issued Policy for Determination of Tariff for Major Port Trusts, 2015 vide communication No.8(1)/2014-TAMP dated 13 January 2015. Since the validity of the Policy was for a period of 3 years, the Policy was taken up for review and consultation process was initiated with the Major Port Trusts.

Taking into consideration the comments and suggestions received from Major Port Trusts during the consultation process, the Policy for Determination of Tariff for Major Port Trusts, 2015 issued by the Ministry of Shipping vide letter No.8(1)/2014-TAMP dated 13 January 2015 has been modified. The Government has issued the following Tariff Policy for Major Port Trusts, 2018, in supersession of the Policy for Determination of Tariff for Major Port Trusts, 2015 issued by the Government of India in the Ministry of Shipping earlier vide its communication No.8(1)/2014-TAMP dated 13 January 2015.

**TARIFF POLICY FOR MAJOR PORT TRUSTS, 2018**

**1. PRELIMINARY**

- 1.1. This Policy is issued to the Major Port Trusts and the Tariff Authority for Major Ports (the "TAMP") as a policy direction under Section 111 of the Major Port Trusts Act, 1963 as amended from time to time (the "MPT Act"), for fixation of tariffs at Major Port Trusts to which the provisions of the MPT Act apply or are extended (the "Port(s)").
- 1.2. The direction may be called 'Tariff Policy for Major Port Trusts, 2018 (the "Tariff Policy")'.
- 1.3. This Policy shall come into effect from the date of issue, and would be applicable for determination of tariff in major ports due for revision w.e.f. 1<sup>st</sup> April 2019. It shall remain in force till 1 April 2022 unless reviewed earlier or extended by the Government.
- 1.4. This Policy is not applicable to BOT / BOOT operators or any other arrangement for private sector participation.
- 1.5. This is a broad policy framework. The TAMP may, in consultation with all the Major Port Trusts, issue working guidelines, if required, to operationalise the policy frame work.

- 1.6. The TAMP, for reasons to be recorded in writing, may relax with the approval of Ministry of Shipping (MOS), application of any of the provisions of the Tariff Policy to a port or a group of ports, on its own or on an application made before it by the concerned Major Port Trust.

## **2. DETERMINATION OF SCALE OF RATES**

- 2.1. Each Major Port Trust will assess the Annual Revenue Requirement (ARR) which is the average of the sum of Actual Expenditure as per the final Audited Accounts of the immediate preceding three years (Y1), (Y2) and (Y3) at the time of submitting the proposal, plus Return at 16% of Capital Employed comprising of Net Fixed Assets plus Working Capital plus capital work-in-progress obtaining as on 31<sup>st</sup> March Y3, duly certified by a practicing Chartered Accountant/ Cost Accountant.
- 2.2. Actual Expenditure will be the total expenditure as reflected in the Audited Annual Accounts of the Major Port Trusts, subject to following adjustments and any other adjustments to be decided by TAMP in consultation with all the Major Port Trusts:
  - (i). All expenses relating to Estate related activity are to be excluded.
  - (ii). Interest on loans is to be excluded.
  - (iii). Only 1/3<sup>rd</sup> of one time expenses like arrears of wages, arrears of pension/ gratuity, arrears of ex-gratia payments arising out of wage revision etc. and 1/3<sup>rd</sup> of the contribution to Superannuation Funds are to be included in the calculation of ARR.
  - (iv). Management and General Administration Overheads subject to a cap of 25% of aggregate of the operating expenditure and depreciation is only to be considered.
- 2.3. The ARR so assessed as on 31<sup>st</sup> March Y3 will be indexed by 100% of the Wholesale Price Index (WPI) applicable for the year Y4 as communicated by TAMP to the Major Port Trusts.
- 2.4. The indexed ARR determined by the Major Port Trusts as per clause 2.3 is the ceiling Annual Revenue Requirement based on which the Major Port Trusts will draw the Scale of Rates (SOR).
- 2.5. For drawing the SOR, the traffic to be considered would be the overall actual traffic exclusively for the port for Y3.
- 2.6. Based on the Annual Revenue Requirement as assessed as per Clause 2.4 above and taking into account the traffic as per Clause 2.5, the Major Port Trusts will have the flexibility to determine the rates to respond to the market forces based on its commercial judgement and draw the SOR within the ceiling of indexed Annual Revenue Requirement, duly certified by a practising Chartered Accountant/ Cost Accountant.
- 2.7. While going for a change in SOR the Major Port Trusts have to ensure that as a result of the changes in SOR there will not be a loss of traffic. The responsibility of ensuring this would rest with the Chairman of the Major Port Trusts.
- 2.8. The SOR will be indexed annually to inflation to the extent of 100% of the variation in Wholesale Price Index (WPI) announced by the Government of India. Such adjustment of SOR will be made every year and the adjusted SOR will come into force from 1<sup>st</sup> May of the relevant year to 30<sup>th</sup> April of the following year.
- 2.9. The SOR will be effective from the date of effect mentioned in the Notification issued by TAMP and shall remain valid for 3 years subject to annual indexation as mentioned in clause 2.8. The annual indexation will be subject to Clause 3.2 of this Tariff Policy.
- 2.10. Tariff arrangement for captive berths/ facilities where a separate tariff arrangement is prescribed in the mutual agreement entered into by the port and the concerned user, will continue to be governed by the respective agreement. Tariff for captive berths/ facilities not covered by specific Agreements will continue to be stipulated by TAMP.

### **3. PERFORMANCE STANDARDS OF MAJOR PORT TRUSTS**

- 3.1. The Major Port Trusts shall also commit Performance Standards for cargo related services in terms of average ship berth day output, average moves per hour in case of container handling. It is not necessary to commit cargo-wise ship berth day output. Instead, the Major Port Trusts may propose overall average ship berth day output. For vessel side services, the port shall prescribe Performance Standards in terms of average turnaround time of vessels and average pre-berthing time of vessels.
- 3.2. The indexation of SOR as provided in Clause 2.8 will be subject to achievement of Performance Standards committed by Major Port Trusts as stipulated in Clause 3.1. If a particular port does not fulfil the Performance Standard, no indexation would be allowed during the next year.

### **4. PROCEDURE FOR FILING AND PROCESSING THE PROPOSAL**

- 4.1. The SOR, along-with conditionalities governing them, for services rendered or facilities provided and Performance Standards shall be formulated by the individual Major Port Trust, in accordance with this Policy as amended from time to time.
- 4.2. The Major Port Trusts shall host the draft SOR along with the proposed Performance Standards in its website and giving the designated email address of Port as well as TAMP for comments of relevant stakeholder/ users within 15 days' time.
- 4.3. The Major Port Trusts shall submit its replies on the comments received from Port Users to TAMP not later than 15 days from the last date of receipt of comments from the port users.
- 4.4. In case there are no objections from users for a proposal or a case, TAMP need not organize any joint hearing.

### **5. GRIEVANCE REDRESSAL**

In the event any user has any grievance regarding non-achievement by the Major Port Trust of the Performance Standards as notified by the TAMP, he may prefer a representation to TAMP which, thereafter, shall conduct an inquiry into the representation and shall forward its findings to the concerned Port Trust with a direction to comply with the Performance Standards as notified by the TAMP.

### **6. MANDATORY DISCLOSURES BY MAJOR PORT TRUSTS**

All the Major Port Trusts shall furnish to TAMP annual reports on cargo traffic, ship berth day output, average turnaround time of ships, average pre-berthing waiting time as well as the tariff realized for each of its berth. In addition, for the container berths, annual reports shall also be provided on average moves per crane hour and average dwell time for containers. The annual reports shall be submitted by the Ports within 60 days following the end of each of the year. Any other information which may be required by TAMP shall also be furnished to them from time to time.

### **7. OTHER ASPECTS**

- 7.1. The rates prescribed in the Scale of Rates are ceiling levels. The ports may, if they so desire, charge lower rates. As regards Scale of Rates for Land and Buildings, the provisions prescribed for fixation of Scale of Rates under the Land Policy Guidelines issued by the Government from time to time will apply.
- 7.2. Subsequent to the Notification of SOR, the ports may also, if they so desire, rationalise the conditionalities prescribed in the SOR.
- 7.3. The ports should notify the public such lower rates and/ or rationalisation of the conditionalities governing the application of such rates and continue to notify the public any further changes in such lower rates and/ or in the conditionalities governing the application of such rates provided the new rates fixed shall not exceed the rates notified by the TAMP.

- 7.4. Major Ports shall charge only for services provided by them. No notional booking of labour and other similar notional charges would be permitted.
- 7.5. Concessional tariff will be prescribed for coastal cargoes/containers/ vessels, as per the policy directions of the Government.
- 7.6.1. Whenever a specific tariff for a new service/ cargo/ equipment/ facility is not available in the SOR, of that particular port, the concerned Major Port Trust can approach TAMP for notification of tariff for the said new cargo/ equipment/ service adopting the tariff and performance standards if any fixed for comparable cargo/ equipment/ service in any Major Port Trust. If there is no rate available in any Major Port Trust or if the rate available is not representative enough of the proposed new cargo/ service/ equipment/ facility, then the port may file the proposal for notification of tariff for the said new cargo/ equipment/ service/ facility with reference to optimal capacity assessed following the principles of 2008 guidelines or based on rated capacity or technical specification of service/ facility/ equipment. If determination of tariff based on the above prescribed options is not available, then the Major Port Trusts after giving sufficient reasons may propose rates based on cost plus 16% return formula.
- 7.6.2. Proposal for notification of rate for use of a new cargo/ equipment/ facility or a new service shall be forwarded to the TAMP at least 60 days prior to the expected date of commissioning of the new cargo/ facility or a new service. For determination of tariff for new cargo/ new service, TAMP will follow normal consultation process as prescribed.
- 7.6.3. The ad hoc rate to be operated and the Performance Standards to be applied in the interim period must be based on the approach outlined in Clause No. 7.6.1 above and it must be in consultation with the concerned user(s).
- 7.7. In an extra-ordinary circumstance, if Major Port Trust incurs major capital expenditure like major capital dredging, etc., that cannot be met from the balance in the Escrow Account, royalty/ revenue share earnings, surplus from the estate activity and capital asset replacement reserve, if any, it may approach TAMP for fixation of a special levy to meet such capital expenditure for a limited period provided such a levy was envisaged at the time of appraisal of the project and considered in the calculation of Financial Internal Rate of Return (FIRR).

## **8. REGULATION OF CHARGES LEVIED BY OTHER AUTHORISED SERVICE PROVIDERS**

- 8.1. In cases where authorisation arrangement u/s 42(3) is other than by way of a BOT concession agreement, ceiling rates will be prescribed for such services. For this purpose, proposals for these charges should be initiated by the concerned Major Port Trust after identifying such authorised services coming under the ambit of tariff regulation and forward to TAMP. The proposal shall contain the Performance Standards to be achieved by the service provider and tariff linked to Performance Standard should be proposed.
- 8.2. In case there is no ceiling tariff prescribed in the concerned Major Port for a particular service/ facility under such arrangement, the port shall adopt the tariff prescribed for the similar service/ facility prescribed in any other Major Port Trust. If there is no tariff prescribed in any Major Port Trust or the rate prescribed is not representative for the cargo/ service/ facility envisaged, the Port Trust may file a proposal with reference to optimal capacity following the principles of 2008 guidelines or based on rated capacity. [with reference to the technical specification of the service/ facility/ equipment] The proposal of Port Trust shall contain the Performance Standards to be achieved by the service provider and tariff linked to Performance Standards should be proposed.
- 8.3. The tariff approved by TAMP with reference to clauses 8.1 and 8.2 shall be subjected to automatic indexation as prescribed in clause 2.8 of these guidelines from the second year onwards.

**(T.S. Balasubramanian)**  
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