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TARIFF AUTHORITY FOR MAJOR PORTS

G. No. : 15

New Delhi, 3 February, 2006

NOTIFICATION

In exercise of the powers conferred under Section 49 of the Major Port Trust Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby approves the proposal received from the Kandla Port Trust regarding revision of the rate structure for the land leased out for the purpose of salt manufacture at Kandla as in the Order appended hereto.

(A.L. Bongirwar)
Chairman

Tariff Authority for Major Ports
Case No. TAMP/69/2005 - KPT

The Kandla Port Trust

- - - -

Applicant

ORDER

(Passed on this 17th day of January 2006)

This case relates to a proposal received from the Kandla Port Trust (KPT) for revision of the rate structure pertaining to salt land leased out by the port.

2.1. The revision of lease rent for the KPT salt lands were last approved by the (then) Ministry of Surface Transport in July 1994. As per the Government Guidelines on the land and water front management at major ports, the base of the lease rent is to be re-fixed every five years. Accordingly, the lease rent of salt lands of KPT fell due for revision in July 1999.

2.2. The KPT had earlier in November 2000 submitted a proposal for 100% upward revision in the lease rental for the salt land allotted by the port. In another case relating to revision of lease rentals in the Gandhidham Township area, the KPT had subsequently requested this Authority to put on hold the revision bearing in mind the unfortunate fact that the Kutch area was hit by two cyclones, one earth quake and one drought in the past four years. The KPT, however, did not accord the same sympathetic consideration to the small-scale salt manufacturers. Since no reason for such a distinction could be cited, this Authority vide its Order dated 9 August 2001 did not approve any revision in the lease rentals for salt land at that point of time and advised the port to take up the case of the salt lands for revision only when it decides to reconsider the revision of other land cases.

2.3. Subsequently, in November 2002 the KPT had again filed a proposal to reconsider the earlier Order and accord approval for 100% upward revision in the rates of salt lands. In this proposal, the KPT did not address the various issues raised in the earlier Order. When the gaps observed in the proposal were pointed out, the KPT agreed to revise its proposal after comprehensively reviewing all the issues involved. This Authority, therefore, passed an Order on 22 October 2003 closing the case as withdrawn.

3.1. In this backdrop, the KPT has filed the instant proposal for revision of rate structure of the salt land leased out for the purpose of manufacture of salt.

3.2. The KPT has made the following main points in its proposal:

- (i). The port has allotted approximately 16112 acres of land for manufacture of salt and allied industries connected with the salt manufacturing. There are 16 major lessees having land varying in area from 99 acres to 3890 acres and 25 minor lessees having land admeasuring 10 acres each for the salt works.
- (ii). The land presently available with the port and leased out to the various lessees for manufacturing of salt was initially given by Maharao of Kutch to the port free of cost at the time of formation of the major port of Kandla.
- (iii). The rates of land for salt manufacturing were last revised by the Govt. of India in the Ministry of Surface Transport in July 1994. Earlier to this, the rates were revised in 1974. In 1984, the Board of Trustees of KPT decided not to revise the rates till 1994. The rates prevalent in 1974 and the revised rates in 1994 are tabulated herein below:

(Rs. per acre per annum)			
Sl. No.	Land admeasuring	Rates fixed in 1974	Rates as revised in 1994
(a).	Upto 10 acres	90/-	200/-
(b).	Above 10 acres but less than 100 acres	45/-	100/-
(c).	100 acres and above	30/-	65/-

(iv). As per the guidelines issued by the Ministry of Surface Transport on 11 March 1998, following clauses were included in the lease agreement:

- The lease rent shall be escalated 5% (compoundable) per annum.
- The base rent for the premises shall be re-fixed every five years.
- The lease shall not be automatically renewed. The party shall have to apply for renewal of the lease for their premises.

These additional clauses were incorporated in the respective lease deeds as per the directive of Govt. of India and the parties have been paying the lease rent at 5% escalation (compoundable) every year upto March 2005.

(v). The rates were last revised in 1994. Considering the Govt. guidelines prescribing revision of the base once in five years, the rates are already overdue for revision since July 1999.

3.3. In accordance with the Govt. guidelines on land policy, the KPT constituted a Committee under the Chairmanship of the Chairman (KPT) and comprising Dy. Collector of Anjar, among other members for revising the rate structure of the land leased out by the port for the purpose of salt manufacture at Kandla. The recommendations of the Committee are summarised below:

(i). State Government of Gujarat levies ground rent of Rs.150/- per hectare per year i.e. Rs.60/- per acre per year as informed by Dy. Collector (Anjar).

Gujarat Govt. is not charging any Royalty at present and decision of charging Royalty is pending.

(ii). No information regarding transfer of salt land is available to arrive at the market rate as no such transaction has taken place.

(iii). The Committee has, however, obtained the rate at which Gujarat Maritime Board allotted land to M/s. Goodearth Maritime Limited for salt export complex at Jakhau, at Rs.0.11 per sq.mtr. for the first three years and, thereafter, the rate shall be increased by 10% as per the policy of Gujarat Maritime Board. This works out to Rs.445/- per acre per annum. Since the said land allotted by Gujarat Maritime Board is near the jetty for export of salt, the lands of Kandla and Jakhau are comparable. Hence, the Committee decided to consider the rate of Rs.445/- per acre per annum for leases upto 10 acres for revision. Based on that, the following rates for different kind of leases are recommended by the Committee with effect from July 2005:

(Rs. per acre per annum)		
(a).	Upto 10 acres	445
(b).	Above 10 acres but less than 100 acres	222
(c).	100 acres and above	144

- (iv). The rate revision is due from 1999 and also renewal of the salt leases have been sent to Government in March, 2004. The Government insists on carrying out rate revision of salt lands. The KPT has, therefore, proposed the following rates for retrospective approval from July 1999. The rates recommended by the Committee has been scaled down at the annual escalation factor prescribed in the Government guidelines from time to time for arriving at the following proposed rates which are to be implemented with retrospective effect from 5 July 1999:

(per acre per annum)		
(a).	Upto 10 acres	Rs.342/-
(b).	Above 10 acres but less than 100 acres	Rs.171/-
(c).	100 acres and above	Rs.111/-

- (v). The proposed rates are reasonable recognising the fact that KPT does not charge any royalty on salt production / dispatch or cess from the salt manufacturers as against levy of royalty @ Rs.8/- per metric tonne on the dispatch of salt by the Government of Gujarat and cess of Rs.3.50 per metric tonne by the Central Government.

3.4. The proposal was approved by the Board of Trustees of the KPT vide resolution No.178 of its meeting held on 17 October 2005.

4.1. In accordance with the consultative procedure prescribed, the KPT proposal was circulated for comments to the Gandhidham Chamber of Commerce and Industry (GCCCI), Kandla Salt Manufacturer's Association (KSMA) and Kutch Small Scale Salt Manufacturer's Association (KSSSMA) as per the list of concerned user organisations forwarded by the KPT.

4.2. The GCCCI, KSMA and KSSSMA have endorsed the proposal of the KPT and have agreed to the proposed revision in the rates of salt lands.

5. Based on a preliminary scrutiny of the proposal, the KPT was requested to furnish additional information / clarification on various points. The KPT has furnished its response to the queries raised by us. Some of the main queries raised by us and the clarifications furnished by the KPT are given in the following table:

Sl.No.	Our queries	Reply submitted by KPT
(i).	Revenue implications of the proposed rates.	Additional revenue on account of the proposed rate revision is estimated at Rs.5.65 lakhs per annum.
(ii).	Confirm whether the lease agreement entered by the KPT with the various lessees contains a clause allowing for retrospective revision of lease rentals.	There is a clause included in the agreement regarding payment of ground rent at the revised rates from the date of revision. It has furnished a copy of the relevant clause of the agreement. All the lessees have furnished a separate undertaking to pay revised ground rent from 5 July 1999 as may be fixed by the competent authority.
(iii).	The proposal states that there are no sale transactions of the salt land and hence the market value has been determined based on the rate of allotment of land by the Gujarat Maritime Board to M/s. Goodearth Maritime Ltd., for Salt Export Complex. In this regard,	The lease rent of M/s. Goodearth Maritime Ltd. offered as a package by Gujarat Maritime Board has taken as a base for fixing the rate of Kandla Salt Land. It has clarified that the ready reckoner of State Government is not available and no tender has been floated since 1973. Further, the rate of highest accepted tender also is not available. That

	<p>explain the reasons for not considering any of the other factors for determining the market value of land for example – land value as per state Govt's ready reckoner, highest accepted tender for similar transactions, etc. as prescribed by the Govt. in the policy guidelines issued on 8 March 2004.</p>	<p>being so, various factors prescribed by the Govt. for determining the market value of land cannot be considered in its case.</p>
(iv).	<p>Furnish detailed working of arriving at the proposed rate of Rs.445 per acre per annum based on the rate (i.e. Rs.0.11 per sq. mtrs. for first three years) at which the Gujarat Maritime Board allotted the land at Jakhau to the said lessee.</p>	<p>In the absence of any proper base for determining the market value of the land either from the ready reckoner of State Government land or any sale transaction value during the last three years, efforts were made to find out the latest allotment, if any, made by the State Government to any enterprises / lessees for salt purposes. It then transpired that Gujarat Maritime Board has allotted salt land to M/s. Goodearth Maritime Ltd. for salt export complex at Jakhau at the rate of Rs.0.11 per sq. meter. The location of both the Kandla Land & Jakhau Land allotted to M/s. Goodearth Maritime Ltd. are comparable as both the lands are in proximity towards water front and hence the rate of 0.11 per sq. meter was taken as a base and converted into rate per acre by using the conversion factor (1 acre = 4057 sq. meters), which comes out to Rs.445/- per acre per annum.</p> <p>While proposing the rates, a study of cost of salt land allotted by the State Govt. Land has also been done. Considering the production of 3000 tons per 10 acres, the rate comes to Rs.2460/- per acre if the ground rent at Rs.60/- per acre and Royalty @ Rs.8/- per ton on dispatch of salt is considered excluding the component of salt cess. This is much higher in comparison to the rates proposed by the KPT. (Salt Cess @ Rs.3.50 per ton is charged on both Kandla land and State Government, hence, not considered for comparison purpose). Based on this comparison of the rates proposed by the port and levied by the State Govt., it is clear that the lessees will not have any grievance / complaint about the proposed rate revision by KPT though it appears to be approximately twice the earlier rate prevailing in 1994.</p>

(v).	Furnish detailed computation to show that the lease rentals has been arrived at 6% of the market value of land as per the Government guidelines.	As no Market Value of the Salt land is available, calculation of lease rent @ 6% does not arise.
(vi).	Furnish detailed comparison of how the land allotted by Gujarat Maritime Board to M/s. Good Earth Maritime Ltd., at Jakhau are comparable to the salt lands of the Kandla Port in terms of development and services provided to justify adoption of that rate for determining the rate for lands allotted by the KPT for its salt lands.	For revising the rates, some base has to be fixed. It has reiterated that in the absence of any basis for determining the market value of Salt Land, attempts were made to find out the present allotment rates, if any, in the market specifically when Gujarat Government is boosting the salt exports. Being a Govt. body it was felt that the rate will be comparable also recognising that the location of both the places, is in proximity towards water front.
(vii).	It is understood from the Committee's report that these lands were acquired from Maharao of Kutch free of cost. Furnish, the details of development cost incurred by KPT subsequent to acquisition of this land also, furnish annual maintenance cost, if any, incurred by the port on these lands.	It is true that the land is acquired from Maharao of Kutch free of cost prior to 1973 and that Kandla Port Trust has not incurred any cost after acquisition. The land has been allotted to Salt Manufacturers on "As is where is" basis. Since no development has been done by the port, no charges such as Royalty has been charged by KPT (unlike the State Government which develops the land, provides the amenities and charges the royalty). The Kandla Port charges Ground Rent for the use of land. It may, however, not be out of context to mention here that though it does not incur any maintenance cost, it incurs approximately Rs.30 lakhs per annum towards establishment expenditure for maintaining the records, dealing the cases, supervision of these land & other incidental charges relating thereto.
(viii).	The lease rent levied by the KPT for each of the years from 1994 to March 2005 for the salt lands leased by the port may be indicated along with the conditionalities governing the rates.	It has furnished the requisite details. It has clarified that there has been drop in the lease rental from salt lands during the year 2003-04 and 2004-05 since renewal of certain leases are pending with the Ministry and lease rent on such lands are not recovered.
(ix).	Furnish the rates structure of salt pans belonging to Govt. of Gujarat adjoining the lands mentioned in the proposal and compare the same with the proposed rate.	The rate structure of the salt pans belonging to the Govt. of Gujarat adjoining the land mentioned in the proposal is as below: (a). Lease Rent-Rs.60.00/- per acre. (b). Salt Cess-Rs.3.50/- per ton. (c). Royalty - Rs.8.00/- per ton on dispatch of salt.

		If all the three rates are taken together the rate per acre comes out to Rs.3510/- (assuming production of 3000 tons per 10 (ten) acre per annum).
(x).	Whether the Lease Agreement provides for revision of lease rent. The legal implications of revising the rates in absence of specific clause may be brought out clearly.	The lease agreement executed between the KPT and the respective lessees invariably provides for revision of lease rent. At the time of renewal of lease also, such a condition will be incorporated in the fresh lease and lessee will be insisted upon to make payment at the revised rates from the date of revision.

6. Since all the concerned users have agreed to the proposed revision in rates of salt land, setting up a joint hearing in this case was found not necessary.

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

- (i). The lease rent for the KPT salt lands were last revised by the (then) Ministry of Surface Transport in the Government of India in July 1994. Going by the five year cycle of revision of rate prescribed in the Government Guidelines on the subject, the next revision was due in 1999.

As stated earlier, the proposals for revision of lease rentals for salt lands of KPT filed in the past on two occasions were not considered favourably for the stated reasons. It appears that absence of revised rates comes in the way of renewal of leases in the relevant cases and the Government has reportedly advised the KPT to take action to revise the rates. The proposal in hand addresses many of the observations made by this Authority in the earlier proceedings.

- (ii). This Authority follows the Government guidelines on port land management for prescribing the lease rental of the major ports. The existing guidelines announced by the Government in March 2004 on land and water management of Major Port Trusts clearly lays down the procedure to be adopted for determining the market value of the port lands. The market value of land can be determined taking into consideration the factors like State Government's ready reckoner value, the average rate of actual transactions in last three years for the lands in the port's vicinity, highest accepted tender value of port lands, rate arrived at by the approved valuer and any other relevant factors. The lease rent has to be fixed at 6% of the market value of the land so determined. Incidentally, the lease agreements also provides for revision of lease rent based on the market value prevailing at the time of revision.

The KPT has stated that valuation of its salt land is not available in the State Govt.'s ready reckoner, nor any sale transaction of the salt land has taken place in the last three years. The question of adopting the rate of the highest accepted tender also does not arise since no tender has been floated since 1973. In the absence of availability of appropriate basis for determining the market value of land, it has adopted the lease rent at which the Gujarat Maritime Board leased a similar land at Jakhau which is reportedly comparable with the salt lands of KPT.

The methodology adopted to derive the proposed lease rental is not found to be in line with the Government guidelines. However, in view of the constraints faced by KPT in obtaining the market value in the prescribed manner, and the consensus between the KPT and the concerned user organisations on the proposed lease

rentals, this Authority is inclined to accept the proposed rates. The approval accorded in the special circumstances of this case cannot be construed as an endorsement of the approach adopted by the KPT and it cannot form any precedence elsewhere.

- (iii). The KPT has sought approval to the revised rates retrospectively w.e.f. July 1999 i.e. on expiry of five years from the date of previous revision of rates.

The KPT has reported that the lease agreement with the lessees specifically provides for payment of ground rent by the lessee at the revised rates from the date of revision and that the lessees have given an undertaking to this effect.

It is also relevant to mention that the earlier guidelines of the Government require revision of the base rate once in five years. The revised policy guidelines issued by the Government in March 2004 retains the same position.

In view of the clear Govt. guidelines in this regard, and also recognising that the lease agreements entered by the KPT contain a specific clause allowing retrospective revision and the lessees have also not raised any objection to the proposed retrospective revision, this Authority accepts the proposal of the KPT for retrospective revision of rates in respect of its salt land from 5 July 1999.

- (iv). The Committee constituted by the KPT for the purpose of revising the lease rental of salt land has recommended a rate of Rs.445/- per acre per annum for land upto 10 acres with effect from July 2005. As against this, the KPT has proposed a lease rental of Rs.342/- per acre per annum with retrospective effect from the due date of last revision i.e. 5 July 1999. The annual escalation factor prescribed in the Government guidelines in force from time to time has been applied on Rs.445/- to work backwards the proposed rate of Rs.342/- per acre per annum. Computation of lease rentals from July 2005 to July 1999 by scaling down the rate for the annual escalation factor does not appear to be the correct approach. The annual escalation prescribed in the lease agreement does not necessarily capture the fluctuation in the market value of land. This is one of the reasons why the Govt. guidelines specify a revision of base rent every five years based on the prevailing market rate.

Nevertheless, recognising the fact that the concerned lessee associations have unreservedly accepted the proposed rates and in view of the clear understanding between the port and the concerned lessees for implementation of the revised proposed rates with retrospective effect from July 1999, this Authority approves the proposal of the KPT.

- (v). The lease rent for salt lands in respect of the categories i.e. above 10 acres and less than 100 acres and salt land above 100 acres is proposed by maintaining the existing differential and hence the proposed slab rates is accepted.
- (vi). The KPT has claimed that though it does not incur any expenditure for maintenance of this salt land, approximately Rs.30 lakhs per annum is incurred towards establishment expenditure for maintaining the records, dealing the cases, supervision of these land and other incidental charges relating thereto. As against this, the average income earned by the KPT from the lease rental for the past few years is reported to be around Rs.10 lakhs per annum which is anticipated to increase by around Rs.5.65 with the proposed upward revision. It is thus clear that the revenue from lease of salt land does not cover the establishment and overhead expenses. The ultimate implication of the position reported by KPT is that core port activities cross-subsidising peripheral activities like leased salt lands. Our earlier specific observation of why the port should continue to administer this land which is not in use of the port or concerned with port related use is not answered by KPT. The KPT is, therefore, advised to examine this point

and take corrective action so that main port activities are not burdened by the non-core activities of the port.

- (vii). As per the Government guidelines, the lease rent fixed is subject to an automatic annual escalation. In terms of 1998 guidelines, the annual escalation in lease rent is at 5% (compoundable). In the revised guidelines of 2004, the quantum of annual escalation is reduced to 2%. In view of this position, the annual escalation is prescribed at 5% p.a. (compounded) for the period 5 July 2000 to 4 July 2004 and thereafter @ 2% p.a. As regards, the other conditionalities, governing the lease rentals, the KPT is advised to ensure that it is in line with the Government guidelines.

8. In the result, and for the reasons given above, this Authority approves the following rates as proposed by the KPT in respect of salt lands leased out by the KPT:

**“Rates applicable with effect from 5 July 1999
(Rs. per acre per annum)”**

Sl. No.	Land admeasuring	Rates
(a).	Upto 10 acres	342/-
(b).	Above 10 acres but less than 100 acres	171/-
(c).	100 acres and above	111/-

Note:

The lease rent prescribed above will bear an escalation @ 5% (compoundable) per annum for the period 5 July 2000 to 4 July 2004 and @ 2% per annum for the period 5 July 2004 to 4 July 2005."

**“Rates applicable with effect from 5 July 2005
(Rs. per acre per annum)”**

Sl. No.	Land admeasuring	Rates
(a).	Upto 10 acres	445/-
(b).	Above 10 acres but less than 100 acres	222/-
(c).	100 acres and above	144/-

Note:

- (i). The rates prescribed above will bear an escalation of 2% per annum till such time the rate is revised with the approval of the competent authority."
- (ii). The base rates prescribed above will be valid for a period of 5 years w.e.f. 5 July 2005.

(A.L. Bongirwar)
Chairman