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TARIFF AUTHORITY FOR MAJOR PORTS

G.No.338

New Delhi

29 September 2015

NOTIFICATION

In exercise of the powers conferred under Sections 48 and 49 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes the proposal received from West Quay Multiport Private Limited (WQMPL) for notification of its Scale of Rates for the WQ-6 berth in the Northern Arm of Inner Harbour of Vishakhapatnam Port Trust (VPT) for handling dry bulk cargo on DBFOT basis at VPT as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

TARIFF AUTHORITY FOR MAJOR PORTS
Case No. TAMP/49/2015-VPT

M/s. West Quay Multiport Private Limited

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Applicant

QUORUM:

- (i). Shri. T.S. Balasubramanian, Member (Finance)
- (ii). Shri. Chandra Bhan Singh, Member (Economic)

ORDER

(Passed on 4th day of September 2015)

This case relates to the proposal received from West Quay Multiport Private Limited (WQMPL) for notification of its Scale of Rates for the WQ-6 berth in the Northern Arm of Inner Harbour of Visakhapatnam Port for handling dry bulk cargo on DBFOT basis at Vishakhapatnam Port Trust (VPT).

2.1. M/s. West Quay Multiport Private Limited (WQMPL) vide its letter dated 11 May 2015 has requested this Authority to notify its Scale of Rates. The main points made by WQMPL in its letter are summarized below:

- (i). In accordance with clause 2.9.1 and 2.9.2 of the 2008 Guidelines the private operator is required to approach Tariff Authority for Major Ports (TAMP) for notification of Scale of Rates before the commencement of operations.
- (ii). The tariff caps fixed by TAMP shall be subject to indexation in accordance with clause 2.8 of the 2008 Guidelines and the indexed tariff shall be notified by TAMP in the Scale of Rates.
- (iii). Clause 6 ("General Note to Schedule (2) to (5) above") of Annex IV to the TAMP tariff Order dated 24 February 2009 published vide Gazette no.26 provides that the tariff caps will be indexed to inflation but only to the extent of 60% of the variation in Wholesale Price Index (WPI) occurring between 1 January 2008 and 1 January of the relevant year.
- (iv). As per TAMP notification no.TAMP/12/2009-Misc dated 8 April 2015 (that provides indexation of tariff caps fixed in the upfront tariff cases under 2008 guidelines for PPP projects at the major port trusts with reference to the variation in Wholesale Price Index) the escalation factor for tariff with reference WPI as on 1 January 2008 shall be 35.08%.
- (v). Therefore, the indexed upfront tariff applicable from 1 April 2015 to 31 March 2016 has been calculated as below:

	Tariff as per TAMP Order (G.No.26) dated 12 February 2009		Indexed upfront tariff as per TAMP letter No.TAMP/12/2009-Misc dated 8 April 2015	
	Foreign Going	Coastal	Foreign Going	Coastal
WPI indexation as per TAMP notification	35.08%			
Berth Hire (₹ per GRT per hour)	0.76	0.46	1.03	0.62
Cargo Handling (₹ per MT)				
CP Coke	78.50	47.10	106.04	63.62
LAM Coke	78.50	47.10	106.04	63.62
Steel	202.30	121.38	273.27	163.96
Granite Block	312.55	187.53	422.19	253.32
Storage Charges (₹ per ton per day)				
1 st week after expiry of free period	8.60		11.62	
2 nd week after expiry of free period	12.90		17.43	
Beyond 2 nd week	17.20		23.23	
Miscellaneous Charges (₹ per ton)	2.6		3.51	

3.1. This Authority has passed an Order No.TAMP/39/2008-VPT dated 12 February 2009 on the proposal filed by Visakhapatnam Port Trust (VPT) for fixation of upfront tariff for handling multipurpose cargo at WQ-6 berth in the Northern Arm of Inner Harbour of Visakhapatnam Port on DBFOT basis which was notified in the Gazette of India Extraordinary (Part III Section 4) on 24 February 2009 vide Gazette No.26.

3.2. 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 this Authority 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.

3.3. Accordingly, WQMPL vide its above referred letter has made a request to this Authority to notify its Scale of Rates (SOR) in the Gazette of India.

3.4. It is relevant here to mention that VPT has forwarded a copy of Concession Agreement entered between the Port and WQMPL.

3.5. The WQMPL, in its above referred letter, did not furnish Draft Scale of Rates. Further, it is seen from WQMPL submission that WQMPL expected to start its operations by end of May 2015. However, WQMPL did not explicitly indicate the likely date of commencement of its operations at WQ-6 berth at VPT. Hence, the proposal dated 11 May 2015 was returned to WQMPL vide our letter dated 20 May 2015 along with request to propose complete draft SOR taking the Scale of Rates approved by this Authority as per the upfront tariff Order applicable in its case (Order No.TAMP/39/2008-VPT dated 12 February 2009) duly applying the applicable escalation factor for the year 2015-16 and also requested to indicate the date of commencement of its operations at WQ-6 berth along with a copy of the completion certificate issued by the Independent Engineer as per the Concession Agreement entered with VPT.

4.1. In response, M/s. WQMPL undercover of its letter dated 23 June 2015 has furnished draft SOR duly applying the applicable escalation factor for the year 2015-16 and a copy of the completion certificate issued by the Independent Engineer.

4.2. Further, it has also stated that it has completed all works for the Project and has successfully handled trial vessel M.V. Tan Binh 22 on 21 May 2015 substantiated with the pictures of the handling of trial vessel.

5.1. A copy of WQMPL's letter dated 23 June 2015 was forwarded to the VPT vide our letter dated 30 June 2015 followed up with reminder dated 14 July 2015 with a request to furnish its comments on the proposal of WQMPL. In response, the VPT vide its letter dated 5 August 2015, has furnished its response which is summarized below:

- (i). The Independent Engineer of the subject project vide his letter dated 19 June 2015 has certified that "all works forming part of the Project have been completed, and the project is hereby declared fit for entry into commercial operation on this the 24 May 2015, subject to the Concessionaire obtaining all the necessary permits and clearances as laid down in Appendix-8 of Concession Agreement".
- (ii). The terminal was accorded customs Notification vide Notification No. 02/2015 (Customs) (NT) (VSM), dated 13.07.2015.
- (iii). The concessionaire has also submitted the necessary permits and clearances from the concerned authorities in terms of Appendix-8 of the Concession Agreement.

- (iv). It is observed from the Order No.TAMP/12/2009-Misc. dated 08.04.2015 that for the period from 1 January 2009 and 1 January 2015, the escalation factor is to be considered as 27.49%. As the charges were notified by TAMP, as per Notification No.26, dated 24 February 2009, the escalation factor claimed by the Concessionaire while sending the proposal to TAMP, needs to be examined by the TAMP authorities.

5.2. Accordingly, VPT has requested to take necessary action in terms of the proposal of WQMPL.

6.1. 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/39/2008-VPT dated 12 February 2009 on the proposal filed by Visakhapatnam Port Trust (VPT) for fixation of upfront tariff for multipurpose cargo handling in pursuance of the guidelines for upfront tariff setting for Public Private Participation (PPP) projects at Major Ports Trusts vide Notification No.TAMP/52/2007-Misc. dated 26 February 2008. The said order was notified in the Gazette on 24 February 2009 vide Gazette No.26.
- (ii). The VPT has awarded the project to West Quay Multiport Private Limited (WQMPL) for handling dry bulk cargo on DBFOT basis at Vishakhapatnam Port Trust (VPT) and entered into Concession Agreement with WQMPL.
- (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 WQMPL has approached to this Authority with a request to notify its Scale of Rates (SOR) as required under the Tariff Guidelines of 2008.
- (iv). As brought out in the earlier part of this Order, the operator WQMPL and the landlord Port VPT have confirmed that the date of commencement of the commercial operation by the WQMPL at WQ-6 berth of the Visakhapatnam Port is 24 May 2015. This is also supported with copy of the Independent engineer's certificate for commencement of the commercial operation. In view of that this Authority is inclined to entertain the proposal of WQMPL for notification of the Scale of Rates approved in February 2009 subject to adjustment with reference to the indexation of the rates so approved to WPI to the extent of 60%.
- (v). 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 should be in line with the tariff caps prescribed for the Port and included in the bid document, subject to indexation as explained earlier. Article 8.1 of the Concession Agreement (C.A.) entered between the VPT and WQMPL governs levy of the tariff at WQ-6 berth in the Northern Arm of Inner Harbour as per the Concession Agreement. As per Article 8.1 of the License Agreement, the Concessionaire i.e. WQMPL shall be entitled to recover tariff from the users of the Project Facilities and Services as per the Tariff Notification annexed as Appendix-12. It is seen that Appendix -12 appended to C.A. gives reference to the Notification details of the Upfront Tariff approved by this Authority vide Order No. TAMP/39/2008-VPT dated 12 February 2009.
- (vi). With reference to the indexation of the upfront tariff fixed vide Order dated 12 February 2009 as required under Clause 2.8. of the 2008 Guidelines, it is noteworthy that the WQMPL while filing of its draft proposed SOR has applied the applicable escalation factor of 35.08% on the tariff caps considering the base year 1 January 2008. However, the VPT in its letter dated 5 August 2015 has pointed out that the escalation factor to be considered should be 27.49% taking WPI base of 1 January 2009 citing that the upfront tariff order was notified in February 2009.

In this regard, it is relevant to mention that para 11.1 of the said upfront tariff order as well as the general note to schedule (2) to (5) of Scale of Rates (SOR) approved in the upfront tariff order, state that the tariff caps will 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. Since, the Order and the general note explicitly state the base year for WPI escalation has to be 1 January 2008, the escalation factor of 35.08% considered by WQMPL to arrive at the indexed Scale of Rates taking the base as 1 January 2008 based on the applicable escalation factor announced by this Authority vide letter no.TAMP/12/2009/Misc. dated 8 April 2015 is found to be in order.

- (vii). It is seen that only the tariff items notified vide Order of February 2009 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 occurring between January 2008 and January of the relevant year has to be with reference to the tariff approved vide Order no.TAMP/39/2008-VPT dated 12 February 2009 and not with reference to the indexed Scale of Rates to be approved. The General note to Schedule (2) to (5) proposed by WQMPL retaining the general note approved in the Order dated 24 February 2009 is, therefore, suitably modified clarifying this position. This is in line with the prescription made in the Scale of Rates of other BOT operators governed under 2008 guidelines who have commenced the operations. All the other conditionalities governing the application of the rates as approved in the Scale of Rates of the Order dated 12 February 2009 are retained.
- (viii). 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.
- (ix). The WQMPL is expected to perform at least at the performance standards / norms brought out in the bid documents / Concession Agreement. The actual performance of the WQMPL 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 WQMPL, the VPT shall initiate appropriate action in accordance with the provisions of the Concession Agreement.
- (x). During the commercial operation at the terminal, within 15 days from the end of every quarter, the WQMPL is directed to submit to this Authority through the VPT a report containing the physical and financial performance at WQ-6 berth in the Northern Arm of Inner Harbour during the preceding three months.

6.2. In the result, and for the reasons given above and based on collective application of mind, this Authority approves the Scale of Rates for the WQ-6 berth in the Northern Arm of Inner Harbour of Visakhapatnam Port for handling dry bulk cargo on DBFOT basis at Vishakhapatnam Port Trust (VPT) to be operated by the WQMPL attached as **Annex**.

6.3. The Scale of Rates notified for WQMPL will come into force from the date of commencement of commercial operations by WQMPL at VPT.

(T.S. Balasubramanian)
Member (Finance)

WEST QUAY MULTIPOINT PRIVATE LIMITED

UPFRONT TARIFF SCHEDULE FOR MULTIPURPOSE CARGO BERTH

1.1. DEFINITIONS

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

- (i). **"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 competent authority.
- (ii). **"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.
- (iii). **"Foreign-going vessel"** shall mean any vessel other than Coastal vessel.
- (iv). **"Week"** shall mean a period of 7 days.

1.2. GENERAL TERMS & CONDITIONS

- (i). The status of the vessel, as borne out by its certification by the Customs or Director General of Shipping is the relevant factor to decide whether vessel is "coastal" or "foreign-going" for the purpose of levy of Berth hire, and the nature of cargo or its origin will not be of any relevance for this purpose.
- (ii).
 - (a). A foreign going vessel of Indian Flag having a General Trading Licence can convert to Coastal run on the basis of a Customs Conversion Order.
 - (b). A foreign going vessel of Foreign Flag can convert to coastal run on the basis of a Coastal Voyage Licence issued by the Director General of Shipping.
 - (c). In cases of such conversion, coastal rates shall be chargeable by the load port from the time the vessel starts loading coastal goods.
 - (d). In cases of such conversion, coastal rates shall be chargeable only till the vessel completes coastal cargo discharging operations, immediately thereafter foreign going rates shall be chargeable by the discharge ports.
 - (e). For dedicated Indian coastal vessels having a Coastal Licence from the Director General of Shipping, no other document will be required to be entitled to Coastal rates.
- (iii).
 - (a). The berth hire for all coastal vessels should not exceed 60% of the corresponding charges for other vessels.
 - (b). The cargo related charges for all coastal cargo other than crude including POL, iron ore and iron ore pellets and thermal coal should not exceed 60% of the normal cargo related charges.
 - (c). In case of cargo related charges, the concessional rates should be levied on all the relevant handling charges for ship shore transfer and transfer from/to quay to/from storage yard including wharfage.
 - (d). Cargo from a foreign port which reaches an Indian Port "A" for subsequent transshipment to Indian Port "B" will be levied the concession charges relevant for its coastal voyage. In other words, cargo from/to Indian Ports carried by vessels permitted to undertake coastal voyage will qualify for the concession.

- (e). The charges for coastal cargo / containers / vessels shall be denominated and collected in Indian rupee.
- (iv). Interest on delayed payments / refunds:
- (a). The user shall pay penal interest on delayed payments for any charge 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 declared by the State Bank of India from time to time.
- (c). The delay in refunds by the terminal operator will be counted beyond 20 days from the date 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 beyond 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 this Scale of Rates.
- (v). 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.
- (vi). All charges worked out shall be rounded off to the next higher rupee on the grand total of each bill.
- (vii). The rates prescribed in the Scale of Rates are ceiling levels: likewise, rebates and discounts are floor levels. The terminal operator may, if it so desires, charge lower rates and / or allow higher rebates and discounts.
- The terminal operator may also, if it so desires 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.
- The terminal operator should, however, 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.
- (viii). The users shall not be required to pay charges for delays beyond a reasonable level attributable to the terminal operator.

2. BERTH HIRE CHARGES:

2.1. Schedule of Berth hire:

Sl. No.	Vessels	Rate per GRT per hour or part thereof	
		Foreign Going Vessel (in ₹)	Coastal Vessel (in ₹)
1.	Vessels carrying CP Coke, LAM Coke, Steel and G. Blocks	1.03	0.62

2.2. Penal Berth hire for overstayal of vessel:

- (i). Penal berth hire equivalent to normal applicable berth hire shall be levied in addition to the berth hire charge for the period of overstayal of vessel for occupancy of the berth beyond the stipulated periods mentioned at (ii) below, provided there is a

demand for the berth and a notice is served by the BOT operator or its authorised officials 10 hrs in advance of completion of discharge / shipment operations.

- (ii). Vessel shall be permitted to occupy the berth after completion of cargo operation without attracting penalty for period mentioned below: -
- | | | |
|------|--|---|
| (a). | Vessels taking bunkers through barges. | 08 hrs |
| (b). | Vessels taking water through barges. | 12 hrs [From the time of placement of barges alongside vessel]. |
| (c). | Vessels taking Water / Bunkers through source other than barges. | 08 hrs |
| (d). | In all other cases | 07 hrs |

General Notes relating to berth hire:

- (i). The time for the purpose of levy of berth hire shall be reckoned from the time the vessel occupies the berth till she vacates the berth.
- (ii). (a). Berth hire shall stop 4 hrs after the time of vessel signalling its readiness to sail.
- (b). The time limit of 4 hrs prescribed for cessation of berth hire shall exclude the ship's waiting time for want of favourable tidal condition or on account of inclement weather or due to absence of night navigation facilities.
- (c). The Master/Agent of the vessel shall signal readiness to sail only in accordance with favourable tidal and weather condition.
- (iii). The Penal Berth hire shall be equal to one-day's (24 hours) berth hire charge for a false signal.
- “False signal” would be when the vessel signals readiness and asks for a pilot in anticipation even when she is not ready for un-berthing due to engine not being ready or cargo operation not completed or such other reasons attributable to the vessels. This excludes the signaling readiness when a vessel is not able to sail due to unfavorable tide, lack of night navigation or adverse weather conditions.”
- (iv). No Berth hire shall be levied for the period the vessel is compelled to idle at berth for continuously for one hour or more due to non-availability/ break down of equipment and any other reasons including power failure attributable to the terminal operator.
- (v). Ousting Priority/Priority berth Hire:

The rate and conditions for granting ousting priority berthing / priority berthing will be governed by extant Government guidelines in this regard and provisions prescribed in the Scale of Rates of Visakhapatnam Port Trust.

3. CARGO HANDLING CHARGES:

SI. No.	Commodity	Unit	Rate in ₹	
			Foreign	Coastal
(a).	CP Coke	Per Metric Tonne	106.04	63.62
(b).	LAM Coke	Per Metric Tonne	106.04	63.62
(c).	Steel	Per Metric Tonne	273.27	163.96
(d).	Granite Blocks	Per Metric Tonne	422.19	253.32

Notes:

The handling charges prescribed above is a composite charge for (i) unloading of the cargo from the vessel including stevedoring and transfer of the same up to the point of storage, storage at the stackyard up to a free period of 5 days and loading on to trucks in respect of import cargo and (ii) unloading of the cargo from the trucks at the stackyard, storage at the stackyard up to a period of 15 days, transfer the cargo to the loading point and loading onto the ship including stevedoring. This

composite charge includes wharfage and supply of labour, wherever necessary and all other miscellaneous charges not specifically prescribed in the Scale of rates.

4. STORAGE CHARGES PER TONNE PER DAY:

The storage charges for the cargo stored in the stackyard beyond the free period allowed shall be as below:

(A). Free period:

Import cargo	5 days free
Export cargo	15 days free

(B). Storage charges after free period (per tonne per day)

Description	Rate in ₹ per tonne per day
First week after expiry of free period	₹11.62
2 nd week after expiry of free period	₹17.43
Beyond 2 nd week	₹23.23

Notes:

- (i). For the purpose of calculation of free period Customs notified holidays and Terminal's non- working days shall be excluded.
- (ii). Free period for export cargo shall commence from the actual date of the receipt of goods in the operator's premises.
- (iii). Free period for import cargo shall be reckoned from the day following the day of completion of final discharge from the vessel.
- (iv). Storage charge 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.

5. Miscellaneous Charges:

₹3.51 per tonne is a composite charge for all miscellaneous services such as environment and management, sweeping of cargo on the wharf, safety measures, etc.

6. GENERAL NOTE TO SCHEDULE (2) to (5) ABOVE:

The tariff caps prescribed in the Scale of Rates of West Quay Multiport Private Limited (WQMPL) takes into consideration the upfront tariff approved by the Authority vide TAMP/39/2008-VPT dated 12 February 2009 and applying indexation to the extent of 60% of the variation in Wholesale Price Index (WPI) occurring between 1 January 2008 and 1 January of the relevant year. For the subsequent years as well, upfront tariff approved in the Order TAMP/39/2008-VPT dated 12 February 2009 will 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. 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.
