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TARIFF AUTHORITY FOR MAJOR PORTS

G.No. 124

New Delhi

18 March 2020

NOTIFICATION

In exercise of the powers conferred under Section 48 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal received from the Chettinad Mangalore Coal Terminal Private Limited for notification of its Scale of Rates for mechanization of Berth No.16 for providing equipment for handling bulk cargo at New Mangalore Port on DBFOT basis as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

TARIFF AUTHORITY FOR MAJOR PORTS
Case No. TAMP/58/2019-NMPT

Chettinad Mangalore Coal Terminal Private Limited

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Applicant

QUORUM:

- (i). Shri. T.S. Balasubramanian, Member (Finance)
- (ii). Shri. Rajat Sachar, Member (Economic)

ORDER

(Passed on this 20th day of February 2020)

This case relates to the proposal received from the Chettinad Mangalore Coal Terminal Private Limited (CMCTPL) for notification of its Scale of Rates (SOR) for mechanization of Berth No.16 for providing equipment for handling bulk cargo at New Mangalore Port on DBFOT basis.

2. Before bringing out the submissions made by the CMCTPL in its proposal, it is relevant here to mention that this Authority had, vide its Order No.TAMP/60/2015-NMPT dated 16 November 2015, fixed Reference Tariff based on the proposal filed by the New Mangalore Port Trust (NMPT) for mechanization of Berth No.12 for providing equipment for handling bulk cargo at NMPT through Public Private Partnership (PPP) mode which was notified in the Gazette of India Extraordinary (Part III Section 4) on 06 January 2016 vide Gazette No.08.

3. The CMCTPL vide its letter dated 15 November 2019 has requested this Authority to notify Scale of Rates for handling Bulk Cargo (Coal and other cargo) at Berth No.16 at NMPT in its name. The main submissions made by the CMCTPL are as under:

- (i). CMCTPL have entered into a Concession Agreement with New Mangalore Port Trust (NMPT) on 18 March 2016 to develop and operate the subject terminal on DBFOT basis.
- (ii). CMCTPL have completed the Project and have received the Independent Engineer Certificate and the Trade Notice dated 31 October 2019 from NMPT.
- (iii). Tariff calculation based on TAMP notification is attached.

4.1. On preliminary scrutiny of the proposal of CMCTPL, it was noticed that the proposal of CMCTPL for notification of its Scale of Rates was not accompanied with requisite information/ document viz. proposed Scale of Rates, Independent Engineer's Certificate, etc. Accordingly, the CMCTPL was requested, vide our letter dated 28 November 2019 to furnish the requisite information/ document immediately. In response, the CMCTPL vide its letter dated 5 December 2019 has furnished its reply to us with a copy endorsed to NMPT.

4.2. A summary of the information/ document sought by us and reply furnished by CMCTPL is tabulated below:

Sl. No.	Information/ document sought by us	Reply furnished by CMCTPL
(i).	(a). The CMCTPL to furnish complete proposed Scale of Rates duly indexed including conditionalities approved by the Authority vide Order No.TAMP/60/2015-NMPT dated 16 November 2015.	The complete proposed Scale of Rates along with the conditionalities governing the proposed rates as notified in reference tariff Order approved by the Authority vide Order No.TAMP/60/2015-NMPT dated 16 November 2015 is attached. (General notes in the Scale of Rates after the Schedule of Storage Charge are not included in the proposed draft SOR and Performance Standards prescribed in the

		said Order are not found to have been attached with the proposal. The CMCTPL has subsequently furnished the proposed draft SOR with conditionalities and Performance Standards as prescribed in the said Order.)
	(b). Simultaneously, forward the same to the NMPT to furnish its comments to TAMP.	The CMCTPL has forwarded the same to NMPT also.
(ii).	As per statute, the rates to be levied by the BOT operator need to be notified by the Authority. The Independent Engineer has certified that the project is declared fit for commercial operation from 22.5.2019. The CMCTPL has filed proposal only on 15.11.2019. The CMCTPL to furnish reason for not filing the proposal well before the commercial operations.	Though, CMCTPL have completed the project during end of May 2019, due to non-availability of committed draft of 14 mtrs., CMCTPL was not able to commence its commercial operations. The NMPT carried out the dredging activity and provided the draft of 13 mtrs. in the last week of October 2019 only. Subsequently, NMPT issued the Trade Notice along with exclusivity clause of coal handling operations to CMCTPL on 31 October 2019, mentioning that the notification shall come into effect from the date of arrival of the first shipment at Berth No.16 in the month of November 2019. Copy of the relevant trade notice is furnished. Hence, CMCTPL has filed the proposal for notification of indexed Scale of Rates in its name in November 2019.

4.3. In the proposed Scale of Rates, the CMCTPL has requested this Authority to approve the following indexed rate by applying applicable escalation factor of Nil for the period 2016-17, 1.20% for 2017-18, Nil for 1 April 2018 to 31 July 2018, 2.07% for 1 August 2018 to 31 March 2019 and 2.56% for the period 2019-2020 on the Reference Tariff approved in the Tariff Order dated 16 November 2015:

(i). Cargo Handling Charges:

Sr. No.	Particulars	Rate in ₹ per metric tonne	
		Foreign	Coastal
(i).	Thermal Coal	301.39	301.39
(ii).	Other Coal	301.39	180.84
(iii).	Other Cargo (Fertilizer, Limestone, Gypsum, Dolomite)	76.95	46.16

(ii). Storage Charges:

Sr. No.	Particulars	Rate in ₹ per MT per Day or part thereof	
		For Coal Import	For other Cargo Import (Limestone, Gypsum, Dolomite)
(i).	Free period	25 Days	5 Days
(ii).	First five days after expiry of free period	1.13	0.83
(iii).	6 th day to 10 th day after expiry of free period	1.70	1.23
(iv).	From 11 th day onwards	2.27	1.65

5.1. With reference to the said proposal of CMCTPL, the NMPT, being the Concessionaire Port, was requested vide our letter dated 28 November 2019 and reminder dated 13 December 2019 to furnish clarification on a few points along with the requisite documents/information immediately. The NMPT was also requested to furnish its comments on the proposed Scale of Rates to be forwarded by CMCTPL.

5.2. The NMPT has furnished its response vide its e-mail dated 24 December 2019. A summary of the information/ clarifications/ documents sought by us and reply furnished by NMPT is juxtaposed below:

Sl. No.	Information / clarifications sought by us	Reply furnished by NMPT
(i).	(a). The CMCTPL has filed the proposal for notification of SOR for Berth No.16. The reference tariff approved by the Authority for this project vide Order dated 16 November 2015 is for Berth No.12. The completion certificate issued by the Independent Engineer gives reference of berth as Berth No.12. The Trade Notice dated 31 October 2019 issued by NMPT refers the berth operated by CMCTPL as Berth No.16.	(a). Yes. While inviting EOI for the subject project, the berth was named as Berth No.12. In the Concession Agreement dated 18.03.2016, the berth is mentioned as Berth No.12. Previous Berth No.12 has been renumbered as Berth No.16. Customs Notification furnished.
	(b). In this context, it is seen from the earlier e-mail dated 4 June 2019 of the NMPT, furnishing the updated status of PPP projects for upfront/ reference tariff of NMPT, that the port has mentioned " <i>Berth No.12 (New 16)</i> " against Order No.TAMP/60/2015-NMPT dated 16 November 2015. The NMPT, being the concessionaire port, to confirm whether the Berth No.12 is same as Berth No.16. That is Berth no.12 is renamed by the Port as Berth no.16.	During Notification of the Berth by the Customs Department, it was insisted that the numbering shall be in a sequential order in line with their earlier notification. Accordingly, the number was changed from Berth No.12 to Berth No.16. Copy of the Customs Notification is furnished.
(ii).	The NMPT has not furnished the Concession Agreement entered with CMCTPL on 18 March 2016. The NMPT to furnish a copy of the Concession Agreement for the said Project.	Copy of the Concession Agreement dated 18.03.2016 between NMPT and M/s.CMCTPL is furnished.
(iii).	As regards the Trade Notice No.NMPT/TM/BERTH.16/2019 dated 31 October 2019 issued by the NMPT to the trade forwarded by CMCTPL stating that CMCTPL is allowed to levy tariff as per Order No.TAMP/60/2015-NMPT dated 16 November 2015, it is relevant to state that as per statute, the rates to be levied by the BOT operator need to be notified by the Authority. The Certificate issued by the Independent Engineer certifies that the project is declared fit for commercial operation from 22 May 2019. It is, however, only now on 15 November 2019, the CMCTPL has filed the proposal for notification of indexed SOR in its name.	(a). The construction works of Berth No.16 was completed on 22.05.2019. This has been certified by the Independent Engineer vide their Completion Certificate dated 22.05.2019. (b). Even though the construction works were completed on 22.05.2019, the Concessionaire was unable to commence commercial operations for want of requisite draft and declaration by the Concessioning Authority. (c). This could be achieved only on 31.10.2019, when the Port issued Trade Notice which stated that the Concessionaire M/s.CMCTPL has been allowed to handle coal as per the Concession Agreement for an exclusivity period of five years from the date of commencement of commercial operation or till the level of handling of cargo reaches at level of 75% of the project capacity for two consecutive years. Further, M/s.CMCTPL has been allowed to charge the tariff as per the Tariff Order

		<p>No.TAMP/60/2015-NMPT dated 16.11.2015.</p> <p>[Concession Period is for 30 years. The above provision is an exclusivity clause.]</p> <p>(d). Based on the above, the date of Commercial Operation came into effect from the date of arrival of first shipment at Berth No.16 which was on 8 November 2019.</p> <p>(e). Accordingly, M/s.CMCTPL vide their letter No. CMCTPL/MLR/2019/0169 dated 15.11.2019 have intimated TAMP on the applicable tariff calculation with indexation along with the Independent Engineer's Certificate and the copy of Trade Notice received from NMPT.</p>
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5.3. Subsequently, the NMPT vide our letter dated 13 December 2019 was again reminded to furnish its comments on the proposal of NMPT dated 15 November 2019 as well as on complete proposed SOR directly furnished by CMCTPL to the port. In this regard, the comments of the NMPT on the draft SOR proposed by CMCTPL are as follows:

- (i). In the draft Scale of Rates, the interest on delayed payment/ refunds specified at Clause 1.2(iii) of reference tariff has been omitted. This clause needs to be incorporated.
- (ii). TAMP may suitably modify the general notes given at Clause 4 of the draft SOR.

6.1. Clause 2.9.1 of the Tariff Guidelines of 2008 for fixation of upfront tariff stipulates that the private operator shall approach this Authority for notification of SOR 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 SOR to be framed by TAMP 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 SOR and statement of conditions shall be notified by this Authority in the Gazette of India as required by the Major Port Trusts Act, 1963.

6.2. While clause 2.9.1 of the Upfront Tariff Guidelines of 2008 explicitly stipulates that before commencement of commercial operation, the private operator shall approach TAMP for notification of the SOR as required under Section 48 of the Major Port Trusts Act, 1963, no such an explicit provision is stipulated in the Tariff Guidelines of 2013.

6.3. As per Section 48 read with Section 42(4) of the Major Port Trusts (MPT) Act, 1963, any person authorised by the Major Port Trusts to render services can levy tariff based on the SOR notified by this Authority. That being so, the BOT operators governed under the tariff guidelines 2013 who have been authorised by Major Port Trust under Section 42(3) of the MPT Act 1963, need to get the indexed SOR notified in their name well before the commencement of operations.

6.4. As per clause 4.2 of the Reference Tariff Guidelines of 2013, the Tariff Caps are to 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, and the adjusted tariff will come into force from 1 April of the relevant year to 31 March of the following year.

6.5. As per note (i) under Schedule 4 for General Notes in the reference tariff for mechanization of Berth No.12 (new Berth No.16) for providing equipment for handling bulk cargo at NMPT through Public Private Partnership (PPP) mode approved by this Authority vide Order No.TAMP/60/2015-NMPT dated 16 November 2015, tariff caps will be indexed to inflation to an

extent of 60% of the variation in the WPI occurring between 1 January 2015 and 1 January of the relevant year.

7. The base WPI to be considered for automatic adjustment every year is as of January 2015, and the corresponding annual escalation for the years 2016-17, 2017-18, 2018-19 and 2019-20 has been announced by this Authority and communicated to all the Major Port Trusts including NMPT and the same are given below:

Year	Annual Indexation Factor (at 60% of WPI) announced by this Authority under 2013 Guidelines
2016-17	NIL
2017-18	1.20%
01.04.18 to 31.07.18	NIL
01.08.18 to 31.03.19	2.07%
2019-2020	2.56%

Accordingly, the escalation factor to be applied in the case in reference is the escalation factor announced by this Authority for the years 2016-17 to 2019-20.

8.1. 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/60/2015-NMPT dated 16 November 2015 disposing of the proposal filed by the New Mangalore Port Trust (NMPT) under Reference Tariff Guidelines, 2013 for mechanization of Berth No.12 for providing equipments for handling bulk cargo at NMPT through Public Private Partnership (PPP) mode. The said Order was notified in the Gazette of India Extraordinary on 06 January 2016 vide Gazette No.08.
- (ii). The NMPT has awarded the said project on license basis to M/s.Chettinad Mangalore Coal Terminal Private Limited (CMCTPL) and NMPT has entered into a Concession Agreement with CMCTPL on 18 March 2016 for handling Coal. As per Article 2.1. of the Concession Agreement signed between CMCTPL and NMPT, the Concession period is for 30 years from the date of award of concession i.e. March 2016. The NMPT has, in the Trade notice dated 31 October 2019, intimated Trade that Port has entered into Concession Agreement with CMCTPL for handling coal with exclusivity clause for coal handling exclusively for a period of 5 years from the date of commencement of operation or till the level of handling of cargo reaches at level of 75% of the project capacity for two consecutive years.
- (iii). As per Section 48 read with Section 42(4) of the Major Port Trusts (MPT) Act, 1963, any person authorised by the MPTs to render services can levy tariff based on the Scale of Rates (SOR) notified by this Authority. That being so, the BOT operators governed under the Tariff Guidelines, 2013 who have been authorised by Major Port Trust under Section 42(3) of the MPT Act 1963, need to get the indexed SOR notified in their name well before the commencement of operations.
- (iv). Accordingly, CMCTPL has approached this Authority with a request to notify the SOR in its name vide its letter dated 15 November 2019 for mechanization of Berth No.16 for providing equipments for handling bulk cargo. The CMCTPL and the NMPT have furnished the information sought by us with reference to the proposal vide their letters dated 5 December 2019 and 24 December 2019 respectively. On receipt of the complete information, the proposal of the CMCTPL is taken up for processing.

The upfront reference tariff approved by this Authority vide Order dated 16 November 2015 is for mechanization of Berth No.12 for providing equipments for handling bulk cargo at NMPT through PPP mode. The proposal of the CMCTPL has sought notification of its Scale of Rates for mechanization of Berth No.16. In this regard, when sought clarification, the NMPT has clarified that the earlier Berth No.12 is renumbered as Berth No.16. That being so, this Authority has taken up

the proposal of CMCTPL for notification of SOR in respect of Berth No.16 as proposed by CMCTPL.

- (v). It is seen from the Independent Engineer Certificate furnished by CMCTPL that the Completion Certificate issued by the Independent Engineer for the Project declares the Project fit for entry into commercial operations on 22 May 2019. The CMCTPL has, however, submitted the proposal only in November 2019.

When sought clarification for not filing the proposal before the commencement of commercial operations, the CMCTPL has clarified that due to non-availability of committed draft of 14 mts., CMCTPL was not able to commence the commercial operations from 22 May 2019. CMCTPL has further stated that NMPT carried out the dredging activity and provided draft of 13 mts. in the last week of October 2019 and has also issued Trade Notice that the CMCTPL shall commence operation from November 2019. The NMPT has also endorsed the same points as made by CMCTPL. The port has further stated that the commercial operations came into effect from the date of arrival of first shipment at Berth No.16 on 8 November 2019. Thus, in short, both CMCTPL and NMPT have clarified the position for filing the proposal in November 2019. Hence, this Authority proceeds ahead with notification of SOR in the name of CMCTPL which shall come into effect from the date of commencement of commercial operations from 08 November 2019.

- (vi). With reference to the indexation of reference tariff fixed vide Order dated 16 November 2015, it is relevant to mention that Para 12.1 of reference tariff Order passed by this Authority vide Order No.TAMP/60/2015-NMPT dated 16 November 2015 and the General Note no.(i) in the SOR approving the reference tariff, states that the tariff cap is to be indexed to inflation to an extent of 60% of the variation in Wholesale Price Index (WPI) occurring between 1 January 2015 and 1 January of the relevant year. The general note explicitly states the base year for WPI escalation has to be 1 January 2015.

That being so, the applicable escalation factor to arrive at indexed SOR as on 1 November 2019 is Nil for the period 2016-17, 1.20% for 2017-18, Nil for 1 April 2018 to 31 July 2018, 2.07% for 1 August 2018 to 31 March 2019 and 2.56% for the period 2019-2020 on the Reference Tariff approved vide Order dated 16 November 2015. This aggregated cumulatively to 5.939%. The CMCTPL have applied the correct escalation factor to arrive at indexed SOR to be made effective from 8 November 2019. For the subsequent years, the tariff shall be indexed automatically applying the indexation factor @ 60% of the WPI with the base year as of January 2019 to be announced by this Authority annually under the Reference Tariff Guidelines of 2013. The General note no. (i) at Schedule (4) as regards automatic escalation in the tariff prescribed in the general note approved in the Order dated 16 November 2015 is, therefore, slightly modified to that extent.

- (vii). The NMPT has already issued a Trade Notice that the CMCTPL has been allowed to charge the tariff as per Order passed by this Authority vide Order No.TAMP/60/2015-NMPT dated 16 November 2015 from the date of arrival of first shipment in the month of November 2019. Both, the NMPT and CMCTPL have confirmed that the commercial operation has commenced from 08 November 2019. Hence, the notified indexed SOR shall come into effect from the date of commencement of commercial operation in November 2019.

- (viii). Whilst the CMCTPL has retained all the definitions, general terms and conditions and notes under the schedule of cargo handling charge as prescribed in the reference tariff Order dated 16 November 2015, the CMCTPL has not included the general condition no.(iii) (a) to (d) under 1.2. relating to interest on delayed payments/ refunds. The SOR proposed by the CMCTPL also does not include the General Notes prescribed under Schedule 4 and the Performance Standards prescribed in the said Reference Tariff Order. It is relevant here to state that the Appendix 12 attached to the Concession Agreement dated 18 March 2016 entered

between the CMCTPL and the NMPT includes the complete SOR and the performance standards approved by this Authority in the Order dated 16 November 2015. That being so, general condition no.(iii) (a) to (d) under 1.2. relating to interest on delayed payments/ refunds, General notes under Schedule 4 are incorporated in the SOR notified in the name of CMCTPL. Further, the Performance Standards as prescribed in the Order dated 16 November 2015 are also included as separate Annex for notification along with the indexed SOR.

- (ix). All the other conditionalities governing the application of the rates as approved in the SOR notified vide Order dated 16 November 2015 are retained subject to the following:

This Authority, has passed an Order No.TAMP/53/2015-VOCPT dated 29 September 2015 based on the recommendations of Directorate General (DG) Shipping on the clarification sought by the VOCPT regarding levy of concessional charges for coastal cargo/ container. The provisions approved in the said Order were further amended vide Order No.TAMP/53/2015-VOCPT dated 26 November 2015. The said Order passed is for common adoption by all the Major Port Trusts. Subsequent to the said Order, the DG Shipping vide its letter no.SD9CHART(309)/2016 dated 20 May 2016 has issued further clarification on the provision approved in the 26 November 2015 Order. This Authority has, accordingly, passed a clarificatory Order slightly amending the provision prescribed in para 9A(ii) and 10(ii) of the Order dated 26 November 2015. The amended provisions approved by this Authority in the said Order which are found relevant in the case of CMCTPL as regards cargo handling charges have been updated accordingly in the SOR of CMCTPL as note no.(ii) under General terms and conditions and the proposed serial numbers at note no.(ii) to (vii) under General terms and conditions are amended as note no.(iii) to (viii) respectively.

8.2. In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves notification of Scale of Rates and Performance Standards for the mechanization of Berth No.16 for providing equipments for handling bulk cargo at New Mangalore Port on DBFOT in the name of the BOT operator CMCTPL operating at NMPT attached as **Annex - I** and **II** respectively.

8.3. The Scale of Rates notified for CMCTPL will come into force from the date of commencement of commercial operations by CMCTPL at NMPT i.e. from 08 November 2019.

8.4. The CMCTPL is expected to perform at least at the performance norms brought out in the Concession Agreement.

9.1. 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 the guidelines of 2013 which will be applicable for the entire concession period.

However, the CMCTPL is 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 relevant 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.

9.2. The proposal shall be submitted by CMCTPL to this Authority along with a certificate from the independent engineer appointed under the Concession Agreement of the Project indicating the achievement of Performance Standards in the previous 12 months as incorporated in the

Concession Agreement or for the actual number of months of operation in the first year of operation as the case may be.

9.3. On receipt of the proposal, this Authority will seek the views of the NMPT on the achievement of Performance Standards as outlined in para 5 of the Tariff Guidelines of 2013, within 7 days of receipt.

9.4. In the event of CMCTPL not achieving the Performance Standards as incorporated in the Concession Agreement in previous 12 months, this Authority will not consider the proposal for notifying the Performance Linked Tariff for the ensuing financial year and the CMCTPL shall be entitled to only the indexed Reference Tariff applicable for the ensuing financial year.

9.5. After considering the views of the NMPT, if this Authority is satisfied that the Performance Standards as incorporated in the Concession Agreement have been achieved, it shall notify the performance linked tariff by 15th of March to be effective from 1st of April of the ensuing financial year.

9.6. While considering the proposal for Performance Linked Tariff, this Authority will look into the Performance Standards and its adherence by the Operator. This Authority will decide on the acceptance or rejection of the Performance Linked Tariff proposal based on the achievement or otherwise of the Performance Standards by the CMCTPL. Determination of indexed Reference Tariff and Performance Linked Tariff will follow the illustration shown in the Appendix attached to the Tariff Guidelines of 2013.

9.7. From the third year of operation, the Performance Linked Tariff proposal from the CMCTPL shall be automatically notified by this Authority subject to the achievement of Performance Standards in the previous 12 months period as certified by the Independent Engineer. The CMCTPL, for the Performance Linked Tariff from the third year onwards, will submit the Performance Linked Tariff proposal along with the achievement certificate from the Independent Engineer by 1st March and this Authority shall notify by 20th March, the Performance Linked Tariff to be effective from the ensuing financial year.

9.8. In the event any user has any grievance regarding non-achievement by the PPP operator of the Performance Standards as notified by this Authority, he may prefer a representation to this Authority which, thereafter, shall conduct an inquiry into the representation and give its finding to the NMPT. The NMPT will be bound to take necessary action on the findings as per the provisions of the respective Concession Agreement.

9.9. The CMCTPL shall furnish to this Authority, quarterly reports on cargo traffic, ship berth day output, average turnaround time of ships, average pre-berthing waiting time as well as the tariff realized at the berth. In addition, quarterly reports shall also be provided on average moves per crane hour and average dwell time for containers. The quarterly reports shall be submitted by the CMCTPL within a month following the end of each quarter. Any other information which may be required by this Authority shall also be furnished to them from time to time.

9.10. If any question arises requiring clarifications or interpretation of the Scale of Rates and the statement of conditionalities, the matter shall be referred to this Authority and its decision in this regard will be binding on the CMCTPL.

9.11. The actual performance of the CMCTPL shall be monitored by this Authority. If any complaint regarding quality of service is received, this Authority shall enquire into such allegation and forward its findings to the NMPT. If any action is to be taken against the CMCTPL, the NMPT shall initiate appropriate action in accordance with the provisions of the relevant Concession Agreement.

10. This Authority shall publish on its website all such information received from CMCTPL. However, this Authority shall consider a request from CMCTPL about not publishing certain data/ information furnished which may be commercially sensitive. Such requests should be accompanied by detailed justification regarding the commercial sensitiveness of the data/

information in question and the likely adverse impact on their revenue/ operation upon publication.
This Authority's decision in this regard would be final.

(T.S. Balasubramanian)
Member (Finance)

CHETTINAD MANGALORE COAL TERMINAL PVT.LTD.

**SCALE OF RATES FOR HANDLING COAL AND OTHER CARGO AT BERTH NO.16 AT
NEW MANGALORE PORT TRUST**

CHAPTER 1 – DEFINITIONS & GENERAL TERMS & CONDITIONS

1.1. Definitions – General

In this Scale of Rates, unless 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 / Director General of Shipping.
- (ii). **“Foreign - going vessel”** shall mean any vessel other than coastal vessel.
- (iii). **“Per Day”** shall mean per calendar day unless otherwise stated.

1.2. General Terms and Conditions:

- (i). The status of a vessel as borne out by its certification by the Customs or the Director General of Shipping, shall be the deciding factor for its classification as ‘coastal’ or ‘foreign-going’ for the purpose of levy of vessel related charges; and, the nature of cargo or its origin will not be of any relevance for this purpose.
- (ii). Criteria for levy of Cargo Related Charges (CRC) at Concessional Coastal rate
 - (a). Foreign going Indian vessel having General Trading License issued for ‘worldwide and coastal’ operation should be accorded applicable coastal rates with respect to Handling Charges (HC) i.e. ship to shore transfer and transfer from/ to quay to/ from storage yard including wharfage in the following scenario:-
 - (i). Converted to coastal run and carrying coastal cargo from any Indian Port and destined for any other Indian Port.
 - (ii). Not Converted* to coastal run but carrying coastal cargo from any Indian Port and destined for any other Indian Port.

*The Central Board of Excise & Customs - Circular No.15/2002- Cus dated 25th February 2002 allows carriage of coastal cargo from one Indian Port to another Indian Port in India, in Indian flag foreign going vessels without any Custom Conversion.
 - (b). In case of a Foreign flag vessel converted to coastal run on the basis of a License for Specified period or voyage issued by the Director General of Shipping, and a Custom Conversion Order, the coastal cargo/ container loaded from any Indian Port and destined for any other Indian Port should be levied at the rate applicable for coastal cargo/ container.
- (iii). (a). The cargo related charges for all coastal cargo other than thermal coal, POL including crude, iron ore and iron ore pellets should not exceed 60% of the normal cargo related charges.

- (b). 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.
- (c). Cargo from a foreign port, which reaches an Indian Port 'A' for subsequent transshipment to Indian Port 'B' will be, levied the concessional charges relevant for its coastal voyage. In other words, cargo from/ to Indian ports carried by vessel permitted to undertake coastal voyage will qualify for the concession.
- (iv). Interest on delayed payments/ refunds.
- (a). The user shall pay interest at the rate of 2% above the Prime Lending Rate of State Bank of India (SBI), on the delayed payments of any charge under the Scale of Rates.
- (b). Likewise, the Port Trust shall pay penal interest at the rate of 2% above the Prime Lending Rate of State Bank of India (SBI), on delayed refunds.
- (c). The delay in refunds will be counted beyond twenty days from the date of completion of services or on production of all the documents required from the User whichever is later.
- (d). Delay in payments by user will be counted only 10 days after the date of raising the bills by Terminal Operator. This provision will, 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 the Scale of Rates.
- (v). All charges worked out shall be rounded off to the next higher rupee on the grand total of the bill.
- (vi). (a). The rates prescribed in the Scale of Rates are ceiling levels, likewise, rebates and discounts are floor levels. The operator may, if they so desire, charge lower rates and/or allow higher rebates and discounts.
- (b). The operator may also, if he so desire, rationalize the prescribed conditionalities governing the application of rates prescribed in the Scale of Rates if such rationalization gives relief to the users in the rate per unit and the unit rates prescribed in the Scale of Rates does not exceed the ceiling level.
- (c). The operator should notify the public such lower rates and/ or rationalization of the conditionalities governing the application of such rates and continue to notify the public any further charges in such lower rates and/or in the conditionalities governing the application of such rates provided the new rates fixed shall not exceed the rate notified by this Authority.
- (vii). Users will not be required to pay charges for delays beyond reasonable level attributable to the operator.
- (viii). No claim for refund shall be entertained unless the amount refundable is ₹100/- or more. Likewise, terminal operator shall not raise any supplementary or under charge bills, if the amount due to the operator is less than ₹100/-.

2. Cargo Handling Charges

Sr. No.	Particulars	Rate in ₹ per metric tonne	
		Foreign	Coastal
(i).	Thermal Coal	301.39	301.39
(ii).	Other Coal	301.39	180.84
(iii).	Other Cargo (Fertilizer, Limestone, Gypsum, Dolomite)	76.95	46.16

- (i). The handling charges for coal (thermal and other coal) prescribed above is a composite charge for unloading of the cargo from the vessel and transfer of the same up to the point of storage, storage at the stackyard upto a free period of 25 days, reclaiming from stackyard and loading onto trucks/ railway wagon, sweeping of cargo on the wharf, dust suppression services and all other miscellaneous services not specifically included in SOR.
- (ii). The handling charges for other cargo (Limestone, Gypsum, Dolomite) prescribed above is a composite charge for unloading of the cargo from the vessel and transfer of the same up to the point of storage, storage at the stackyard upto a free period of 5 days, reclaiming from stackyard and loading onto trucks, sweeping of cargo on the wharf, dust suppression services and all other miscellaneous services not specifically included in SOR.
- (iii). The handling charges for other cargo (Fertilizer) prescribed above is a charge only for unloading of the cargo from the vessel and transfer of the same up to the Port storage sheds. The handling charges also cover other miscellaneous services not specifically included in SOR. Storage of Fertilizer is not envisaged in this project and handling charges shall not include the charges against storage.

3. Storage Charges

The storage charge for the coal and other cargo (Limestone, Gypsum, Dolomite) stored in the yard beyond a free period (25 days for coal and 5 days for other cargo) after complete discharge of vessel's cargo, shall be as below:

Sr. No.	Description	Rate in ₹ per MT per Day or part thereof	
		For Coal Import	For Other Cargo Import (Limestone, Gypsum, Dolomite)
(i).	Free period	25 Days	5 Days
(ii).	First five days after expiry of free period	1.13	0.83
(iii).	6th day to 10th day after expiry of free period	1.70	1.23
(iv).	From 11 th day onwards	2.27	1.65

Notes:

- (i). (a). For the purpose of calculation of free period, Customs notified holidays and Terminal's non-working days shall be excluded.
- (b). Free period shall be calculated from the day following the date of complete discharge of goods from the vessel on to the berth.
- (ii). Storage charges on cargo shall not accrue for the period when the Terminal Operator is not in a position to deliver the cargo when requested by the User due to reasons attributable to the Terminal operator.
- (iii). Storage charges shall be payable for all days including Terminal's non-working days and Customs notified holidays for stay of cargo beyond the prescribed free days.

4. GENERAL NOTES:

- (i). 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 2019 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.
- (ii). 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 the tariff guidelines of 2013 which will be applicable for the entire licence period.

However, the Chettinad Mangalore Coal Terminal Private Limited (CMCTPL) 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 relevant 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.

- (iii). The proposal shall be submitted by CMCTPL to TAMP along with a certificate from the independent engineer appointed under the Concession Agreement of the Project indicating the achievement of Performance Standards in the previous 12 months as incorporated in the Licence Agreement or for the actual number of months of operation in the first year of operation as the case may be.
- (iv). On receipt of the proposal, TAMP will seek the views of the New Mangalore Port Trust (NMPT) on the achievement of Performance Standards as outlined in para 5 of the tariff guidelines of 2013, within 7 days of receipt.
- (v). In the event of CMCTPL not achieving the Performance Standards as incorporated in the Licence Agreement in previous 12 months, TAMP will not consider the proposal for notifying the Performance Linked Tariff for the ensuing financial year and the CMCTPL shall be entitled to only the indexed Reference Tariff applicable for the ensuing financial year.
- (vi). After considering the views of the NMPT, if TAMP is satisfied that the Performance Standards as incorporated in the Concession Agreement have been achieved, it shall notify the performance linked tariff by 15th of March to be effective from 1st of April of the ensuing financial year.
- (vii). While considering the proposal for Performance Linked Tariff, TAMP will look into the Performance Standards and its adherence by the CMCTPL. TAMP will decide on the acceptance or rejection of the Performance Linked Tariff proposal based on the achievement or otherwise of the Performance Standards by the CMCTPL. Determination of indexed Reference Tariff and Performance Linked Tariff will follow the illustration shown in the Appendix attached to the tariff guidelines of 2013.
- (viii). From the third year of operation, the Performance Linked Tariff proposal from the CMCTPL shall be automatically notified by TAMP subject to the achievement of Performance Standards in the previous 12 months period as certified by the Independent Engineer. The CMCTPL, for the Performance Linked Tariff from the third year onwards, will submit the Performance Linked Tariff proposal along with the achievement certificate from the independent engineer by 1st March and TAMP shall notify by 20th March, the Performance Linked Tariff to be effective from the ensuing financial year.

PERFORMANCE STANDARDS

A. Gross Berth Output:

- (i). The parameter deals with the productivity of the terminal (Gross Berth Output) for Coal. In case of dry and break-bulk cargo, the capability of the terminal (mechanization, method of handling) and parcel size will determine the Gross Berth Output. Higher terminal capability and greater parcel size will lead to high productivity.
- (ii). The Gross Berth Output shall be calculated as the total cargo handled from the ship during a month divided by the time spent by the ship at the terminal expressed in number of working days of ships in that month at that terminal. **While determining the number of working days from the ship hours, the berth allowance of 5 (five) hours shall be subtracted from the total hours.**
- (iii). The norms for Gross Berth Output for different categories of cargo are as follows:

Cargo Category	Norms
Thermal Coal	35,000 T/day
Other Coal	35,000 T/day
Other Cargo (Fertilizer, Limestone, Gypsum, Dolomite)	8,000 T/day

B. Transit Storage Dwell Time:

Bulk Cargo:

The Transit Storage Dwell Time for coal shall be calculated, as half of average parcel size of above cargo vessels in a month divided by average disposal of cargo from the port per day as per the following methodology:

Average disposal of Cargo per day (A) = $\frac{OB + Received}{Despatched - CB}$ No. of days

OB = Opening Balance, CB = Closing Balance.

Average Parcel Sizes (B) = $\frac{P1+P2+ \dots +Pn}{N}$ (no. of parcels)

P1, P2 ... Pn are parcel size of each vessel in a month.

Transit Storage Time for Bulk Cargo = $0.5(B/A)$.

C. Transit Storage Dwell Time- Import:

Coal (at stackyard) 15 days on completion of vessel.

D. Turnaround Time for receipt/ delivery operation:

The Turnaround Time for receipt/ delivery operation shall be the sum of time taken for loading/ unloading of cargo divided by the number of trucks/trailers/rakes deployed, as the case may be, in a month. Further, in case the truck/trailer/rake does both unloading and loading operations on a single entry into the terminal, the time allocated shall be doubled for those trucks/ trailers/ rakes.

- (i). (a). Truck (Single operation) = 10 min
- (b). Truck (Double operation) = 20 min
- (ii). (a). Rake (Single operation) = 4hrs
- (b). Rake (Double operation) = 8 hrs
