(Published in Part - III Section 4 of the Gazette of India, Extraordinary)

TARIFF AUTHORITY FOR MAJOR PORTS

G.No.161 **New Delhi,** **12 April 2021**

NOTIFICATION

In exercise of the powers conferred by Section 48 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal received from Visakhapatnam Port Trust for amendment in the existing Scale of Rates approved vide Order No.TAMP/20/2019-VPT dated 29 November 2019 to prescribe a note for levy of concessional Vessel Related Charges for the Boats/ Barges/ other crafts registered under Inland Vessel Act, 1917, as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports
Case No.TAMP/20/2019-VPT

Visakhapatnam Port Trust - - - **Applicant**

QUORUM

(i). Shri. T.S. Balasubramanian, Member (Finance)
(ii). Shri. Sunil Kumar Singh, Member (Economic)

O R D E R
(Passed on this 16th day of March 2021)

This case relates to the proposal received from Visakhapatnam Port Trust (VPT) for amendment in the existing Scale of Rates approved vide Order No.TAMP/20/2019-VPT dated 29 November 2019 to prescribe a note as regards levy of concessional Vessel Related Charges for the Boats/ Barges/ other crafts registered under Inland Vessel Act, 1917.

2. This Authority had vide Order No.TAMP/20/2019-VPT dated 29 November 2019 passed an Order relating to general revision of VPT Scale of Rates. This Order was notified in the Gazette of India on 27 December 2019 vide Gazette No.494. Subsequently, a speaking Order was notified vide Gazette No.20 dated 14 January 2020. The revised SOR notified by this Authority came into effect after expiry of 30 days from the date of notification of the SOR in the Gazette of India and shall be in force for a period of 3 years from the date the revised SOR came into effect i.e. till 26 January 2023.

3.1. The VPT vide its e-mail dated 23 February 2021 has now submitted a proposal for prescription of note for levy of concession in Vessel Related Charges for the Boats/ Barges/ other crafts registered under Inland Vessel Act, 1917. The main points made by the VPT in support of its proposal are as follows:

(i). Many crafts/ boats arrived at VPT for the purpose of Dredging, marine related operations, various infrastructural works etc. which do not ply beyond territorial waters of India, were levied necessary vessel related charges.

(ii). Clause 1.2 (i) of Scale of Rates states that the status of the vessel 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 vessel related charges and therefore foreign rate is charged in respect of crafts registered under the Inland Vessels Act, 1917 which are permitted to ply in coastal water only.

(iii). VPT Board vide resolution No.13/2020-21 resolved to send proposal to TAMP for levy of concessional Coastal tariff on berth hire and other components of VRC for barges/ boats etc. registered under the Inland Vessel's Act, 1917 and classified as Inland Vessels.

(iv). Therefore, it is proposed to levy concessional coastal tariff on berth hire and other components of VRC specified in the SOR vide Order dated 29 November 2019 with due annual indexation for vessels registered under Inland Vessel Act and classified as "Inland Vessels" wit following insertion under section 1.1 as clause (xi).

(v). "Inland vessel or Inland mechanical propelled vessel means a mechanically propelled vessel, which ordinarily plies on inland water but does not include fishing vessel and a ship registered under the Merchant Shipping Act, 1958 and registered under the Inland Vessels Act, 1917" and classified as "Inland Vessels".

(vi). To insert under General Terms and Conditions 1.2 clause (iv) as "Inland vessels shall be levied concessional coastal tariff on Berth Hire and other components of

Vessel Related Charges for vessels registered under the Inland Vessel's Act, 1917 and classified as "Inland Vessels".

3.2. The Board of Trustees of VPT, in its meeting held on 02 June 2020, has resolved vide resolution no.13 (a copy of Board resolution dated 02 June 2020 is furnished) approved the following:

(i). To send proposal to TAMP for levy of concessional coastal tariff on Berth Hire and other components of Vessel Related Charges for barges/ boats etc.

(ii). Till such time TAMP notifies the above concessional rates for "Inland Vessel" [as stated at (i) above], and with a view to implement an uniform policy in levy of tariff, Coastal rates may be levied for such vessels treating the rates as remitted/ remission from foreign rates for such classifications of vessels [Inland Vessel] as the Board has the jurisdiction to permit such remissions under section 53 of the Major Port Trust Act, 1963 and

(iii). The concessional tariff will be effective prospectively from the date of issuance of Circular, informing the above to the Trade.

4. Thus, in short, the VPT has filed the current proposal for inserting a note in the existing SOR of VPT as regards levy of concessional tariff at the concessional tariff prescribed for coastal vessel for berth hire charges and other components of VRC for barges/ boats etc. registered under the Inland Vessel's Act, 1917 and classified as Inland Vessels.

The rates approved by this Authority in the SOR of the VPT are ceiling rates. The VPT already has the flexibility to levy lower rates. The Board of Trustees of the VPT has approved levy of concessional coastal tariff prescribed for Berth Hire and other components of Vessel Related Charges for barges/ boats etc. to inland vessel. Since the proposal of the port is in the interest of the trade and is approved by the Board of Trustees, the consultation process and joint hearing on the proposed amendment was not felt necessary.

5.1. In the meanwhile, Mr. K. Vijay Gopal, an owner of the boat Sagar Rakshak – 2 (AP-IV-K-B-0156) vide its e-mail dated 18 December 2020 and subsequent reminder dated 08 January 2021 sought an order to be released to VPT against berth hire charges collected by VPT at foreign rate in respect of their boat which has not left the port since arrival. The main submission made by Mr.K. Vijay Gopal in its e-mail dated 18 December 2020 are summarised below:

(i). The said boat was purchased from AP State Government in an auction when the boat was being used by customs Vizag in the year 2012.

(ii). Since then the boat has not been registered and did not leave the VPT till date. The VPT has been collecting the berth hire charges under foreign category even though the boat was built in India and the original owner was State Government and in its life time it did not leave the VPT.

(iii). In the year 2018 the said boat was registered under IV Act of AP Maritime Board. Even then port has been collecting the same charges under foreign category till May 2020. After several representations, the port started collecting tariff for coastal category from the month of June 2020.

(iv). Hence, it is requested to consider their plea and give proper justified Orders to VPT regarding this matter.

5.2. A copy each of said e-mails dated 18 December 2020 and subsequent reminder dated 08 January 2021 received from K. Vijay Gopal was forwarded to VPT vide our letter dated 12 February 2021 for furnishing its comments.

5.3. In response, the VPT vide its e-mail dated 10 March 2021 has forwarded its letter dated 08 March 2021. The main points made by the VPT in its letter dated 10 March 2021 are summarized as follows:

(i). As per VPT Board Resolution No.13/2020-21 in respect of Agenda item No.S-1, during the meeting held on 02 June 2020, the concessional coastal tariff will be effected from the date of issue of the circular i.e. 26/29 June 2020.

(ii). Hence, the firm's contention to collect the charges in coastal tariff till May 2020 cannot be considered as per the decision of the Board of Trustees of VPT. Further, when sought clarification from TAMP, TAMP has replied to file a proposal for treating the vessels registered under Inland Vessel Act as coastal and the same to have prospective effect.

6. As regards reference made by VPT to TAMP letter on clarification sought by the port, it is to state the factual position stated in the said letter dated 20 January 2021 to the VPT. TAMP has drawn reference to the Board Resolution of VPT dated 02 June 2020 wherein, Board of Trustees of the VPT has resolved that the port files a proposal to TAMP for separate tariff for inland vessel. That being so, the VPT was requested to file a proposal seeking approval of tariff for inland vessel following the Tariff Guidelines, 2018 and Working Guidelines 2018. As per Clause 5.7.5 of the Working Guidelines 2018, the tariff to be approved by TAMP based on the proposal to be filed by the VPT shall have prospective effect.

It was further stated in the said letter in concluding para that the rates approved by this Authority are ceiling rates. The VPT already has the flexibility to levy concessional rates to inland vessel till the rates are approved by this Authority based on separate proposal to be filed by VPT.

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

(i). The VPT has mooted this proposal in light of the position brought out that many crafts/ boats which arrived at VPT for the purpose of Dredging, marine related operations, various infrastructural works etc. which do not ply beyond territorial waters of India, were being levied Vessel related charges at the tariff prescribed for Foreign going vessel rate reportedly based on the provision prescribed in 1.2 (i) of SOR.

The said clause of the SOR states that the status of the vessel 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 vessel related charges and therefore foreign rate is charged in respect of crafts registered under the Inland Vessels Act, 1917 which are permitted to ply in coastal water only.

(ii). Definition of Coastal vessel prescribed uniformly across all the Major Port Trusts and BOT operators including the SOR of VPT, is reproduced below:

"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 license issued by the Director General of Shipping/ Competent Authority.

(iii). The term Inland vessel is not defined in the existing approved SOR of VPT. The VPT has referred to the definition of the term "Inland Vessel" as per Inland Vessels Act, 1917 which is reproduced below:
"*Inland vessel or Inland mechanical propelled vessel means a mechanically propelled vessel, which ordinarily plies on inland water but does not include fishing vessel and a ship registered under the Merchant Shipping Act, 1958 and registered under the Inland Vessels Act, 1917" and classified as "Inland Vessels.*"

(iv). Definition of Inland vessel is prescribed in the SOR of Cochin Port Trust (COPT), Syama Prasad Mookerjee Port, Kolkata (SPMP) [earlier known as Kolkata Port Trust (KOPT)] and Mumbai Port Trust (MBPT) as given below:

(a). Cochin Port Trust (COPT):
"Inland Water Barge" shall mean barge, which plies only in inland waterways.

(b). Syama Prasad Mookerjee Port, Kolkata (SPMP) [earlier known as Kolkata Port Trust (KOPT)]:
'Inland Vessel' shall mean any vessel registered as such under the provision of the Inland Vessels Act, 1917.

(c). Mumbai Port Trust (MBPT):
"Inland Vessels" shall mean Vessels/ barges registered under Inland Vessel Act and cannot ply outside Inland water limit, such vessels do not fall under definition of offshore supply vessel

(v). The VPT has proposed to levy concession in the vessel related charges on inland vessel at par with the concessional tariff prescribed in the SOR for coastal vessel. For this, the port has proposed to insert a note stating Inland vessels shall be levied concessional coastal tariff on Berth Hire and other components of Vessel Related Charges for vessels registered under the Inland Vessel's Act, 1917 and classified as "Inland Vessels". This proposal is approved by Board of Trustees of VPT.

Since the proposal of VPT is already approved by its Board, this Authority approves insertion of the proposed note with slight modification in the language to state that Inland vessels registered under the Inland Vessels Act, 1917 and classified as Inland Vessels shall be levied concessional tariff in Berth Hire and other components of Vessel Related Charges at the level prescribed for coastal vessel in the Scale of Rates of the VPT.

It is relevant here to state that the definition of coastal vessel and coastal concession policy issued by the Government do not cover inland vessel. Hence, the concessional tariff prescribed for inland vessel as proposed by the VPT is to be treated as general concession and not to be construed as covered by concession in tariff for coastal vessel.

The VPT has proposed to insert the proposed note as note (iv) under 1.2. General Terms and Conditions of the existing SOR. It is seen that the existing SOR of the VPT already prescribes note (iv). Hence, the proposed new note is inserted as a last note no.(xxv) under 1.2. General Terms and Conditions of its SOR.

(vi). The Board of Trustees of the VPT has approved the proposed concessional tariff for inland vessel prospectively from the date of issuance of Circular by the VPT to the Trade treating the rates as remitted/ remission from foreign rates for such classification of the vessels (inland vessels) as the Board has the jurisdiction to permit such remissions under Section 53 of the Major Port Trusts Act, 1963. Further, since the rates approved by this Authority, are ceiling rates, the ports already have the flexibility to charge rates lower than the prescribed rates.

Ordinarily the Orders approved by this Authority have prospective effect after expiry of 30 days from the date of notification of the Order in the Gazette unless otherwise different arrangement is specifically mentioned in the respective tariff Orders. Since the VPT has, based on approval of Board of Trustees of VPT, already applied concessional tariff based on circular to trade and the proposal is for granting concessional rate, the proposed amendments to the SOR notified by this Authority vide Order No.TAMP/20/2019-VPT dated 29 November 2019, is made effective from the date of Gazette Notification of the Order passed in the

Gazette of India. Since the said note shall form part of the existing SOR of the VPT, the validity of the same will be coterminous with the validity of the SOR of the VPT.

(vii). As regards the contention of the VPT that port cannot consider to charge coastal tariff on inland vessel till May 2020 as per the decision of the Board of Trustees of VPT, it is to state that the Note (xv) under Clause 1.2 of the Scale of Rates prescribes that the rates prescribed in the SOR are ceiling rates and the port has the flexibility to charge lower rates. Recognising that the Inland vessel is not a foreign going vessel and also in view of the said clause (xv) under 1.2. in the SOR of VPT which is as per Tariff Policy, 2018, the VPT may consider concessional tariff for the period prior to June 2020 commonly applicable for all inland vessels without reference to any individual vessel after taking approval of its Board. For the said period, the concession to inland vessel may be granted in line with the current proposal of the port.

8.1. In the result, and for the reason given above and based on collective application of mind, the following note is inserted as note no.(xxv) under General Terms and Conditions 1.2 in the existing Scale of Rates of VPT approved by this Authority vide Order No.TAMP/20/2019-VPT dated 29 November 2019:

"*Inland vessels registered under the Inland Vessels Act, 1917 and classified as Inland Vessels shall be levied concessional tariff in Berth Hire and other components of Vessel Related Charges at the tariff level prescribed for coastal vessel in the Scale of Rates of the VPT."*

8.2. The note approved by this Authority will come into effect from the date of notification in the Gazette of India. The validity of the same will be coterminous with the validity of the SOR of the VPT.

8.3. The VPT is advised to suitably amend the existing SOR.

(T.S. Balasubramanian)
Member (Finance)