

Chapter 5

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The main sources of revenue for the Ports can be classified into (a) Vessel Related Charges viz. Port dues, pilotage fees, charges for berth hire, mooring, anchorage, beaching etc. (b) Cargo Related Charges viz. wharfage, demurrage, dwell time, storage etc. and; (c) Miscellaneous Charges viz. charges for fresh water supply, issue of entry permit, mobile cranes, forklifts etc. for cargo handling.

5.1 Gross Revenue and Revenue share

A PPP operator has to pay License fee and Revenue Share at the agreed rate stipulated in the respective LA/CA determined on the basis of a bid to the port.

(i) License fee: is the consideration for use of project site and equipment, payable annually in advance. It includes lease rent for waterfront and land. Lease rent for waterfront is a lump-sum, whereas lease rent for land is calculated as per the prevailing SoR notified by TAMP.

(ii) Revenue share: is a share as per the terms of LA/ CA which is calculated in either of the following ways:

- agreed *per cent* of the cargo handling charges collected by operator or;
- agreed rate on the TEUs handled or;
- agreed percentage of the gross revenue collected by the concessionaire, computed on the maximum tariff leviable for the use of the project/ project facilities and services. This has been adopted for CAs after 2008 Guidelines.

5.2 Non standardisation of provision for revenue sharing

The definition of revenue share varied from project to project. It was noticed that in the 18 completed projects, the agreement provision for revenue sharing was:

- ❖ Agreed *per cent* of gross revenue in respect of 10 projects;
- ❖ Agreed *per cent* of berth hire charges and cargo handling charges in five projects; and
- ❖ Agreed Rate multiplied by quantity/ TEUs in three projects.

It was also observed that in 12 projects the berth hire charges were shared in the agreed percentage. Out of the remaining five¹⁴ projects, in three (NSICT at JNPT, ESSAR Oil at KPT and UPCL at NMPT) berth hire charges were collected by the port directly and in two cases berth hire charges were collected by the concessionaires but not shared with the port.

Ministry stated (October 2015) that MCA defines Gross Revenue as all the revenues chargeable by the Concessionaire from the Project/Project Facilities and Services and thus there was no longer ambiguity about the term 'Gross Revenue'.

¹⁴ In case of LNG regassification terminal in CoPT, berth hire charges are not applicable since the berth is not used for operation.

5.3 Systems to verify correctness of revenue declared by the PPP partner

The MCA issued by MoS in January 2008 stipulated the following:

- the PPP operator to submit monthly reports on cargo traffic and tariff earned and collected (Article 7.1(a)(viii));
- the PPP operator to submit financial statements of the gross revenue for every six monthly period ending September and March every year duly certified by their Statutory Auditors (Article 9.4); and
- the port to appoint a firm of Chartered Accountants to conduct a Special Audit of the gross revenue and financial statements (Article 9.4).

Although in the pre-MCA period very few contracts included these clauses, in post 2008 agreements, these clauses were included in most cases.

5.3.1 Appointment of independent auditor

In PPP projects, there is a need to appoint independent auditor who provides assurance regarding collection and sharing of revenues as envisaged in contract. It was noted that in case of Container Terminal-I at ChPT, and ICTT in CoPT, though there was no provision in the LA for appointment of independent auditors, ports had appointed a firm of Chartered Accountants to verify the correctness of revenue declared and shared. However, of the 14 completed projects for which LAs were signed (July 1997 to May 2008) prior to MCA, the provision for appointment of independent auditor was included only in five¹⁵. Audit observed the following in this regard:

- (a) Clause 8.25 of the LA provided that licensee shall appoint the statutory auditors from out of a mutually agreed list of 10 Chartered Accountants. It was, however, seen that ICTPL appointed Batliboi and Co. as statutory auditor who, was the statutory auditor of the holding company, Gammon India Ltd. There was a thus a patent conflict of interest due to which the independence of the auditor could not be ensured.
- (b) In MbPT, though the operational period of five years (2007-12) of the own terminal 'Ballard Pier Station', given to Indira Container Terminal Private Ltd. (ICTPL) for operation along with the construction of Offshore Container Terminal was completed, no additional auditors were appointed.

In the four completed projects, whose agreements were signed after 2008, the provisions stipulated in MCA in this regard were included in three projects¹⁶ (except LNG Terminal by Petronet LNG Limited at CoPT). Additional Auditors were appointed by the ports in two cases (operation of Berth 15 at KPT was discontinued (November 2014) and LNG Regasification Terminal at CoPT is working at only 5.10 per cent capacity).

The findings of Auditors were as under:

¹⁵ (1) Development of Marine Liquid terminal at KPL, (2) Redevelopment of Bulk Terminal to Container Terminal in JNPT, (3) Development Container Terminal 2 in ChPT (4) Operation of Iron ore terminal at KPL (5) Operation of Coal Terminal at KPL.

¹⁶ (1) & (2) Multipurpose Cargo Berth 13 and Berth 15 at KPT, (3) Mechanised Coal handling facility at GCB in the Outer Harbour at VPT.

- The additional auditors pointed out short recovery of ₹ 1.10 crore for the period 2013-14 in respect of Multipurpose Cargo Berth 13 at KPT. It is pertinent to mention here that Auditor was appointed after the issue was pointed out by us in August 2014.
- In respect of Mechanised Coal Handling Facility at GCB at VPT, the Additional Auditors' Report (2013-14) pointed out:
 - A revenue share shortfall of ₹18.03 lakh;
 - Unsettled issues totaling ₹2.72 crore towards revenue share on berth hire charges, storage charges, dispatch of excess stock, stock left over etc.;
 - Non submission of vessel related files/ data.

While confirming the audit observation, Ministry stated (October 2015) that patent conflict of interest compromising the independence of the auditor in respect of ICTPL would be examined.

5.3.2 Independent verification of operational data of PPP Projects by ports

In all revenue sharing projects, there is a need to verify correctness of data submitted by the operator to ensure that correct share of revenue accrues to the port. It was noted that MPT has cross verified (June 2015) the traffic data provided by South West Port Limited (SWPL) with Bill of Entry data collected from vessel agents and claimed an additional revenue share of ₹8.24 lakh due to difference in quantity. This was reconciled to ₹7.08 lakh and recovered (July 2015) from SWPL. Such good practice was, however, not seen in other ports as a result of which there was a possibility of under reporting of revenue share by the operator, as was noted in following cases:

- (a) There was no procedure in place at KPT to verify the correctness of revenue shared by ABGKCTL as regards Container Berth 11 and 12. Though different rates were prescribed in the SoR for 20, 40 and 45 feet containers, there was no primary data available with port to cross verify the Monthly cargo traffic report submitted by ABGKCTL. Monthly cargo and revenue statements submitted from March 2007 were discontinued from July 2012 till the project was taken over by KPT in September 2013. Thus, KPT relied upon the data/ revenue share submitted/paid by ABGKCTL and did not verify their correctness.
- (b) Though LA with ICTPL provides for access to relevant data and conduct of independent verification, MbPT fully relied on the data provided by ICTPL and no independent verification was conducted to ascertain the veracity and reconcile the data furnished by ICTPL with the records available with the Port. Audit observed variations in revenue details submitted by concessionaire compared to parallel operational records such as Bill of Entry, Customs documents etc. :
 - Quantity handled as per gross revenue statement submitted by ICTPL for the period 2007-08 to 2012-13 was 145347 TEUs whereas as per Container Section records, the same was 154659 TEUs.

- Quantity handled for the period 2010-11 was 43644 TEUs whereas Annual Report (2010-11) of Gammon India Limited, the holding company, indicated that 51000 TEUs were handled by ICTPL.
 - The quantity handled as per gross revenue statement was 34071 and 43644 TEUs for the year 2009-10 and 2010-11 respectively whereas in the proposal submitted to TAMP for general revision of SoR, the same was indicated as 39002 TEUs and 51593 TEUs for the year 2009-10 and 2010-11 respectively.
- (c) Based on Audit Enquiry (August 2014), MPT has claimed a short recovery of revenue share of ₹7.52 crore towards MGT and short recovery for the period November 2005 to March 2015.
- (d) We also noticed a good practice at the CoPT which is recommended for replication. Invoices generated by IGTPL are captured in CoPT's system through intranet and the data is reconciled with monthly statements.

While confirming the audit observations, Ministry assured (October 2015) that the feasibility of putting in place an independent database/ methodology for ports to verify the data of terminal operators would be examined.

5.3.3 Operation of Escrow Account

Article 9.5 of the MCA prescribes that the concessionaire should maintain an escrow account with an approved bank and enter into an agreement to ensure that all proceeds for financing the project and all revenues and other receipts arising from the project and under any agreements, received by the concessionaire were deposited into such escrow account. The escrow bank was to act as the trustee for the benefit of, and as agent for, the concessioning authority, the lender's representative and the concessionaire. The agreement envisaged the following order of priority for withdrawal and appropriation of funds:

- All taxes due and payable by the concessionaire;
- License fee;
- All construction/implementation expenses relating to the project/project facilities and services, in accordance with the budget and subject to limits, if any, set out under the financing documents;
- All expenses relating to operations and management of the project/project facilities and services, in accordance with the budget and subject to limits, if any, set out under the Financing Documents;
- Debt service obligations under the Financing Documents;
- Revenue share and other sums payable to the concessioning authority and liquidated damages, if any;
- Any reserve requirements in accordance with the Financing Documents.

The concessionaire was at liberty to withdraw any sums outstanding in the escrow account after all the aforesaid payments due in any quarter have been made and/or adequate reserves have been created.

Audit observed that as per the order of priority of withdrawal, prescribed for escrow account, payment of revenue share was considered only after concessionaire's expenses related to operations and management of the project. This led to arrears of revenue share in respect of Berth 13 and 15 operated (since February 2013 and November 2013 respectively) by RAS and JRE at KPT, of ₹36.36 crore and ₹4.96 crore respectively as on 31 March 2015.

It was also observed that KPT failed to check all deposits into and withdrawals from the escrow account to ensure compliance to the order of priority. On scrutiny of Escrow Account for the period February 2013 to March 2015, short assessment of revenue share ₹11.34 crore based on 31.62 per cent of the gross amount ₹153.20 crore) deposited was observed. Letters regarding default under Escrow Agreement to Escrow Banks were issued only in January 2015 (berth 13) and May 2015 (berth 15) after it was pointed out (May 2014) by audit.

It is pertinent to note that in the Escrow Accounts in respect of two CAs (Airport Authority of India, New Delhi and Directorate of Information Technology, Government of Puducherry) Fixed Annual Premium and payment of Revenue Share were given priority over Debt Service and O&M expenses.

In view of the above, the Escrow agreement needs to be revisited to accord priority for withdrawal of revenue share and other dues to the concessioning authority just after the statutory dues. A system of realtime transfer at each receipt point, may be considered from Escrow Account, with a provision for subsequent periodical reconciliation.

While accepting the audit observation, Ministry stated (October 2015) that the suggestion for according higher priority to revenue share while withdrawing sums from Escrow account and real time transfer with subsequent periodical reconciliation would be considered.

5.4 Status of Revenue Sharing

The provisions for revenue sharing have not resulted in actual remittances in three cases as detailed below primarily on account of delay/recourse to arbitration by operator.

- In case of Berth 15 by UPCL at NMPT, even though the royalty for the first five years of operation was to be paid in lump sum in advance each year, NMPT has not collected the royalty of ₹5.70 crore for the period June 2012 to June 2015.
- In case of operation of BPS Terminal from June 2008 to December 2012, an amount of ₹11.34 crore was yet (December 2014) to be recovered from ICTPL.
Management stated (January 2015) that the dues are disputed and is being referred to arbitration. Ministry stated (October 2015) that MbPT advised ICTPL to settle the revenue share claim for ₹12.15 crore (June 2008 to June 2015) on top priority.
- In case of Berth 11 and 12 at KPT, ABGKCTL remitted ₹114.45 crore for the period commencing from March 2007 to July 2012 including penal interest for delays ranging between 70 and 90 days. Revenue share for the period

August 2012 to February 2013 worked out by KPT at ₹9.05 crore was outstanding. Revenue share for the period March 2013 to September 2013 was not quantified by KPT as details of revenue earned by ABGKCTL was not shared with KPT.

Though, in any of the applicable period (commencing from September 2007), ABGKCTL could not achieve the MGT, ABGKCTL did not remit the shortfall in revenue share, which worked out to ₹40.69 crore for the period September 2007 to September 2012. Revenue share on the shortfall in MGT for the period September 2012 to September 2013 could not be verified as data was not available with port. The matter is under arbitration.

Ministry stated (October 2015) that all claims relating to royalty, MGT etc. were included in the arbitration claim.

It needs to be highlighted that in two of the completed projects (Berth 15 at NMPT and Container Terminal-II at ChPT) there was provision for advance remittance of revenue share. The operator of Container Terminal-II (CITPL) has been remitting revenue share at 45.801 per cent of the gross revenue before 23rd of the month preceding to the month in which gross revenue pertains.

5.5 Procedural issues resulting in non recovery of ₹76.61 crore

It was also noted that the Ports were to collect an amount of ₹76.61 crore as detailed in the Annexures II and III from various PPP operators.

Recommendation 6: *In view of the low priority accorded to revenue share payment, it is suggested that a system may be devised to ensure real time transfer to the Port's account. This would prevent any arrears or need of follow up on this account.*