CHAPTER XII : MINISTRY OF SHIPPING

Chennai Port Trust

12.1 Avoidable expenditure due to delay in taking decision

Failure to decide between outsourcing the Chennai Port's dredging requirements and owning a dredger contributed to the delay in delivery of the dredger ordered by the Port and resulted in avoidable expenditure of Rs. 2.61 crore.

The Chennai Port Trust maintained the required depth in the Port with its own dredger *Coleroon* and by engaging dredgers of the Dredging Corporation of India (DCI).

The port dredger *Coleroon* had completed its economic life of 20 year by 1996 and required replacement. The Port decided (August 1996) to procure a dredger for replacing *Coleroon*. After inviting tenders, the Port Trust placed (November 2000) the work order costing Rs. 52.24 crore with the Cochin Shipyard Limited (CSL) for delivery of a dredger within 24 months.

Meanwhile, the Secretary (Shipping) of the Ministry, noting the high cost of dredging, suggested (September 2001) to the Port Trust to examine the possibility of selling the dredger under construction, and then to in-charter it for dredging in the Port. Acting on this suggestion, the Port Trust approached (January 2002) DCI to purchase the dredger. DCI agreed, subject to execution of a long-term dredging contract (10 to 20 years) with them. But, the Ministry, without assigning any reasons, did not agree (April 2003) to the Port entering into such a long-term contract with DCI. Thereafter, the Port Trust approached CSL for sale of the dredger directly from their shipyard. Accordingly, CSL initiated action in June 2003.

CSL completed the construction (cost: Rs. 56.23 crore) in October) 2003. As CSL was taking action to sell the dredger directly, the Port Trust allowed retention of the dredger by them. However, in March 2004, the Port Trust asked CSL to deliver the dredger if it could not sell the dredger in the near future. Meanwhile, the Port Trust paid an additional amount of Rs. 40 lakh to CSL towards charges for upkeep, maintenance, etc., for the period from October 2003 and for trials arranged for three prospective buyers. The Port Trust took delivery of the dredger in May 2004.

In the meantime, the dredger *Coleroon* was decommissioned in October 2002.

The Port Trust, after inviting tenders (February 2003) entrusted (June 2003) the work of deepening of Dr. Ambedkar Dock basin (estimated quantity 8.67 lakh cu.m.) and maintenance dredging in turning circle, approach channel, etc., (estimated quantity 7.15 lakh cu.m.) to DCI at rates ranging from Rs. 84 to Rs. 96.50 per cu.m., in addition to payment of Rs. 60 lakh towards mobilisation and demobilisation charges. The DCI commenced the work in September 2003 and completed it in March 2004.

During 2004-05, the Port Trust deployed its new dredger and dredged 8.911akh cu. m. The average dredging cost for the new dredger worked out to Rs. 61.68 per cu.m. including depreciation.

Initially, the Port Trust made (May 1996) a strong case in the feasibility study, for the acquisition of a new dredger, as the most economical option. Even in January 2002, the Committee constituted for examining the capacity and suitability of the proposed dredger concluded that the dredger under construction was most economical. Yet the Chennai Port Trust accepted the Ministry's suggestion for selling the dredger under construction.

In December 2003, when the Ministry advised the Port Trust to prepare a comparative study, the Port Trust reported that outsourcing was cheaper than owning a dredger, contradicting their earlier study. However, after taking delivery of the new dredger and operating it, the Port Trust reported (October 2004) to the Ministry that operating the dredger was more economical than engaging DCI. No response of the Ministry to this change in stand of the Port had been received (October 2005).

Hence, the shifting stands of the Port Trust and the Ministry points to serious deficiencies in the process of evaluating dredging options.

The Port Trust while entrusting the work of dredging including maintenance dredging to DCI in June 2003 did not consider the possibility of utilising the newly constructed dredger evidently due to its decision to sell the dredger. Had the Port Trust used the new dredger for maintenance dredging during September 2003 - March 2004, they need not have paid Rs. 7.58 crore to DCI and could get the job done at an estimated cost of Rs. 4.97 crore, thus saving Rs. 2.61 crore.

Thus, the inconsistent decisions of the Port Trust and the Ministry, after placing a work order for construction and supply of a dredger, led to the belated delivery of the dredger with consequent avoidable expenditure of Rs. 2.61 crore.

The matter was referred to the Ministry in August 2005; their reply was awaited as of December 2005.

12.2 Loss of revenue

The decision of the Chennai Port Trust not to levy appropriate charges for additional supply of sophisticated ABG cranes on non-BRS Port users led to continued loss of revenue aggregating to Rs. 1.24 crore till May 2005.

Between June 1997 and June 1998, the Chennai Port Trust (ChPT) hired four 10 tonne electric level luffing shore cranes (ABG Cranes) for a period of eight years. Pending fixation of appropriate hire charges for these new cranes, the Port supplied these cranes to the two Port users under Berth Reservation Scheme[1] (BRS operators) as well as other users on collection of hire charges at the rates[2] applicable to supply of additional 10 tonne cranes in the Scale of Rates (SOR).

The Chief Mechanical Engineer (CME) of the Port furnished the details of the newly inducted ABG cranes to the Financial Advisor and Chief Accounts Officer (FA&CAO) in November 1998 for fixing the rate of hire charges recoverable from users. After prolonged deliberations stretching over a period of 27 months regarding the number of shore cranes for which charges were included in the berth hire charges and on the levying of separate charges for the new cranes supplied, etc., the CME proposed (March 2001) a rate of Rs 15,000 per crane per shift with a minimum of Rs 7500 per half shift or part thereof. The FA&CAO, justifying the fixation of higher rate for ABG cranes in view of their higher capacity and productivity, proposed (May 2001) to recover the differential cost from all the users from the dates of their induction. The Chairman, ChPT approved the proposal in May 2001. However, in a meeting of heads of department of the Port held in November 2002, presided over by the Chairman, it was decided to recover the enhanced charges only from BRS operators.

As berth hire charges (BHC) in SOR included the charges for only one shore crane, ChPT ought to have extended the enhanced rate to other Port users also

[1] Under Berth Reservation Scheme two berths with a shore crane each were reserved for two licensees on special conditions like payment of berth reservation charges in addition to regular berth hire charges and other vessel related charges, utilisation of these berths by the Port during the non-occupancy of the berths by the licensees' vessels.

[2] At Rs. 1592.50 per crane per shift with a minimum of Rs. 822.50 per half shift or part thereof up to March 2000 and thereafter at Rs. 3185 per crane per shift with a minimum of Rs. 1645 for half shift or part thereof.

for use of ABG cranes as additional cranes. Hence, the decision of November 2002 to exclude the non-BRS operators from the levy of enhanced rates was not justified.

The decision of ChPT to exclude the non-BRS operators from the purview of the enhanced charges on the ABG cranes supplied additionally led to a loss of revenue on continued basis that had accumulated to Rs 1.24 crore till May 2005. Besides, the demand for Rs 77.76 lakh towards differential charges relating to the period from June 1997 to September 2001 raised on BRS operators was yet to be realised (November 2005).

The Ministry in their reply (December 2005) justified the non-levy of charges for additional supply of ABG cranes on the non-BRS operators on the following grounds:

(i) Till the general revision of SOR in October 2002, the number of cranes for which charges were included in the berth hire charges was not specifically mentioned in SOR. Hence, there was no need to levy charges for additional supply of cranes. Further, the Port's initial proposal to collect the differential hire charges was objected to by the Port users on the ground that there was no provision in SOR for collection of differential cost.

(ii) Individual tariff items may not be strictly cost based in view of the overall cost plus approach adopted by the Tariff Authority for Major Ports (TAMP).

(iii) Fixation of new rates whenever new equipment are purchased or hired would destabilize the SOR and lead to underutilisation of the latest addition to the pool of equipment due to higher tariff. Further as per TAMP's observation, tariff should be the same for similar services.

(iv) Non-recovery of capital cost of new equipment would only be a short term phenomenon confined only to the period between the date of procurement and the next general revision of tariffs. The two general review proposals for revision of tariff in March 2000 and October 2002 would have taken care of the lease rent payable for the ABG cranes.

The Ministry's reply was not tenable in view of the following:

(a) The Ministry did not take into account the fact that only one shore crane was used while indicating the number of cranes for which charges were included in the berth hire charges. Further, the Port had clarified to TAMP

during revision of SOR in October 2002 that the composite berth hire charges included charges for only one crane. The Port Trust also collected charges for additional supply of these cranes at the rates applicable to 10 tonne cranes pending fixation of appropriate hire charges for these new cranes.

Further, there was a specific provision in the SOR (till October 2002) for recovery of actual charges incurred by the Port from the Port users whenever hired cranes were provided to them. Hence, Ministry's reply that there was no provision in SOR was not tenable.

(b) There was a specific provision in the Port's Manual for fixation of appropriate rate whenever a new machinery was purchased. The ABG cranes were more sophisticated with higher capacity and productivity and they were hired at a huge cost of Rs 4.66 crore per year with 2 *per cent* annual escalation. TAMP also suggested (February 2001) a separate rate when the service rendered varied or a new facility was created at a huge cost. Thus there was justification for fixation of enhanced rate and Port Trust also acted initially only as per the provisions in the Port's Manual and SOR.

(c) The stand of the Ministry would apply to BRS operators also but the Port Trust decided to revise the rate for them.

Hence, the Ministry's reply justifying the exclusion of non-BRS operators from levy of enhanced rates on the sophisticated ABG cranes inducted at a huge cost and supplied additionally was not justified, and not in the financial interests of the Port.

12.3 Vacant units in a building specifically constructed for Port users

The Port Trust fixed unrealistically high base rent for allotment of office space and imposed other restrictive conditions that resulted in loss of revenue of Rs. 1.19 crore.

To meet the demand from Port users for provision of accommodation close to the container terminal, the Board of Trustees (Board) of the Chennai Port Trust approved (April 1996) construction of an office complex comprising basement, ground floor and five upper floors with a total built up area of about 4200 sq.m. at an estimated cost of Rs. 4.84 crore. The construction was completed in November 2000 at a cost of Rs. 4.53 crore. The total built up area was 4512.91 sq.m. including the basement designed for car parking.

The Port Trust calculated (January 2001) monthly rental value of the building at Rs. 377 per sq.m. after reckoning (a) depreciation at 2 *per cent* (b)

maintenance at 5 *per cent* and (c) return and interest at 20 *per cent* on the estimated cost of building and (d) tax at 30 *per cent* on the above elements. Though market rent in the area ranged between Rs. 130 and Rs. 215 per sq.m., the Port Trust decided (April 2001) to adopt the above base rent for allotment on the ground that the office complex was newly constructed with adequate facilities.

The Port Trust invited the tender for allotment of office space only in July 2001, seven months after completion of the building due to delay in fixing the minimum reserve rent. The lease period for allotment of units (each floor divided into two units) was three years and was extendable at the discretion of the Board.

The other conditions of the tender included (i) payment of one year lease rent as non-refundable premium and one year lease rent as security deposit, (ii) 10 *per cent* annual (compounded) increase in the rate of license fee, (iii) additional levy for proportionate common open area around the building at Rs. 38 per sq.m. and (iv) separate license fee for car parking area in the basement at the same rate applicable for office space allotted. Against 16 tenders documents sold, only one offer (Rs. 390 per sq.m. per month) for one unit on the fourth floor was received.

The Port Trust allotted (November 2001) one unit on the fourth floor to the firm initially for three years. Based on further request, the Port Trust allotted (December 2001) the second unit on the fourth floor to the same firm at the same rate. The licensee however vacated the two units in November 2004.

The Port Trust redivided the remaining floor space into 41 units and invited the second tender in February 2002 with similar terms and conditions. Though 20 tender documents were sold, no offer was received.

The Port Trust invited the third tender in April 2002 without indicating the minimum reserve rent. All other conditions of the earlier tender remained the same. Based on an offer for 17 units, all the units on the second and the third floors were allotted (June 2002) at Rs. 215 per sq.m. per month. The fourth tender fixing minimum rent of Rs. 200 (July 2002) did not elicit any response.

In the fifth tender (July 2003), the Port Trust reduced the rate for car parking to Rs. 60 per sq.m. per month besides reducing the rate of annual increase in license fee to 5 *per cent* (compounded). The tender condition for payment of additional license fee for open area was also withdrawn. Further, the lease period was fixed as ten years but the bidder had to quote rate for the entire

floor. No offer was received for this tender also. In December 2003, the allottee of the second and the third floors vacated the premises.

The rentable area of office premises so far tendered included a proportionate share of common areas like corridor/lobby, staircase, lift and toilets. In view of the repeated poor response, the Port Trust reworked (April 2004) the rentable area as per the CPWD Manual, by excluding the common covered areas. Thus 3662 sq.m. (ground floor and other four floors except to fourth floor) tendered earlier was reduced to 2079 sq.m.

Adopting the revised area and redividing each floor into four to six units, the Port Trust invited the sixth tender in April 2004 in which the condition of non-refundable premium was withdrawn. The license fee was fixed at Re. one per sq.m. per year with 30 *per cent* escalation after every five years. A reserved upfront premium for ten years was fixed based on the rate of Rs. 130 per sq.m. (Rs. 60 per sq.m. for basement) per month with 2 *per cent* annual escalation after allowing 6 *per cent* discount factor. The upfront premium for ten years was to be paid within one month from the date of allotment. Based on the offers all the units on second floor, third floor and entire basement were allotted from August 2004 for ten years.

Subsequently, two tenders (seventh and eighth) were invited in July 2004 and October 2004 with similar conditions. The Port Trust allotted one unit on the first floor and all units on the fifth floor from October 2004 and all units on the fourth floor from December 2004 based on these two tenders. The allotments of office space under sixth to eighth tenders were made at upfront premium based on the monthly rates ranging between Rs. 132 and Rs. 141 per sq.m. As of May 2005, four units on first floor and entire ground floor remained vacant.

The above chain of events indicates that the realistic monthly rent for the building in 2001 was about Rs. 130 per sq.m. The Port Trust's expectation of rent that this building would fetch ignored the fact that prevalent market rent rates would be the determinant factor and not its calculation based on return on investment, depreciation, etc. But the Port Trust, apart from fixing the minimum reserve rent at a higher level, imposed additional conditions in the first four tenders viz. payment of non-refundable premium without any firm commitment for longer lease period, additional levy for open space, etc. The rentable area upto fifth tender included a proportionate share of common covered space.

Had the Port Trust adopted an approach in alignment with market realities, the

loss of revenue of Rs. 1.19 crore (calculated at Rs. 130 per sq. m.), due to the area remaining vacant, during November 2000 to May 2005, could have been avoided.

The Ministry replied (April 2005) that the Port Trust initially fixed the reserve price based on the principle of return on investment and when that option did not yield the expected result, the next option of fixing the reserve price based on the scale of rates of the Port and the market rate were followed. The Ministry further stated that even after reducing the reserve price to Rs. 130 per sq.m., some units remained vacant.

Ministry’s reply does not constitute acceptable justification for the Port’s actions, because they ignored market realities in their decision making process. Further, the financial impact of the restrictive conditions were not quantified and taken into account while determining the base rentals.

Cochin Port Trust

12.4 Extension of undue advantage to a private firm

Cochin Port Trust extended undue advantage to a private firm by not levying penal interest of Rs. 31.96 lakh for the delay in remittance of premium amount as stipulated in the conditions of allotment of land on lease.

Cochin Port Trust (CoPT) allotted (June 2000) about 4.79 acres of land in the commercial category on lease to Konkan Storage Systems Private Limited (firm) at a premium of Rs. 71.85 lakh for construction of a tank farm. The period of lease was 30 years at the annual rent of Rs. 4.13 lakh per acre. The conditions of allotment stipulated that the firm should take possession of the land within 15 days from the date of allotment order failing which the rent would accrue from the 16th day of the allotment order. The firm was required to remit security deposit equivalent to lease rent for one year (Rs. 19.80 lakh), the premium amount (Rs. 71.85 lakh) and the half-yearly rent (Rs. 9.90 lakh) in advance. The firm accepted the offer and remitted the security deposit of Rs. 19.80 lakh and advance instalment of half yearly rent of Rs. 9.90 lakh in July 2000. The premium amount was, however, not remitted in advance as required in the allotment order but in four instalments between March 2001 and November 2002.

Clause 21 of the allotment order provided for levy of penal interest at the rate of 24 *per cent* per annum in the event of delay in payment of dues to CoPT. But no penal interest was levied on the firm as per the conditions of allotment for the delayed remittance of the premium amount. The penal interest for the delay worked out to Rs. 31.96 lakh.

In response to the Audit observation (April 2003), CoPT initially justified the non-realisation of penal interest and argued that the firm was given extension of time for remittance of premium amount since they were facing liquidity crisis at that time and stringent action would have resulted in the investor backing out. It was also stated that Clause 21 of the order applied only to dues and not to the payments which were the preconditions for taking over the land.

The argument was not tenable as remittance of premium in advance was a pre requisite for allotment and when the offer for allotment was accepted by the bidder, the premium became due to Port Trust. CoPT had placed the issue before the Board of Trustees in June 2003 and the Board referred the matter to a sub committee. Final decision of the committee was awaited (September 2005).

The matter was referred to the Ministry in October 2005; their reply was awaited as of December 2005.

Kolkata Port Trust

12.5 Avoidable loss on investment

Kolkata Port Trust's investment in the US-64 scheme in breach of Government's directives, coupled with its failure to take timely action to redeem the units resulted in an avoidable capital loss of Rs. 8.07 crore.

In December 1994, the Government of India had explicitly barred the investment of Provident Fund (PF) balances by PSUs and the Port Trusts in equity based mutual funds having elements of speculation and risk. But the Trustees of the PF (Contributory/Non-contributory) of the Kolkata Port Trust (Port Trust), which had already invested Rs. 9.83 crore form its PF in 57.33 lakh units of US-64 scheme (Scheme) of the Unit Trust of India (UTI) in January/July 1994, invested an additional amount of Rs. 7.60 crore between July 1995 and August 1995 in 48.83 lakh units. Also, during the next four years it reinvested the dividend and bonus amounting to Rs. 4.82 crore in 35.60 lakh units of the Scheme. The total amount invested in the Scheme stood at Rs. 22.25 crore in July 2000 in 1.42 crore of units.

It was only much later, in December 2002, that the Ministry of Shipping clarified that investment in UTI was permitted, after the Port Trusts considered all relevant factors including rate of return, risk factors etc.

Meanwhile, in July 1998 UTI announced that the reserves of the Scheme had turned negative to the extent of Rs. 1098 crore. This was followed by redemption of US-64 units amounting to Rs. 1500 crore in the first six months of the fiscal year ending June 1999. Despite these developments, the Port Trust retained its investment in the Scheme. In July 2000, the dividend declared was 13.75 *percent*, which fell to 10 *percent* in July 2001. In addition, the UTI announced the suspension of sale and repurchase of its US-64 units. No dividend was declared by UTI subsequently.

Audit noted that during 1999 and 2000, the Port Trust had invested its PF balance in other deposits and bonds and earned interest at the rate of 14 *percent* and 13 *percent* respectively per annum. However, the Port Trust did not consider redeploying its balances in the Scheme in such deposit or funds despite the declining trend of returns and the significant erosion of its reserves. In March 2003, the UTI had intimated the Port Trust that they had

decided to terminate the Scheme from June 2003. Consequently, the Port Trust considered (April 2003) that it would be financially beneficial to invest the proceeds in earmarked Government securities at the higher rate of fixed interest and redeemed (May 2003) all the 1.42 crore units of the Scheme for Rs. 14.18 crore against the total cost of investment of Rs. 22.25 crore. This resulted in capital loss of Rs. 8.07 crore.

Thus, the Port Trust's decision to invest in a Scheme having elements of speculation and risk, that was in violation of Government's extant directive, coupled with its failure to take timely action to redeem its investment in the Scheme resulted in an avoidable loss of Rs. 8.07 crore.

The Port Trust stated in August 2005 that the Trustees of PF could not apprehend the fall in the rate of dividend in respect of US-64 Scheme in July 2001. The Ministry also endorsed the views of the Port Trust in October 2005. Audit noted that the reply is not acceptable since the Trustees had ignored UTI’s announcement in July 1998 that the reserves of this Scheme had turned negative. Further, Audit attempted to verify Port Trust's reply by seeking details of the meetings of the Trustees of the Provident Fund in which matters relating to the declining returns from the Scheme were considered prior to its closure.

These records were not made available and the Port Trust stated that the Trustees did not meet on a regular basis regarding investments. Hence, there was no evidence to conclude that the Port's decision to hold US-64 units in the face of declining returns and eroding reserves was a considered one. This pointed to a serious inadequacy in the Port's financial management.

Marine Engineering and Research Institute, Kolkata

12.6 Undue benefit to a supplier

Undue benefit to a supplier by releasing payment, in violation of the conditions in the purchase order, for an equipment that remained uninstalled resulted in unfruitful expenditure of Rs 59.78 lakh defeating the very purpose of procurement.

The Ministry of Shipping sanctioned (March 2001) Rs 60 lakh to the Marine Engineering and Research Institute, Kolkata for purchase and installation of an old Marine Propulsion Engine with accessories, to update its training facilities according to the 'Standard of Training Certification & Watch keeping of Sea farers’ prescribed by the International Maritime Organisation in August 1998. The purchase order for the supply and installation of the engine was placed

with M/s. Maritime Engineers (supplier) at a cost of Rs 58.35 lakh in March 2001 without specifying any time schedule for the supply and installation of the engine.

The purchase order clearly mentioned that any item (s) found unserviceable, damaged or not conforming to the specification(s) would summarily be rejected at the cost of the supplier and that the payment would be released only after transportation, successful installation and satisfactory commissioning as well as trial of the engine. During transportation by the supplier, the engine had overturned in the premises of the Institute in August 2001. Thereafter, till June 2005, it could not be installed and commissioned due to the damage caused by the accident. Full repairs would have required complete dismantling and rectification of the internal defects of the engine. However, the Institute released the entire payment of Rs. 59.78 lakh including sales tax to the supplier between July 2001 and 2002 though the conditions in the purchase order requiring successful installation and satisfactory commissioning as well as trial of the engine were not fulfilled.

The Institute in reply (October 2005) stated that overhauling of the engine was nearly completed and that the engine would only be taken into stock after completion of activities relating to engine trial.

The reply did not clarify the reasons on account of which the entire payment was released in violation of the conditions mentioned in the purchase order. Non-installation of the engine over the last four years defeated the purpose of its procurement which was to impart training to the cadets of the Institute. Thus, unfruitful expenditure of Rs. 59.78 lakh, was incurred by the Institute.

The matter was referred to the Ministry in July 2005; their reply was awaited as of December 2005.

Mormugao Port Trust

12.7 Unfruitful investment

The Port Trust purchased 20,500 sq. mtrs of land for Rs. 2.46 crore with no specific utilisation plan resulting in the land lying idle even after six years of its purchase.

The Mormugao Port Trust (Port Trust) had proposed (June 1998) purchase of 20,500 sq. mtrs. of land offered by the Vasco Planning and Development Authority (VPDA) at a total cost of Rs. 2.46 crore for future Port development works and other utility services. The Government of India approved the

proposal in principle in August 1998 on the condition that the expenditure would be met by the Port from its own internal resources. Accordingly, the Port Trust purchased the land from VPDA for Rs. 2.46 crore and executed an agreement of conveyance (May 1999).

Audit noted that the Ministry had advised the Port (August 1999) to send the Plan for use of the said land and take steps to prevent encroachment. Though the Port had replied (October 1999) that the land could be used for development of container freight station, the land actually remained unutilised (June 2005).

Further, inspite of a provision in the agreement of conveyance that on payment of the entire purchase price a final sale deed shall be executed and registered, the Port had not completed the registration of the land in its name (June 2005).

The Port replied (March 2005) that though many companies had shown interest in the said land to stock bulk clean cargo, only one had come forward with utilisation plan. The Port further stated that the land being adjacent to the NH 17-A is a prime property and an asset to the Port considering the paucity of land in the Port area. As regards the sale deed, VPDA was requested in February 2005 to execute the same.

The reply showed that the Port Trust had no specific plans to use the land for Port services and was instead waiting for private parties to come up with proposals. Moreover, the funds spent on this land acquisition could have been utilised by the Port for productive revenue yielding purposes, instead of the idle investment in lands, which in any case is not the Port's core business.

The matter was referred to the Ministry in July 2005; their reply was awaited as of December 2005.

Mumbai Port Trust

12.8 Avoidable expenditure

Failure of the Port to bring to the notice of the Arbitrator non-claim of duty drawback on re-export of one dredger by the contractor led to avoidable payment of Rs. 41 lakh as reimbursement of customs duty. Subsequently, an amount of Rs. 47.06 lakh (including interest of Rs. 6.06 lakh) was recovered from the contractor at the instance of the audit.

Mumbai Port Trust (Port Trust) engaged (November 2000) a foreign contractor (contractor) to carry out maintenance dredging for two years 2000-01 and 2001-02. Clause 70.2 of General Condition of the contract stipulated

that if there was any addition to or reduction in the cost to the contractor due to change in legislation occurring after "the date 30 days prior to the latest date for submission of tenders", the same should be added to or deducted from the contract price. In the Conditions of Particular Application, clauses 54.13 and 73.1 (a) enjoined on the contractor the responsibility of payment of all duties, fees and other charges applicable from time to time in connection with or arising from the execution of work or supply of materials and equipment.

The contractor imported (November 2000) two dredgers for use in dredging at the Port. At the time of submission of tenders (June 2000) and import of the dredgers in the first year of contract, the import of dredger was exempt from customs duty. However, the exemption was withdrawn and a duty of five *percent* became payable with effect from March 2001. Consequently, the contractor paid customs duty aggregating to Rs. 6.88 crore while importing (September 2001) two dredgers for the second year of the contract. The contractor claimed reimbursement of duty from the Port in terms of the condition governing additional cost arising from change in legislation. The claim was refused by the Port and the issue was referred to (October 2001) arbitration.

The two dredgers were re-exported (December 2001) by the contractor on completion of the Port's contract. The re-export being within six months of the import, customs duty drawback of Rs. 5.85 crore at 85 percent of the customs duty paid on import was admissible to the contractor under the Customs Act 1962. However, the contractor claimed duty drawback of Rs.5.44 crore on one dredger. The duty drawback was not claimed on the second dredger as the contractor intended to import the second dredger again for another work without paying duty by virtue of the unclaimed drawback.

Subsequently, in the arbitration award (January 2003) the contractor's claim for reimbursement was upheld and the Port was asked to reimburse the duty of Rs. 6.88 crore after adjusting the duty drawback of Rs. 5.44 crore along with 10 percent interest from the date of award up to the date of payment.

However, the Port failed to verify matters and did not appraise Arbitrator of the fact that when computing the amount payable by the Port, the duty drawback on the second dredger amounting to Rs. 0.41 crore that was not claimed by the contractor for his own reasons, was not excluded. As a result, the Port paid a sum of Rs. 1.45 crore including interest of Rs. one lakh involving excess payment of Rs. 41 lakh excluding interest.

In response to the Audit observation (December 2003), the Port Trust issued notice to the contractor (September 2004) and recovered Rs. 47.06 lakh (October 2004) including interest of Rs. 6.06 lakh from him. The Ministry confirmed (June 2005) the aforesaid recovery.

12.9 Short recovery of sales expenses from the sale proceeds of unclaimed cargo

Sales expenses of unclaimed cargo were recovered at a flat rate of 10 *per cent* from the sale proceeds without verifying actual expenses. This resulted in short recovery of Rs. 7.97 crore during the period 1998-99 to 2003-04.

To realise Customs/Port Trust dues, cargo which is not cleared or not claimed within two months of landing is sold by the Port Trust following the procedure laid down in the Major Port Trust Act, 1963 (Act).

According to the provisions contained in Section 63 of the Act, the proceeds of every sale under Section 61 or 62 shall be applied first towards payment of the expenses of the sale. In accordance with the relevant decision of the Board of Trustees of the Mumbai Port Trust (June 1968), the sales expenses were required to be worked out on the basis of actual expenditure. However, subsequently, it was directed by the Chairman of the Port Trust (July 1991) that sales expenses should be recovered at the flat rate of 10 *per cent* of the sale proceeds with effect from 1989-90. The basis for this decision was not available with the Port Trust.

Audit ascertained (March 2004) that the actual expenditure incurred by the Port Trust on sale of unclaimed cargo, between 1998-99 to 2002-03 varied between 11 *per cent* and 28 *per cent*[3] of the amounts realised from the sale for such cargo. In 2003-04, sales expenses were abnormally high at 217 *per cent* due to the fact that only a few lots could be sold because of a newly introduced system of e-auction bids. The Port Trust realised sale proceeds of Rs. 82.71 crore from these sales and incurred expenditure of Rs. 16.24 crore on these sales during 1998-2004 but recovered only Rs. 8.27 crore only towards sale expenses involving a short recovery of Rs. 7.97 crore.

The Ministry responded (December 2004) that Audit considered salaries and wages of staff of Docks Auction Sales Branch while calculating establishment expenses instead of salaries of employees actually attending the auction sale

[3] 1998-99 – 11 *per cent*, 1999-2000 – 28 *per cent*, 2000-01 – 26 *per cent*, 2001-02 – 16 percent, 2002-03 – 15 *per cent*, 2003-04 – 217 *per cent*

related work. The reply was not acceptable because prior to 1990 when the sales expenses were recovered on actual basis, such expenses included establishment expenses, that salaries of warehouse, sales section and audit staff.

Audit also noted that the Chairman, Mumbai Port Trust had approved (December 2004) revision of the rate of allocation of sales expenses from 10 *per cent* to 21 *per cent*, taking into account the actual sales expenses incurred during the previous six years. Thus the gap between sales expenditure and its recovery, pointed out in audit, was sought to be bridged by the Port Trust by enhancing the percentage of recovery.

Tuticorin Port Trust

12.10 Unnecessary construction of a warehouse

Construction of an additional warehouse based on under-estimation of existing storage capacity and unrealistic projection of future demand resulted in blocking up of funds amounting to Rs. 1.62 crore.

The Tuticorin Port had three warehouses for general cargo with a floor capacity* of about 7,000 tonne each depending on the stowage and density of cargo after leaving aisle spaces for the movement of trucks etc.

Following a demand (February 1997) from Port users for additional warehouse capacity, the Traffic Department of the Port conducted (April 1997) a study of the quantum of cargo that might require warehousing during the next five years. In this study, the annual capacity utilisation of the three existing warehouses was estimated at 1.50 lakh tonne of general cargo with average transit time of two months. With projection of warehousing requirement at 2.19 lakh tonne for 1997-98, increasing to 2.46 lakh tonne for 2000-01 and 2001-2002, the study proposed construction of an additional warehouse. The proposal was recommended (August 1998) by the Project Investment Committee and approved by the Board of Trustees of the Port in August 1998. Construction of the additional warehouse with floor capacity of 5700 tonne was completed in August 2002 at a cost of Rs. 1.62 crore.

Audit noted the following:

(i) The basis for estimating the capacity utilisation of the three old warehouses and annual projection of cargo requiring warehousing during

---

* Warehouse I-5220 sq. m.; Warehouses II and III-4860 sq.m. each

1997-2002 were not on record. The actual total annual cargo that moved through the three warehouses during 1994-95 to 1996-97 varied only between 85,279 and 88,720 tonne with transit time of general cargo ranging from one to four months. Yet, the Traffic Department projected (April 1997) the warehousing requirement between 2.19 lakh and 2.46 lakh tonne per annum for 1997-2002 without indicating any basis for the steep rise. The Project Investment Committee, constituted specifically to examine the proposal for construction of additional warehouse, also did not reassess the justification for an additional warehouse in the light of the steep rise in the projected warehousing requirement.

(ii) Against the annual capacity utilisation of the three old warehouses estimated at 1.50 lakh tonne, the Port accommodated 2.37 lakh tonne of cargo during 2002-03 in the three old warehouses. This indicated incorrect estimation of the available annual capacity of the three existing warehouses.

(iii) The new warehouse with floor space to accommodate 5700 tonne remained vacant for 29 out of 34 months since the date of its commissioning upto May 2005. Cargo occupying floor space ranging from 90 to 2880 sq.m. were stored on 41 days in the new warehouse during the remaining five months. Audit noted that the vacant floor space in the three existing warehouses was quite adequate to accommodate the cargo stored in the new warehouse on 26 days. Efficient control over transit time during the remaining 15 days would have created sufficient space in the existing three warehouses to accommodate more cargo. Moreover, the overall capacity utilisation of the three old warehouses during August 2002 to March 2005 was also poor as detailed below:

Year	Three old warehouses					Additional warehouse	
	Quantity stored (tonne)	**Available area* (sq.m.)**	**Actual area utilised (sq.m.)**	**Vacancy (sq.m.)**	**Percentage of vacancy**	**Quantity stored (tonne)**	**Actual area utilised (sq.m.)**
2002-03	2,36,879	36,30,420 @	9,11,840 @	27,18,580 @	75@	4837	9200 @
2003-04	1,31,867	54,68,040	28,49,100	26,18,940	49	4566	41,960
2004-05	58,710	54,53,100	3,37,610	51,15,490	94	1488	450

* Day-wise area annualised
@ For the period from August 2002 to March 2003

Thus, the construction of an additional warehouse by the Port Trust based on under estimation of available capacity coupled with unrealistic projection of future traffic resulted in avoidable blocking of Port's funds of Rs. 1.62 crore

since August 2002.

The matter was referred to the Ministry in August 2005; their reply was awaited as of November 2005.

Visakhapatnam Port Trust

12.11 Non-realisation of interest on the investment in private bonds

Injudicious decision of the Visakhapatnam Port Trust in making investments in privately placed bonds of the company which defaulted and delayed the redemption resulted in a loss of Rs. 78.25 lakh.

The Department of Public Enterprises (DPE), Government of India (GOI) issued guidelines in December 1991 in regard to investment of surplus funds of public sector enterprises. The guidelines specified, *inter-alia*, that

- The maturity of investments should not exceed one year; however, in respect of term deposits with banks the investment could be for a period upto three years.
- The instruments obtained should have been rated by an established credit rating agency and accorded the highest credit rating signifying highest safety.

The Ministry of Surface Transport in September 1996 and April 1997 advised that all the Port Trusts should bear in mind the instructions issued by the DPE while investing surplus funds.

The Visakhapatnam Port Trust (VPT) invested during December 1999 and January 2000 Rs. 11.08 crore in the 13.75 *per cent* privately placed bonds of the Industrial Development Corporation of Orissa Ltd. (company) from the available balances under 'Reserves' (Rs. 8.64 crore) and Provident Fund (Rs. 2.44 crore). The company allotted 1108 bonds with face value of Rs. one lakh each on 28 February 2000 redeemable in three years from the date of allotment. The repayment of the principal amount on the due date and payment of interest thereon was guaranteed by the Government of Orissa until the bonds were .redeemed in full. The company paid interest for four half-year periods at 13.75 *per cent* upto October 2001 and defaulted thereafter. The company paid the redemption proceeds of Rs. 11.08 crore and interest for the period from October 2001 to February 2003 amounting to Rs. 1.82 crore, only on 23 December 2003

VPT raised a claim of Rs. 1.50 crore on the company on 31 December 2003 towards interest for the period from March 2003 to December 2003 at 13.75 *per cent*. However audit worked out the amount due as Rs. l.55 crore. The company offered to pay interest only at 8.5 *per cent* for the period of delay in redemption. In August 2004 VPT accepted the offer of the company and received Rs 76.63 lakh in full and final settlement of dues. In the process, VPT lost revenue of Rs. 78.25 lakh.

Audit observed that VPT invested its funds in the privately placed bonds issue of three year duration, without making any proper financial appraisal. There was no credit rating of the investment by any agency. The investment was made exclusively on the ground that the Government of Orissa stood guarantee for repayment of principal on redemption of the bonds and payment of interest. However, the financial position of the company and the fact that it incurred losses during 1996-99 was not considered. Audit further noticed that the Securities and Exchange Board of India, when approached by VPT, expressed (January 2003) its inability to take any action in this regard as the issue was privately placed and did not fall within its regulatory purview. Given this exclusion, it was incumbent upon VPT to exercise a higher degree of caution before investing in the company.

Thus, the decision of VPT in making investments in privately placed bonds of the company, in disregard of the DPE guidelines, resulted in a loss of Rs. 78.25 lakh.

VPT stated (May 2004) that the guidelines of the DPE were not applicable to it. The Ministry endorsed (June 2004) the reply of VPT given in May 2004. This was not tenable as the Ministry of Surface Transport had instructed all Port Trusts specifically in September 1996 and April 1997 to follow DPE guidelines on investment of surplus funds. Further, the general need to exercise prudence would include the requirement of seeking a high credit rating of the financial instrument and a detailed financial appraisal of the issuing company.

Visakhapatnam Dock Labour Board

12.12 Short realisation of interest due to incorrect interpretation

Visakhapatnam Dock Labour Board short realised Rs. 2.88 crore due to incorrect interpretation of its resolution.

The Deputy Chairman of the Visakhapatnam Dock Labour Board (VDLB)

accorded sanction (October 2000) for the investment of Rs. 20 crore with the Visakhapatnam Port Trust (VPT) subject to the condition that VPT should be asked to pay interest that would have been earned if the funds were invested in long-term avenues. This was brought to the notice of the Investment Committee. VPT sought an additional (October 2000) temporary loan of Rs. 25 crore and stated that the terms and conditions of the loan could be agreed mutually.

VDLB in its meeting held in October 2000, taking into cognizance the offer of the Indian Telephone Industries at the Coupon rate of interest at 12 *per cent* per annum, resolved to collect interest at 12 *per cent* per annum on the investment of Rs. 20 crore made with VPT and further decided to collect from VPT the prevailing rate of interest for future investments.

VDLB invested in all Rs. 72.50 crore with the VPT during October 2000 to March 2002. VPT refunded the amounts, in spells, by March 2003. VPT also paid the interest as calculated by it in spells.

Although the VDLB resolution was clear that for future investments the rate of interest prevailing on the date of such investment will apply, VPT calculated the interest payable to VDLB at varying rates instead of adopting the prevailing rate on the date of investment for the entire tenure of each investment. The rates applied by VPT were

Period	**Rate of Interest (*per cent*)**
5 October 2000 to 25 September 2001	12.00
26 September 2001 to 28 December 2001	10.25
29 December 2001 to 31 March 2002	9.48
1 April 2002 to 11 March 2003 (Final payment)	8.00

Further, there was no written agreement between VDLB and VPT on the rate of interest to be allowed from time to time. VDLB did not calculate the interest due on the investment on its own, but merely accepted the interest paid by VPT. Audit worked out the interest due on investment as Rs. 15.36 crore applying the appropriate rate of interest on the date of each investment. However, VPT paid Rs. 12.48 crore, in all, towards interest. This led to short realisation of Rs. 2.88 crore.

VDLB, while admitting that no terms and conditions were drafted, stated (May 2004) that the rates of interest were modified by VPT in consultation with VDLB since the VDLB Board resolved that the applicable rate of interest would be the prevailing market rates from time to time. Ministry endorsed

(September 2004) the reply of the Dock Labour Board.

The reply of the Ministry was not tenable as the resolution was very clear that subsequent investment with VPT would be at the rate of interest prevailing on the date of investment. Further, VPT and VDLB constitute distinct legal entities created under different central legislations. As a result, the management of each entity is obliged to act in the best financial interest of the respective entity and financial investments must be governed by an explicit agreement.

12.13 Loss of revenue

Failure of Visakhapatnam Dock Labour Board to raise the rate of levy on Coromandel Fertilizers Limited led to under-realisation of revenue of Rs. 70.25 lakh.

Prior to January 1994, Coromandel Fertilizers Limited (company) used to pay Re. one per tonne for handling fertilizer cargo by employing its own labour at its fertilizer berth at the Visakhapatnam Port. The rate of Re. one per tonne was indicated in an agreement between the company and the VDLB executed in November 1990. In January 1994, VDLB resolved to enhance the levy to Rs. two per tonne but did not pursue the matter with the company to get the latter's acceptance. No formal agreement enhancing the levy was also executed.

VDLB raised the bill at the enhanced rate of Rs. two per tonne for the period November 1994 to March 1996 in November 1996. The bill for the period April 1996 to March 1998 was raised only in September 1998. Subsequent bills were raised regularly. The levy due from the company for the period November 1994 to May 2005 was Rs. 1.26 crore calculated at the rate of Rs. two per tonne.

In October 1998, the company took the stand that VDLB’s decision to enhance the levy to Rs. two per tonne had not been conveyed to them and offered to pay Re. one per tonne as before. The matter eventually went to an Arbitrator in accordance with the agreement of November 1990. The Arbitrator, in his award of May 2003, advised the parties to enter into a fresh agreement enhancing the levy to Rs. 1.50 per tonne with effect from 1 January 1999. While the company accepted the award in August 2003, VDLB did not formally pass any resolution adopting the new rate nor took any steps to enter into a fresh agreement with the company. The company paid Rs. 55.75 lakh at the old rate of Re. one per tonne for the period November 1994 to May 2005.

The entire process of raising the demands on the company for the levy, revision of the levy rate and formalisation of the arrangement with the company seems to have been handled by VDLB in a dilatory manner. The demands were raised late, the levy rate was enhanced and communicated to the company but the matter was not pursued for the latter's concurrence and agreement and lastly, even after the arbitrator gave the award, VDLB did not impose the levy at the awarded rate.

Calculated at the rate of Rs. two per tonne, an amount of Rs. 1.26 crore became due from the company to VDLB for the period November 1994 to May 2005. The realisation was Rs. 55.75 lakh only. Thus, there is under realisation of the levy to the extent of Rs. 70.25 lakh. Even if VDLB had calculated the levy at the rate of Rs. 1.50 per tonne with effect from 1 January 1999, further revenue of Rs 19.30 lakh would have accrued to it for the period up to May 2005.

The matter was referred to the Ministry in October 2004; their reply was awaited as of January 2005.