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LAW DEPARTMENT

NOTIFICATION

The 4th November 2009

No. 12366—I-Legis.-10/2009-L.—The following Ordinance promulgated by the President and published by the Government of India, Ministry of Law & Justice (Legislative Department) in the *Gazette of India*, Extraordinary, Part-II, Section I, dated the 21st October 2009 is hereby republished for general information.

By order of the Governor

D. DASH

Principal Secretary to Government, I/C.

THE ESSENTIAL COMMODITIES (AMENDMENT AND VALIDATION) ORDINANCE, 2009 (CENTRAL ACT No. 9 OF 2009)

Promulgated by the President in the Sixtieth Year of the Republic of India.

An Ordinance further to amend the Essential Commodities Act, 1955 and to make provisions for validation of certain orders issued by the Central Government determining the price of levy sugar and actions taken under those orders and for matters connected therewith.

WHEREAS, the Supreme Court, in *Modi Industries Ltd. and Another versus Union of India and Others* [T.C. (Civil) No. 9/1990] on the 20th February, 1996 and later on in *Bharat Sugar Mills Ltd. and Another versus Union of India and Others* [T.C. (Civil) Nos. 15-17/1993] on the 19th August, 1998 and in *Union of India and Others versus Triveni Engineering Works Ltd. and Others* [(1999) (9) SCC 245] on the 2nd February, 1999, upheld the determination of price of levy sugar in respect of the sugar season, 1982-1983 by taking note of the fact that while determining the price of levy sugar neither the additional price under Clause 5A of the Sugarcane (Control) Order, 1966 nor the mopping up of excess realisation were factored into consideration;

AND WHEREAS, the Supreme Court in Mahalakshmi Sugar Mills Company Limited and Another *Versus* Union of India and Others [2008 (6) Scale 275] by its Judgment, dated the 31st March, 2008 has considered the scope and ambit of sub-section (3C) of Section 3 of the Essential Commodities Act, 1955 and construed in relation to the sugar seasons, 1983-1984 and 1984-1985 that both the additional price paid to the cane growers in terms of Clause 5A of the Sugarcane (Control) Order, 1966 made under the said Act and the State Advised Price (SAP) or actual price of sugarcane paid should be factored in the computation of price of levy sugar;

AND WHEREAS, there have been conflicting decisions as to the factors to be taken into consideration in determining the price of levy sugar;

AND WHEREAS, it has become necessary to clarify for certainty and to have a uniform policy and factors to be taken into consideration for the determination of price of levy sugar and also to clarify that the State Governments declaring the S.A.P. also bear the additional expenditure connected thereto in so far as the impact on price of levy sugar in respect of sugar factories located in those States is concerned;

AND WHEREAS, Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for her to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by Clause (1) of Article 123 of the Constitution, the President is pleased to promulgate the following Ordinance :—

Short title
and
commence-
ment.

1. (1) This Ordinance may be called the Essential Commodities (Amendment and Validation) Ordinance, 2009.

(2) It shall come into force at once.

Amendment
of
Section 3
of Act 10 of
1955.

2. In Section 3 of the Essential Commodities Act, 1955 (hereinafter referred to as the principal Act)—

(a) in sub-section (3C), the existing *Explanation* shall be numbered as *Explanation I*, and after *Explanation I* as so numbered, the following *Explanation* shall be inserted and shall be deemed to have been inserted, with effect from the 1st day of October 1974, namely :—

'Explanation II.—For the removal of doubts, it is hereby declared that the expressions “minimum price” referred to in Clause (a), “manufacturing cost of sugar” referred to in Clause (b) and “reasonable return on the capital employed” referred to in Clause (d) do not include the additional price of sugarcane paid or payable under Clause 5A of the Sugarcane (Control) Order, 1966 and the price paid or payable under any order or enactment of any State Government and any price agreed to between the producer and the grower of sugarcane or a Sugarcane Growers’ Co-operative Society’ ;

(b) on and from the 1st day of October, 2009, for sub-section (3C) and the *Explanations* thereunder, the following shall be, and shall be deemed to have been substituted, namely :—

‘(3C) Where any producer is required by an order made with reference to Clause (f) of sub-section (2) to sell any kind of sugar (whether to the Central Government or to a State Government or to an Officer or Agent of such Government or to any other person or class of persons) and either no notification in respect of such sugar has been issued under sub-section (3A) or any such notification, having been issued, has ceased to remain in force by efflux of time, then, notwithstanding anything contained in sub-section (3), there shall be paid to that producer an amount therefor which shall be calculated with reference to such price of sugar as the Central Government may, by order, determine, having regard to—

(a) the fair and remunerative price, if any, fixed for sugarcane by the Central Government under this Section;

(b) the manufacturing cost of sugar;

(c) the duty or tax, if any, paid or payable thereon; and

(d) the securing of a reasonable return on the capital employed in the business of manufacturing of sugar,

and different prices may be determined from time to time for different areas or for different factories or for different kinds of sugar :

Provided that where only provisional determination of price of levy sugar has been done in respect of sugar produced up to the sugar season, 2008-2009, the final determination may be done under this sub-section as it stood immediately before the 1st day of October, 2009.

Explanation.—For the purposes of this sub-section,—

(a) “fair and remunerative price” means the price of sugarcane fixed by the Central Government under this Section ;

(b) “manufacturing cost of sugar” means the net cost incurred on conversion of sugarcane into sugar including net cost of transportation of sugarcane from the purchase centre to factory gate, to the extent it is borne by the producer;

(c) “producer” means a person carrying on the business of manufacturing sugar;

(d) “reasonable return on the capital employed” means the return on net fixed assets plus working capital of a producer in relation to manufacture of sugar including procurement of sugarcane on fair and remunerative price fixed under this Section.’

Validation
of action
taken, etc.,
under
specified
orders
issued
under sub-
section
(3C) of
Section 3
of the
principal
Act.

3. (1) Notwithstanding anything contained in any judgment, decree or order of any Court, Tribunal or other authority—

(a) all things done or all actions taken by the Central Government under the specified orders shall be deemed to be and deemed to have always been done or taken in accordance with law;

(b) no suit or other proceedings shall be instituted, maintained or continued in any Court, Tribunal or other authority for the payment or adjustment of any payment in relation to the determination of price of levy sugar under any specified order;

(c) no Court shall enforce any decree or order directing any payment in relation to the determination of price of levy sugar under any specified order;

(d) no claim or challenge shall be made in, or entertained by any Court, Tribunal or other authority on the ground that the Central Government did not take into consideration any factors specified in sub-section (3C) of Section 3 of the principal Act in the determination of price of levy sugar under any specified order.

(2) In this Section, “specified order” means any order relating to the determination of price of sugar issued under sub-section (3C) of Section 3 of the principal Act before the commencement of this Ordinance in relation to sugar produced in any sugar season up to and including sugar season, 2008-2009.

PRATIBHA DEVISINGH PATIL.

President.