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LAW DEPARTMENT
NOTIFICATION

The 10th January, 2011

No. 370-I.Legis.1/11/L.— The following Act of Parliament which is assented by the President on the 22nd December, 2009 and published by the Government of India, Ministry of Law & Justice and Company Affairs (Legislative Department) in the Gazette of India, Extraordinary, Part-II, Section-I, dated the 22nd December, 2009 is hereby republished for general information.

By Order of the Governor

D. DASH

Principal Secretary to Government

[ASSENTED TO ON 22ND DECEMBER, 2009]

(ACT NO. 36 OF 2009)

THE ESSENTIAL COMMODITIES (AMENDMENT AND VALIDATION) ACT, 2009

AN

ACT

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 a Bench of three Judges of the Hon'ble Supreme Court in the case of Modi Industries Ltd. and Another versus Union of India and Others on the 20th February, 1996 reported in (1999) 9 SCC 245, accepted the statement made on behalf of the Union of India that while determining the minimum cane price of levy sugar, regard had been given only to the minimum cane price referred to in section 3(3C) of the Essential Commodities Act, 1955 and that the additional cane price

payable under clause 5A of the Sugarcane (Control) Order, 1966 had not been taken into account and held that the case was not covered by the decision of the Supreme Court dated 22-9-1993 in Shri Malaprabha Coop. Sugar Factory Ltd. versus Union of India [(1994) 1 SCC 648 Malaprabha (1)];

AND WHEREAS subsequently the decision of a Bench of three Judges of the Supreme Court dated 28-1-1997 in the case of Shri Malaprabha Coop. Sugar Factory Ltd. versus Union of India (Malaprabha 2) (1997) 10 SCC 216 held that the decision in Modi Industries' case did not have any bearing on the fixation of price of levy sugar for the year 1975-1976 to 1979-1980;

AND WHEREAS the decision of the Bench of three Judges in Modi Industries Ltd. and Another versus Union of India and others was followed in the case of Bharat Sugar Mills Ltd. and another versus Union of India, (decided on 19th August, 1998) after noticing the judgments in Shri Malaprabha Coop. Sugar Factory Ltd. (Malaprabha 1) and Shri Malaprabha Coop. Sugar Factory Ltd. [(Malaprabha 2)];

AND WHEREAS in the case of Union of India and Others versus Triveni Engineering Works Ltd. (1999) 9 SCC 244, by judgment dated 2-2-1999, the appeal of the Union of India was allowed relying upon the decision in Modi Industries Ltd. and the decision of the Bench of two Judges of the Supreme Court in Bharat Sugar Mills Ltd.;

AND WHEREAS in Shri Malaprabha Coop. Sugar Factory Ltd. versus Union of India, [(2002) 9 SCC 716] (Malaprabha 3) Contempt Petitions filed against the Union of India for alleged non-compliance with the decision in Malaprabha 1 and Malaprabha 2, were dismissed by order dated 16-11-2000 and the working statement given before the Hon'ble Court showed that the retention of fifty per cent. being a factor which can be taken into consideration in determining element (d) in section 3(3C) of the Essential Commodities Act was taken into account, not to the extent as desired by the petitioners, but the result of this was that the levy price fixed at Rs 163.780 in respect of West U.P. had gone up to Rs. 172.430, the Hon'ble Supreme Court held that "the said fixation is in accordance with law and the directions given by this Court have been complied with. Neither a case for contempt has been made out nor is there any justification, in our opinion, for giving any direction to the Government to re-fix the levy price under section 3(3C) of the Essential Commodities Act.";

AND WHEREAS notwithstanding the judgment in the Modi Industries case, the Bharat Sugar Mills case, and the Triveni Engineering Works Ltd. case and the judgment of a Bench of three Judges of the Hon'ble Supreme Court in Shri Malaprabha Coop. Sugar Factory Ltd. (Malaprabha 3), a Bench of two Judges of the Hon'ble Supreme Court in Mahalakhmi Sugar Mills Coop. Ltd. and Anr. *Versus* Union of India and Others (2008) 6 SCALE 275, in a judgment dated the 31st March, 2008, in relation to sugar seasons 1983-1984 and 1984-1985, held that the actual price payable to cane growers was absolutely relevant for determining the price of levy sugar;

AND WHEREAS there are thus 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 make suitable amendments to the Essential Commodities Act, 1955 to clarify and reiterate the underlying principles and the factors that needed to be taken into consideration in determining the price of levy sugar and to give effect accordingly; 10 of 1955.

AND WHEREAS in order to remove doubts and ambiguities it has become necessary to make such provisions with retrospective effect to validate the determination of the price of levy sugar by the Central Government from time to time pursuant to the provisions of the Essential Commodities Act, 1955. 10 of 1955.

BE it enacted by Parliament in the Sixtieth Year of the Republic of India as follows:—

Short title and Commencement

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

(2) It shall be deemed to have come into force on the 21st day of October, 2009.

Amendment of section 3.

2. In section 3 of the Essential Commodities Act, 1955 (hereinafter referred to as the principal Act)— 10 of 1955.

(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) exclude the additional price of sugarcane paid or payable under clause 5A of the Sugarcane (Control) Order, 1966 and any 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) for sub-section (3C) and the Explanations there under, the following shall be substituted, and shall be deemed to have been substituted, on and from the 1st day of October, 2009, 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) whether a notification was issued under sub-section (3A) or otherwise, then, notwithstanding anything contained in sub-section (3), there shall be paid to that producer only such amount as the Central Government may, by order, determine, having regard to—

(a) the fair and remunerative price, if any, determined by the Central Government as the price of sugarcane to be taken into account under this section;

(b) the manufacturing cost of sugar;

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

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

Provided that the Central Government may determine different prices, from time to time, for different areas or factories or varieties of sugar:

Provided further that where any 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 of price may be undertaken in accordance with the provisions of 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 determined 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 the 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 manufacturing of sugar including procurement of sugarcane at a fair and remunerative price determined under this section.'.

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, claim 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 of the 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 21st day of October, 2009, in relation to sugar produced in any sugar season up to and including the sugar season 2008-2009.

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

Repeal and
saving.

4. (1) The Essential Commodities (Amendment and Validation) Ordinance, 2009, is hereby repealed. Ord. 9 of 2009.

(2) Notwithstanding the repeal of the Essential Commodities (Amendment and Validation) Ordinance, 2009, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall, subject to the provisions contained in sub-section (3), be deemed to have been done or taken under the principal Act, as amended by this Act. Ord. 9 of 2009.

(3) Nothing contained in sub-section (2) shall apply to clause 3B of the Sugarcane(Control) Order, 1966, as inserted by the Government of India in the Ministry of Consumer Affairs, Food and Public Distribution Order number S.O. 266 (E)/Ess Com./Sugarcane dated the 22nd October, 2009 or any thing done or any action taken there under.