



भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 1

PART II—Section 1

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं० ४३]

नई दिल्ली, बुधवार, अक्टूबर २१, २००९ / २९ आश्विन, १९३१

No. 43]

NEW DELHI, WEDNESDAY, OCTOBER 21, 2009 / 29 Asvina, 1931

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

THE ESSENTIAL COMMODITIES (AMENDMENT AND VALIDATION) ORDINANCE, 2009

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 Ors* [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 SAP 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 upto 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.

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.

V.K. BHASIN,

Secy. to the Govt. of India.



भारत का राजपत्र

The Gazette of India

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EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं. 1708]

नई दिल्ली, बृहस्पतिवार, अक्टूबर 22, 2009/आश्विन 30, 1931

No. 1708]

NEW DELHI, THURSDAY, OCTOBER 22, 2009/ASVINA 30, 1931

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

(खाद्य और सार्वजनिक वितरण विभाग)

आदेश

नई दिल्ली, 22 अक्टूबर, 2009

का.आ. 2665(अ)/आवश्यक वस्तु/गन्ना.—केन्द्रीय सरकार, आवश्यक वस्तु अधिनियम, 1955 (1955 का 10) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, गन्ना (नियंत्रण) आदेश, 1966 का और संशोधन करने के लिए निम्नलिखित आदेश करती है, अर्थात् :—

1. (1) इस आदेश का संक्षिप्त नाम गन्ना (नियंत्रण) संशोधन आदेश, 2009 है।

(2) यह राजपत्र में प्रकाशन की तारीख को प्रवृत्त होगा।

2. गन्ना (नियंत्रण) आदेश, 1966 में,—

(क) “न्यूनतम मूल्य” शब्दों के स्थान पर, जहाँ-जहाँ वे आते हैं, “उचित और लाभकारी कीमत” शब्द रखे जाएंगे;

(ख) खंड 2 में, उप-खंड (ग) के पश्चात् निम्नलिखित उप-खंड अंतःस्थापित किया जाएगा, अर्थात् :—

‘(गग) “गन्ने का उचित और लाभकारी कीमत” से केन्द्रीय सरकार द्वारा खंड 3 के अधीन, समय-समय पर गन्ने के लिए निर्धारित की गई कीमत अभिप्रेत है;’

(ग) खंड 3 में, उप-खंड (1) में, मद (च) के पश्चात् निम्नलिखित मद अंतःस्थापित की जाएंगी, अर्थात् :

“(छ) जोखिम और लाभ के लिए गन्ना उत्पादकों के लिए युक्ति-युक्त सीमांत;”

(घ) खंड 3क के पश्चात्, निम्नलिखित खंड अंतःस्थापित किया जाएगा, अर्थात् :—

“3.ख. उचित और लाभकारी कीमत से अधिक गन्ने की कीमत नियत करना।

यदि कोई प्राधिकरण या राज्य सरकार खंड 3 के अधीन केन्द्रीय सरकार द्वारा नियत उचित और लाभकारी कीमत से अधिक कोई कीमत नियत करती है तो वह प्राधिकरण या राज्य सरकार, केन्द्रीय सरकार द्वारा नियत उचित और लाभकारी कीमत से अधिक रकम का भुगतान, यथास्थिति, गन्ने के उत्पादकों या गन्ना उत्पादक सहकारी सोसाइटी को करेगी।”

(ड) खंड 5क का लोप किया जाएगा;

(च) दूसरी अनुसूची का लोप किया जाएगा।

[फा. सं. 3-4/2009-एसपी-II]

एन. सान्याल, संयुक्त सचिव

टिप्पणी :—मुख्य आदेश भारत के राजपत्र, असाधारण में संख्या सा.का.नि 1126/आवश्यक वस्तु/गन्ना, तारीख 16 जुलाई, 1966 द्वारा प्रकाशित किया गया था और तत्पश्चात् उसमें निम्नलिखित द्वारा संशोधन किए गए :—

1. सा.का.नि. 35(अ)/आवश्यक वस्तु/गन्ना तारीख 5-1-1967
2. सा.का.नि. 1591(अ)/आवश्यक वस्तु/गन्ना तारीख 17-10-1967
3. सा.का.नि. 945(अ)/आवश्यक वस्तु/गन्ना तारीख 18-5-1968
4. सा.का.नि. 1456(अ)/आवश्यक वस्तु/गन्ना तारीख 2-8-1968
5. सा.का.नि. 620(अ)/आवश्यक वस्तु/गन्ना तारीख 8-4-1973
6. सा.का.नि. 402(अ)/आवश्यक वस्तु/गन्ना तारीख 25-9-1974
7. सा.का.नि. 492(अ)/आवश्यक वस्तु/गन्ना तारीख 12-9-1975
8. सा.का.नि. 542(अ)/आवश्यक वस्तु/गन्ना तारीख 27-10-1975
9. सा.का.नि. 484(अ)/आवश्यक वस्तु/गन्ना तारीख 26-7-1976
10. सा.का.नि. 799(अ)/आवश्यक वस्तु/गन्ना तारीख 13-9-1976
11. सा.का.नि. 815(अ)/आवश्यक वस्तु/गन्ना तारीख 24-9-1976

12. सा.का.नि. 913(अ)/आवश्यक वस्तु/गन्ना तारीख 9-12-1976
13. सा.का.नि. 62(अ)/आवश्यक वस्तु/गन्ना तारीख 2-2-1978
14. सा.का.नि. 197(अ)/आवश्यक वस्तु/गन्ना तारीख 28-3-1978
15. सा.का.नि. 427(अ)/आवश्यक वस्तु/गन्ना तारीख 3-7-1981
16. सा.का.नि. 79(अ)/आवश्यक वस्तु/गन्ना तारीख 24-2-1982
17. सा.का.नि. 695(अ)/आवश्यक वस्तु/गन्ना तारीख 9-9-1983
18. सा.का.नि. 903(अ)/आवश्यक वस्तु/गन्ना तारीख 29-11-2000
19. सा.का.नि. 113(अ)/आवश्यक वस्तु/गन्ना तारीख 20-2-2003
20. सा.का.नि. 204(अ)/आवश्यक वस्तु/गन्ना तारीख 22-3-2004
21. का.आ. 1940(अ)/आवश्यक वस्तु/गन्ना तारीख 10-11-2006
22. का.आ. 1309(अ)/आवश्यक वस्तु/गन्ना तारीख 31-7-2007
23. का.आ. 2198(अ)/आवश्यक वस्तु/गन्ना तारीख 28-12-2007
24. का.आ. 2984(अ)/आवश्यक वस्तु/गन्ना तारीख 29-12-2008

(d) after clause 3A, the following clause shall be inserted, namely :—

“3B. Price of sugarcane fixed above the fair and remunerative price.

If any authority or State Government fixes any price above the fair and remunerative price fixed by the Central Government under clause 3, such authority or State Government, shall pay the amount, which it fixes above the fair and remunerative price as fixed by the Central Government, to the grower of sugarcane or to the sugarcane growers' cooperative society, as the case may be.”

(e) clause 5A shall be omitted;

(f) the Second Schedule shall be omitted.

[F. No. 3-4/2009-SP-II]

N. SANYAL, Jt. Secy.

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Food and Public Distribution)

ORDER

New Delhi, the 22nd October, 2009

S.O. 2665(E)/Ess Com./Sugarcane.—In exercise of the powers conferred by section 3 of the Essential Commodities Act, 1955 (10 of 1955), the Central Government hereby makes the following Order further to amend the Sugarcane (Control) Order, 1966, namely :—

1. (1) This Order may be called the Sugarcane (Control) Amendment Order, 2009.

(2) It shall come into force on the date of its publication in the Official Gazette.

2. In the Sugarcane (Control) Order, 1966,—

(a) for the words “minimum price”, wherever they occur, the words “fair and remunerative price” shall be substituted;

(b) in clause 2, after sub-clause (c), the following sub-clause shall be inserted, namely :—

“(cc) “fair and remunerative price of sugarcane” means the price fixed by the Central Government under clause 3, from time to time, for sugarcane ;”

(c) in clause 3, in sub-clause (1), after item (f), the following item shall be inserted, namely :—

“(g) reasonable margins for the growers of sugarcane on account of risk and profits:”;

Note : The principal Order was published in the Gazette of India Extraordinary *vide* Number G.S.R. 1126/Ess.Com./Sugarcane, dated 16th July, 1966 and subsequently amended *vide* :

1. G.S.R. 35(E)/Ess.Com./Sugarcane dated 5-1-1967
2. G.S.R. 1591(E)/Ess.Com./Sugarcane dated 17-10-1967
3. G.S.R. 945(E)/Ess.Com./Sugarcane dated 18-5-1968
4. G.S.R. 1456(E)/Ess.Com./Sugarcane dated 2-8-1968
5. G.S.R. 620(E)/Ess.Com./Sugarcane dated 8-4-1973
6. G.S.R. 402(E)/Ess.Com./Sugarcane dated 25-9-1974
7. G.S.R. 492(E)/Ess.Com./Sugarcane dated 12-9-1975
8. G.S.R. 542(E)/Ess.Com./Sugarcane dated 27-10-1975
9. G.S.R. 484(E)/Ess.Com./Sugarcane dated 26-7-1976
10. G.S.R. 799(E)/Ess.Com./Sugarcane dated 13-9-1976
11. G.S.R. 815(E)/Ess.Com./Sugarcane dated 24-9-1976
12. G.S.R. 913(E)/Ess.Com./Sugarcane dated 9-12-1976
13. G.S.R. 62(E)/Ess.Com./Sugarcane dated 2-2-1978
14. G.S.R. 197(E)/Ess.Com./Sugarcane dated 28-3-1978
15. G.S.R. 427(E)/Ess.Com./Sugarcane dated 3-7-1981
16. G.S.R. 79(E)/Ess.Com./Sugarcane dated 24-2-1982
17. G.S.R. 695(E)/Ess.Com./Sugarcane dated 9-9-1983
18. G.S.R. 903(E)/Ess.Com./Sugarcane dated 29-11-2000
19. G.S.R. 113(E)/Ess.Com./Sugarcane dated 20-2-2003
20. G.S.R. 204(E)/Ess.Com./Sugarcane dated 22-3-2004
21. S.O. 1940(E)/Ess.Com./Sugarcane dated 10-11-2006
22. S.O. 1309(E)/Ess.Com./Sugarcane dated 31-7-2007
23. S.O. 2198(E)/Ess.Com./Sugarcane dated 28-12-2007
24. S.O. 2984(E)/Ess.Com./Sugarcane dated 29-12-2008.