

The Essential Commodities (Amendment) Bill, 2009

The Essential Commodities (Amendment) Bill, 2009 validates an Ordinance promulgated on October 21, 2009. The Bill is listed for consideration and passing in the week starting November 30, 2009.

The Ordinance amended the price paid by the central government to sugar mills for levy sugar. Subsequently, an Order issued on October 22, 2009 changed the pricing methodology for sugarcane.

In this note, we briefly describe the regulatory system for the sugar industry, and examine the changes made by the Ordinance and the Order.

Regulatory system

We describe below some of the ways in which the sugar sector is regulated.

Command Area

Each sugar mill is allocated a command area in its vicinity (which usually varies from 15 km to 25 km radius, depending on the state). The mill is bound to purchase any sugarcane grown in that area. Sugarcane farmers are also expected to sell only to the designated mill.

Price of sugarcane

The central government announces a price called the Statutory Minimum Price (SMP) for sugarcane, which is linked to several factors such as cost of growing cane, alternative crops, fair price of sugar and the yield of cane (sugar content).

States also announce a price called the State Advisory Price (SAP), which is usually higher than the SMP.

Cane mill pay the higher of SMP or SAP to farmers.

Levy and Free sugar

Sugar Mills are required to sell a part of their produce to the government. This is called levy sugar. The percentage was recently raised from 10% to 20% for the current sugar season (starting October 1, 2009). The price paid by the central government to the mills is based on SMP.

Mills are free to sell the remaining sugar in the free market. However, the government announces monthly quotas to each mill, and thus controls the supply.

Ordinance and subsequent Orders

The Essential Commodities (Amendment and Validation) Ordinance, 2009

On October 21, 2009, an Ordinance was promulgated to amend the Essential Commodities Act, 1955. This Ordinance had two provisions:

1. It added an Explanation to Section 3 of the Principal Act, stating that the central government, while procuring levy sugar, would not pay any price in excess of that calculated on the basis of the Minimum Price (SMP) for sugarcane set by the central government. This Explanation comes into effect from 1974. The Supreme Court has ruled that the price of levy sugar should include the additional price as indicated in Section 5A of the Sugarcane Control Order, 1966 (known as the Bhargava formula) and the State Advisory Price (SAP) set by state governments¹. This amendment negated the judgement.

2. The Ordinance also amended the price to be paid to sugar producers by the central government for procuring levy sugar. It specified that the price of sugar will be based on the "Fair and Remunerative Price" (FRP) fixed for sugarcane, and will include the manufacturing cost, duties, taxes and reasonable rate of return. Earlier the price was based on the Minimum Price (SMP) for sugarcane, and included the other costs and return. The FRP will be announced by the central government, similar to the earlier system of SMP. The Ordinance clarified that the central government would not pay any price in excess of that based on FRP for sugarcane.

The Sugarcane Control (Amendment) Order, 2009

On October 22, the central government issued an Order to amend the Sugarcane Control Order, 1966.

The Sugarcane Control Order, 1966, among other provisions, specified the method of computing the price to be paid by sugar mills to sugarcane farmers. It specified that the central government shall fix a minimum price for sugarcane (SMP). The minimum price had six factors: (a) cost of production of sugarcane; (b) return to growers of alternative crops; (c) availability of sugar at a fair price to consumers; (d) price of sugar sold by consumers; (e) recovery of sugar from sugarcane; and (f) realisation from by-products such as molasses, bagasse. It also said that an additional price above the SMP shall be paid based on a formula (specified in Clause 5A and the Second Schedule) that provides for sharing of profits of the sugar mills with

sugarcane producers. This formula is popularly called the Bhargava formula.

The Amendment order replaced the “minimum price” by “fair and remunerative price”. It included a seventh factor (g) reasonable margin to the growers of sugarcane on account of risk and profits. It added Clause 3B which required that the state governments should bear the incremental cost if its fixes SAP higher than FRP. It also deleted Clause 5A and the Second Schedule; sugar mills shall not pay an additional price based on the Bhargava formula.

Implications of the Ordinance and the Amendment Order

1. With effect from 1974, the central government shall not pay any price for levy sugar higher than that based on MSP. This is expected to save Rs 14,000 crore that the central government would have to pay sugar mills otherwise.
2. The central government shall pay a price for levy sugar based solely on the FRP that it sets for sugarcane. It will not take into account any higher price paid or payable for sugarcane by sugar mills.
3. The FRP will include a reasonable margin to the sugarcane grower for risk and profit.
4. If a state government fix a price for sugarcane (such as SAP) which is higher than FRP, it will have to pay the difference between SAP and FRP to the sugarcane grower.
5. The sugar mills will not share its excess profits with the sugarcane growers, as mandated by the Bhargava Formula.

Further developments

Recent News reports² indicate that the government has agreed to drop Clause 3B. This implies that sugar mills will pay the higher of FRP or SAP. However, they will not pay any additional price computed by the Bhargava formula (unless the government deletes Clause 2(e) and 2(f) of the Sugarcane Control (Amendment) Order, 2009.

¹ Mahalakshmi Sugar Mills Co. Ltd and Anr Vs Union of India and Ors Civil Appeal No 2258 of 2008

² for example, The Hindu, November 21, 2009
<http://www.thehindu.com/2009/11/21/stories/2009112159480100.htm>