

Bill No. 90 of 2010

THE ESSENTIAL COMMODITIES (AMENDMENT) BILL, 2010

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BILL

further to amend the Essential Commodities Act, 1955.

BE it enacted by Parliament in the Sixty-first Year of the Republic of India as follows:—

1. This Act may be called the Essential Commodities (Amendment) Act, 2010.

Short title.

2. In section 3 of the Essential Commodities Act, 1955, in sub-section (3C), the *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, 2009, namely:—

Amendment
of section 3 of
Act 10 of
1955.

10 ‘*Explanation II*.—For the removal of doubts, it is hereby declared that the expressions “fair and remunerative 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), of this sub-section do not include the price paid or payable under any order or any enactment of any State Government and any price agreed to between the producer and the grower or a sugar cane growers’ co-operative society.’

STATEMENT OF OBJECTS AND REASONS

The Essential Commodities Act, 1955 seeks to provide, in the interests of the general public, for the control of the production, supply and distribution of, and trade and commerce in, certain commodities. Sugar and sugarcane are foodstuffs and thus essential commodities under the said Act. Under the system of partial control on sugar, a part of the sugar produced by sugar mills is requisitioned as levy sugar and the balance is allowed to be sold as non-levy (free sale) sugar in the open market. While the price of non-levy sugar is determined by the market forces, the price of levy sugar is fixed by the Central Government under the provisions of sub-section (3C) of section 3 of the aforesaid Act, having regard to—

- (a) the fair and remunerative price, if any, fixed for sugarcane by the Central Government;
- (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.

2. Sub-section (3C) of section 3 of the Essential Commodities Act, 1955 was last amended by clause (a) of section 2 of the Essential Commodities (Amendment and Validation) Act, 2009, *inter alia*, inserting therein the following *Explanation II* with effect from the 1st day of October, 1974 to clarify beyond doubt that the cost components of levy sugar mentioned in the said sub-section (3C) do not include the additional price of sugarcane paid or payable under the erstwhile 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:—

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.’.

3. The said *Explanation II*, however, remained effective till the 30th September, 2009 only as the said sub-section (3C) of section 3, was substituted by a new sub-section (3C) on and from the 1st day of October, 2009 *vide* clause (b) of section 2 of the aforesaid Amendment Act of 2009. Since the newly substituted sub-section (3C) does not contain any *Explanation* on the lines of the said *Explanation II*, it is likely that it may lead to a possible interpretation that the intention of the legislature has been not to exclude, with effect from the 1st day of October, 2009, the consideration of any price paid or payable by the producer of sugar 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. Such an interpretation is again likely to lead to ambiguity and further litigation, which in fact, the Essential Commodities (Amendment and Validation) Act, 2009 was intended to remove. The objective of the amendment is to extend the application of *Explanation II* [inserted under sub-section (3C) by clause (a) of section 2 of the Amendment Act 36 of 2009] beyond the 30th September, 2009 as well.

4. In view of the above, it is proposed to amend sub-section (3C) of section 3 of the Essential Commodities Act, 1955, by inserting therein an *Explanation* with retrospective effect that is with effect from the 1st day of October, 2009 so as to clarify the intention of the legislature beyond doubt.

5. The Bill seeks to achieve the above objects.

NEW DELHI;
The 29th July, 2010.

SHARAD PAWAR.

ANNEXURE

EXTRACT FROM THE ESSENTIAL COMMODITIES ACT, 1955
(10 OF 1955)

Powers to control production, supply, distribution, etc., of essential commodities.

3. (1) * * * * *

(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.

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LOK SABHA

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Bill

further to amend the Essential Commodities Act, 1955.

*(Shri Sharad Pawar, Minister of Agriculture, Consumer Affairs, Food and Public
Distribution)*