

**Essential Commodities (Amendment and Validation), Act 2009**

**Preamble - Essential Commodities (Amendment and Validation), Act, 2009**

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THE ESSENTIAL COMMODITIES (AMENDMENT AND VALIDATION), ACT, 2009

[Act No. 36 of 2009]

[22nd December 2009]

PREAMBLE

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 Mahalakshmi Sugar Mills Coop. Ltd. and Anr. Versus Union of India and Others (2008) 6 SCALE 275, in a judgment dated 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(10 of 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;

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:--

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