

# THE ESSENTIAL COMMODITIES ACT, 1955

## AMENDMENTS MADE TO THE ACT :-

- (1) The Adaptation of Laws Order, 3 of 1956.
- (2) The Essential Commodities (Amendment) Act, 13 of 1957. (Dt. 04-06-57)
- (3) The Essential Commodities (Second Ament.) Act, 28 of 1957. (Dt. 17-09-57)
- (4) The Rajasthan Amendment Act, 32 of 1960. (Dt. 17-09-60)
- (5) The Essential Commodities (Amendment) Act, 17 of 1961. (Dt. 10-05-61)
- (6) The Essential Commodities (Amendment) Act, 47 of 1964. (Dt. 24-12-64)
- (7) The Essential Commodities (Amendment) Act, 25 of 1966 (Dt. 03-09-66)
- (8) The Essential Commodities (Amendment) Act, 14 of 1967. (Dt. 16-04-67)
- (9) The Essential Commodities (Amendment) Act, 36 of 1967. (Dt. 30-12-67)
- (10) The Central Laws (Extension to Jammu & Kashmir) Act, 25 of 1968.
- (11) The Ess. Comm. (Amendt.) Continuance Act, 14 of 1970. (Dt. 31-03-70)
- (12) The Essential Commodities (Amendment) Act, 66 of 1971. (Dt. 23-12-71)
- (13) The Essential Commodities (Amendment) Act, 30 of 1974. (Dt. 29-08-74)
- (14) The Essential Commodities, (Amendment )Act, 92 of 1976 (Dt. 02-09-76)
- (15) The Essential Commodities (Spl. Provi.) Act, 18 of 1981 (Dt. 02-09-81)
- (16) The Essential Commodities (Amendment) Act, 34 of 1984 (Dt. 26-05-84)
- (17) The Essential Commodities (Amendment) Act, 42 of 1986. (Dt. 08-09-86)
- (18) The Essential Commodities (Second Amdt.) Act, 73 of 1986. (Dt. 24-12-86)
- (19) The Ess.Com. (Special Provisions) Conti. Act, 25 of 1987. (Dt. 28-08-87)
- (20) The Ess.Com. (Spl. Provi.) Amdt. Ord. 1992 (No.12 of 1992) (Dt. 27-08-92)
- (21) The Ess.Com. (Spl. Provi.) Amdt. Ord. 1993 (No. 1 of 1993) (Dt. 02-01-93)
- (22) The Ess.Com. (Spl. Provi.) Amdt. Act, 1993 (No. 34 of 1993) (Dt. 03-04-93)
- (23) The Ess.Com. (Spl. Provi.) Ord. 1997 (No. 21 of 1997) (Dt. 03-10-97)
- (24) The Ess.Com. (Spl. Provi.) Second Ord.1998 (No. 1 of 1998) (Dt. 02-01-98)
- (25) The Ess.Com. (Amendt.) Ord.1998 (No. 13 of 1998) (Dt. 25-04-98)
- (26) The Ess.Com. (Amendt.) Act, 2003 (No. 37 of 2003) (Dt. 01-06-03)
- (27) The Ess.Com. (Amendt.) Act, 2006 (No. 54 of 2006) (Dt. 24-12-06)
- (28) The Ess.Com. (Amendt. & Validation) Act, 2009 (Dt. 22-12-09)  
(No. 36 of 2009)
- (29) The Ess.Com. (Amendt.) Act, 2010 (No. 35 of 2010) (Dt. 08-09-10)

## COMMENTS

The E.C. Act, 1955 is a social legislation and frequent changes are made therein according to the requirements of the Society. Few amendments were made to the Act for a limited period & after expiry of this period, these amendments ceased to have effect. Certain Special Provisions by way of amendments to the E.C. Act, 1955 were made for 5 years vide E.C.(S.P.) Act, 1981. These amendments included provisions for summary trial, constitution of special courts, minimum mandatory imprisonment for not less than 3 months, enhancement of imprisonment in summary trial cases from 1 to 2 years, making all offences non-bailable, appeal u/s 6C to State Government in stead of judicial authority

& sale of seized commodities through F.P. shops etc. Provision was also made under its section 1 (3) that these special provisions shall cease to have effect on the expiry of this Act. The provisions of this special Act were introduced for temporary period of five years. This term was extended to 10 years vide E.C. (S.P.) Continuance Act, 1987 and was further extended to 15 years vide E.C. (S.P.) Amendment Act, 1993.

As the E.C. (S.P.) Act, 1981 had come into force on 1.9.82, fifteen years period expired on 31.08.97. Thus the E.C. (S.P.) Act, 1981 lapsed on 31.8.97. New Ordinance namely, E.C. (S.P.) Ordinance, 1997 was promulgated on 3rd October, 1997. It contained most of the provisions of the erstwhile E.C. (S.P.) Act, 1981 alongwith certain amendments. But this Ordinance of 1997 was repealed by the E.C. (S.P.) Second Ordinance 1998.

The second Ordinance was promulgated on 2.1.98. But it had been deemed to have come in force w.e.f. 3.10.07 and a provision was made therein that the offences committed under the E.C. Act, 1955 between 1.9.97 to 2.10.97 would be instituted only in the special court and any prosecution in respect of such offences pending in any court shall stand transferred to the special court.

The second Ordinance (No.1 of 1998) has also been repealed by Ess. Comm. (Amendment) Ordinance No. 13 of 1998 and it has come in to force w.e.f. 25.4.98. As this Ordinance has not been replaced by an enactment, it has ceased to have effect after 24.10.98. The amendments made by Act 18 of 1981 alongwith the subsequent Ordinances have come to an end by efflux of time and the position prior to Act 18 of 1981 holds the field now. The provisions of E.C. Act, 1955 remained dormant till the continuance of special Act of 1981. But after expiry of the special Act, the provisions of the E.C. Act automatically stood revived in view of sec.1(3) of the Act, 18 of 1981.

For ready reference Acts & Ordinances at S.No. 15, 19, 22, 24, 25 & 28 of the above list have been included in Part IV of this compendium.

## THE ESSENTIAL COMMODITIES ACT, 1955

(Act No. 10 of 1955)

(1<sup>st</sup> April, 1955)

An act to provide, in the interest of the General Public, for the control of the production, supply and distribution of, and trade and commerce in certain commodities.

Be it enacted by Parliament in the sixth year of the Republic of India as follows :-

**1. Short title and extent** - (1) This Act may be called the Essential Commodities Act, 1955.

(2) It extends to the whole of India <sup>10</sup>[XXX]

### COMMENTS

The words "except the state of Jammu & Kashmir" have been omitted vide amending Act, 25 of 1968.

**2. Definitions.**- In this Act, unless the context otherwise requires, -

<sup>14</sup>[(ia) "Collector" includes an additional Collector and such other officer, not below the rank of Sub-Divisional Officer, as may be authorised

by the Collector to perform the functions and exercise the powers of the Collector under this Act.]

#### COMMENTS

E.C. Act, 1955 Sec. 2(ia) - The definition of Collector has been inserted by the Amendment Act, 92 of 1976 giving it an expanded meaning by including Additional Collector and such other officer, not below the rank of sub-divisional officer, as may be authorised by the Collector to perform the functions & exercise the powers of the Collector under the Act. Ordinarily wherever the word collector is used in section 6A, as per definition, it would mean not only the Collector of the district, but also such other officers who are 'authorised within the scope of the definition to function as the collector. (M/S Ganesh Traders Vs. State of Orissa & others - 1992 (2) EFR. 620)

(a) <sup>27</sup>[XXXX]

#### COMMENTS

This clause (a) relating to essential commodities has been omitted by Amending Act, 54 of 2006. Now the essential commodities have been given in the Schedule attached to Act. The number of the commodities have been pruned from 15 to 7. Cattle fodder, Coal, Iron & Steel, Parts & Accessories of Automobiles etc. were included in the Omitted clause (a) of Section 2. But now these commodities stand excluded from the Schedule.

(b) "food crops" include crops of sugarcane,

(c) "notified order" means an order notified in the Official Gazette;

<sup>9</sup>[(cc) "order" includes a direction issued thereunder,]

(d) \*<sup>1</sup>["State Government" in relation to union territory, means the administrator thereof,]

<sup>9</sup>[(e) "Sugar" means -

(i) any form of sugar containing more than ninety per cent of sucrose, including sugar candy,

(ii) Khandsari sugar or Bura sugar or crushed sugar or any sugar in crystalline or powdered form, or

(iii) sugar in process in vacuum-pan sugar factory or raw sugar produced therein.]

<sup>27</sup>[2A. Essential commodities declaration etc. - (1) For the purposes of this Act, "essential commodity" means a commodity specified in the Schedule.

(2) Subject to the provisions of sub-section (4), the Central Government may, if it is satisfied that it is necessary so to do in the public interest and for reasons to be specified in the notification published in the Official Gazette, amend the Schedule so as to -

(a) add a commodity to the said Schedule;

(b) remove any commodity from the said Schedule,

in consultation with State Governments.

(3) Any notification issued under sub-section (2) may also direct that an entry shall be made against such commodity in the said Schedule declaring that such commodity shall be deemed to be an essential commodity for such period not exceeding six months to be specified in the notification:

Provided that the Central Government may, in the public interest and for reasons to be specified, by notification in the Official Gazette, extend such period beyond the said six months.

(4) The Central Government may exercise its powers under sub-section (2) in respect of the commodity to which Parliament has power to make laws by virtue of Entry 33 in List III in the Seventh Schedule to the Constitution.

(5) Every notification issued under sub-section (2) shall be laid, as soon as may be after it is issued, before both Houses of Parliament.]

#### COMMENTS

(1) This new section has been added by Amending Act, 54 of 2006 and it has come into force w.e.f. 12.02.07. List of seven essential commodities has been given in the schedule. Any commodity may be added to or removed from the schedule by the Central Government after consultation with the State Governments. The addition will be for 6 months but this period can be extended beyond six months.

(2) In Section 6 of the Amending Act, No. 54 of 2006, provision has been made for savings of the Orders issued under Section 3 of the E.C. Act, 1955. This Section 6 is reproduced hereunder :-

“6. Savings of the orders issued under Section 3 - All notifications, orders, directions issued or any appointment made, license or permit granted under section 3 of the principal Act before the commencement of this Act and are in force, in respect of the essential commodities specified in the Schedule, shall continue to remain in force until and unless it is superseded by any notification, order, appointment made, license or permit granted or directions issued and it shall be deemed to have been issued under the corresponding provisions of this Act.”

**3. Powers to Control Production, Supply, Distribution, etc. of Essential Commodities.-** (1) If the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices <sup>9</sup>[or for securing any essential commodity for the defence of India or the efficient conduct of military operations], it may, by order provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein.

(2) Without prejudice to generality of the powers conferred by sub-section (1), an order made thereunder may provide, -

- (a) for regulating, by licences, permits or otherwise, the production or manufacture of any essential commodity,
- (b) for bringing under cultivation any waste or arable land, whether appurtenant to a building or not, for the growing thereon of food crops generally or of specified food-crops, and for otherwise maintaining or increasing the cultivation of food crops generally, or of specified food-crops,
- ✓(c) for controlling the price at which any essential commodity may be bought or sold,
- (d) for regulating by licences, permits or otherwise the storage, transport, distribution, disposal, acquisition, use or consumption, of any essential commodity,
- (e) for prohibiting the withholding from sale of any essential commodity ordinarily kept for sale,
- \*<sup>14</sup>✓(f) for requiring any person holding in stock, or engaged in the production, or in the business of buying or selling, of any essential commodity,-
  - (a) to sell the whole or a specified part of the quantity held in stock or produced or received by him, or
  - (b) in the case of any such commodity which is likely to be produced or received by him, to sell the whole or a specified part of such commodity when produced or received by him, to the Central Government or a State Government or to an officer or agent of such Government or to a Corporation owned or controlled by such Government or to such other person or class of persons, and in such circumstances as may be specified in the order.

**Explanation 1:-** An order made under this clause in relation to foodgrains, edible oilseeds or edible oils, may, having regard to the estimated production, in the concerned area of such foodgrains, edible oilseeds and edible oils, fix the quantity to be sold by the producers in such area and may also fix or provide for the fixation of such quantity on a graded basis, having regard to the aggregate of the area held by, or under the cultivation of, the producers.

**Explanation 2:-** For the purpose of this clause, "production" with its grammatical variations and cognate expressions includes manufacture of edible oil and sugar.]

## COMMENTS

(1) This sub-clause was previously substituted vide amending Act. 28 of 1957 and has been again substituted by Amendment Act of 1976. It provides that levy orders may fix on a graded basis and the quantity to be sold by the producers having regard to the estimated production of the crop in the area and the aggregate area held by the producer under cultivation.

(2) "Person holding the stock" does not mean that he should have both possession & title- "Stock" of foodgrain does not mean stock for sale- Person holding stock does not postulate holding in quantities in excess of one's requirement. (The State of Kerala & Others Vs. Annam & Others - AIR 1969 Ker. 38).

- (g) for regulating or prohibiting any of commercial or financial transactions relating to foodstuffs <sup>27</sup>[XXXX] which, in the opinion of the authority making the order, are, or, if unregulated, are likely to be, detrimental to the public interest,
- (h) for collecting any information or statistics with a view to regulating or prohibiting any of the aforesaid matters,
- (i) for requiring persons engaged in the production, supply or distribution of, or trade and commerce in, any essential commodity to maintain and produce for inspection such books, accounts and records relating to their business and to furnish such information relating there to, as may be specified in the order,]
- <sup>5</sup>[(ii) for the grant or issue of licences, permits or other documents, the charging of fees therefor, the deposit of such sum, if any, as may be specified in the order as security, for the due performance of the conditions of any such licence, permit or other document, the forfeiture of the sum so deposited or any part thereof for contravention of any such conditions, and the adjudication of such forfeiture by such authority as may be specified in the order,]
- (j) <sup>\*12</sup>[for any incidental and supplementary matters including in particular, the entry, search or examination of premises, aircraft, vessels, vehicles or other conveyances and animals, and the seizure by a person authorised to make such entry, search or examination:-
  - (i) of any article in respect of which such person has reason to believe that a contravention of the order has been, is being or is about to be, committed and any packages, coverings or receptacles in which such articles are found,
  - (ii) of any aircraft, vessel, vehicle or other conveyance or animal used in carrying such articles, if such person has reason to believe that such aircraft, vessel, vehicle or other conveyance or animal is liable to be forfeited under the provisions of this Act,]
- <sup>14</sup>[(iii) of any books of accounts and documents which in the opinion of

such person, may be useful for, or relevant to, any proceeding under this Act and the person from whose custody such books of accounts or documents are seized shall be entitled to make copies thereof or to take extracts there from in the presence of an officer having the custody of such books of accounts or documents.]

#### COMMENTS

This sub-clause has been substituted vide Amendment Act of 1976. Prior to this amendment, this sub-clause contained provision for return of original books of accounts or documents after taking certified copies thereof. But now provision has been made for retention of the original books of accounts and documents. However, the affected person is entitled to make copies thereof.

(3) Where any person sells any essential commodity in compliance with an order made with reference to clause (f) of sub-section (2), there shall be paid to him the price therefor as hereinafter provided-

- (a) Where the price can, consistently with the controlled price, if any, fixed under this section, be agreed upon, the agreed price,
- (b) where no such agreement can be reached, the price calculated with reference to the controlled price, if any,
- (c) where neither clause (a) nor clause (b) applies, the price calculated at the market rate prevailing in the locality at the date of sale.

<sup>2</sup>[(3-A) (i) If the Central Government is of opinion that it is necessary so to do for controlling the rise in prices, or preventing the hoarding, of any foodstuff in any locality, it may, by notification in the Official Gazette, direct that notwithstanding anything contained in sub-section (3), the price at which the foodstuff shall be sold in the locality in compliance with an order made with reference to clause (f) of sub-section (2) shall be regulated in accordance with the provisions of this sub-section.

(ii) Any notification issued under this sub-section shall remain in force for such period not exceeding three months as may be specified in the notification.

(iii) Where, after the issue of a notification under this sub-section, any person sells foodstuff of the kind specified therein and in the locality so specified, in compliance with an order made with reference to clause (f) of sub-section (2), there shall be paid to the seller as the price therefor -

- (a) Where the price can, consistently with the controlled price of the foodstuff, if any, fixed under this section, be agreed upon, the agreed price,
- (b) where no such agreement can be reached, the price calculated with reference to the controlled price, if any,
- (c) where neither clause (a) nor clause (b) applies, the price calculated

with reference to the average market rate prevailing in the locality during the period of three months immediately preceding the date of the notification.

(iv) For the purposes of sub-clause (c) of clause (iii), the average market rate prevailing in the locality shall be determined by an officer authorised by the Central Government in this behalf, with reference to the prevailing market rates for which published figures are available in respect of that locality or of a neighboring locality, and the average market rate so determined shall be final and shall not be called in question in any Court.]

\*<sup>14</sup>[(3B) Where any person is required, by an order made with reference to clause (f) of sub-section (2), to sell to the Central Government or a State Government or to an officer or agent of such Government or to a Corporation owned or controlled by such Government, any grade or variety of foodgrains, edible oilseeds or edible oils in relation to which no notification has been issued under sub-section (3A), or such notification having been issued, has ceased to be in force, there shall be paid to the person concerned, notwithstanding anything to the contrary contained in sub-section(3), an amount equal to the procurement price of such foodgrains, edible oilseeds or edible oils, as the case may be, specified by the State Government, with the previous approval of the Central Government having regard to-

- (a) the controlled price, if any, fixed under this section or by or under any other law for the time being in force for such grade or variety of foodgrains, edible oilseeds or edible oils,
- (b) the general crop prospects,
- (c) the need for making such grade or variety of foodgrains, edible oilseeds, or edible oils available at reasonable prices to the consumers, particularly the vulnerable sections of the consumers, and
- (d) the recommendations, if any, of the Agricultural Price Commission with regard to the price of the concerned grade or variety of foodgrains, edible oilseeds or edible oils.]

#### COMMENTS

The sub-section has been substituted by Amendment Act of 1976 to provide for the procedure for fixing the price in case of levy on foodgrains, edible oil seeds/oils and further to provide for the criterion for the fixation of such price.

<sup>28</sup>[[ (3C) Where any producer is required by an order made with reference to clause (f) of sub-sec. (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-sec. (3A) or otherwise, then, notwithstanding anything contained in sub-sec. (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 1<sup>st</sup> day of October, 2009.

**Explanation**<sup>29</sup>[ I ].- For the purpose 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.]]

<sup>29</sup>[**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 grover or a sugarcane growers co-operative society.]

## COMMENTS

(1) Vide Essential Commodities (Amendment and Validation) Act, 2009 dt. 22.12.2009. Explanation II was added to this Sub-Sec. (3C) w.e.f. 1.10.1974. Simultaneously sub-section 3(C) and explanations thereunder have been substituted vide amending Act dt. 22.12.09 and it shall be deemed to have been substituted on and from 01.10.09. Please see the Essential Commodities (Amendment and Validation) Act, 2009 in Part IV of this Compendium.

(2) Explanation II to this sub-section 3(C) has been added vide amending Act dt. 8.9.10.

<sup>26</sup> [(3-D) The Central Government may direct that no producer, importer or exporter shall sell or otherwise dispose of or deliver any kind of sugar or remove any kind of sugar from the bonded godowns of the factory in which it is produced, whether such godowns are situated within the premises of the factory or outside or from the warehouses of the importers or exporters, as the case may be, except under and in accordance with the direction issued by the Government:

Provided that this sub-section shall not affect the pledging of such sugar by any producer or importer in favour of any scheduled bank as defined in clause (e) of Section 2 of the Reserve Bank of India Act, 1934 (2 of 1934) or any corresponding new bank constituted under Section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), so, however, that no such bank shall sell the sugar pledged to it except under and in accordance with a direction issued by the Central Government.

(3-E) The Central Government may, from time to time, by general or special order, direct any producer or importer or exporter or recognised dealer or any class of producers or recognised dealers, to take action regarding production, maintenance of stocks, storage, sale, grading, packing, marking, weighment, disposal, delivery and distribution of any kind of sugar in the manner specified in the direction.

**Explanation:-** For the purposes of sub-section (3-D) and this sub-section-

- (a) "producer" means a person carrying on the business of manufacturing sugar,
- (b) "recognised dealer" means a person carrying on the business of purchasing, selling or distributing sugar,
- (c) "sugar" includes plantation white sugar, raw sugar and refined sugar, whether indigenously produced or imported.]]

## COMMENTS

The sub-sections (3-D) & (3-E) have been inserted vide Amending Act. No. 37 of 2003 dt. 1-6-03 to overcome the difficulties faced by the Central Government in

regulating the release of sugar. These sub-sections shall be deemed to have been inserted from 14-6-99 as per section 2 of the Amending Act.

(4) If the Central Government is of opinion that it is necessary so to do for maintaining or increasing the production and supply of an essential commodity, it may, by order, authorise any person (hereinafter referred to as an authorised controller) to exercise with respect to the whole or any part of any such undertaking engaged in the production and supply of the commodity as may be specified in the order such functions of control as may be provided therein and so long as such order is in force with respect to any undertaking or part thereof:

- (a) the authorised controller shall exercise his functions in accordance with any instructions given to him by the Central Government, so, however, that he shall not have any power to give any direction inconsistent with the provisions of any enactment or any instrument determining the functions of the persons incharge of the management of the undertaking, except in so far as may be specifically provided by the order; and
- (b) the undertaking or part shall be carried on in accordance with any directions given by the authorised controller under the provisions of the order, and any person having any functions of management in relation to the undertaking or part shall comply with any such directions.

<sup>8</sup>[(4A),(4B),(4C),]

#### COMMENTS

These sub-clauses (4A), (4B) & (4C) inserted w.e.f. 16-4-67 vide amending Act 14 of 1967, have ceased to have effect from 31-3-68.

- (5) An order made under this section shall-
- (a) in the case of an order of a general nature or affecting a class of persons, be notified in the Official Gazette; and
  - (b) in the case of an order directed to a specified individual be served on such individual-
    - (i) by delivering or tendering it to that individual; or
    - (ii) if it cannot be so delivered or tendered by affixing it on the outer door or some other conspicuous part of the premises in which that individual lives, and a written report thereof shall be prepared and witnessed by two persons living in the neighborhood.
- (6) Every order made under this section by the Central Government or by any officer or authority of the Central Government shall be laid before

both Houses of Parliament, as soon as may be, after it is made.

#### COMMENTS

(1) The section 3 is the most important Section of the Act. It empowers the Central Government to make orders for regulating and prohibiting the production, supply and distribution and trade and commerce therein. These powers are delegated to State Governments by the Central Government u/s 5 and State Governments issue orders in accordance with the powers delegated subject to conditions and directions of the Central Government.

(2) Creation of monopolies in favour of co-operative societies and refusal of licences to others who are not co-operative societies, is discriminatory and not legal. (A.I.R.1966 Andhra Pradesh 310)

(3) **Sec. 3-Punjab Essential Commodities (Regulation of Sales) Order, 1966-** Prohibition of sale of things in powdered form or mixtures is not justified-Order prohibiting such sale is invalid. (A.I.R.1968 Punjab 363)

**4. Imposition of Duties on State Governments etc.** - An order made under section 3 may confer powers and impose duties upon the Central Government or the State Government or officers and authorities of the Central Government or State Government, and may contain directions to any State Government or to officers and authorities thereof as to the exercise of any such powers or the discharge of any such duties.

**5. Delegation of powers :-** The Central Government may, by notified order, direct that \*<sup>12</sup>[the power to make orders or issue notifications under section 3] shall, in relation to such matters & subject to such conditions, if any, as may be specified in the direction, be exercisable also by-

(a) such officer or authority subordinate to the Central Government,  
or

(b) such State Government or such officer or authority subordinate to a State Government,  
as may be specified in the direction.

#### COMMENTS

(1) Under this Section, the Central Government can delegate powers to make orders. For orders, delegating powers to State Government issued by Central Govt., please see at the end of the Act.

(2) **Andhra Pradesh Tyres & Tubes Dealers Licensing Order, 1973-** The tyres and tubes were declared as essential commodities by the Central Government after the order of delegation under section 5. The fact that commodity is declared essential after the orders of delegation does not affect the exercise of power by the State Government under section 3 of the Act. Licensing Order held valid. (State of Andhra Pradesh & others V/s. Patta Saryasi Rao and others-(1975) 2 SCC 480 - A.I.R.1975 SC 2030)

(3) **Sec. 5 does not confer powers upon the State Government to legislate on the matters which have been covered by the Central Orders, if they are not inconsistent-** Rajasthan (Display of Prices & Stocks of Essential Commodities) Order, 1966 - Display of prices of Iron & Steel- Matter dealt with by Central Government under Iron & Steel

(Control) Order, 1956- State Government not competent to order display of prices of Iron & steel. Provisions of clause 5 of the 1966 Order are inconsistent with the Central Order - Held, Order is not valid. (Sita Ram & Sons V/s State of Rajasthan - 1974 RLW 311-1974 WLN 774 - AIR 1975 Raj.78).

(4) **Clause 5A added on 23.12.66 to the Rajasthan (Display of Prices & Stocks Of Essential Commodities ) Order, 1966 without prior sanction of Central Government** - State Government has no doubt power to add or ammend the order, but that power must be exercised in the like manner and subject to the like sanction and conditions. Prior sanction of the Central Government was obligatory for adding new section 5A. Since it was not done, Section 5A so far as it relates to cement, is liable to be struck down. Any proceedings under clause 5A declared void and quashed.(M/s Sohan Lal Loonkaran V/s State of Rajasthan and others - 1975 RLW 199 - 1975 WLN 158 - AIR 1975 Raj.215) .

(5) If power is vested in two authorities, one subordinate to the other, to act in respect of certain matter, the subordinate authority has no scope to act if the superior authority has already acted. The exercise of power by the subordinate authority in such a case must be deemed to be inconsistent with the exercise of power by the superior authority. In this view of the matter Kerala Iron & Steel (Declaration of Stocks & Maintenance of Accounts) Order, 1968 does not stand in the face of Iron & Steel Control Order, 1956 passed by Central Government. (Tata Iron & Steel Co. Ltd., Vs. State of Kerala & Others - AIR. 1972 Ker. 97)

**6. Effect of orders inconsistent with other Enactments :-** Any order made under section 3 shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other than this Act.

#### COMMENTS

**Inconsistent Orders** - The District Magistrate, Kota put restriction on the movement of Jowar & Maize under Rule 125 of the Defence of India Rules. The order of the District Magistrate and Coarse Grain (Removal of Control) Order, 1954 made by the Central Government are undoubtedly inconsistent with each other and both of them cannot be obeyed simultaneously and, therefore, one of them shall have to give way to the other. The Coarse Grain (Removal of Control) Order, 1954, having been made under the provisions of Special Law viz. the Essential Commodities Act, 1955 would govern the movement of an essential commodity in preference to the impugned order of the District Magistrate under D.I.R., which confer power of a general nature on the said authority. The order made by the Central Government should hold the field and the order made by the State Government or its delegate would, to the extent of its repugnancy with the order made by the Central Government, be ineffective. (M/s Surajmal Roop Chand & Co. Vs State of Raj.-ILR (1965) 15 Raj. 1989- 1965 RLW 429)

<sup>7</sup>[6A **Confiscation of essential commodity.**- <sup>14</sup>[(1)] Where any <sup>9</sup>[essential commodity is seized] in pursuance of an order made under section 3 in relation thereto, <sup>14</sup>[a report of such seizure shall, without unreasonable delay, be made to the Collector of the district or the Presidency town in which such <sup>9</sup>[essential commodity is seized] and

whether or not a prosecution is instituted for the contravention of such order, the Collector \*<sup>14</sup>[may, if he thinks it expedient so to do, direct the essential commodity so seized to be produced for inspection before him, and if he is satisfied] that there has been a contravention of the order, \*<sup>13</sup>[may order confiscation of-

- (a) the essential commodity so seized;
- (b) any package, covering or receptacle in which such essential commodity is found; and
- (c) any animal, vehicle, vessel or other conveyance used in carrying such essential commodity :

Provided that without prejudice to any action which may be taken under any other provision of this Act, no foodgrains or edible oilseeds seized, in pursuance of an order made under section 3 in relation thereto from a producer shall, if the seized foodgrains or edible oilseeds have been produced by him, be confiscated under this section.]

<sup>14</sup>[Provided further that in the case of any animal, vehicle, vessel or other conveyance used for the carriage of goods or passengers for hire, the owner of such animal, vehicle, vessel or other conveyance shall be given an option to pay, in lieu of its confiscation, a fine not exceeding the market price at the date of seizure of the essential commodity sought to be carried by such animal, vehicle, vessel or other conveyance.]

<sup>14</sup>[(2) Where the Collector, on receiving a report of seizure or on inspection of any essential commodity under sub-section (1), is of the opinion that the essential commodity is subject to speedy and natural decay or it is otherwise expedient in the public interest so to do, he may-

- (i) order the same to be sold at the controlled price, if any, fixed for such essential commodity under this Act or under any other law for the time being in force; or

(ii) where no such price is fixed, order the same to be sold by public auction:

Provided that in case of foodgrains, the Collector may, for its equitable distribution and availability at fair prices, order the same to be sold through fair price shops at the price fixed by the Central Government or by the State Government, as the case may be, for the retail sale of such foodgrains to the public.]

(3) Where any essential commodity is sold, as aforesaid, the sale proceeds thereof, after deduction of the expenses of any such sale or auction or other incidental expenses relating thereto, shall-

- (a) where no order of confiscation is ultimately passed by the Collector;

- (b) where an order passed on appeal under sub-section (1) of section 6C so requires; or
- (c) where in a prosecution instituted for the contravention of the order in respect of which an order of confiscation has been made under this section, the person concerned is acquitted, be paid to the owner thereof or the person from whom it is seized.]

#### COMMENTS

(1) This new section was added on 3-9-66 and amended on 30-12-67, 22-6-74, 2-9-76, 2-9-81, 3-10-97 and 2.1.98. The Section gives ample powers to Collector to confiscate the seized property. But the food grains and edible oilseeds seized from a producer cannot be confiscated, if they are produced by such producer. The confiscation proceedings are different from the forfeiture proceedings and as such this section is not an alternate to Sec. 7. The intention of the legislature appears to make an effective provision for the speedy disposal of seized commodities which are of perishable nature without waiting for the final disposal of the case. The Confiscation proceedings can be taken even if no prosecution case has been launched for contravention of the Order made under Section 3.

(2) Prior to amending Act. of 1974, Section 6 A contained provision for confiscation of only essential commodity seized. Conveyance or receptacle etc. could not be confiscated. But now confiscation of any package, covering or receptacle in which such essential commodity is found and any animal, vehicle, vessel or other conveyances used in carrying such essential commodity has been provided for by amending Act 30 of 1974.

(3) Prior to the Amendment Act of 1976, production of seized commodity before the Collector for confiscation proceedings was necessary. But now physical production of the seized commodity before the Collector is not obligatory and a report of such seizure is sufficient. If the Collector considers it necessary, he has got a discretion to direct the production of such seized commodity for inspection. Collector has also been empowered to order the distribution of the seized foodgrains through Fair Price Shops at the price fixed by the Government.

(4) The proviso to sub-clause (2) was substituted by the Act 18 of 1981 and again by Ord. 1 of 1998. This was applicable only to the seized commodities, retail sale prices of which had been fixed by the Government. To expedite the disposal of seized commodities, the Collectors were empowered to order for their sale through Fair Price Shops at such fixed prices. But now this proviso does no more exist as the Act 18 of 1981 has lapsed.

(5) E.C. Act, 1955, Section 6-A (1)-Kerosene oil was being poured in oil tank of bus-Contravention of Kerosene Control Orders of 1962 and 1993-Bus as well as Kerosene Oil seized - Collector directed confiscation of vehicle and imposed fine of Rs. 20,000/- Writ Petition-Second Proviso requires collector to give an option to owner of such vehicle to pay in lieu of confiscation a fine not exceeding the market price of the vehicle on the date of seizure of the essential commodity - Impugned order set aside and remitted to High Court to consider the matter afresh.

The measure of fine which is required to be levied in lieu of confiscation under the second proviso to Section 6-A(1) would be relatable to the market price of the vehicle and not of the seized essential commodity and, the fine amount in lieu of confiscation is not to exceed the market price of the vehicle on the date of seizure of the essential commodity. That is to say, the limit of such fine would be up to the market price of the vehicle on the

relevant date and it is within the discretion of the competent authority to fix such reasonable amount considering the facts and circumstances of each case - Impunged order set aside - Remitted to High Court to consider the matter afresh. [Collector of Ganjam Vs. Ramesh Chander Padhi = 2009(2) EFR 29 (SC)]

**(6) E.C. Act, 1955 - Section 3/7; 6-A and 6-B-Confiscation of petitioner's truck loaded with food-grains in contravention with provisions of public distribution system for black marketing-Appeal Dismissed-Writ petition - Neither petitioner - Owner of truck nor his driver had been charged for violating 3/7 of E. C. Act admitted on record, hence, confiscation order of petitioner's truck in question not sustained - Impugned order quashed.**

For confiscation of a vehicle under Section 6-A (2) of the Act, what is sine qua non is that there should be some contravention of the provisions of a control order within the knowledge of the transporter or owner of the vehicle. In this respect reliance can be had from apex court decision in Nathulal versus State of Madhya Pradesh: AIR 1966 SC 43.

On the facts of the present case it is established that neither writ petitioner nor his driver has been charge sheeted for violating 3/7 E.C. Act and hence non-involvement of the writ petitioner in the crime is writ large on the record. Respondent authorities failed to take note of the said fact and, therefore, confiscation order of the petitioner's truck in question cannot be sustained.

Writ petition allowed. [Maharani Deen Bind Vs. State of U.P. = 2012 (1) EFR 361]

**(7) E.C. Act, 1955 - Section-6A- Petitioner's vehicle seized by officers of Food Department on allegation of illegal transportation of paddy- Collector directed to release the vehicle but imposed onerous condition of submitting said amount of FDR - Held, condition of same amount of FDR not proper & reasonable - Direction issued.**

The application of the petitioner for release of the vehicle as well as the paddy on supurdnama has been allowed and the petitioner has been directed by the respondent-Collector to deposit F.D.R. of Rs. 2,47,061/-, which is estimated cost of the paddy, for release of the paddy. However, in the matter of release of vehicle, it has also imposed the same condition of deposit under F.D.R. of the same amount, which does not appear to be proper and reasonable. In so far as, release of vehicle is concerned, production of vehicle as and when directed could be ensured by imposing condition of furnishing solvent security, taking into consideration the condition and make of the vehicle. Therefore, I am inclined to interfere with the order dated 8.3.2011 (Annexure P-2) to the extent it seeks to impose condition of depositing F.D.R. of Rs. 2,47,061/- in the matter of release of vehicle on supurdnama.

Accordingly, it is directed that the vehicle of the petitioner shall be released on furnishing local solvent security of the amount as may be directed by the Collector taking into consideration the valuation and make of the vehicle. [Awdheshwar Vs. State of Chhattisgarh = 2012(2) EFR 135]

**(8) E.C. Act, 1955-Sections 3/7 and 6-A-Recovery of L.P.G. cylinders carried on vehicle in question-Proceedings under Section 6-A of Act for confiscation of vehicle pending before District Magistrate- Application for release of vehicle rejected by concerned ACJM-I on ground that as confiscation proceedings pending before District Magistrate, therefore, he had no jurisdiction to release said vehicle - Revision also dismissed by Court concerned upholding same ground of Court below- Held, impugned orders quashed-Court concerned to release said vehicle in supurdgi - Direction issued.**

It cannot be said that pending confiscation proceedings before the District Magistrate, the Magistrate has no jurisdiction to release the vehicle pending trial. Such a view cannot be accepted. Learned Magistrate as well as Special Judge, E.C. Act committed illegality in rejection the release application as well the revision.

In view of the decision of the Apex Court in Sunder Bhai Ambalal Desai Vs. State of Gujrat, 2003 (46) ACC 223, it is not desirable that a motor vehicle be kept at the police station for a long time as that may result in the vehicle becoming junk. In these circumstances, the application for release should have been allowed by the Magistrate subject certain conditions and both the impugned orders being contrary to law, are liable to be quashed.

The writ petition is allowed. Impugned orders dated 23.10.2010 and 1.2.2011 are quashed.

Learned Magistrate is directed to release the aforesaid vehicle in supurdgi of its registered owner on furnishing adequate to its satisfaction on the following conditions: -

- (i) Till further orders of the Court, the petitioner shall not transfer or dispose of the vehicle in question in any manner.
- (ii) The petitioner shall produce the vehicle as and when directed by the trial court or the District Magistrate and as and when directed to do so at his own expenses.

[Sirajuddin Vs. State of U.P. = 2011(3) EFR 562]

**(9) E.C. Act, 1955, Section 3/7- 327 bags wheat seized loaded in alleged truck - By impugned order Court below rejected release of truck due to pendency of proceedings - Release of the vehicle should not be ignored keeping in view the decision of Apex Court - Court below to release said truck in light of law laid down by Apex Court in Sunder Bhai Ambalal Desai's case - Direction issued - Revision allowed.**

The lower Court took an erroneous view that the jurisdiction of Criminal Court is ousted in the case where the proceedings under Section 6-A of Essential Commodities Act is said to have been pending before the Magistrate.

The impugned order set aside. The learned lower Court directed to release the vehicle in the light of the law laid down by Hon'ble the Supreme Court in the case of Sunderbhai Ambal Desai Vs. State of Gujarat, reported in 2003 (46) ACC 223 (SC). - Revision allowed. [Ram Shankar Yadav Vs. State of U.P. = 2010(1) EFR 193]

**(10) E.C. Act, 1955, Section 6-A (2) - Assam Trade Articles (Licensing & Control) Order, 1982 - Order for sale of essential commodity which is not subject to speedy & natural decay can not be made unless it is in public interest - No material to show that Collector ordered sale of E.C. in interest of general public. Any reason assigned subsequent to passing of impugned order, can be of no avail - order of sale set aside [Chittaranjan Barvah Vs. State of Assam = AIR 1907 (NOC) 299 (Gau)]**

**(11) E.C. Act, 1955 section 6-A (2) - Collector can order for sale of seized commodity pending confiscation proceedings - Plea that opportunity of hearing should be given before sale of commodity - not tenable. [Chittranjan Barvah Vs. State of Assam = AIR 1907 (NOC) 299 (Gau.)]**

**(12) E.C. Act, 1955, Section 6-A & 6-B- Truck carrying kerosene was seized - Before confiscation of truck, opportunity to opt for the option as to payment of fine must be given - Appeal allowed.**

Petitioner submitted his explanation in response to notice on 22.02.2005 and the matter was adjourned to 28.02.2005. On this date petitioner was not present - Signature of

petitioner or his counsel not taken on the order sheet dt. 22.02.05 Order of confiscation was passed on 28.02.05. Appeal u/s 6 C also dismissed.

Respondent No. 1 failed in his duty to call upon the petitioner to ascertain whether he wanted to exercise option as provided under second proviso to Section 6-A of the Act. It was mandatory on the part of the authority as the provision read in correct perspective goes to show that the order of confiscation cannot be passed unless the incumbent is given opportunity to opt for the option as to payment of fine equivalent to the market price of the vehicle. Therefore merely because the petitioner failed to appear on 28.02.05, the respondent No. 1 was not justified legally in passing the order of confiscation of the vehicle as the petitioner had no opportunity to exercise his option as provided under second proviso to Section 6-A of the Act.

It is true that the petitioner in his explanation has not referred to his option as to payment of fine on confiscation of the vehicle. However, in our view, it was not necessary for the petitioner to say so or to contend so in his explanation. It was only after the Authority decides to pass an order of confiscation that the incumbent is required to give his option as to payment of fine in lieu of confiscation of the vehicle. Respondent No. 1 committed grave irregularity in passing the order of confiscation without taking into consideration the fact that the petitioner was deprived of his right of giving option as provided under second proviso to Section 6-A of the Act. - Respondent No.1 directed to release the truck on superdnama and he is at liberty to take fresh proceedings after giving an opportunity of hearing to the petitioner. [Syed Zakir Ali & Others Vs. State of Maharashtra = 2006 (1) EFR 316]

**(13) E.C. Act, 1955, Sections 3 and 6-A - In the absence of violation of Section 3, question of application of section 6A did not arise- if commodity is not liable to be confiscated - Question of confiscation of vehicle or container did not arise - Appeal dismissed.**

The view taken by the High Court that in the absence of violation of Section 3 of the Essential Commodities Act, 1955 question of application of Section 6-A did not arise, is correct. If the commodity, as in the present case is not liable to be confiscated, the question of confiscation of vehicles or container did not arise. The order of the High Court does not call for any interference - Appeals dismissed. [Govt. of A.P. of others Vs. V. Ranga Rao etc. - 2006 (2) EFR 20 (SC)]

**(14) E.C. Act, 1955, Section 6-A - M.P. Scheduled Commodities (Dealers Licensing and Restriction on Hoarding) Order, 1991 - Applicant is a dealer in groundnut oil - Inspector checked the premises on 4.3.1995 and found violation of order- Now the control order is repealed - No saving clause -Revisional Court has jurisdiction to give its benefit.**

Revision filed challenging judgment dated 12.07.2000 passed by Sessions Judge, Shivpuri whereby the appellate Court has confirmed the judgment dated 8.12.1998 passed by Collector and Licensing Authority, Shivpuri. - After rescission of control order, 1991 the applicant is entitled to the benefit of rescission of the order and this Court in revisional jurisdiction can examine the legality of the order passed in the light of the subsequent development and rescindment of the control order. As there is no saving clause in the notification saving the order of confiscation passed by Collector cannot be sustained in the eyes of law. - Revision allowed. [Hanuman Industries Vs. State of M.P. = 2005 (1) EFR82]

**(15) E.C. Act, 1955 - Sec.6B & 6A - Reply to show cause notice given by petitioner & attended on several dates fixed - on one date petitioner could not appear & order**

**of confiscation was passed - Collector ought to have held an enquiry before passing the Order - Confiscation Order can not be sustained -**

After receipt of reply the case was listed for hearing before the Collector on 14.12.83, 18.1.84, 7.3.84, 18.4.84 and 30.5.84 - But on these dates of hearing the Collector was busy in other administrative work & the case was adjourned from time to time. - On 18.7.84, petitioner did not attend & Collector ordered that the petitioner has not availed the opportunity of hearing - Collector reserved the case for orders on 25.7.84 & then passed the order for confiscation.

It is evident that though show cause notice was given, but petitioner was not afforded any opportunity of hearing which is mandatory. Petitioner appeared on various dates & not on 18.7.84. Even the petitioner did not appear, the Collector ought to have held an enquiry before passing the order of confiscation - The Order was quashed and the case was sent back to Collector to pass the order in accordance with law after giving an opportunity of hearing to the petitioner as envisaged under Sec. 6B(1)(c). [Vasudeomal vs. Collector Bilaspur and another - 1997(2)EFR 80]

**(16) E.C. Act, 1955 - Sec. 6A, - Confiscation of Paddy loaded in truck - Petitioner found engaged in the purchase & sale of paddy and the stock of paddy was more than their agricultural produce - Confiscation not illegal.**

Truck carrying 150 bags (112.5 Qls.) paddy was apprehended by N.T. near mandi barrier - 1150 bags paddy was also found in the house of petitioner - Total paddy was confiscated by Collector - In appeal the State observed that paddy found in house could not be confiscated as there was nothing on the record to show or suggest that it was collected for the purpose of effecting sale.

Evidence show that they purchased paddy and they were engaged in the business of sale & purchase of paddy - They had 70 acres of land, they cannot have yield of 1300 bags. Patwari report shows that this could not be the produce from agricultural fields. - Paddy found in the truck were not the agricultural produce of the petitioners - As petitioners were engaged in sale & purchase of paddy, it can not be held that the paddy found in truck was agricultural produce - Appeal dismissed. [Purshottam Sahu vs. State of M.P. - 1997(2) EFR 64]

**(17) E.C. Act, 1955 - Sec.6A - Power is very wide & to be exercised with reasonableness & fairness and to promote the purpose & objective of the Act, - Every contravention cannot entail confiscation.**

Goods seized are liable to be confiscated only if the Collector is satisfied about violation of the control orders. The language of the section and its setting indicate that every contravention can not entail confiscation. That is why the section uses the word 'may'. A trader indulging in black marketing or selling adulterated goods etc. should not, in absence of any violation, be treated at par with technical violations such as failure to put up the price list etc. or even discrepancies in stock. [N.Nagendra Rao & Co. vs. State of Andhra Pradesh = AIR 1994 SC2663]

**(18) E.C. Act 1955, Sec. 6A & 6C - Cr.P.C.1973, Sec.482 - Order passed under Sections 6A & 6C of E.C. Act is administrative in nature & as such no directions under Sec.482, Cr. P.C. can be issued by High Court.**

The orders passed by the executive under Sections 6-A and 6-C of the Act are administrative in nature and they cannot be said to be judicial orders. These authorities are not amenable to the control of the High Court and no direction under Section 482 of the Code of Criminal Procedure can be issued in these proceedings. [M/s. Sahu Bros. vs. Govt. of U.P. - 1994(2)EFR 372]

**(19)(A) E.C. Act, 1955 - Sec.6A (1) - Power of Collector is very wide - Power to be exercised after applying mind and after taking necessary steps in accordance with law.**

It requires a report of seizure of the essential commodity to be made without unreasonable delay to the Collector of the district who is empowered to direct confiscation if he is satisfied that there has been a contravention of the Order. This requirement is to ensure that the higher authority shall apply its mind and take necessary steps in accordance with the law. For instance, in this case even non-essential goods were seized. If the Collector would have applied its mind and perused the report he would have immediately directed release of such goods instead of directing its sale by Tehsildar as the provision of the Act and the Control Orders do not apply to non-essential goods. The exercise of power was obviously mechanical. This is being mentioned only to demonstrate the nature of power and how it is expected to be exercised. Nothing turns on it so far this appeal is concerned. But what needs to be mentioned is that since the power is very wide as a person violating the Control Orders is to be visited with serious consequences leading not only to the confiscation of the seized goods, packages or vessel or vehicle in which such essential commodity is found or is conveyed or carried, but is liable to be prosecuted and penalised under Section 7 of the Act, it is inherent in it that those who are entrusted with responsibility to implement it should act with reasonableness, fairness and to promote the purpose and objective of the Act. Further, it should not be lost sight of that the goods seized are liable to be confiscated only if the Collector is satisfied about violation of the Control Orders. The language of the Section and its setting indicate that every contravention cannot entail confiscation. That is why the Section uses the word 'may'. A trader indulging in black marketing or selling adulterated goods etc. should not, in absence of any violation, be treated at par with technical violations such as failure to put up the price list etc. or even discrepancies in stock.

**(B) E.C. Act, 1955 - Sec.6A (1), (2) - Sec. 6C(2) - Confiscation of part of the seized goods do not affect the right of the owner to claim return of the remaining goods. - owner not bound to accept the goods in whatever condition they are - Liability of the State when loss is caused to owner for the goods which are directed to be released or returned to him.**

The purpose of sub-section(2) is for protecting the goods seized by the Collector whether they are eatables or they are foodstuffs or they are iron steel, as, if they are spoilt or they deteriorate then it is a loss not only to the owner but to the society - Loss in value of the goods in quality or quantity is neither in public nor in society's interest. Therefore, the Collector has to form an opinion if the goods seized are of one or the other category and once he comes to conclusion that they fall in one of the categories mentioned in the sub-section then he has no option but to direct their disposal or selling of in the manner provided - This interim arrangement comes to an end once an order of confiscation is passed -

The sub-section(2) of Sec.6C ensures that a person who has been prosecuted or whose goods have been confiscated does not suffer if the ultimate order either in appeal or in any proceedings is in his favour. It is very wide in its import as it statutorily obliges the Government to return the goods seized or to pay the value of the goods if for any reason it cannot discharge its obligation to return it. The circumstances in which goods are to be returned are :

- (a) an order under Section 6-A is modified or annulled by the State Government;
- (b) where the goods were confiscated in consequence of prosecution of the person and

he is acquitted;

(c) and in all these cases where it is not possible for any reason to return the essential commodity seized. This provision cuts across the argument of the State that where even part is confiscated the person whose goods are seized is not liable to be compensated for the remaining. The Section is clear that if only part of the goods are confiscated then the remaining has to be returned. The very first part of the sub-section indicates that where the order of confiscation is modified in appeal meaning thereby if confiscation is confined to part only the Government is bound to release or return the remaining or pay the value thereof.

But what is more significant of this sub-section which widens its reach is the expression, 'and in either case it is not possible for any reason to return the essential commodity seized' then the State shall be liable to pay the market price of the value with interest. The expression 'for any reason' should be understood in broader and larger sense as it appears from the context in which it has been used. The inability to return, giving rise to the statutory obligation of deeming it as sale to the Government, may arise for variety of reasons and extends to any failure on the part of the Government. For instance, the goods might have been sold in pursuance of interim arrangement under Section 6-A(2). Or it might have been lost or stolen from the place of storage. The goods might have deteriorated or rusted in quality or quantity. The liability to return the goods seized does not stand discharged by offering them in whatever condition it was. Confiscation of the part of the goods, thus, could not affect the right of owner to claim return of the remaining goods. Nor the owner is bound to accept the goods in whatever condition they are. The claim of the respondent, therefore, that the appellant was bound to accept the goods in whatever condition they were, is liable to be rejected. [N.Nagendra Rao & Co. vs. State of A.P.-1995(1) EFR 141 (SC)]

**(20) E.C. Act, 1955 - Sec. 6A, - While dealing with the cases of confiscation, it has to be seen that the contravention should be deliberate and there should be "mens-rea" - when no material to show intentional contravention, order of confiscation not proper.**

Licence valid upto 31.3.82 - checking on 29.1.83 - Petitioner was found carrying on business without renewal of licence - Explanation given by petitioner was that he remained under a mistaken belief that the period of validity of his licence is for five years - On this checking he learnt about this mistake & he applied for renewal from the date of expiry - His request was considered & licence was renewed on payment of late fee & fine, for 5 years w.e.f. date of expiry - Regular filing of monthly returns shows bonafide of trader - Department did not proceed against the trader in time - Fault on both sides - Prima facie it could not be a ground for confiscation - No material to show intentional contravention - Order of confiscation not proper. [Mirehoo Mal vs. State Committee - 1989 EFR 462]

**(21) E.C. Act, 1955 - Sec. 6A, - Confiscation of goods on the basis of search & seizure by officers not empowered - Confiscation proceedings become illegal - Hence quashed.**

On 30.7.88, a Dy. S.P.CID and Inspector of Police CID (Food) led a raiding party and seized certain quantities of rice, wheat, pulses etc. - They have been empowered to make search & seizure on 28.7.92 Thus it is crystal clear that neither the D.S.P., C.I.D.(Food), who led the raiding party and held inspection nor the Inspector of Police, C.I.D. (Food), who lodged F.I.R. against (he petitioner, had any power under the law to make search and seizure of the foodgrains in question. In this view of the matter, the order of confiscation

is unsustainable and illegal as the search and seizure had no legal sanction. [Shyam Sunder Agrawal vs. State of Bihar & Others -1994(1) EFR 542]

(22) E.C. Act, 1955 - Sec. 6A & 6C - No provision for payment of interest u/s 6A - Under Sec.6C duty to pay interest is imposed.

Where an essential commodity is sold under Sec.6A(2) pending disposal of confiscation proceedings, which ended in passing no confiscation order by Collector - Sec.6A merely directs return of the goods or its value subject to the deduction of expenses of any sale. Thus Sec. 6A does not contemplate payment of any interest. It is only Sec.6C of the Act that deals with the situation arising out of the appeal filed by the trader - Sec.6C deals with post confiscation situation - Statutory liability to pay interest attaches itself only to a case falling u/s 6C & not U/s 6A - Writ petition dismissed [M/s Shankar Lal Purnimal vs. Commissioner, Civil Supplies, A.P. - 1989 EFR 456]

(23) E.C. Act, 1955 - Sec. 6A - Confiscation U/s 6A can be done of the seized commodity only - Seizure of commodity is a condition precedent before order of confiscation is passed - It is pertinent to note that the inspecting party did not visit the Central Warehouse Corporation's godown where the goods were stored. It is only on the basis of the stock registers that the note has been prepared - no document to show that the goods were seized - As there is no seizure, order of confiscation cannot be sustained. (Arbind Trading Co. Vs. State of Maharashtra & Others - 1992 (2) EFR276)

(24) E.C. Act, 1955 - Sec. 6A (1)- Report of seizure of essential commodity has to be sent to Collector -Failure to do so - Collector cannot reach the conclusion for direction to produce the commodity for inspection or its confiscation - No report admittedly having been made to the Collector, the proceedings of confiscation is invalid. [M/s. Ganesh Traders Vs. State of Orrisa & Others - 1992(2) EFR 620]

(25) E.C. Act, 1955 - Sec.6A - Presence of 'mens-rea' is essential ingredient for passing an order U/s 6A - Court below rightly set aside order of confiscation - Mens-rea is an essential ingredient of criminal offence unless excluded by Statute - offence under E.C. Act. necessarily involves a guilty mind as an ingredient of the offence - Conduct of offender indicating absence of 'mens-rea' being an essential ingredient to prove the guilt would be enough to fail the charges - Furthermore, particularly in the matter of an order of confiscation U/s 6A, 'mens-rea' must be proved/established. When such order is to be made without or before the alleged offender is found guilty for contravention of any order framed u/s 3 of E.C. Act. - Respondents were carrying on the business under bonafide belief which has reasonable basis and so necessary 'mens-rea' for contravention of the order was absent - Lower court was justified to set aside the order of confiscation - Petition rejected [State of Assam v/s Monglunia & Co. and others -1991(2) EFR 274]

(26) E.C. Act, 1955 - Sec. 6A - M.P. Wheat Procurement (Levy) Order 1981 - 121 bags of wheat were seized at check post on the allegation that it was being transported out of M.P. in contravention of clause 3(1) of the order - goods confiscated by Collector - Appeal u/s 6C failed - Confiscation not illegal specially when there is evidence of carrying of wheat without permit - Applicant had 'mens-rea' in trying to export the stock in question out of the state of M.P. without paying levy on it - Order suffer from no legal infirmity -Revision dismissed (Prakash Chand v/s State of M.P. - 1992 (2) EFR 123)

(27) E.C. Act, 1955 - Sec. 6A - Effect of legal seizure & confiscation u/s 6A over the rights of a bank to whom the seized goods are pledged - In confiscating proceedings bank cannot be held to be a dealer - Bank was holding the stock not on behalf

of the dealer, but in exercise of its own right as a pawnee to whom the goods have been duly pledged under cash credit agreement. In exercise of its right as a pawnee, it had every authority to have its debts discharged from out of the pledged goods before the same could be made available for any other purpose - Respondent restrained from recovering sale proceeds of pledged goods unless it be found that out of sale proceeds anything in excess of the loan with interest & expenses involved, is still liable to be recovered from the petitioners ( Bank of Baroda v/s Collector Indore & Others - 1992 (2) EFR 669)

(28) E.C. Act, 1955 - Sec. 6A - Confiscation of truck without seizing it - Confiscation vitiated - Valid seizure was a 'sine qua non' for giving jurisdiction for starting the proceeding of confiscation - Truck in question having not been seized in as much as no seizure report was received - Truck could not have been confiscated - valid seizure was a 'sine qua non' for giving jurisdiction to respondent for starting the proceeding of confiscation - writ petition allowed & the impugned order was set aside. (Dilip Kumar Kotecha vs. State of Bihar & Others - 1993 (2) EFR 553]

(29) E.C. Act, 1955 - Sec. 6A(2) - In a case u/s 6A (2) the Legislature has not provided any right to any person for being heard and the opportunity of hearing was expressly excluded - Legislature intentionally did not place the authority under a mandate to pass an order only after affording opportunity to the concerned persons - Reasons explained [M/s. Jyoti & Co. vs. State of U.P. & Others - 1992 (1) EFR 304]

(30) E.C. Act, 1955 - Sec. 6A & 7 - Confiscation proceedings u/s 6A and criminal proceedings under sec. 7 differ from each other - Decision under sec. 6A in favour of accused cannot operate as bar for taking cognizance of charge under Sec. 7 - Decision of confiscation proceeding relevant for decision of proceedings u/s 7, but not decisive - Confiscation under Sec. 6A cannot be said to be a penalty - Collector has no jurisdiction to impose penalty - Special Court constituted under E.C. Act. can impose penalty - notwithstanding the Order of Collector confiscating the commodity, in the event (he person is acquitted, the Order of confiscation automatically become 'non est'. No provision has been made in Sec. 7 that if a confiscation proceeding is decided in favour of a person, the prosecution of that person shall be dropped. In other words, whereas the order of acquittal by Special Court will be binding on the Collector, the latter's order is not binding on the former. - Confiscation proceeding may be started even without lodging a prosecution - Collector while exercising jurisdiction in confiscation proceeding and the Special Court while exercising the jurisdiction of trying a person under E.C. Act. are having different objectives and different materials & they have to act on different standard of proof- Finding of Collector in confiscation proceeding cannot be considered by itself to be a ground for quashing any order of taking cognizance or any criminal proceedings before the special court.

Finding of Collector arrived in confiscation proceeding may be an aspect for consideration by Special Court while proceeding to take cognizance or at any appropriate stage of prosecution proceeding, but certainly, it cannot be conclusive or even decisive - Petition dismissed [ Surendra Kumar Jhunjunwala vs. State of Bihar -1991(1) EFR 125]

(31) E.C. Act, Sec. 6A & 7 - Dropping of confiscation proceedings by Collector U/s 6A, has no effect on the criminal proceedings from the stage of taking cognizance - 1984 All LJ 876 dissented from -The law never contemplates that a judicial authority should surrender its discretion in the matter to the Collector exercising the power U/s 6A of the Act and is obliged, under law, to blindly follow the finding of the Collector in this regard. Powers exercisable U/s 6A of the Act is summary in nature in the sense that it is to

he exercised for the limited purpose, namely, for confiscation, or release of the seized goods. Sec. 6A of the Act does not envisage a regular trial & it has nothing to do with the merits of the criminal case even though confiscation itself may have penal consequences. (Lal Bahu Tiwari & others V/s State of Bihar. 1990 Cr.LJ. 1997 = 1990(1) EFR 555]

**(32) E.C. Act, Sec.6A & 6E- Collector not empowered to release the seized goods during the pendency of the proceedings before special court. HELD-** The legislature did not intend to confer a power on the collector to return the essential commodity to the owner or the person from whose possession it was seized. That is for the obvious reason that it would counter the very object and purpose of enactment. [Shambhu Dayal Agrawal V/s State of West Bengal and others - 1990 3 SCC page 549 - Crimes 1990 (2) page 665]

**(33) E.C Act, Sec. 6A - seizure report cannot take place of evidence.** - In case grounds of confiscation are denied - Collector is bound to make enquiry - order of confiscation merely on facts mentioned in the seizure report not valid. The report can be a basis for a Collector for formation of an opinion that an essential commodity in question has been seized for contravention of provisions of an order issued U/s 3 of the Act which is a condition precedent for initiation of a proceeding U/s 6A of the Act for confiscation of the seized essential commodity, but can not take place of evidence.

If the allegations in the report of seizure are denied on behalf of the concerned person in his representation, Collector has no option but to make enquiry in the confiscation proceedings and thereafter only he can finally dispose of the same. In that enquiry, both the parties should be allowed to lead evidence, which may be documentary or oral in the shape of affidavit or otherwise. Of course, the technical rules of evidence will not apply to such enquiry. (Dharam Deo Yadav & others V/s State of Bihar & others - 1990 Cr.L-J. 1990).

**(34) E.C. Act, Ss. 6A and 6E - In proceedings under Sec. 6A - Collector finds that goods cannot be confiscated - Collector can drop proceedings - He has no jurisdiction to pass order for release of goods - Held - Collector's order is erroneous.** By Sec. 6E the Collector has been given the jurisdiction for making orders with regard to possession, delivery, disposal, release or distribution of seized essential commodities pending confiscation. Under Sec. 6A of the Act, the Collector has under certain circumstances been given power to confiscate the goods. By Sec. 6A the Collector has not been given any power to release the goods. Section 6E is to be read in the perspective of the provision of Sec.6A of the Act because of the phrase "pending confiscation" under Sec.6A, used in Sec.6E. If the Collector has not been given any power to release the goods under Sec.6A, it can never be assumed that by Sec.6E which gives some interim powers to the Collector with reference to the proceeding u/s 6A, the Collector has been given any power to release the goods after finding that the goods cannot be confiscated u/s 6A, the Collector may order confiscation of the essential commodities so seized. He has not been given any power to release the goods. Under Sec.6A the Collector may either pass an order for confiscation or may not pass any such order thereby dropping the proceedings. What the Collector cannot finally do in a confiscation proceeding under Sec.6A can never be done by him after he holds that the goods are not liable for confiscation. If the Collector finds that the goods cannot be confiscated, he will stop giving further orders under Sec. 6A and drop the proceedings, leaving the special courts to pass the final order regarding forfeiture or release of the goods. As soon as he holds that the goods are not liable for confiscation he ceases to have any jurisdiction to pass any order in respect of the goods in a proceeding under Sec. 6A of the Act which he shall then

drop. He is not given the powers of the special court in this proceeding - Order of Collector set aside. (State of West Bengal Vs. Shree Brahma Oil Mills- 1989 Cr.L.J. 1064).

(35) E.C. Act, Section 6A & 6-C(2) - Order of confiscation passed without specifying the provision and order, for violation of which it was being passed - Order without jurisdiction- The courts below were required to record a clear finding as to what provisions of Bihar Edible Oil Wholesale Dealers Licensing Order and/or Bihar Vanaspati Dealers Licensing Order was contravened. They have not referred to any provisions in the two orders which require a driver of the truck to move on the road with the papers relating to the stock loaded in the truck. It is not a case that the goods loaded in the truck were stolen articles. No other claimant has come forward to claim the goods which were on the truck. A delayed claim of the goods seized is entirely irrelevant till such time the authorities are able to establish that there has been a contravention of any of the provisions of the said two orders. Absence of papers may only raise a reason to believe that some provision of the order is being violated but for the purpose of passing an order of confiscation the authorities must be able to establish what provision of the Order has been contravened. The authorities have confiscated the goods because the claim of the petitioner did not appeal to the authorities. Power to confiscate does not flow even if there is an inter se dispute as to the ownership of the property ; though in this case there is no other claimant than the petitioners of the case in question. The two orders are wholly without jurisdiction and are being quashed. (Shanti Trading Co. Vs. State of Bihar - 1988 EFR 562)

(36) E.C. Act- Sec. 6A (2) - Direction for disposal of Commodity - HELD - Though the provision does not specifically provide for an opportunity of hearing, having regard to the nature of the exercise of power and the authorities exercising it and the consequence this would ensue, the principles of "audi- alteram partem" should be read into Sec. 6A(2) - If any action under Sec. 6A(2) is desired, an opportunity of hearing should be given to the petitioner. (Paramhans Traders Vs Collector Cuttack - 1987 EFR 627).

(37) E.C. Act 6A - Bihar Essential Articles Display of stock and price Order, 1977- Stock of Coal was seized for breach of provisions of the order & it was entrusted to Munim of the owner on Zimmanama. When the complainant went to the place where the seized coal was kept on Zimmanama he found that the entire stock of seized coal had been disposed of by the Munim, Held that when the prosecution case, as stated in the complaint was that the coal had been entrusted to the Munim, the question of breach of trust attributed against the owner could not be said to be at all applicable. (Mohd. Yasin Vs State of Bihar - 1987 EFR 94)

(38) E.C. Act, Sec. 6A - West Bengal Pulses, Edible Oil Seeds, Edible Oils (Dealers Licensing) Order, 1978 Cl. 13 (1)(e) - On search petitioner - Licensed Dealer . was found to have 99 Qtls. of 'Arhar Dal' while according to the stock board displayed by him, he had 110 Qtls. as the opening stock - The petitioner could not explain the difference of 11 Qtls. which according to the police was sold without issuing cash memo in violation of condition of the Licence. Entire stock of 99 Qtls. of Dal was seized by the police and confiscated by the Collector - Held - The law permits the Collector to confiscate only that portion of the commodity which offends that order and the Collector was not right in confiscating 99 Qtls. of Dal since the stock does not contravene any of the provisions of the order - confiscation order set aside. (Prem kumar Khandelia Vs. State of West Bengal -1987 EFR 621)

(39) E.C. Act, Sec. 6A (2) - Direction for disposal of commodity seized was passed by the Collector on the sole ground that the commodity was subject to natural decay - Other ground that it was expedient in public interest not adverted. - Directions become illegal (Param Hans Traders Vs Collector Cuttack - 1987 EFR 627)

(40) E.C. Act, Section 6A (1)(2) - Order for auction of seized commodity - Passed after lapse of more than one year without ascertaining as to which order has been violated, what is the nature of the offence - Held - Order liable to be quashed. When the passing of the order was itself delayed by almost over a year, and the fact that the matter was still being investigated by the police, to find out as to which particular order had in fact been violated and the nature of the offence committed by the petitioner. In such circumstances, ordering the auction of the commodities seized, cannot be said to be justifiable. (Ram Niwas Vs. State of M.P. - 1987 EFR 113)

(41) E.C. Act, Section 6A -Only Collector has to apply his mind and consider expediency of directing disposal or confiscation of essential commodity - Preparation of show cause notice initiated by Dy. Collector - Proceedings of confiscation at his very inception vitiated - Collector cannot delegate his authority to any of his subordinates. Section 6A does not speak of any Food Officer, it is only the Collector of the district, who under Section 6A has to apply his mind and consider the expediency of directing disposal or confiscation of the essential commodity seized and produced for inspection before him. Section as it is worded, does not permit any scope of delegation of this authority to any of his subordinates. (M/s. Raj Kamal Oil Mills Vs. Collector, Indore - 1986 EFR 591)

(42)(A) E.C. Act, Sec. 6-A & 7 - Proceedings under Secs, 6A & 7 are independent and distinct from each other and can go on simultaneously. The proceedings regarding the confiscation of essential commodity were independent and distinct from the proceedings before a Court which was empowered to award the penalties enumerated in Section 7. It was not incumbent upon the state to launch a prosecution of a person for having contravened any Order made under Section 3 merely because the Collector had, in the exercise of powers under Section 6A, passed an order of confiscation of an essential commodity in respect of which a criminal prosecution could be launched. Likewise, criminal proceedings could be initiated before a competent criminal court and penalties awarded by it even without confiscation proceedings being taken under Section 6A. Further, confiscation proceedings and the criminal prosecution could go on simultaneously or the criminal proceedings could be initiated subsequent to the passing of the order of confiscation under section 6A. However, the fate of the confiscation proceeding was made dependent upon the success or failure of the prosecution, if launched. If the prosecution ended in a conviction the order of confiscation, if not set aside or modified etc. under Section 6-C(2), became final. On the contrary, if the prosecution ended in acquittal the order of confiscation fell through automatically even if the same had been upheld in appeal.

(B) E.C. Act, Secs. 6-A (2) and 6-A (1)- Proceedings under Section 6-A(2) - Depends upon commencement of proceedings under Section 6-A(1) - Finding about contravention of the Order is not required to be recorded before passing of an order in proceeding under Section 6-A(2) -

No order for sale of commodity seized can be passed unless proceedings for the confiscation of the commodity seized have commenced under sub-section (1) of Section 6-A. In other words, the machinery as contemplated in Sub-Section (2) of Section 6A cannot be set in motion unless the ball has been set in rolling by proceedings under

Section 6-A(1). It follows that the proceedings under Sub-section (2) of Section 6A are dependent upon the proceedings under Sub-Section (1) of Section 6A to a limited extent, that is, the proceedings under the later provision cannot commence unless the proceedings under the former provisions have been initiated. Once that stage is arrived at, the two streams start flowing in different channels.

In contrast to the provisions contained in Section 6-A that before passing an order of confiscation of any commodity the authority concerned has to be satisfied that there has been a contravention of the Order, no such duty has been cast upon the officer passing an order under Sub-Section (2) directing the sale of the seized essential commodity.

The scheme as formulated by the Legislature in Section 6-A (2) clearly negatives the idea that even at the stage when the Collector is passing an order directing the sale of an essential commodity seized, he should record a finding or satisfaction that there has been a contravention of the order.

**(C) E.C. Act, Sec 6-A(2) - In proceedings under Section 6-A(2) enquiry on merits not required - Collector is authorised to direct sale of commodity seized.** - Question of the Collector making an enquiry on the merits of the case while proceedings under Sec 6-A (2) does not arise. In proceedings under Sec 6-A (2) the Collector is merely concerned with the interest of the consumers. (M/s. Pankaj Dal Mills V/s State of U.P. - 1985 EFR 101)

**(43) Essential Commodities (Prices & Stock Display) Order, 1966 - Proceedings U/S 6-A are quasi criminal in nature - Decision of criminal court will govern the ultimate fate of the confiscated goods** - If no criminal prosecution is launched for the alleged offence, then the order passed U/s 6-A (1) or the order passed in appeal by the judicial authority, as the case may be, would become final as relating to the question of confiscation of such essential commodity. But if a criminal prosecution is launched then the decision of the criminal court in such proceedings would govern the ultimate fate of the confiscated goods.

The Collector confiscated tyres under Sec. 6A - No appeal was filed by the accused against the order of the Collector. In criminal proceedings relating to the same offence, the accused was acquitted. The petitioner is entitled to the restoration of the seized or confiscated goods or price thereof, if sold. (M/s. Hind Tyres Vs. State of Rajasthan - 1984 RLW 424)

**(44) Karnataka Edible Oil, Edible oilseeds and Oil Cakes (Declaration of Stocks) Order, 1976 - Effect of the word "May"**- The sub-Inspector seized the truck carrying 7200 kgs. oil without furnishing a declaration. The Deputy Commissioner Belgaum confiscated 7200 kgs. oil. It is axiomatic that the power of confiscation is a discretionary power. The use of the word "may", however, does not necessarily mean that the Dy. Commissioner can not, in the given circumstances of a particular case, direct the confiscation of the entire consignment in relation to which there is a contravention of the order. It all depends upon the facts and circumstances of each case whether the confiscation should be of entire consignment or part of it, depending upon the nature of the contravention. Some time it may be in public interest to direct confiscation of the entire consignment. The order of confiscation of 7200 kgs was upheld. (State of Karnataka Vs Krishna Brahma & others - A.I.R.1981 SC 1468)

**(45)** The legislature has conferred a two fold powers on the Collector in respect of the seizure of the essential commodity to be produced before him for inspection, if he thinks it expedient to do so. He may order the confiscation of the essential commodity so seized, if he is satisfied that there has been a contravention of the order made under

section 3 of the Act.

Collector mentioned in the notice that he was satisfied about the contravention; he made clear therein that all that he was proposing to do in the matter was to confiscate the seized oil and that if the petitioner had any cause to show against the proposed action, he could make within 15 days. The notice read as a whole clearly indicate that the satisfaction was merely tentative and the Collector had an open mind in the matter, and that is why the Collector gave the petitioner an opportunity of making written as well as oral representation against the proposed action - Revision dismissed. (Sunder Lal Bansal Vs. State Of Rajasthan - 1982 Cr. L.R. 179)

(46) **When order for confiscation can be made** - Enforcement Officer saw 67 bags of millet being kept in house on 22-5-79. He came to Office and enquired about godowns of the firm. The house was not entered as godown. E.O. seized millet and made a report U/s 6-A. The collector issued notice. The dealer showed cause that he utilised this house only on 22-5-79 with the intention to inform the licensing authority within 48 hours. Case was adjourned on various dates. On 5-2-80 the Collector passed order of confiscation in the absence of the petitioner or his advocate. It was held that where confiscation U/s 6-A is not followed by the prosecution or where prosecution is not intended, some sort of enquiry on the disputed question of facts ought to be made before making an order of confiscation. The petitioner deserves a hearing before the Collector - Revision accepted - Case remanded. [Kedar Mal Vs. State of Rajasthan - 1980 Cr.L.R.(Raj.) 542]

(47) The Collector is empowered to confiscate the essential commodity seized if he is satisfied that there has been a contravention of order - it cannot be denied that this power is discretionary. [State of Andhra Pradesh Vs. Bathu Prakash Rao - 1976 Cr. L.R. (SC) 334]

(48) **Section 6-A, authorises Collectors to confiscate the seized goods, it does not say that the entire seized quantity be confiscated.** It is left to the discretion of the Collector to decide whether entire seized stock should be confiscated or only a portion of it. That however is a judicial discretion & must be exercised judicially having regard to the circumstances of, the case, gravity of the matter and other relevant and pertinent factors.

Admittedly the petitioners are producers of food grains. It is nowhere alleged that they have purchased the commodity and were dealing in them. In the circumstances of the case, it is reasonable to come to the conclusion that the petitioners were trying to fetch best possible price for the commodities which they have produced on their own lands. In these circumstances entire stock need not be confiscated - Quantum of confiscation reduced to 1/4 of the seized goods. (B.Seetharammayya Gupta vs. Distt.Rev.Officer - A.I.R.1977 Andhra Pradesh 133)

(49) **Seizure of goods by police for contravention of Kerala Rice (Regulation of Movement) Order, 1966** - Accused produced before Magistrate and the goods retained for production before the Collector -Magistrate cannot direct production of goods before him under Sec. 523 Cr.P.C.

If the seized goods have been produced before the Collector under this section, the Court before whom the accused is brought for the trial, has no power to call the Collector to produce the seized goods. After trial of the case, if the magistrate passes an order to return the goods to the accused, the Collector shall return the goods in specie and if it is not possible to return the goods, then its price with reasonable interest will be returned to the accused. (State of Kerala Vs. C.K. Assainar - A.I.R.1969 Kerala 151)

(50) **Order of sale of confiscated foodgrains-** Power is very much inherent in the

order of confiscation. There is no condition for making the order of confiscation that a prosecution case should be pending. This is so clear from Section 6A itself. Therefore, the provision of Code of Criminal Procedure will not come into play and even prosecution case launched, the collector will have the power to confiscate & also to deal with the property may be by selling the same in public interest. Where a statute specifies a particular mode of enforcing a new obligation created by it, such obligation can, as a general rule, be enforced in no other manner than provided by the statute. Therefore there can be no relevancy of see .516 A of the Code of Criminal Procedure. (Amarnath Vs. State of Himachal Pradesh and others-A.I.R.1975 H.P. 40 )

(51) **The consideration or mens rea or bonafides of a dealer is relevant while passing an order of forfeiture of foodgrains from him under Sec.6A.** The view that the question of bonafides or mens rea of a dealer may have bearing in original proceeding and may be considered there if any prosecution is launched against the dealer and that those considerations are out of place at the stage of confiscation, is not correct. The contravention attracting the provisions of 6- A has the same legal incidence and consequences and has the same nature and character as the contravention made punishable by Sec. 7. The two provisions i.e. Section 6-A and 7 are in pari materia. (Kishori Lal Bihani Vs. The Addl. Collector & D.M. Kanpur and other- A.I.R.1969 All. 159)

(52) **Aluminium (Control) Order, 1970** - Where aluminium product is seized in pursuance of the control order, the Collector has no jurisdiction to go into the validity of the seizure and can only confiscate goods in respect of which contravention is established and it is only if the seizure is valid the collector would have jurisdiction to go into the question whether there has been any contravention of the control order in respect of the whole or portion of the goods seized. The Collector cannot go on with the enquiry under Sections 6-A & 6-B when the seizure itself is illegal. (Hindustan Aluminium Corporation Ltd. Vs. Controller of Aluminium & others-AIR 1976 Delhi 225)

(53) **Section 6-A has not been enacted with a view to provide an alternative to Sec.7.** The obvious intention behind sec.6-A appears to be to make provision for the speedy & effective control and disposal of the seized commodities like foodgrains, edible oil seeds or edible oils etc. which are perishable in nature. The legislature well thought that an order of confiscation or forfeiture may be passed initially and may not wait till the final disposal of the prosecution. To that end, power has been conferred on the Collector to pass suitable orders under Section 6-A. This provision is not in substitution of Section 7. It is provisional. It provides a measure of an interim relief to the commodities in respect of which a contravention has taken place. These provisions are, therefore, not unconstitutional.(M/s. Babu Ram Jagannath Vs. D.M. Merrut & Others -A-I.R.1970, p 396)

(54) **Confiscation proceedings pending - Sale of seized commodities without notice to the licensee - Held valid.** The sale of essential commodities is an interim measure under Section 6A does not in any way affect the rights of the dealer in the property, for the sale proceeds are there in the event of his being found guilty. It is to be remembered that under Sub-Section (2) of Section 6-C where an order under Section 6-A is modified or annulled on appeal, or wherein prosecution instituted for the contravention of the order in respect of which an order of confiscation has been made under Section 6-A, the person concerned is acquitted and in either case it is not possible for any reason to return the essential commodity seized, such persons shall be paid the price thereof as if the essential commodity had been sold to Government with reasonable interest calculated from the day of seizure of the essential commodity - It is true that Section 6-B in terms

does not provide for making interim orders by the Collector or other competent authority. It does not also provide for issuing a notice in case the Collector proposed to sell an essential commodity seized for contravention of an order made under Section 3 of the Act. But that clause has no prejudice to the defence of a dealer and does not deprive him of an opportunity to represent against the proposed action of confiscation. It will be open to him to show that the proposed action is illegal and that he had not contravened any of the conditions of the Control or Licensing Order. The power to conduct an enquiry under Section 6-A includes also the power to make incidental or consequential orders. Interim arrangements are made not only in the interest of consumer public but also in the interest of the dealer. It is for the licensing authority or the Collector or the Government, as the case may be, to consider, in a given case, whether the essential commodity seized should be sold or kept in storage until the completion of the proceedings under Section 6-A. It depends upon the supply or distribution position of essential commodities to the consumer public in a particular area, locality, village or town. So this is a matter entirely within the discretion of the competent authority to determine, in a given case, whether the essential commodities seized should be sold so as to make them available to the needy consumer public or whether they should be kept in storage till such times as the proceedings under Sec.6-A conclude. (K. Venkataraman Vs. The Distt. Rev. Offi. - 1975 A.I.R. A.P. 359)

**<sup>3</sup>[[6-B. Issue of show-cause notice before confiscation of essential commodity etc. -**

<sup>13</sup>[(1)] No order confiscating any \*<sup>13</sup>[essential commodity, package, covering, receptacle, animal, vehicle, vessel or other conveyance] shall be made under section 6A unless the owner of such \*<sup>13</sup>[essential commodity, package, covering, receptacle, animal, vehicle, vessel or other conveyance] or the person from whom \*<sup>9</sup>[it is seized]-

(a) is given a notice in writing informing him of the grounds on which it is proposed to confiscate the \*<sup>13</sup>[essential commodity, package, covering, receptacle, animal, vehicle, vessel or other conveyance];

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation; and

(c) is given a reasonable opportunity of being heard in the matter.]]

<sup>13</sup>[(2) Without prejudice to the provisions of sub-section (1) no order confiscating any animal, vehicle, vessel or other conveyance shall be made under Section 6-A if the owner of the animal, vehicle, vessel or other conveyance proves to the satisfaction of the Collector that it was used in carrying the essential commodity without the knowledge or connivance of the owner himself, his agent, if any, and the person incharge of the animal, vehicle, vessel or other conveyance and that each of them had taken all reasonable and necessary precaution against such use.]

<sup>14</sup>[(3) No order confiscating any essential commodity, package, covering, receptacle, animal, vehicle, vessel or other conveyance shall be invalid

merely by reason of any defect or irregularity in the notice given under clause(a) of sub-section (1), if, in giving such notice, the provisions of that clause have been substantially complied with.]

#### COMMENTS

**(1) E.C. Act 1955, Sec. 6B - Notice to owner & person from whom the goods are seized - Owner is first entitled to notice • It can not be the sweet will of the authority concerned to give notice to either of the two.-**

The whole intention of the provision is clear that it is the owner who is first entitled to the notice. It can not be the sweet will of the authority concerned to give notice indicating the grounds of confiscation to either of the two. In case, where the owner is known or somebody comes forward claiming to be the owner of the goods seized, notice at the first instance has to be given to him. The alternative which has been provided in the provision seems to be where the owner of the goods is not known or nobody is coming forward claiming to be the owner of the goods and in that event, the notice if given to the person from whom the commodity is seized, would only suffice. There may be circumstances in which it may not be possible to trace out the owner. In that event also, there would be no option left but to give notice to the person from whose custody the goods are seized. It is difficult to envisage a situation in which the authority concerned may have the owner as well as the person from whose custody the goods are seized, before it, but on its own sweet will, may prefer to give notice to the person from whom the goods are seized ignoring the owner of the goods. That would frustrate the whole purpose of the provision itself. The owner and the person from whose custody the goods are seized, are not inter-changeable - Case remanded. [Mukesh Chand & another vs. Addl. Commr. and Joint Secretary, U.P. Govt.(Alla. H.C.) - 1996 (2) EFR 366]

**(2) E.C. Act, 1955, Sec.6A & 6B - Notice for confiscation given to petitioner - wordings used in the notice indicate that accused is taken to have contravened the Order - An inappropriate wording in the show cause notice can not by itself be sufficient to infer 'bias' on the part of the Joint Collector.-**

No doubt, the wording used viz. 'clearly contravened' may be suggestive of the fact that the competent authority came to a conclusion without hearing the petitioner. But I do not think that bias shall be necessarily inferred by reason of employing such expression. The overall tenor of the notice indicates that it is only in the nature of the show cause notice calling upon the petitioner to submit his explanation and the conclusions recorded in the said notice are only prima facie conclusions based upon the report of the second respondent. In any case, the Joint Collector will independently adjudicate the issues involved after taking into account the representation of the petitioner without being merely carried away by the report of the 2nd respondent. [M/s Triplex Agencies, Chittor (H.P.Gas Dealer) vs. Distt. Collector, Chittor and another - 1994(2) EFR 541]

**(3) E.C. Act, 1955 Sec.6B & 6A - Notice in confiscation proceedings must contain details and grounds of proposed confiscation proceedings - Vague notice vitiates entire proceedings - Entire proceedings based on such vague notice invalid - Notice did not make out reference of various irregularities, type of it, the nature of it, quantity of them and in what manner it was serious and what was the actual violation - Issue of notice is a mandatory provision which in term means that the notice must contain material fact which the opposite party is required to answer.- The vagueness & lack of material grounds on which the essential commodity is required to be confiscated, must be clearly**

indicated in the notice, without which the notice itself will become invalid, and if the notice is invalid, the confiscation order passed on the basis of such type of notice, must be deemed to be invalid - Order of confiscation quashed [Mahabir Prasad Bajaj Vs. State of Bihar & Others - 1991(2) EFR 172]

(4) **E.C. Act, 1955 Sec. 6B - Notice contained preconceived decision about commission of offence - Therefore initiation of the confiscation proceeding is bad in law** - The Dy. Commissioner, while stating the facts in the notice has stated to the effect that "it is, therefore, clear that the dealer has violated the provisions of . Bihar Foodgrains Dealers' Licensing Order 1967 ...." - Authority concerned should have come to such decision only after hearing the parties. The pre-conceived notice of the authority, therefore, vitiates the whole trial - Impugned orders set aside. ( M/s. Anand stores Vs. State of Bihar & Another. - 1991(1) EFR 284]

(5) **E.C. Act 1955, Sec. 6B - Confiscation of truck alongwith coal loaded on it - without serving notice U/s 6B - Confiscation vitiated** - From the records it does not appear that any notice was served on the petitioner as required u/s 6B - Confiscation of truck without notice u/s 6B vitiated - Impugned order set aside. [Dilip Kumar Kotecha vs. State of Bihar & Others - 1993(2) EFR" 553]

(6) **E.C. Act 1955, Sec. 6B - Written notice U/s 6B not served on petitioner- Appearance of petitioner no substitute of written notice** - Petitioner appeared in the proceedings & on various dates filed petitions for adjournment to file his show cause - Order passed exparte - Appearance of petitioner no substitute for service of written notice as required in the law & this would not cure the fatal lacuna in the proceeding - Confiscation order set aside. [Ramanand Kejariwal Vs. State of Bihar & Others - 1992(2) EFR 124]

(7) **E.C. Act, Section 6-A & 6-B - Person appearing voluntarily to give explanation - Order without issue of notice not illegal** - Undisputedly a show cause notice and an opportunity of hearing are required to be provided before ordering confiscation - Petitioner voluntarily appeared and gave his explanation before issue of show cause notice - Insistence for show-cause notice could only be a force and empty formality - Petition dismissed. [S.R. Anjan Setty Vs. Govt. of Karnataka - 1989 Cr.L.J. 786 = 1989 EFR 707(Kar)]

(8) **E.C. Act, Section 6-B - Notice not containing grounds for confiscation is violative of Section 6-B as well as basic principles of natural justice - As such, has to be quashed** - The notice does not set out the grounds of proposed confiscation beyond stating the sugars have been seized for violation of E.C. Act - It is now well established in law that for initiating a confiscation proceeding authorities must set out the grounds in order to give an effective opportunity to explain the alleged irregularities. In absence of statements of ground a person is denied a real and effective opportunity to show cause. This is not only violative of the basic principles of natural justice, but also the requirement of Section 6-B of the Essential Commodities Act.

Be that as it may, the order of sale of sugar as also the notice for initiating confiscation proceeding are per se, illegal and without jurisdiction for being violative not only the provisions of the Essential Commodities Act, but also the principles of natural justice. (Shaym Prasad Kishore Vs. State of Bihar- 1987 EFR 260)

(9) Show cause notice issued by the Collector contained one ground for confiscation of foodgrains viz., that the firm stored foodgrains in excess of the quantities shown in the stock register. No other ground was mentioned in the notice. No excess quantity was found. Indeed, the quantities of foodgrains were in conformity with the entries recorded in

the stock register. Confiscation was made on the ground for stocking foodgrains in a godown not specified in the licence of the firm. No prior notice of this charge was given to the firm nor an opportunity was afforded to it to put its defence to this charge. The confiscation order was held invalid being in violation of principles of natural justice. [M/s. Dayal Chand Ganga Ram Vs. The State of Rajasthan -1978 WLN 3-1978 RLW 42-ILR (1978) 28 Raj. 145]

(10) On 27.5.77, Collector, Jalore confiscated the truck, alleged to have been bringing the rice. Order of confiscation was set aside by Sessions Judge on 17.3.78. The provisions of section 6-B are mandatory in nature and confiscation of truck can only be made after complying with these provisions. The Collector confiscated the truck illegally without giving the owner of the truck a notice in writing informing him of the grounds on which it was proposed to be confiscated and without giving him an opportunity of being heard and of making a representation in writing against the grounds of confiscation. Held - the order of Collector was rightly set aside. (Mohan Singh Vs. The State of Rajasthan - 1978 WLN 290 - 1978 RLW 354)

(11) Section 6-B makes it clear that no confiscation should be made unless the competent authority hears representation from the person affected. After bearing the matter and after that if the Collector is satisfied that there was such a contravention, that the confiscation could be ordered. Before the stage of hearing, the authorities concerned must have an open mind in regard to the matter - satisfaction can come only after hearing the petitioner and not before that.

From perusal of the notice under section 6-B, it appears that the Collector has come to a finding that the petitioners have abetted the export of / exported 229 bags of maize from Haryana to West Bengal without any permit and secondly he was satisfied that a contravention has been made under the provisions of Rule 8 of the Northern Inter Zonal Maize (Movement Control) Order, 1967, and thereafter he has given show cause notice against the ground of confiscation of maize exported. Notice read as a whole makes it clear that Collector was satisfied that there was a contravention and show cause notice only given for the confiscation, should not be allowed to stand. (M/S Munilal Bhagwat Sharan etc. Vs. Chief Comm. Supdt. E.R. etc., - AIR 1972 Cal. 405)

(12) Business belonged to a partner firm, consisting of three partners - In view of the legal position that each partner is an agent of other partners, the notice to petitioner no. 1 would be sufficient compliance with the law. (Kashinath Bhimanna Ghanta & Others Vs. State of Maharashtra & another-A.I.R. 1980 S.C. 132).

<sup>7</sup>[[6-C. Appeal - (1) Any person aggrieved by an order of confiscation under section 6-A may, within one month from the date of the communication to him of such order, appeal to any judicial authority appointed by the State Government concerned and the judicial authority shall, after giving an opportunity to the appellant to be heard, pass such order as it may think fit confirming, modifying or annulling the order appealed against.

(2) Where an order under Section 6A is modified or annulled by such judicial authority or where in a prosecution instituted for the contravention of the order in respect of which an order of confiscation has been made under section 6-A, the person concerned is acquitted, and in either case it

is not possible for any reason to \*<sup>9</sup>[return the essential commodity seized], \*<sup>14</sup>[such person shall, except as provided by sub sec. (3) of Section 6A, be paid] the price therefor \*<sup>9</sup>[as if the essential commodity] had been sold to the Government with reasonable interest calculated from the day of the seizure of \*<sup>9</sup>[the essential commodity] \*<sup>9</sup>[and such price shall be determined -

- (i) in the case of foodgrains, edible oilseeds or edible oils, in accordance with the provisions of sub-section (3-B) of section 3;
- (ii) in the case of sugar in accordance with the provisions of sub-section (3-C) of section 3; and
- (iii) in the case of any other essential commodity, in accordance with the provisions of sub-section (3) of section 3]]

#### COMMENTS

(1) Prior to commencement of the Act. 18 of 1981 appeal against the order of confiscation made by Collector used to lie to the Judicial Authority. The State Government had appointed District & Sessions Judge as judicial authority to discharge the functions under this section vide Notification No. F.3(35) Judl/74 dated 25-11-74. But as per amendment made vide E.C. (S.P.) Act 1981, provision was made for filing appeals to State Government. The Rajasthan State Government constituted a committee to hear such appeals. As the E.C.(S.P.) Act 1981 has lapsed by efflux of time and no such provision is in force, the appeals are now to be heard by the Judicial Authority. The State Government has appointed Distt. & Sessions Judge to hear appeals against the order of Collector vide Noti. dt. 24.1.98.

(2) E.C. (Special Provisions) Act 1981, Sec. 1 (3) - E.C. Act, 1955 Sec. 6C - Cessation of Special Act by efflux of time - Provisions of E.C. Act of 1955 would stand revived - Notification under S.6C of 1955 Act which remained dormant till continuance of Special Act would automatically stand revived - Consequently in terms of said notification all Sessions Judges of District would be authorised to hear appeals in capacity of judicial authority. [Rajesh Agrawal Vs. State of UP = AIR 2006 (NOC) 943 All = 2006 (2) EFR 52]

(3) E.C. Act, 1955, Sec. 6(c) & Article 227 of the Constitution - seized goods damaged - petitioner prayed for price of seized goods - Delay caused at the instance of petitioner- no interference required .-

Collector confiscated 338 bags of mustard seed - order of confiscation affirmed in appeal - order of appellate authority challenged in High Court - order of confiscation set aside - Direction was given to return the seized goods on furnishing bond.- Bond was executed - when the petitioner went to take delivery of seized goods , it was found that the same was damaged & unfit for human consumption- Petitioner refused to accept the goods in such a damaged condition.

It is clear that the order of confiscation could not be given effect to and the goods could not be disposed of in view of the order of stay obtained by the petitioner himself. Petitioner chose the wrong Forum for which the application was ultimately dismissed by this court. Although the petitioner is a dealer in mustard seeds having sufficient knowledge in dealing with such articles, he never brought it to the notice of the learned Collector that there was any chance of deterioration in the condition of the mustard seeds.

On the contrary he kept silent after obtaining the stay order from this Court. So, delay in the present case was caused mainly at the instance of the petitioner himself. .... There was no negligence on the part of authorities in returning the seized goods.

Application dismissed.

[Swapan Kumar Ghose Vs State of West Bengal =2003 (1) EFR259]

**(4) E.C. Act, 1955 - Sec.6C - Appeal can be filed against order of confiscation & not against order of release** - The significant expression is "a person aggrieved by an order of confiscation" which indicates that the appeal is provided against the confiscation and not against a refusal to confiscate. Where the order confiscates part of the goods and release the balance, the section does not contemplate an appeal against the release of the balance of the goods but only an appeal against that part of the order confiscating the goods by the person aggrieved by such confiscation. Moreover, even if the appeal is entertained, the appellate authority has not been given the power to enhance the confiscation which underlines the scope of the appeal which is contemplated by the section. Petition dismissed. [Director of Agriculture AP. vs. Commissioner of Civil Supplies (Appeals) & Ex-Officio Secy. to the Govt. - 1996(1) EFR 616 (And. Pra. HC)]

**(5) E.C. Act, 1955 Sec. 6-C(2) - A person, who was discharged, could also claim the same advantage, which a person who was acquitted in a trial could get.**

Order taking cognizance was set aside by the Addl. Sessions Judge - Application for refund of sale proceeds of seized articles was dismissed by the Dy. Commissioner on the ground that the order setting aside the order of cognizance does not amount to acquittal - Person discharged can claim the same advantage which an acquitted person can claim. - Application for refund of sale proceeds allowed. [Gopal Sah vs. Dy. Commr. Santhal Parganas -1987 EFR 97]

**(6) E.C. Act 1955, Sec. 6-C (2) - The Judicial Magistrate while exercising powers u/s 3 & 7 of E.C. Act, 1955 has no jurisdiction & authority to award interest u/s 6C(2)-**

The power to dispose of the essential commodity vests with the Collector and, therefore, payment of the price and interest on the price of the essential commodity, in case of acquittal of the person or in case of order of confiscation being set aside, is that of the Collector and not of the Judicial Magistrate. As the Collector is the authority to make payment of the price of the essential commodity illegally confiscated, the application for refund of the price with reasonable interest thereon shall lie to the Collector and not to the Judicial Magistrate. The judicial magistrate does not have any power under section 6-C(2) of the Act to direct repayment of the price or reasonable interest thereon. [State of M.P. vs. Deena Nath - 1994(2) EFR 197]

**(7) E.C. Act, Sec. 6-C, 6-A (2) and 6-A(1) - Appeal under Section 6-C - Maintainable only against order of confiscation under Section 6-A (1) and not an order for sale passed under Section 6-A (2)-** The order for sale under sub-sec.(2) of Sec.6-A pending proceedings for confiscation cannot be equated with the actual order of confiscation under sub-sec. (1) of Sec.6-A. Since appeal under Sec.6-C is provided only against the order of confiscation the appeal filed before the Sessions Judge against the order for sale of the seized commodities pending proceedings for confiscation was not maintainable. (Krishna Gopal Vs. State of U.P.-1986 EFR 268).

**(8) E.C. Act. 6-C, 6-A (1) and 6-A (2) - Appeal under Sec.6-C lies only against order passed under Sec. 6-A (1) but not under Sec.6-A (2) -** Order refusing to confiscate or refusing to exercise powers under Sec. 6-A (1) cannot be treated an order under Sec.6-A (1) - Appeal against orders not maintainable under Sec. 6-C.

Collector while exercising power under Sec. 6-A (1) is not an inferior Criminal Court - Held - Order of Collector passed under Section 6A (2) cannot be quashed in exercise of revisional powers under Section 401 Cr.P.C. (State of U.P. Vs. Ram Avtar Jaiswal-1984 EFR 116).

(9) E.C. Act, 6A (2) and 6-C - Cr.P.C., Sec. 397 - Appeal & Revision against interim order of disposal passed under Sec. 6-A (2) not maintainable. (State of U.P. Vs. Mool Chand - 1982 EFR 555)

<sup>7</sup>[6D. Award of Confiscation not to interfere with other punishments.- The award of any confiscation under this Act by the Collector shall not prevent the infliction of any punishment to which the person affected thereby is liable under this Act.]

\*<sup>17</sup>[6E. Bar of jurisdiction in certain cases - Whenever any essential commodity is seized in pursuance of an order made under section 3 in relation thereto, or any package, covering or receptacle in which such essential commodity is found, or any animal, vehicle, vessel or other conveyance used in carrying such essential commodity is seized pending confiscation under section 6-A, the Collector, or, as the case may be, the State Government concerned under section 6-C shall have, and notwithstanding anything to the contrary contained in any other law for the time being in force, any court, tribunal or other authority shall not have, jurisdiction to make orders with regard to the possession, delivery, disposal, release or distribution of such essential commodity, package, covering, receptacle, animal, vehicle, vessel or other conveyance.]

#### COMMENTS

(1) Prior to the Amendment Act of 1976, the Collector and the Court have got jurisdiction to deal with the seized commodity. But by insertion of this new Sec. 6-E, vide Amendment Act of 1976, the jurisdiction of Courts has been barred and now the Courts cannot make any order with regard to possession, delivery, disposal or distribution of a seized commodity. Vide Amending Act of 1986, Section 6-E has been amended further to enlarge the scope of that section so as to bar the jurisdiction of courts also in respect of the release of any package, covering or receptacle in which any seized essential commodity is found or any animal vehicle, vessel or other conveyance used in carrying such essential commodity seized pending confiscation thereof under Section 6-A of the Act.

(2) E.C. Act, 1955 Sees. 3, 6A, 12A, 12AA & 12AC - Cr.P.C. 1973, Secs.- 457 & 157 - Special Court has implied power to release the seized goods, only if proceedings for confiscating the seized commodity have not been initiated by the Collector.

Once a cognizance of an offence has been taken by a Special Court and proceedings for confiscation under section 6-A have not commenced, there can be no difficulty in taking the view that a Special Court alone will have the jurisdiction to deal with an application for release or return of the seized goods. The difficulty, however, arises in a situation where neither any confiscation proceedings have commenced nor has the cognizance been taken of the offence by the Special Court.

It is, thus, evident that the Collector has to make up his mind as soon as possible as to

whether the confiscation proceedings should or should not commence. He has also to apply his mind as to whether the commodity seized deserves to be sold off under section 6-A(2) pending confiscation proceedings. He has neither been given any express nor any implied powers to order the return of the commodity seized even if no confiscation proceedings have commenced, of course, the scheme of Section 6-A, on the face of it, disclose that an immediate action has to be taken for an action is enjoined to be taken under section 6-A(2) in public interest and it is implicit that such an action should be taken without any loss of time.

The Special Court has the implied power of directing the return of the goods after imposing necessary conditions. The conditions, of course, would be necessary so as to ensure the deposit in the Government account of the market value of the commodity released or return in the event an order of confiscation is passed under Section 6-A or an order of forfeiture is passed by the Special Court itself, if and when it tries an offence after taking cognizance. We may repeat that the Special Court can exercise the powers only if the proceedings for confiscating the essential commodities have not been initiated by the Collector. [M/s Devendra Kumar & Bros. v/s State of U.P. & M/s Anil Traders vs. State of U.P. - 1994(1) EFR 49]

**(3) E.C. Act 1955, Sec. 6E - Provisions of Sec. 6E does not confer power of release of seized commodity**

- Sec. 6E of the Act only creates bar on jurisdiction in certain cases and does not confer power of release either on the Collector independently of Sec. 6A or on the State Government independently of Sec. 6C of the Act -The total powers which have to be exercised by the Collector have been given under Sec 6A and the powers of the State Government have been enumerated under Sec. 6C [Har Govind vs. Addl. Distt. Magistrate (Fin. & Rev.) Jhansi - 1991 (2) EFR 495]

**7. Penalties.-** \*<sup>13</sup> [(1) If any person contravenes any order made under Section 3-

(a) he shall be punishable-

- (i) in the case of an order made with reference to clause (h) or clause (i) of sub-section (2) of that section, with imprisonment for a term which may extend to one year and shall also be liable to fine; and
- (ii) in the case of any other order, with imprisonment for a term which shall not be less than three months but which may extend to seven years and shall also be liable to fine :

Provided that the Court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three month;

(b) any property in respect of which the order has been contravened shall be forfeited to the Government;

(c) any packing, covering or receptacle in which the property is found and any animal, vehicle, vessel or other conveyance used **in** carrying the property shall, if the Court so orders, be forfeited to

the Government.

(2) If any person to whom a direction is given under clause (b) of Sub-Section (4) of Section 3 fails to comply with the direction, he shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to seven years and shall also be liable to fine:

Provided that the Court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three months.

(2A) If any person convicted of an offence under sub-clause (ii) of clause (a) of sub-section (1) or under sub-section (2) is again convicted of an offence under the same provision, he shall be punishable with imprisonment for the second and for every subsequent offence for a term which shall not be less than six months but which may extend to seven years and shall also be liable to fine :

Provided that the court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months.

(2B) For the purposes of sub-section (1), (2) and (2-A), the fact that an offence under sub-clause (ii) of clause (a) of sub-section (1) or under sub-section (2) has caused no substantial harm to the general public or to any individual shall be an adequate and special reason for awarding a sentence of imprisonment for a term of less than three months or six months, as the case may be.]]

<sup>9</sup>[(3) Where a person having been convicted of an offence under sub-section (1) is again convicted of an offence under that sub-section for contravention of an order in respect of an essential commodity, the court by which such person is convicted shall, in addition to any penalty which may be imposed on him under that sub-section, by order, direct that that person shall not carry on any business in that essential commodity for such period, not being less than six months, as may be specified by the Court in the order.]

#### COMMENTS

(1) The courts were given a discretion to impose a sentence of imprisonment for a term of less than 3 months under sub-clause 1 (a) (ii) and sub-section (2) and for a term of less than 6 months under sub-section (2A) for any adequate and special reasons. This discretion was withdrawn by the Act 18 of 1981 & the provisos to sub-sections 1 (a)(ii), (2) and (2A), and sub-section (2-B) were omitted. As the Act 18 of 1981 has lapsed this discretion stands restored to courts.

(2) E.C. Act, 1955 - Section 7-Bihar Motor Spirit and High Speed Diesel Oil Dealer's Licensing Order, 1966 - Clause 12- Search and seizure of 1800 liters of

diesel by Assistant Sub-inspector of police - A.S.I was not authorized - A.S.I. not competent and consequently the report submitted could not be the basis of prosecution. - Proceedings quashed. [Butan Singh Vs. State of Bihar and others = 2012(1) EFR 193]

(3) E.C. Act, 1955- Section 3/7-Accused involved for offence under Section 3/7 for transporting wheat allotted to shop to the Flour Mill for black marketing - No evidence on record to prove - Merely being a President of that institution, she cannot be held responsible for the offence - Petition allowed.

Upphokta Bhandar is a Govt. Ration Shop & the petitioner is President of the shop - Presently Vishnu Agrawal is running it. -

From petitioner's statement and three panchnamas there appears no involvement of the petitioner. Merely being a President of that institution, she cannot be held responsible for the offence. Unless it is averred that she was Incharge or responsible of the shop concerned with its day-to-day business. Nothing that sort is available against her on record. On this ground alone, the impugned order appears erroneous and an abuse of the process of the Court, so far as the petitioner is concerned.- Petition allowed. [Vimla Devi Vs. State of M.P. = 2009(1) EFR 603]

(4) E.C. Act, 1955, - Section 7- Fertilizer (Control) Order, 1985 - Sections 5, 7, 8 & 35 - As the petitioner has been exonerated by the departmental authorities in proceedings initiated under the order, it is obvious that no conviction would be possible in criminal proceedings - FIR & the subsequent proceeding emanating therefrom quashed.

Pursuant to a raid conducted on 5.11.98, 125 bags of DAP fertilizer found short - FIR lodged - License was also cancelled - In appeal the license was restored. - As the petitioners have already been exonerated by the departmental authorities in proceedings, initiated under the Fertilizer (Control) Order, 1985 read with the provisions of the Essential Commodities Act, for the same offence, it is obvious that no conviction would be possible in criminal proceedings. There is no difference or distinguishing feature between the facts before the appellate authority and the facts, contained in the FIR, and the proceedings ensuing therefrom. In this view of the matter, I have no hesitation in holding that the FIR and the proceedings emanating therefrom are liable to be quashed. [Bansal & Deo Fertilizer Vs. State of Punjab - 2006 (1) EFR-348]

(5) E.C. Act, 1955, Sec. 7 - Liquefied Petroleum Gas (Regulation of Supply & Distribution) Order, 1988 - ASI of Police not competent to search or seize the Gas cylinders - seizure by ASI was illegal.-

It is only the Officer of the department of Food and Civil Supplies not below the rank of Inspector, who has been specifically authorized by notification, can exercise the powers under the Act. ASI had no power to seize the gas cylinders, even if the appellants did not possess a valid licence or permit. It is not the case of prosecution that ASI was accompanied by the Inspector of the Department of Food and Civil Supplies of the Government specifically authorized by Notification - seizure by ASI was illegal. No case is made out against the appellants. - Appeal allowed. [Karam Chand Vs State of Haryana = 2004 (1) EFR108]

(6) E.C. Act, 1955, Sec.7 -Lubricating Oils and Greases (Processing, Supply and Distribution Regulation) Order, 1987, Petitioner was accused of doing business of processing and selling mobil oil, black oil without valid licence - Contravened Clauses 3 and 4 of Order, 1987 - Raid conducted by S.I. with police party - charge quashed.-

Any officer below the rank of Inspector is not competent for search & seizure - It could not be pointed out as to how the SI & ASI were competent to conduct the raid & seize the lubricating oils. It is not the case of State that the S.I. was authorized to conduct the raid - Charge quashed - Petition allowed. [Raj Narain alias Kuka vs. State of Punjab = 2003 (2) EFR 527]

**(7) Orissa Sugar Dealers Licensing Order, 1963 - Clauses 3 & 7 - E.C. Act, 1955 - Sec. 7 - Excess stock of sugar - Prosecution can not be sustained in absence of any specific provision either in the Order or in licence -** On 24.7.86 godowns were raided - Books of accounts maintained upto 30.6.86 and as per the same there was stock of 10.70 qtls. of sugar whereas the actual stock stood at 13 qls 53 Kgs & 300 gms. Thus there was excess stock of 2 qls. & 83 Kgs. of sugar.

Condition No.3 requires the licensee to maintain a Register of Daily Accounts of sugar showing the opening stock, quantity received, quantity delivered and closing stock of each day. In the instant case, there has been contravention of this condition in as much as daily accounts were not maintained from 30-06-1986 to 24-7-1986. But as already stated, the learned Special Judge has exonerated the appellants from accusation in this regard on the ground of absence of mens rea. Mr. Mishra for the appellants argued with vehemence that even accepting the prosecution story that excess stock of sugar was detected, this fact does not contravene any of the clauses of the licence. Counsel for the State could not controvert this position by referring to any clause in the licence or the Licensing Order. Excess stock may be either due to receipt of more stock or delivery of less stock than what has been disclosed in the books of accounts. In either case the authorities can certainly take action for suspension or cancellation of the licence in exercise of powers under Clause 7 of the licence, for non-maintenance of correct accounts. But there being no specific provision either in the Licensing Order or in the licence with regard to actual quantity of sugar in the stock of the licensee, it cannot be said that a licensee or anybody acting on his behalf by being in possession of excess stock of sugar is guilty of contravention so as to make himself liable for the offence under Section 7 of the Essential Commodities Act, 1955.

Conviction can not be sustained - Appeals allowed. [Bijai Kumar Patra & another vs. State of Orissa -1995(2) EFR 320]

**(8) Gujarat Essential Articles (Licensing Control & Stock declaration) Order, 1981, Cl.16 - E.C. Act, 1955, Sec. 3 & 7 - Non displaying of stock, price & working hours - Contravention is not of technical nature - Order holding it to be an offence of technical nature not sustainable -** Supply Inspector inspected F.P.S. - Contravention of cl. 16 noticed for non-displaying the facts about the opening stock & price of edible oil & working hours at the conspicuous place of his business premises. - Respondent pleaded guilty & prayed for mercy in the matter of sentence on the ground that the offence alleged against him was merely 'technical' - Trial Judge sentenced him till rising of the court and to pay fine of Rs.100/- - Object underlying engrafting of clause 16 is to protect the interest of customers. - The term 'technical offence' stands undefined anywhere - 'Technical offence' is the one which is literally an offence, giving an appearance of the offence, yet at the same time, if we look at the facts & circumstances of the case would prima facie appear to be an offence having not that spark or spirit to persuade the court to take stricter view of the matter. It is more or less in nature of a shadow rather than the substance. - Order set aside - Case remanded [State of Gujarat vs. Kanti Lal Amba Lal Patel - 1995(1) EFR 468]

**(9) E.C. Act, 1955, Secs. 3 & 7 - Bihar Trade Articles (Licences Unification)**

**Order, 1984 - 550 Bags of wheat sent from Delhi to Begusarai - Consignee did not honour consignment - Bags lying at Begusarai Station does not constitute offence.**

Petitioner sent 550 Bags of wheat from Delhi to M/s Bajrang Roller Flour Mills Teghra Distt. Begusarai - Order for supply was placed by the Mill - Wheat was despatched in Rly. wagons from Delhi to Begusarai - Mill did not take delivery - Despite persuasion & a direction from D.S.O., the mill did not honour the consignment - M/s Sullania Enterprises agreed to purchase the wheat on consignment basis - This transaction between petitioner & M/s Sullania Enterprises does not constitute breach of any provision of E.C. Act or an Order made thereunder - Allegation in F.I.R. regarding sale of wheat in black market is not merely a surmise but proceeds on an erroneous factual assumption - No element of criminality found. - Writ petition allowed. [M/s Rohan Lal Arjun vs. State of Bihar - 1993(2) EFR - 294]

**(10) E.C. Act, 1955, Secs. 3 & 7 - Revision against conviction order - Finding that price list was not exhibited can not be disturbed - However, forfeiture of whole stock merely for some irregularity in exhibition of price list not proper.**

So far as stock register is concerned that was found to be correct as per observation in para 13 of the judgment of trial magistrate. Under these circumstances if the stock was not in excess of what was shown in the stock register, it was not proper for the court to have forfeited whole of the stock merely for some irregularity in the exhibition of the price list. - Conviction maintained - Order of forfeiture of stock set aside. [Dinesh Kumar vs. State of M.P. - 1993(1) EFR 362]

**(11) E.C. Act, 1955, Secs. 3 & 7 - Kerosene Oil (Fixation of Price) Order, 1970 - cl.4 - Conviction for having excess stock & sale at higher price - seized kerosene & Stock Board not produced in Court - Both containers not seized - Not fatal.**

Stock position exhibited 45 litres of kerosene. On inspection 90 litres of kerosene was found in two containers - It was also found that kerosene was being sold at Rs.1.50 per litre instead of prescribed price of Rs.1.42 per litre - Seized articles deposited in court - Production of the same at the time of evidence is the duty of the court staff - If no objection is raised by the defence, non production will not vitiate the trial. - Non-cross examination of Food Inspector about non seizure of both the containers does not give any advantage to the defence. - Revision dismissed [Khuman Vs. State of M.P. - 1992 (2) EFR 122]

**(12) E.C. Act, 1955, Sec 7 - Conviction for alleged recovery of 200 litres of kerosene - One bottle of kerosene was taken as sample & sealed - Chemical analysis report not produced - In its absence it can not be presumed that the seized commodity was kerosene oil - Conviction set aside.**

It can be presumed that when sample was taken out, it must have been sent to the laboratory for analysis - no such report tendered to show as to what was the result of analysis. In its absence it can not be presumed that the material recovered from the shop was kerosene oil - Appellant acquitted [Jai Prakash vs. State of Haryana -1990(1) EFR 394]

**(13) E.C. Act, 1955, Sec.-7, - Conviction for charging more than prescribed price of wheat - After detecting mistake, excess amount charged was returned even prior to initiation of proceedings - no "mens rea" is available - Conviction set aside.**

Appellant sold wheat to Satyanarayan and charged Rs.2.15 per Kg. vide cash memo dt. 17.4.85 - wheat was to be sold at Rs.1.96 per Kg. - Excess amount charged was returned to purchaser on 19.4.85 - Complaint filed by Satyanarain before authorities on 15.7.85 - Appellant had voluntarily returned the excess amount charged much prior to the

complaint to the authorities - No criminal liabilities can be fasten on the appellant - Appeal accepted & Conviction set aside. [Ashok Kumar Hazra vs. State of Bihar - 1990(1) EFR 152]

**(14) E.C. Act, 1955 - Sec. 7 - During inspection shortage was found - shortage of negligible nature - no prosecution to be launched in view of Food Commissioner, Bihar's instructions dt. 11.9.82.**

Shortage of 2.5 Kgs of rice & 1.5 kgs. sugar was found in the inspection - Show cause notice issued by S.D.O. - During course of enquiry S.D.O. found that no irregularities were committed & he exonerated the dealer - Instructions dt. 11.9.82 issued by Food Commissioner, Bihar making the intention of the Government clear that for a very small mistake, the dealer should not be asked to show cause and the District Magistrates should not take action on them in their discretion. The extent of shortage and measurement in this case was so small that it is fully covered under the instructions of Govt. - For such negligible infraction or infringement of any provisions of the Order or the rule, ordinarily no person should be prosecuted & they should not be forced to face the rigors of criminal trial. (Murari Pd. Gupta vs. State of Bihar - 1989 EFR 199)

**(15) E.C. Act, 1955 - Sees 3 & 7 - Rajasthan Sugar Dealers Licensing Order, 1967 - When the shortage is alleged the Inspector is under a duty to get proper weighment - No evidence that sugar was weighed - Assumption about shortage merely on surmise not proper.**

The Enforcement Inspector inspected F.P.S. and found stock of 10 qls 31 kgs & 100 gms. of sugar - It was - short by 1 Ql. 6 Kgs. & 100 Gms. - No evidence that sugar was weighed - Prosecution has failed to prove beyond doubt that there was a shortage in stock of sugar - when it is so, conviction can not be maintained. [Pawan Kumar vs. State of Rajasthan 1989 EFR 346]

**(16) E.C. Act, 1955, Sec. 7(I)(a)(ii) - Kerala Foodgrains Dealers Licensing Order, 1966 - cls. 3 & 5(1A) - Licence expired before the date of seizure - After seizure, the appellant applied for renewal - Renewal of licence even with retrospective effect can not help him, as he did not have valid licence on the date of seizure - Conviction proper.**

Licence was valid upto 31.3.85. On 6.4.87, search was conducted & rice was seized - on 23.4.87, appellant applied for renewal - D.S.O. renewed licence upto 31.3.88 - crucial question is whether appellant has a valid licence on 6.4.87 and whether the subsequent renewal of the licence with retrospective effect would save him from the penal consequences - As he had no licence on 6.4.87, it has to be held that he violated cl.3 of the Order - It can not be held that the subsequent renewal would lake effect from the retrospective date so as to save him from penal liability. - Appeal dismissed [P.K-Poulose vs. State of Kerala - 1989 EFR 808]

**(17) E.C. Act, 1955, Sec 3 & 7 - Violation of Clause 3 of Haryana Milk Products Control Order 1975 - Trial has to proceed in accordance of law, even after expiry of the Order of 1975 - It is needless to say that the trial in respect of an offence committed when the control order was in force, cannot be expected to be completed within that short period. The offence committed has to be tried inspite of the expiry of the period. Mere expiry of the period does not make any difference. - Conviction confirmed, however, sentence reduced. (Isher Das Vs. State of Haryana - A.I.R. 1992 SC 1595 - 1993(2) EFR 554 - Supp.1993 SCC 644]**

**(18) E.C. Act 1955, Sec. 7 - Prosecution for alleged storage of diesel in excess of quantity fixed cannot be allowed in view of relaxation made by Govt. - Excess stock**

found - allegedly violated provisions of U.P. High Speed Diesel Oil and Light Diesel Oil (Maintenance of Supply & Distribution) Order, 1981 - By orders dt. 4-12-82 and 12-10-83, the Govt. had relaxed these provisions - petitioners cannot be prosecuted.

Contention that these provisions could not be relaxed by Govt. orders not accepted. - The State Govt. having itself issued the order, cannot be heard saying that the same have no binding effect. - State Govt. is bound by its own action - Writ petition allowed & F.I.R. quashed. [Akhilesh Kumar & Another Vs. Station Officer P.S.Kotwali Badaun - 1992(1) EFR 177]

(19) E.C. Act, 1955, Secs. 3, 5, 7 - Bihar Trade Articles (Licences Unification) Order, 1984 - Special Officer Rationing Patna cannot be licensing authority for whole sale trade as he has not been so appointed by the State Govt.- Licences issued by Special Officer under misconception of law - Notice termination issued by Special Officer - illegal - Special Officer has no jurisdiction to issue notice. - Notice quashed - Petitioner carrying on business on the basis of a licence issued to him by a person not competent - Both the parties working under bonafide belief that the petitioner was dealing in whole sale trade on the basis of a valid licence - petitioner cannot be prosecuted u/s 7. - Ordered that petitioner shall apply for licence within 30 days and he will be entitled to carry on the trade till appropriate order is passed by the licensing authority. [M/s. Parvati Bhandar Vs. State of Bihar & Others - 1992(1) EFR 595]

(20) Bihar Kerosene Oil Dealers Licensing Order, 1965 - Inspection in absence of licence holder - Defence pleas convincing - Conviction vitiated - Inspected shop on 30-4-79 - shop was closed and nephew of licence dealer was near the shop - on request he opened the shop - stock register did not contain the entries after 19-4-79 - sale register and cash memos were not produced at the time of inspection - According to defence case there was no lifting of Kerosene oil after 17-4-79 and therefore there was no entry in the stock register after 17-4-79 - Regarding second allegation defence plea was that since the petitioner was not present in the shop, he could not be able to produce the sale register and cash memos and no further opportunity was given to him to produce these documents before filing of the complaint - nephew could not produce the sale register and cash memos as he was not associated with the business - there was no 'mens-rea' on the part of the petitioner to withhold any document - Conviction set aside [Bishnu Deo Shah Vs. State of Bihar - 1991(2) EFR 17]

(21) E.C. Act, 1955, Sec. 3(1)(2) - Kerala Kerosene Control Order, 1968, Cl. 1 - Remission of excess profit - Increase in price of kerosene by State Govt. - Whole sale distributor sold old stock at enhanced rates - State cannot demand remission or payment of excess profit as no relationship of principal and agent between them & the State - Where there is no relationship of principal & agent, it is incomprehensible as to how the State can demand the whole sale dealers to remit or pay the so called excess profits of the differential cost - Writ appeals dismissed [Taluk Supply Officer, Manjeri Vs. M/s. Para.Parakkottil Brothers Vandoor etc. - AIR 1992 Ker. 213]

(22) E.C. Act, Secs. 3, 10 and 10-C - Drugs (Prices Control) Order, 1979, Clauses 21 and 22 - Charge for contravention of Clauses 21 and 22 - Accused, a licensed retailer of pharmaceutical drugs, taking plea that he was not present at the shop when the sale was done by his son and that due to mistake by his son, the price was charged in excess of fixed price - Such a plea has to be established by proving beyond reasonable doubt that he had no 'mens rea' - 'Means rea' is an essential element for such a charge but by introducing Section 10-C, Legislature has placed a presumption of 'mens rea' and the burden is on accused to rebut such presumption - Case remanded. (K-Vishwanathan Nair

Vs. Drug Inspector - 1989 Cri.L.J.540).

(23) E.C. Act, Sections 7(l)(a) and 3(2) - Orissa Cement Control Order, 1973, Clauses 2(h) and 15 - Licence of Cement in name of wife - Husband merely carrying on her business - Only wife can be convicted for contravention of Cl.15.- Clause 15 makes liable only the stockist who contravenes the provision. "Stockist" is defined in Clause 2(h) to mean a person who holds a licence under the Order to deal in cement for the purpose of selling to a consumer. Since the licence in the present case stands in the name of T.Shushila Patra, it is she who will be the stockist and not her husband T. Shyam Babu Patra and consequently, no liability can be fastened of T.Shyam Babu Patra. Prosecution report was given against both. But clause 15 makes liable only the stockist and, therefore, the husband who was managing the business cannot be penalised for violation of the provisions of Clause 15. (T.Shushila Patra Vs. State-1987 EFR 438).

(24) E.C. Act - Sec. 7(l)(a)(ii)- Conviction for violation of conditions of Licence.- Allegation that petitioner accused failed to maintain proper records about sales and distribution of essential commodity - the entries in the sales & stock registers were not in accordance with actual sales and therefore violated the conditions of licence - From the facts of the case it was found that the mistakes were bonafide and not a deliberate act of a guilty mind.- Hence, accused acquitted. (Sudershan Lal Gupta Vs. Delhi Administration - 1985 EFR 141).

(25) E.C. Act - Complaint under Sec. 7, 9, 10 - Petition under section 482 Cr.P.C. for quashing the order taking cognizance of complaint - In proceedings relating to confiscation u/s 6-A and proceedings relating to cancellation of licence accused persons not found guilty - Held - complaint liable to be quashed.- The licensing authority accepted the show cause filed by the petitioners and came to the conclusion that the charges levelled against the petitioners have not been substantiated. He accepted the show cause and discharged the petitioners. Even in the confiscation proceedings under section 6A. the District Magistrate has observed that the violation is of technical nature and no other irregularities were found.

In view of the order passed by the Sub-divisional Magistrate as well as by District Magistrate, there can be any doubt that it would be an abuse of the process of the court to prosecute the petitioners when the allegation has not been found to be substantiated by the Sub-divisional Magistrate who is the licensing authority and on whose sanction the prosecution started - Held - complaint liable to be quashed. (Ramavtar Prasad Kedia Vs. State of Bihar 1985 EFR 32)

(26) E.C. Act- Section 7 - Delhi Edible Oils (Licensing Control) Order, 1977, Clauses 8(4) and 9.-Officials of Food and Supplies Department, Delhi Administration, on raid found that the licensee should have 1560 tins of Edible Oil - On physical verification 1534 tins were found. Thus there was shortage of 26 tins -Licence suspended - After hearing the petitioner the Dy. Commissioner exonerated the petitioner from alleged contravention of the Order - Meanwhile police submitted charge sheet against petitioner in the Court - Held in view of the order of Dy. Commissioner, there was no jurisdiction or warrant for petitioner's prosecution. (Ramesh Kumar Vs. State - 1985 - EFR 396).

(27) E.C. Act - Secs. 3 & 7 - Licensed foodgrain dealer distributed more grain than what was in stock - Convicted by trial Court - Acquitted in appeal as prosecution failed to prove guilt - Held - Order of acquittal was justified. The case against the petitioner was that he was licenced dealer for food grains at Gram Sewa Sahakari Samiti, Gundoj and was guilty of distributing more grain than what was there in the stock between the period 1-4-70 to 6-4-70 and 13-4-70 to 7-5-70. Disparity in the

stock register and the distribution register led the learned Chief Judicial Magistrate to the conclusion that the respondent was guilty of violating one of the conditions of the licence that he shall maintain a register of daily account for foodgrain correctly showing the opening stock, quantity received each and every day and quantity delivered or otherwise removed during the day and the closing stock of each day.

The Enforcement Inspector inspected the premises of the society on 25-5-70 and upon checking of the register noted the disparity between the two registers as stated above. The explanation of the accused respondent was that some few ration card holders had actually taken the wheat on the following days although their entries had been made earlier. The learned Sessions Judge took this explanation plausible and in my opinion was correct in holding that the correct position was not taken into consideration by the Enforcement Inspector and without there being any fault of the respondent he was made to face the trial.

Evidently it is not the case of the prosecution that the accused had not distributed the wheat to the ration card holders and sold it in black market. The grievance of the prosecution was that he had distributed more wheat to the public than what was there in the stock. The explanation of the accused respondent has been rightly taken to be reasonable by the learned Sessions Judge and the finding of innocence of the respondent based on sound grounds calls for no interference. (State of Rajasthan Vs. Champa Lal - 1988 EFR 676).

**(28) E.C. Act. - Sections 3, 7, & 8 - Rajasthan Food Grains and other Essential Articles (Regulation of Distribution) Order, 1976, Clause 6.-** Sale of Food-grains to petitioner by Fair Price shop dealer, which was meant for supply through fair price shop - Charges framed against petitioner - Fair price shop dealer discharged - The fair price shopkeeper has violated the provisions of the order & it has nowhere been pointed out that the petitioners have contravened the provisions of any of the order issued under E.C. Act. - HELD - when real offender has been discharged, petitioner can not be charged for alleged violation of order. (Gautam Lal Vs. State of Rajasthan-1988 EFR 484).

**(29) E.C. Act, Sees. 7 and 10 - Case registered against fair shop dealer - Meanwhile his licence suspended - In appeal against order of suspension no default of dealer was found - in view of this finding, case under Sections 7 and 10 cannot stand - as such quashed.-** E.I. checked F.P.S. on 22.3.83 and found that R.B.D. Palm oil issued to Fair Price Shopkeeper on 11.3.83 and Rape Seed Oil issued on 17.3.83 were not entered in the stock register - Licence was suspended on 26.3.83. Appeal against the suspension order was accepted and licence was restored.

It is no doubt true that on 22.3.83, the Inspector of the Enforcement Branch did discover the non-distribution of the commodity by the petitioners' Fair Price Shop to the ration card holders as no entry in the stock register regarding its distribution was found entered therein. This very finding was enquired into by the Commissioner, Food and Civil Supplies Department - From door to door verification it transpired that the sale of the commodity has been confirmed in 90 per cent cases whereas 10 per cent card holders could not be contacted. On the basis of the fresh inquiry, Commissioner came to the conclusion that in fact there was no default on the part of the petitioners Fair Price Shop and sale of the commodity has been established. On that basis he accepted the appeal.

The very basis of the complaint has been knocked down by the order of the Commissioner, Food and Civil Supplies Department. It has been done on the basis of a door to door verification from the ration card holders. Once the Department is satisfied with the explanation of the petitioners, the proceedings under the Essential Commodities

Act loses all importance, as in fact that the Department has to prove their case before the Court which has already been decided against them by the Department itself.

As a result the impugned order is set aside and the prosecution against the petitioners quashed. (Walayati Ram Vs. State-1987 EFR 373).

(30) **E.C. Act, Secs 3 & 7 - Stock & sale registers not maintained by licenced foodgrains dealer-Explanation that he used to complete register after sale not accepted - Dealer guilty of breach of licence conditions -** The respondent was a foodgrain dealer licenced to distribute wheat, sugar and kerosene oil to Ration card holders through his fair price shop. He was prosecuted for not maintaining stock register and distribution register. Held that explanation given by the respondent that he used to complete these registers after sale could not be accepted in view of clear and cogent obligation imposed upon him by law and under the circumstances he must be held guilty of violating the provisions of Section 3 of the Essential Commodities Act, 1955. (State of M.P. Vs. Arun Kumar-1986 EFR 587).

(31) **E.C. Act, Section 7 - Haryana Rice Procurement (Levy) Order, 1979, Clause 4 - Rice exported in contravention of direction issued under Clause 4 - Directions were never published in Government Gazette nor were the appellants in any manner informed of them - Conviction set aside.** (Darbara Singh Vs. State - 1988 EFR 395).

(32) **E.C. Act, Secs. 3 & 7 - M.P. Motor Spirit and High Speed Diesel Oil (Licensing and Control) Order, 1980, Clauses 3 and 10 - Retail price of petrol and diesel increased by Union of India - State Government and Collector has no power to direct petrol and diesel dealers to sell their existing stock at old rate.-** A bare reading of Clauses 3 and 10 of the Licensing and Control Order, 1980 would indicate that they nowhere give any such power to the State Government to compel the petrol dealers to sell the existing stock of petrol or high speed diesel oil at the old rates and at the increased rates on the day the increase in price comes into effect as the said Order is absolutely silent so far as this point is concerned. The submission of the learned Government Advocate that the 'power to give directions' would also include the power to compel the petrol dealers not to sell the existing stock at the increased price but to sell the same at the old price, cannot, therefore be easily accepted. The submission of Government Advocate can not be accepted that the power to give direction to the dealers also includes the power to direct or compel the petrol dealers to sell the existing stock of petrol or diesel oil lying with them at the old rate not at the increased rate from the day the price rise comes into effect. (Mahendra Pratap Vs. Union of India - 1987 EFR 609).

(33) **E.C. Act Secs. 3 & 7 - Fertilisers (Movement Control) Order, 1973, Clause 3 - Mens rea not necessary for conviction of a person exporting fertilizer bags without a valid permit.**

**Decision of Madhya Pradesh High Court Reversed.**

The words used in S. 7.(1) are "if any person contravenes whether knowingly, intentionally or otherwise any Order made under S.3". The section is comprehensively worded so that it takes within its fold not only contraventions done knowingly or intentionally but even otherwise i.e. done unintentionally. The element of mens rea in export of fertiliser bags without a valid permit is therefore not a necessary ingredient for convicting a person for contravention of an order made under Sec.3 if the factum of export or attempt to export is established by the evidence on record. (State of M.P. Vs Narain Singh - A.I.R 1989 SC 1789).

(34) **'Mens Rea' necessary to construe Offence -** Mere failure to produce licence to the inspecting authority by the licensee or absence of the licensee at the time of

inspection, is no ground to prosecute the licensee for contravention of the provisions of the order or the conditions of the licence as no 'mens rea' can possibly be attributed to him for non production of the licence etc. (1961 - BLJR 890)

(35) **'Mens Rea' is an essential ingredient of an offence U/s 7 of the Act-** The applicant applied for licence and his application was rejected but he was not intimated by the Licensing Authority of such rejection. Under the bona fide belief that the licence was issued to him, the applicant started storing the foodgrains and sent the relevant returns to the licensing authority. As the trader did not intentionally contravene the provisions of the Order, it was held that he was not guilty and the conviction was set aside. (1965 - 2 SCWR 591)

(36) **Clause 7- Rajasthan Foodgrains (Prevention of Hoarding) Order, 1964.** - Provision for forfeiture of stock besides punishment for contravention of the Order - Entire Stock found in possession can be confiscated.

Stock Register of the Dealer showed a balance of 15 Qtls. of wheat. On checking it was found to be 42 Qtls. On trial 42 Qtls. was ordered to be confiscated. It was contended by the dealer that confiscation of 42 Qtls. could not be ordered as he would have himself kept 20 Qtls. of wheat. The Court is empowered to forfeit the entire stock in respect of which the court is satisfied that an offence has been committed. Once a person is found to be hoarding foodgrains in excess of the prescribed quantity, he has committed an offence in respect of the whole quantity of stock, which he has been found hoarding and he cannot be heard to say that there is no offence committed in respect of the grains upto 20 Qtls. but only an offence in regard to foodgrains in excess of 20 Qtls. [Babroo Vs State - 1968 WLN 6 - 1970 ILR 20 (Raj.) Page 242].

(37) **Recovery of 1092 maunds of foodgrains in common godown of four persons** - Possession of- over 400 Qtls. without submitting any return as required under Bihar Foodgrains (Declaration of Stock by Cultivators) Order, 1967 - prima facie constituted offence under Section 7 of the Act - Held, order for sale of only part of seized foodgrains after releasing 200 Qtls. in favour of four accused was not arbitrary or illegal as such order could have been passed even in respect of entire seized grains. (1968 BLJR 119).

(38) The movement of foodgrains within the internal border area without a valid permit is prohibited and if any one moves foodgrains within such area for taking it to any place either within that area or outside that area. then he would certainly commit an offence punishable under the Essential Commodities Act, 1955. [ILR (1967)-17 (Raj.)- P. 961]

(39) **Movement without permit-** Movement of wheat without a permit is violation of clause 3 of Rajasthan Foodgrains (Restriction on Border Movement) Order, 1959 - Contention that wheat was being moved to nearest grain market within the State of Rajasthan itself- Offence held technical offence - Moreover some of accused persons found only as carriers employed by another - Sentence of fine hold alone would meet ends of justice. [State Vs. Kisan Lal - ILR 12 (1962) Raj. 579 - 1962 RLW 608].

(40) **Sec 3/7 and Rajasthan Foodgrains (Restriction on Border Movement) Order, 1959 and Inter Zonal Wheat & Wheat Products (Movement Control) Order, 1964** - Charge mentioning Rajasthan Foodgrains Order instead of Inter Zonal Wheat Order - Held, no prejudice caused when accused knew nature, constituents and ingredients of offence.

In the charge all the facts constituting the offence have been clearly mentioned. It has also been mentioned that the act committed by the accused fall within the mischief of Sec. 3/7 of the Essential Commodities Act, 1955. But instead of mentioning the correct Order

i.e. Inter Zonal Wheat & Wheat Products (Movement Control) Order, 1964, the Rajasthan Foodgrains (Restrictions on Border Movement) Order, 1959 has been mentioned. This, in our opinion, does not cause any prejudice to the accused because they very well knew the nature of offence and the constituents and ingredients of the offence. [State Vs. Karna and Others - 1973 WLN 366 - 1973 RLW 487 - ILR (1973) 23 Raj. 823].

(41) **Maharashtra Foodgrains (Export Control) Order, 1966** - Clause 3 provided that no person shall export any foodgrains outside the State of Maharashtra except under and in accordance with an authorisation issued by the State Government or Collector or other authorised officer. The Mamlatdar issued 3 permits to accused to sell foodgrains to M/s Ratialal Ramanlal. The accused was not entitled to export foodgrains to M/s Ratialal Ramanlal outside the State without obtaining the requisite authorisation and has contravened Clause 3 of the Order. The 3 Permits issued by the Mamlatdar, who was not authorised to issue such authorisation, could not exonerate him from the consequences flowing from such breach. [Sopana Trimbak Wani Vs. State of Maharashtra - 1977 Cr.L.R. (S.C.) 49 - AIR 1977 S.C. 696]

(42) Magistrate has the power to pass an order of forfeiture even in a case where he acquits the accused person. The seized commodity is to be returned or its price paid by the Collector only if no order of forfeiture is passed by the Magistrate. (AIR. 1969 Kerala 151).

(43) If the accused is acquitted, the seized goods should normally be returned to him. But in exceptional circumstances this rule is inapplicable and the accused cannot claim the right of the goods seized. In case where the property is claimed neither by the accused nor by any other person resort is to be made to Sec. 517 of the Cr. P.C. 1898 (33 Cut. L.T. 936). In case no offence is proved and the accused is acquitted the property can even be confiscated. (Gaur Chandra Vs. State of Orissa - AIR 1968 Orissa 67).

(44) Order forfeiting the commodity should be made at the time of delivering the judgment and not subsequently. Sec. 7 prevails over Sec. 517 of the Cr.P.C. (AIR 1952 All. 578).

(45) **Seizure without powers** - Accused transporting rice without licence and thus contravening U.P. Foodgrains (Restrictions on Border Movement) Order, 1959-Clause 3 - No evidence that constable seizing rice and apprehending accused was authorised to do so within meaning of Clause 4 of Order - Conviction cannot be maintained. (1965 All.Cr.L.R. 17).

(46) The act envisages two independent proceedings against a person charged with contravention or violation of an order made under Section 3. Under Section 6-A, the Collector can confiscate the seized commodity. Under Section 7 such contravention is made punishable. Prior to amendment of 1974, it was not obligatory upon the Court to forfeit the seized commodity. It was left to the discretion of the Court to direct forfeiture of the whole or part thereof. After amendment in 1974, this discretion of the Court has been taken away and it is made obligatory upon the Court to forfeit the property in respect of which an offence appears to have been committed.

In case the Collector confiscated the property, it would be still open to the competent authority to launch prosecution and the Court would have to deal with the person who is charged with the offence, but in such a situation the question of forfeiture of the property would not arise because the Collector has already confiscated the same. (Thakur Das Vs. State of Madhya Pradesh etc. AIR 1978 S.C.I).

(47) **Rajasthan Hydrogenated Vegetable Dealers Licensing Order, 1968 - Clause 3(2)** - On 4-1-72, Enforcement Officer inspected the shop of Prahlad and found six tins of

hydrogenated vegetable oil of 'Chetak' brand weighing 99 Kgs. The tins were stored for sale without obtaining a licence. The S.D.M. convicted the accused as he stored more than 66 kgs. without a licence. The limit of 66 kgs. was raised to 100 kgs. by amending Order dt. 29-5-72. Neither the Act nor the licensing Order issued under Section 3 of the E.C. Act are laws of temporary nature, because no time is fixed for their duration. Hence, it cannot be said that the liability incurred by the petitioner on 4-1-72, for infringing Section 3(2) of the Licensing Order ipso facto terminated with the amendment of Sec. 3 of the Order. The conviction and the sentence of the accused cannot be set aside merely because of the amendment made on 29-5-72, (Prahlaad Vs State of Rajasthan - 1976 WLN 231 - 1976 RLW 249 - 1977 Cr.L.J. 694 Raj. - I.L.R. (1976) 26 Raj. 681].

(48) **Condition 9 of the Licence - Rajasthan Foodgrains Dealers Licensing Order, 1964** - The accused contravened this condition on 21-9-1964. The condition was omitted on 26-9-64. It was held that the accused can be punished U/s 7 as long as the offence was committed while the condition was in force inspite of the fact that the condition has been cancelled before the case was brought to trial. [Krantichand Vs. State-AIR 1967 Rajasthan 100 - 1966 RLW 205 - 1967 Cr.L.J. 595 - ILR (1966) 16 Raj. 271].

(49) **Rajasthan Foodgrains (Prevention of Hoarding) Order, 1973 - Clause 4A of the Amendment Order** - Under the Order a dealer was at liberty to have in his possession wheat in quantity exceeding 10 qtls. or in quantity exceeding 25 Qtls. of all foodgrains taken together on submitting a declaration of his stock in the manner and to the officer specified in clause 4. As per clause 4-A of the Amendment Order, no dealer could have in his possession at any time, all foodgrains taken together in quantity exceeding 150 qtls. The Amendment Order has come into force at once i.e. 10th Dec. 1973, the day it was issued. Absolutely no time, much less a reasonable time, was given to the dealers for disposing of the foodgrains in their possession exceeding 150 qtls.-Clause 4-A was struck down as being unreasonable. [Gordhan Lal Ram Gopal Vs State - 1976 RLW 79 - 1975 WLN 821 - AIR 1976 Raj. 151 - ILR (1976) 22 Raj. 360].

(50) **Rajasthan Guest Control Order, 1965** - On receipt of the Police report the Sub-Divisional Magistrate ordered to register the case against the accused under Section 7/3 of the E.C. Act read with rule 3 of the Rajasthan Guest Control Order, 1965, and issued warrants of arrest against the accused on 14-5-71. The revision petition was rejected on 12-10-71 by the Session Judge - The Guest Control Order was rescinded by the Govt. by their Notification No.S.0.29, dated 9-9-71 and no saving clause was inserted, providing that the case which were pending on 9-9-71, would remain unaffected. Held, the accused are well within their right to contend that after the expiry of the Rajasthan Guest Control Order, 1965, the procedure laid down in it cannot be invoked in the case then pending against them and the accused cannot be prosecuted - Accused discharged. (Ram Chandra Vs. State of Rajasthan - 1972 RLW 272 -1972 WLN 228).

(51) **Andhra Pradesh Rice Procurement (Levy) Order, 1964** - The petitioner got a licence on 2-9-1964 and started milling on 14-9-1964 after the procurement order was rescinded. The petitioner is not liable to be prosecuted for non compliance of an order which has ceased to be in force prior to his starting business (AIR 1969 A.P. 59).

(52) From and after the date on which the order is cancelled or withdrawn, there can be no contravention of any of its provisions. (1961 Patna L.R. 77).

(53) **Iron & Steel (Control) Order, 1956** - Contravention of directions given by the Controller under paragraph 14(2) of the Order - paragraph 12 (1) says that every stock holder shall keep such books, accounts and records relating to the business as the Controller may require. What books are to be kept is left to the discretion of the

Controller. If a stock holder does not keep the required books of accounts & records, that act being a contravention of provision of the Iron & Steel Control Order is punishable under Section 7. But paragraph (14)2 does not require the stock holder to do a particular thing. It only empowers the Controller to give directions to the stock holder to give a memorandum for sale containing some specified particulars. Contravention of directions contained in the Notification issued under paragraph (14)2 is not a contravention of the provision of the Order and so it is not punishable under Section 7. (Superintendent & Remembrancer of Legal Affairs Vs. Prahlad Agrawalla - A.I.R.1970 Cal. 167).

(54) **Secs. 7(1) (a) (i) and (ii), 3(2) (i), 3 (2) (d)** - Failure to maintain account books properly as required under conditions No.3 & 5 of the licence issued to the dealer under the Rajasthan Foodgrains Dealers Licensing Order, 1958, is a breach liable to be prosecuted under Sec.3 (2) (i) and not under Sec.3 (2) (d) and is punishable under Sec.7 (1) (a) (i) with imprisonment upto one year. Merely because the accused is a licence holder, his case would not fall under clause 2 (d) thereby becoming punishable under Sec.7 (1) (a) (i). The offence is a non-cognizable and police has no power to investigate the case. The offence is triable as a summons-case - Charge framed by the Spl. Magistrate against the accused quashed. (Gyarsi Ram Vs. State-1964 RLW 275)

(55) **Sec. 7 (1) (b) Proviso** - Hired truck belonging to appellant caught in attempt to export prohibited cattle fodder - The appellant was not a party to the confiscation proceedings. The truck was valuable property and its confiscation merely because an attempt was made to export cattle fodder through it, would indeed be a very harsh order so as to work very serious injustice to the appellant. There is no evidence to indicate that the truck was hired with the knowledge or concurrence of the appellant. Order of confiscation of truck held ought not to have been passed. (Satpal Vs. State of Haryana - A.I.R.1979 S.C. 1767).

(56) **Clause 3 of Rajasthan (Display of Prices & Stock of Essential Commodities) Order, 1966 and Sections 514 & 515 of Cr.P.C. (Old) - Forfeiture of Bond**- The Enforcement Inspector gave the seized wheat in "supardginama" to Tara Ram who was Munim of the firm. Tara Ram promised to produce the goods in the Court whenever required & on failure to do so, to pay Rs.5500/-. But when required to produce the seized goods, he pleaded that the wheat has been sold by the firm and amount has been credited in the account books of the firm. The C.J.M. issued a warrant for recovery of amount from Tara Ram. The order of forfeiture of bond appears to have been passed under Section 514 of Cr.P.C. (Old). Bond in Section 514 is taken by the Court. Hence Bond executed in favour of Enforcement Officer is not covered by Section 514 and cannot be forfeited by C.J.M. [Kapoor Chand Vs. State - 1981 Cr.L.R (Raj.) 446].

(57) **Cl. 8 & 10 of the Rajasthan Kerosene Oil Dealers Licensing Order, 1971** - The price of Kerosene fixed by competent authority was Rs.1.08 per litre. The accused displayed the price as Rs.1.10 per litre. The accused also did not maintain the sale register. HELD, the accused was rightly convicted for displaying excess price and for not maintaining the register in the prescribed form. - Sentence was reduced, as no harm to general public was caused, to imprisonment for period already undergone with a fine of Rs. 100/-. Revision partly allowed - (Mohd.Jamal Vs. State of Raj. - 1982 Cr.L.R. 115).

(58) **The petitioner was the partner of the firm Babulal Ashok Kumar and was found selling wheat without licence.** The firm was not prosecuted - Sec 10, held, not applicable as the partner was found selling wheat outside the shop in question without a licence. As the petitioner is a petty trader and it is his first offence. 9 days imprisonment already undergone would meet the end of justice, fine of Rs.2,000/- maintained. (Babulal

Vs. State of Rajasthan 1981 (6) R.Cr.C.125 - 1981 Cr.L.R. (Raj.) 204)

(59) **Contravention of Conditions of licence issued under Rajasthan Sugar Dealers Licensing Order, 1967** - Accused 60 years old & suffering from T.B. - incident about 6 years old - offence committed under Section 7(1) - HELD, the sentence of fine alone shall meet the ends of justice - Fine of Rs.1500/- imposed. (State of Raj. Vs. Bhima Ram - 1981 (6) R.Cr.C.39).

(60) **Rajasthan Guest Control Order 1972 - Contravention** - Feast organised on death for more than 100 persons - A social evil - Adverse effect on supply & distribution of essential commodities and their availability on fair prices especially at a time when there is shortage of foodgrains. HELD, the lenient view taken by the C.J.M. is not justified - Sec 7 as stood prior to amendment of 1974 applicable to the present case - Incident of 1974 - HELD, it is not appropriate to enhance sentence of imprisonment - Fine on Roop Chand, who organised feast on the occasion of his mother's death enhanced from Rs.20/- to Rs. 1,000/- - Appeal partly allowed. (State of Rajasthan Vs. Roopnath & Others - 1978 WLN (UC) 418),

(61) **Sentence when not to be interfered with** - Pratap Chand was the foodgrain distribution agent for Gram Panchayat Bibalsar. The District Supply Officer visited the shop on 22-2-72 & found that the dealer did not make entry in stock register of 54 Qtls. of Maize received by him. On checking D.S.O. found 48 bags instead of 60 bags. On enquiry the dealer disclosed that he has sold out 12 bags of maize to Gram Panchayat Mandoli for the purposes of feeding pigeons instead of distribution to card holder - Sentence of fine of Rs. 150/- was imposed- No ulterior motive for obtaining pecuniary gain - It was his first offence - Case of 1973 prior to Amending Act of 1974 - HELD, no reasonable ground to interfere with sentence awarded- Appeal for enhancement of sentence by State dismissed. (State of Rajasthan Vs. Pratap Chand - 1980 Cr. L.R. (Raj.) 471).

(62) **Sugar Control Order & Sugar (Packing & Marketing) Order, 1970 - C1.4 (1)** - Sample of sugar kept in polythene bag which is not an absolute guarantee about dampness - The deterioration in colour might be on account of being kept in polythene bag for a long period. Sugar has an inherent quality to attract moisture. Variation in colour possible in humidity - HELD, acquittal was not unjustified - Appeal dismissed. (State of Rajasthan Vs. N.R. Kesnan - 1983 WLN (NC)145].

(63) **Contravention of C1. 3(a) of the Raj. Foodgrains (Restriction on Bonier Movement) Order, 1959** - Truck loaded with 41-1/2 bags of paddy was stopped at Police Outpost. No documentary proof was given as to outpost being within 5 miles belt as required by Section 2(bb) of the Order. The finding based on no evidence -Revision allowed and accused acquitted. (Abdul Gani & Others Vs. State of Raj.- 1981 (6) R.Cr.C. 338).

(64) **Maharashtra Scheduled Articles (Display of Marking of Prices) Order, 1966** - The charge framed by the Magistrate alleges that the respondent has failed to display the price list of "Vanaspati Ghee" while it should have been in respect of the "Vanaspati" which is the item mentioned in Schedule I. In view of the challenge that what was being sold was not Vanaspati and that the tins did not contain vanaspati within the meaning of items 15 & 16 of Schedule I - No evidence showing that the respondents were dealers in 'Vanaspati' and that they had kept 'Vanaspati' for sale in their shops - Orders of acquittal confirmed. (State of Maharashtra Vs. Hans Raj Deepar Parle Oil Centre & Others - 1977 Cr.L.J.833).

(65) **Order of forfeiture of commodities held not proper when accused acquitted** - 16 Tins of Oils forfeited for not displaying on the board the Stock of Oil. Order of

confiscation under Section 7(ii)(b) contemplates the pre-condition of the accused. In this case the accused persons were acquitted by the Trial Court. No law could be pointed under which, at the time of acquittal, stock found in possession of a business man could be forfeited by the Court. Hence the order of confiscation was set aside. (Ram Swaroop Vs. State of Raj - 1981 (6) R.Cr.C. 146 - 1981 RLW 74)

(66) **Condition 8 of Rajasthan Hydrogenated Vegetable Oils Dealers Licensing Order, 1968. - Words 'any property in respect of which' explained** - The case of the prosecution was that 2 tins of vegetable oils out of 40 had been sold. There was no entry about their sale. Only 34 tins were in stock and 4 tins had been sold on that day. Thus condition 8 of the licence was contravened so far as 2 tins of vegetable oils were concerned. The competent authorities could not have seized the 34 tins relating to which the order or any condition of the licence was not contravened. The learned Magistrate would not have ordered the forfeiture of 34 tins of vegetable oil. -Revision partly allowed - (Manohar Lal Vs. State, 1982 RLW 86 - ILR (982) 32 Raj. 70 - 1982 R.Cr.C. 12)

(67) **Order of forfeiture when not to operate - Essential Supplies (Temporary Powers) Act, 1946, Sec.8** - Articles returned to accused on acquittal- Appellate Court later on convicted him - the order of forfeiture will not operate in such a case, since it is now not possible to hold on the identical articles which were connected with the offence. Such articles, if already handed over to the accused will not be demanded back from the accused. [State Vs. Bhura - 1954 RLW 87 (DB)].

(68) **Rajasthan Specified Foodgrains (Sale of Stock & Movement Restrictions) Order, 1972, Cl.3** - 15 bags of Bajra handed over to accused on furnishing security of Rs.2,000/-. As the goods were handed over to the accused considering them to be of perishable nature, so the same must have been sold by the accused. As such, instead of ordering forfeiture of any part of the goods, we think it proper that a sum of Rupees 2,000/- may be realised from the accused on account of forfeiture of goods. (State of Rajasthan Vs. Champalal - 1984 Cr.L.R. (Raj.97)

<sup>16</sup>[(7A. **Power of Central Government to recover certain amount as arrears of land revenue** <sup>17</sup>[or as a public demand].- (1) Where any person, liable to -

(a) pay any amount in pursuance of any order made under Section 3, or

(b) deposit any amount to the credit of any Account or fund constituted by or in pursuance of any order made under that section,

makes any default in paying or depositing the whole or any part of such amount, the amount in respect of which such default has been made shall (whether such order was made before or after the commencement of the Essential Commodities (Amendment) Act, 1984, and whether the liability of such person to pay or deposit such amount arose before or after such commencement) be recoverable by Government together with simple interest due thereon computed at the rate of \*<sup>17</sup>[fifteen percent], per annum from the date such default to the date of recovery of such amount, as an arrear of land revenue <sup>17</sup>[or as a public demand],

(2) The amount recovered under sub-section (1) shall be dealt with in accordance with the order under which the liability to pay or deposit such

amount arose.

(3) Notwithstanding anything contained in any other law for the time being in force or any contract to the contrary, no court, tribunal or other authority shall grant any injunction or make any order prohibiting or restraining any Government from recovering any amount as an arrear of land revenue <sup>17</sup>[or as a public demand] in pursuance of the provisions of sub-section (1).

(4) If any order, in pursuance of which any amount has been recovered by Government as an arrear of land revenue <sup>17</sup>[or as a public demand] under sub-section (1) is declared by a competent court, after giving to the Government a reasonable opportunity of being heard, to be invalid, the Government shall refund the amount so recovered by it to the person from whom it was recovered together with simple interest due thereon, computed at the rate of \*<sup>17</sup>[fifteen] per cent per annum, from the date of recovery of such amount to the date on which such refund is made.

**Explanation** - For the purpose of this section, 'Government' means the Government by which the concerned order under Section 3 was made or where such order was made by an officer or authority subordinate to any Government, that Government.]]

#### COMMENTS

(1) This new section has been inserted vide Amending Act No. 34 of 1984 and it has come into force w.e.f. 1.7.84 (vide Notification No. G.S.R. 485 (E), dated 1.7.84). Specific provision has now been added to the effect that all sums due under any order made U/s 3 of the E.C. Act, 1955 from any person can be recovered as an arrear of land revenue. Vide Amending Act 42 of 1986, rate of interest has been increased from six to fifteen percent.

(2) Section 7-A was also added to this Act by the Rajasthan Act 32 of 1960 dated 24.9.60 and as such it was applicable to Rajasthan only. The same is reproduced hereunder :-

**"7-A Forfeiture of certain property used in the commission of the offence. -** Whenever any offence relating to foodstuffs which is punishable u/s 7 has been committed, the Court shall direct that all the packages, coverings or receptacles in which any property liable to be forfeited under the said section is found and all the animals, vehicles, vessels or other conveyances used in carrying the said property shall be forfeited to the Government:

Provided that if the Court is of opinion that it is not necessary to direct forfeiture in respect of all such packages, coverings or receptacles or such animals, vehicles, vessels or other conveyances or any of them, it may, for reasons to be recorded, refrain from doing so."

**8. Attempts and abetment-** Any person who attempts to contravene, or abets a contravention of, any order made under section 3 shall be deemed to have contravened that order.

### COMMENTS

(1) A new proviso was added by Act 18 of 1981 and again by Ordi. No. 1 of 1998. Prior to this amendment, punishment for abetting a contravention of an order was fine & imprisonment both. A lenient new provision for punishment of fine only was made for cases of abetment of contravention of an order, if it was for procuring drugs, foodstuffs, edible oilseeds & oils for one's own/family/dependent use. As the Act 18 of 1981 and Ordinance. No. 1 of 1998 have lapsed, this proviso does not exist now.

(2) **Attempt and preparations.**- In this Section an 'attempt' to commit an offence is made punishable u/s 7 of the Act. 'Preparation' to commit an offence is not punishable as it is different from an attempt to commit an offence. Preparation consists in devising or arranging for the commission of the offence and the attempt is the direct movement towards the commission of the offence, after preparations are made. The attempt to commit an offence consists of intention to commit the offence by the accused & he must have done an act. The distinction between the two may be clear in some cases but in most of the cases dividing line is very thin. It must be decided upon the facts of each case whether an act is 'attempt' or 'preparation'. The crucial test is that if the last act towards commission of an offence interrupted would constitute a crime. If the offender changes his mind and does not proceed further in its progress and the acts already done are harmless, it may be a 'preparation' only. An act done towards the commission of the offence which does not lead inevitably to the commission of the offence, unless proceeded by other acts is merely an act of preparations.

(3) **U.P. Scheduled Commodities Dealers (Licensing & Restriction on Hoarding) Order, 1989 - Clause 8(1) and condition 13 of Lic. - F.I.R. lodged against proprietor of firm as he showed his inability for inspection; & also against President of Vyapar Mandal as he exhorted his companions for not allowing inspection - These acts attract cl. 8 - offences u/s 7 made out -F.I.R. can not be quashed.** A conjoint reading of Clause 8 of the Control Order and Condition No. 13 of the licence shows that the contravention of any condition of the licence would amount to contravention of Control Order. Section 8 of the Essential Commodities Act provides that any person who attempts to contravene or abets contravention of any Order made under Section 3 shall be deemed to have contravened that Order.

According to the allegations made in the FIR the licensee namely Ramesh Chandra did not give all facilities to the Enforcement officer for the inspection of his stock and accounts which amounted to breach of condition No. 13 of the Licence and in view of Clause 8, it will amount to contravention of Control Order. The petitioner No.2 Joginder Singh abetted in commission of the aforesaid act by Ramesh Chandra Arora, and, therefore, he has also committed an offence under Section 7 by virtue of Section 8 of the Essential Commodities Act. Thus, on the allegations made in FIR, both the petitioners have committed offence under Section 3 and 7 of Essential Commodities Act. - Petition dismissed [Ramesh Chandra Arora & Others vs. State of U.P. & Others. -(All.H.C.) - 1996(2) EFR 607]

(4) **U.P. Paddy and Rice (Restriction of Movement) Order, 1970, Clauses 3, 4 and 7 - E.C. Act, 1955, Section 7 - Restriction on export of rice and paddy - Rice being carried on by bus was 15 bags (3.30 qls.) without permit - Intercepted 22 miles before the border - No contravention as it amounted only to preparation to carry rice out of border - Conviction set aside. - AIR 1970 SC 713 - Followed.**- It is clearly made out that Dehradun was still at a distance of about 22 Miles from the place where the

Bus was intercepted and the accused was apprehended, allegedly making an attempt to export rice from one block to another. Both the courts below have failed to appreciate this fact which is so very clear from the evidence on record. In the authority cited as Malkiat Singh vs. State of Punjab, AIR 1970 SC 713, the Apex Court has in very clear terms held that there is no provision in the Act which makes a preparation to commit an offence punishable - In order that a person may be convicted of an attempt to commit a crime, he must be shown first to have had an intention to commit the offence, and secondly, to have done an act which constitutes to actus reu of a criminal attempt. The test for determining whether the act of accused person constituted an attempt or preparation is whether the overt acts already done are such that if the offender changes his mind and does not proceed further in its progress, the acts already done would be completely harmless.

It was quite possible that the applicant might have been warned that he had no licence to carry the rice and he might have changed his mind at any place between Behrigarh barrier and Saharanpur Dehradun border and not have proceeded further in his journey. Section 8 of the Act states that "any person who attempts to contravene, or abets a contravention of, any order made under Section 3 shall be deemed to have contravened that Order." But there is no provision in the Act which makes a preparation to commit an offence punishable. It follows, therefore, that the applicant should not have been convicted under Section 7 of the Act. - Revision allowed - [Jagmohan alias Manohar Lal vs. State of U.P. - (All. H.C.) 1996(2) EFR 625]

(5) E.C. Act, 1955, Secs. 3 & 7 - M.P. Rice Procurement Levy Order, 1979 - Cart carrying rice in contravention of Levy Order intercepted before it crossed the border - No offence committed. Transportation of rice from M.P. to Gujarat without paying due levy - This contravened the provisions of the Levy Order and thus committed an offence under sec. 3/7 of E.C. Act - cart carrying 6 qls. of rice were caught when it was crossing the unguarded barrier - No evidence that the applicant has actually crossed the border There was no actual crossing of the border - It can not be said that they had committed an offence - Conviction & sentence set aside. [Kutubdin and others vs. State of M.P. - 1994 (2) EFR 177]

(6) Essential Commodities Act, 1955, Secs. 3, 7 - Fertilisers (Movement Control) Order, 1973, Cls. 1, 3 -Export of fertiliser bags without valid permit- Interception at Sales Tax Barrier near Border - Held, it was a case of attempted unlawful export and not case of mere preparation.

#### Decision of Madhya Pradesh High Court, Reversed.

The respondents in each case were actually caught in the act of exporting fertiliser bags without a permit therefor from Madhya Pradesh to Maharashtra. The trucks were coming from Indore and were proceeding towards Maharashtra. The interception had taken place at Sales Tax Barrier which is only 8 miles away from the border of Maharashtra State. If the interception had not taken place, the export would have become a completed act and the fertiliser bags would have been successfully taken to Maharashtra State in contravention of the F.M.C. Order. It was not therefore a case of mere preparation, viz. the accused trying to procure fertiliser bags from someone or trying to engage a lorry for taking those bags to Maharashtra. They were cases where the bags had been procured and were being taken in the lorries under cover of sales invoices for being delivered to the consignees and the lorries would have entered the Maharashtra border but for their interception at the Sendhwa Sales Tax Barrier. Surely, no one can say that the accused were taking the lorries with the fertiliser bags in them for innocuous purposes or for mere thrill or amusement and that they would have stopped well ahead of the border

and taken back the lorries and the fertiliser bags to the initial place of despatch or to some other place in Madhya Pradesh State itself. They were therefore clearly cases of attempted unlawful export of the fertiliser bags and not cases of mere preparation alone.

Clause 3 of the order forbids not only export but also attempt to export and abetment of export of any fertiliser from one State to another without a permit. It would therefore be wrong to view the act of transportation of the fertiliser bags in the trucks in question by the accused as only a preparation to commit an offence and not an act of attempted commission of the offence. (State of M.P. V/s Narain Singh - AIR 1989 SC 1789).

**(7) Orissa Foodgrain Control Order, 1947.-** Transport of rice in lorry from Orissa to Madras - Rice seized before the lorry reached the border - Held to be an attempt and accused convicted, (AIR 1952 - Orissa 164).

**(8) Charge of attempting to export without Permit - Omission to give evidence regarding distance between concerned State and place where carts were intercepted - offence held not proved-** Clause 3 of Bihar Foodgrains (Movement Control) Order, 1957 provides that "no person shall export or attempt to export or abet to the export of foodgrains except under and in accordance with a permit issued by the State Govt. in this behalf." Few cultivators of Bihar State whose village was on the border of Bihar & West Bengal, were taking paddy in their bullock carts from their village. When questioned by the Police Officer they replied that they were taking it to village Faridabad, another village of Bihar State. The Paddy seized from them was forfeited. It is true that the movement was without a permit but at the earliest opportunity while they were within the border of the State of Bihar, they had explained that they were taking the paddy to village F. In the absence of a proper plan and the information in respect of the correct geographical position of village F, it was not safe to convict the appellants of a breach of clause 3 of the Order.

It is noteworthy that the distance between the State of West Bengal and the place where the carts were intercepted was neither mentioned in this seizure list nor in the F.I.R. It was possible that the appellants might have changed their mind at any time between the place of seizure and the State boundary. In the absence of proper contemporaneous documents which ought to have been prepared and the omission from the first information report of the distance, the possibility that the appellants might have changed their minds between the place of seizure and the boundary of the State in question cannot be excluded. [Nansu Sheikh and others Vs. the State of Bihar, (1972) S.C.W.R. 636- 1972 UJ (SC) 841- AIR 1972 SC 1610].

**(9) Section 3(1) and 7 and Punjab Paddy (Export Control) Order, 1959, para 2(a)- Preparation to commit offence - Not punishable under Sec. 7 of the Essential Commodities Act - Conviction of accused thereunder held bad-** The question to be considered was whether upon the fact found by the lower Courts any offence has been committed by the appellants. It is not disputed that the truck carrying the paddy was stopped at Samalkha barrier which is 32 miles from Delhi. It is also not disputed that the Delhi-Punjab boundary was at the relevant point of time, at about the 18th mile from Delhi. It follows, therefore, that there was no export of paddy within the meaning of para 2 (a) of the Punjab Paddy (Export Control) Order, 1959. There is no substance in the argument that there was an attempt to commit the offence of export. On the facts found, there was no attempt on the part of the appellants to commit the offence of export. It was merely a preparation on the part of the appellants and as a matter of law a preparation for committing an offence is different *from* attempt to commit it. The preparation consists in devising or arranging the means or measures necessary for the commission of the offence.

An attempt to commit the offence is a direct movement towards the commission after preparations are made. In order that a person may be convicted of an attempt to commit a crime he must be shown first to have had an intention to commit the offence, and secondly to have done an act which constitutes the actus reus of a criminal attempt. The sufficiency of the actus reus is a question of law which had led to difficulty because of the necessity of distinguishing between acts which are merely preparatory to the commission of a crime, and those which are sufficiently proximate to it to amount to an attempt to commit it. If a man buys a box of matches, he cannot be convicted of attempted arson, however clearly it may be proved that he intended to set fire to a haystack at the time of purchase. Nor can he be convicted of this offence if he approaches the stack with the matches in his pocket but if he bends down near the stack and lights a match which he extinguishes on preceiving that he is being watched, he may be guilty of an attempt to burn it.

The test for determining whether the act of the appellants constituted an attempt or preparation is whether the over acts already done are such that if the offender changes his mind and does not proceed further in its progress, the acts already done would be completely harmless. In the present case, it is quite possible that the appellants may have been warned that they had no licence to carry the paddy and they may have changed their mind at any place between the barrier in question and the Delhi-Punjab boundary and not have proceeded further in their journey. Section 8 of the Essential Commodities Act states that "any person who attempts to contravene or abets a contravention of any order made under Sec. 3 shall be deemed to have contravened the order". But there is no provision in the Act which makes a preparation to commit an offence punishable. It follows therefore, that the appellants should not have been convicted under sec. 7 of Essential Commodities Act. [Malkiat Singh and another Vs. State of Punjab, (1969) 1SCC. 157- AIR 1970 SC 713.]

(10) **Attempt and preparation - Distinction** - Accused merely found proceeding towards border of State of Bombay - not guilty under Section 7. [1962 (1) Cri. L.J. 830 (Mys)].

(11) **Inter Zonal Wheat and Wheat Products (Movement Control) Order, 1964 - Clauses 3 & 4-** In the schedule appended to the order, Rajasthan & Gujarat are two different zones. Persons moving bags of wheat from one place in the Zonal border area to another place in that area without a permit or in the alternative, they were attempting to export wheat This was clearly an offence under the Inter-Zonal Wheat Order, 1964. [State Vs. Karna 1973 RLW 487 - 1973 WLN 365 -1973 ILR- Raj. Series 823].

(12) **Rajasthan Rice (Export Control) Order-** Seizure of rice bags far off from the borders of Gujarat and Rajasthan from the trucks at Aravali Petrol Pump, Udaipur - the act of the accused could not be construed an attempt to export rice as he could change his mind before crossing the border. Distinction between attempt and preparation - A greater degree of determination to commit an offence is required in 'attempt' in comparison to the degree of determination that is required for a preparation to commit it. Held, no offence is committed & seizure is illegal,' (Murari Lal Vs. State of Rajasthan- 1974 WLN 960-1975 RLW 45).

(13) **Transportation of rice within same town or village and carrying of rice within belt area is no offence -**

No evidence of actual transportation out of belt area - Amounts only to preparation and not an attempt- No offence. (1970 Cri. L.J. 1190 (1192) Mys.).

(14) **Inter Zonal wheat & wheat products (Movement Control) Order, 1964 -**

**Attempt to commit is equally an offence** - Few carts laden with wheat were seized after they had crossed the river bank of-Pahuj into the river bed itself, while they were nearing the border between the two states of Madhya Pradesh & Uttar Pradesh. Although the carts were on the river bed, on the side of the river Pahuj which was within the State of M.P., nevertheless, they were actually seized while they were proceeding towards the State boundary which was at the centre of the river. Held that the seizure was affected while the accused were attempting to export the wheat from a place within the Zone to a place outside it. (State of M.P. Vs. Ram Charan Kishan - AIR 1969 M.P. 96).

**9. False Statements-** If any person,-

(i) When required by any order made under section 3 to make any statement or furnish any information, makes any statement or furnishes any information which is false in any material particular and which he knows or has reasonable cause to believe to be false, or does not believe to be true, or

(ii) makes any such statement as aforesaid in any book, account, record, declaration, return or other document which he is required by any such order to maintain or furnish,

he shall be punishable with imprisonment for a term which may be extended to \*<sup>9</sup>[five years] or with fine, or with both.

**COMMENTS**

These provisions of punishment are in addition to the provisions contained in Section 7. It so appears that legislators have felt it necessary to provide special provisions for punishing the persons who furnish false information or make false statement in the books of accounts or returns.

**10. Offences by Company** - (1) If the person contravening an order made under Section 3 is a company, every person who, at the time the contravention was committed was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be prosecuted against and punished accordingly :

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall

be liable to be prosecuted against and punished accordingly.

**Explanation** - For the purpose of this section, -

- (a) 'Company' means any body corporate, and includes a firm or other association of individuals; and
- (b) 'director' in relation to a firm means a partner in the firm.

#### COMMENTS

(1) **E.C. Act, 1955, Section 10 – Swatantra Bharat Mills - Violation of Clause 17 of the Textile Control Order, 1986,-High Court quashed proceedings against respondents holding that S.B. mills cannot be called to be an association of individuals-Appeal against - Held, Section 10 of E.C. Act lists the person who may be held guilty and punished are (1) Company itself (2) Person-in-charge of the company (3) Officer of the company - Any one or more or all may be prosecuted and punished - Impugned judgment set aside-Appeal allowed.**

The Section 10 appears to our mind to be plain enough. If the contravention of the order made under Section 3 is by a company, the persons who may be held guilty and punished are (1) the company itself, (2) every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company whom, for short, we shall describe as the person-in-charge of the company, and (3) any director, manager, secretary or other officer of the company with whose consent or connivance or because of neglect attributable to whom the offence has been committed, whom, for short we shall describe as an officer of the company. Any one or more or all of them may be prosecuted and punished. The company alone may be prosecuted. The person-in-charge only may be prosecuted. The conniving officer may individually be prosecuted. One, some or all may be prosecuted. There is no statutory compulsion that the person-in-charge or an officer of the company may not be prosecuted unless he be ranged alongside the company itself. Section 10 indicates the person who may be prosecuted where the contravention is made by the company. It does not lay down any condition that the person-in-charge or an officer of the company may not be separately prosecuted if the company itself is not prosecuted. Each or any of them may be separately prosecuted or along with the company. Section 10 lists the person who may be held guilty and punished when it is a company that contravenes an order made under Section 3 of the Essential Commodities Act. Naturally, before the person in-charge or an officer of the company is held guilty in that capacity it must be established that there has been a contravention of the order by the company.

Impugned judgment set aside - Appeal allowed. [State (Govt. of N.C.T. Delhi) Vs. D.A.M. Prabhu & another = 2009 (2) EFR 51 (SC)]

(2) **E.C. Act, Sec. 10 - Offence by firm - Criminal liability of the partners - Sec. 10 does not provide for vicarious liability - All the partners are not responsible for the offence - the partner(s) responsible for carrying on business and during relevant time incharge of business could alone be prosecuted - In absence of such proof no partner could be convicted –**

#### **Decision of Punjab & Haryana High Court Reversed.**

More often it is common that some of the partners of a firm may not even be knowing of what is going on day to day in the firm. There may be partners, better known as sleeping partners who are not required to take part in the business of the firm. There may be ladies and minors who were admitted for the benefit of partnership. They may not

know anything about the business of the firm. It would be travesty of justice to prosecute all partners and ask them to prove under the proviso to sub-section (1) of Sec.10 that the offence was committed without their knowledge. It is significant to note that the obligation for accused to prove under the proviso that the offence took place without his knowledge or that he exercised all due diligence to prevent such offence arises only when the prosecution establishes that the requisite condition mentioned in sub-section (1) is established. The requisite condition is that the partner was responsible for carrying on the business and was during the relevant time incharge of the business. In the absence of any such proof, no partner could be convicted. The documents do not indicate even remotely that all the partners were doing the business of the firm. There is no other evidence on record on this aspect, it could not be said that when the offence was committed all the partners were conducting the business of the firm. As Lajpat Rai was conducting business his conviction not disturbed -Conviction of other partners is absolutely uncalled for. (Shyam Sunder Vs. State of Haryana - A.I.R.1989 SC 1982).

(3) E.C. Act, 1955, Sec. 10 – Vegetable Oils Products Control Order, 1947, Sec. 3 – where the offence is committed by a company, the persons who may be prosecuted are indicated in Sec.10.- Challan filed against production manager & Director of the company as the sample of vegetable oil was found to contain 78% of solvent mustard oil as against permitted limit of 20%. Plea that the production manager was nominated by the company for conduct of business & there fore no one else could be arrayed as accused. Plea not accepted by Special Judge, In revision, High Court held that only production manager was to face trial & others not liable. In appeal Supreme Court held - High Court was not justified in quashing the charge framed so far as the present respondents are concerned.

If the contravention of the order made under Section 3 is by a company, the persons who may be held guilty and punished are (1) the company itself, (2) every person who, at the time the contravention was committed, was incharge of and was responsible to, the company for the conduct of the business of the company whom for short we shall describe as the person-in-charge of the company, and (3) any director, manager, secretary or other officer of the company with whose consent or connivance or because of neglect attributable to whom the offence has been committed, who for short we shall describe as an officer of the company. Any one or more or all of them may be prosecuted and punished. The company alone may be prosecuted. The person –in – charge only may be prosecuted. The conniving officer may individually be prosecuted. One, some or all may be prosecuted. There is no statutory compulsion that the person –in-charge or an officer of the company may not be prosecuted unless he be ranged alongside the company itself. Section 10 indicates the persons who may be prosecuted where the contravention is made by the company. It does not lay down any condition that the person –in-charge or an officer of the company may not be separately prosecuted if the company itself is not prosecuted. Each or any of them may be separately prosecuted or along with the company. Section 10 lists the person who may be held guilty and punished when it is a company that contravenes an order made under Section 3 of the Essential Commodities Act. Naturally, before the person-in-charge or an officer of the company is held guilty in that capacity it must be established that there has been a contravention of the order by the company.- Appeal allowed. [State of Punjab vs. Kasturi Lal & Others = 2004(2) EFR 508 –Supreme Court]

(4) E.C. Act, 1955, Sections 7 and 10- Fertilizer Control Order, 1985 Clause 19  
(1) (a)- Vicarious liability – Sample of Fertilizer found Sub-standard - Prosecution

was launched against firm & its partners - Only a partner being in charge of and responsible for conduct of day to day business of the firm can be prosecuted and none else.

Only a partner being in charge of and responsible for conduct of day-to-day business of the company/firm can be prosecuted for contravention of provisions of the Act or Control Order and none else - Petition allowed. - Complaint so also the summoning order in respect of petitioner Nos. 2 and 4 are hereby quashed. [Oswal Agro Sales Corp. & others Vs. State of Punjab = 2005 (2) EFR 256]

(5) E.C. Act, 1955, Secs.7- Fertilizer Control Order - Clause 19 (1) (a) - Sample of fertilizer found sub-standard - Show cause notice issued to Company - Complaint filed against dealers, Production Manager of the Company and M.D. of the Company- In the complaint, the Company was not arrayed as a co-accused- Complaint could not be filed against petitioner who is only M.D. - Petition allowed.

The company M/s. Shivalik Fertilizer Limited was not arrayed as a co-accused and therefore, in the absence of the aforesaid company, the complaint could not be filed against S.K. Sood who was merely a Managing Director of the company. Petition is allowed and the complaint and all consequential proceedings qua the petitioner are hereby quashed. [S.K. Sood Vs. State of Punjab = 2006 (2) EFR -57]

(6) E.C. Act, 1955- secs. 7 & 10 - Sample of Super Phosphate found substandard - Petitioner (a partner of the firm) out of country at the relevant time- Petitioner discharged from the case.

Prosecution was launched against M/s. Kishori Lal Vishwa Nath and its partners. Rajinder Kumar, present petitioner, was one of the partners. The other partners had been Vishaw Nath and Rakesh Kumar.

The contention of the petitioner was that he had left the country in 1991. He was never residing in India nor he was taking any active part in the business of M/s. Kishori Lal Vishwa Nath. - He came for the first time to India in 1998 after the year 1991. - He had been prosecuted only because he happened to be partner of the firm M/s. Kishori Lal Vishwa Nath from which sample was taken. That firm Kishori Lal Vishwa Nath and its other partners and then who manufactured etc. had been separately prosecuted and sentenced. - When there had been no averments or specific allegations against the present petitioner and he was not in this country at the relevant time when the sample was taken, then it cannot be said that he shall be liable for offence under Section 7 read with Section 10 of the Essential Commodities Act merely because he was a partner of the firm. - Petition allowed and petitioner is discharged from the case. [Rajindra Kumar Sharma Vs. State of Punjab = 2006 (2) EFR - 21]

(7) E.C. Act, 1955- secs.7 & 10 - Fertilizers Control Orders 1985 - Sample of Fertilizer taken on 26.05.88 from sealed bags kept in godown of IFFCO found to be sub-standard - Salesman joined his duties on 20.05.88 - Salesman not liable.

As salesman has joined his duties only on 20.05.88 whereas the bags from which sample was taken had been received on 9.05.88 - IFFCO had not been made accused & sample had been taken from sealed bags, it can not be said that salesman was liable for storing / sale of any sub-standard fertilizer - Accused acquitted. [Satpal Vs. State of Punjab = 2006 (2) EFR -23]

(8) E.C. Act 1955, Sec. 10 - Offence committed by firm - Petitioners, who are admittedly partners of the firm, could therefore be made vicariously responsible for the offence committed by the firm but to prosecute them there should have been an averment in the charge sheet that as partners of the firm, they were incharge of and

were responsible for the conduct of its business to the firm. - Unfortunately there was no such averment in the charge sheet - Mere statement in the seizure list that certain documents were seized from one of the partners of the firm is not enough to show that such partner was in charge & responsible for the conduct of its business to the firm - Revision allowed. (Sushil Kumar Jajodia vs. State of West Bengal - 1992(2) EFR 673)

(9) E.C. Act 1955, Secs. 7 & 10 - Cr.P.C. 1973, Sec. 482 - **Complaint filed against partners of the firm - No averment in the complaint that three partners were managing affairs of the firm - Complaint liable to be quashed - Prosecution must first show that the partners of the firm to be prosecuted, who was in-charge of and was responsible to the company for the conduct of the business of the company. After the prosecution establishes this fact, then the burden shifts on the partner prosecuted to prove that the contravention took place without his knowledge or that he exercised all due diligence to prevent any such contravention - Nowhere in the complaint it has been averred that these partners were managing the affairs of the firm during the relevant period - In absence of any such averment in the complaint to the effect that these partners were managing the affairs of the firm during the relevant period, they cannot be prosecuted against. - Proceedings quashed. [Kishor Lal & Others vs. State of Karnataka - 1991(1) EFR 567]**

(10) E.C. Act, Secs. 3, 7 & 10 - **Tamilnadu Scheduled Commodity (Regulation of Distribution by card system ) Order, 1982 - Cl. 6(2) & 14 - Cr.P.C. Sec. 482 - The fair price shop was checked - certain irregularities in distribution found - charge sheet against society . Special Officer. Secretary and Salesman -Special Officer was in overall control - Omissions & Commissions by Salesman - No proof that there was connivance - There was absolutely nothing in this case to show that the special officer has anything to do with the alleged sale or with false entries made by the salesman in the Register - Proceedings against the special officer quashed. (K.S. Chandra Shekhran Vs. Inspector of Police - 1989 Cr.I-J. 1508).**

(11) E.C. Act - Secs. 10 & 7 - **Offence by partnership firm - Charge framed against three partners and two salesman but not against firm - No allegation that they are incharge of and responsible to firm -Charge is liable to be quashed.**

For bringing the case of a person within the mischief of S. 10 (1) of the Act two things must be satisfied viz.(i) the offence in the first instance must have been committed by the company which includes a partnership firm and for that the company must be first charged as such: and (ii) the person, besides the company, who is sought to be made liable by virtue of S.10(1), must be incharge of and responsible to the company for the conduct of its business. In the present case neither of the two conditions appears have been satisfied for charging the three partners - Charge as against the present petitioners is liable to be quashed. (Vidyawati vs. State - 1989 Cr.LJ. 1047).

(12) E.C. Act, Sections 10 and 7 - **Case against Managing partner of Firm - Conviction of few other persons merely because of their presence cannot be sustained.**

According to section 10 of the Act, if the person contravening an order made under Section 3 is a firm, every person who at the time the contravention was committed, was in charge of, and was responsible to the firm for the conduct of the business of the firm as well as the firm shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly. From Clause 8 of the Partnership Deed (Ex. P-3) it is clear that the first accused Iddinabba is the Managing Partner of the firm. He alone will be contravening the Order as the firm has not been prosecuted. It is not even

alleged that the other partners consented or connived at the commission of the said offence or that the said offence was attributable to any neglect on their part. Merely because accused Nos. 2 to 6 were present at the time of the search, it cannot be said that they consented or connived at the commission of the said offence, especially as the firm was dealing in foodgrains, sugar cane, cement after obtaining valid licence. Therefore, the conviction of accused Nos. 2 to 6 cannot be sustained. (Iddinaba Vs. State of Karnataka-1986 EFR 386).

**(13) E.C. Act, Secs. 7 and 3 - Person merely present at shop with the accused - cannot be convicted along with the accused.**

Admittedly, the said Baldev Raj is the son of the revisionist Negi Ram and he has been challenged by the prosecution merely because he was present in the shop and name of the shop is M/S. Negi Ram Baldev Raj. It is, however, not safe to hold that Baldev Raj is liable for the offence in question on the basis of the evidence on record. It was further incumbent upon the prosecution to prove that this Baldev Raj was co-owner of this shop alongwith his father or that their firm was a registered one of which said Baldev Raj was one of the partners. There is, however no iota of evidence in proof of this factum. The sentence passed against said Baldev Raj is liable to set aside, and he is entitled to acquittal. (Negi Ram Vs. State of Himachal Pradesh- 1986 EFR 429).

**(14) E.C. Act., Section 3 and 10 - Without impleading the Company, the office bearers responsible for conduct of its business can be prosecuted provided condition under clauses (1)&(2) of Sec. 10 are satisfied.**

In case the contravention of an order made under Section 3 of the Essential Commodities Act, 1955 is made by the company, then it is better if the company as well as persons mentioned in clauses (1) and (2) of Section 10 of the Act are prosecuted. But there appear to be no bar that if the company is not prosecuted, the persons mentioned in clauses (1) and (2) of Section 10 of the Act cannot be prosecuted. But in such a case, because of the company having contravened an order made under sec. 3 of the Act, those persons will be held liable vicariously, it is necessary for the prosecution to aver and prove that contravention of an order made under Section 3 of the Act was committed by the company and the persons mentioned in two clauses of section 10 shall be deemed to be guilty for the said offence in case the condition contained therein are satisfied. But no punishment can be inflicted on the company because the company is not arrayed as an accused. Without first recording a finding that the company has contravened an order made under Section 3 of the Act, persons referred to in clauses (1) and (2) of Section 10 or either of them cannot be held guilty and punished vicariously.

Without impleading the company which term includes a firm or association of individuals like the co-operative society the office bearers of the society who are incharge of and responsible to the conduct of its business can be prosecuted in case conditions under clause (1) or (2) of Section 10 of the Act are satisfied. (Prabhu Lal Yadav vs. State of Rajasthan - 1986 EFR 640).

**(15) Every partner of the firm is liable for an act of the firm.** For contravention of an order by all partners, or by any partner, or by any agent of the firm, action is taken against the firm. All the partners shall be prima facie liable to be prosecuted for the contravention. Therefore, at the initial stage there will be presumption that all of the partners are guilty. It is for the partners to prove that the contravention had taken place without their knowledge or they had exercised due diligence and care to prevent the contravention. (1965 A.L.J. 1026).

**(16) Offence committed by a person in the Production Section of a company.** The

Manager of the Company having no connection with the production Section cannot be held responsible for such offence. It is for the prosecution to prove that the Manager has some nexus with the crime then alone he can be involved in the case. (A.I.R. 1965 All. 525).

(17) **Madras Gur & Khandsari Sugar Dealers Licensing Order, 1963- C1.3-** Accused dealing in Khandsari sugar without licence - liability of his servant - It can not be said that the clerk was carrying on business in sugar. He was only a clerk and the person who was doing the business was his master. Held - servant is not liable. (A.I.R. 1970 Madras 315).

(18) **Contravention by Firm - Partner** can be prosecuted only when shown to be incharge at the time of contravention. (1970 Pat. L.J.R. 234).

(19) **Iron and Steel (Control) Order, 1956 - C1.5 - Sale of pig iron** at a price higher than the controlled price by a representative of another firm with the aid of the clerk of the company. No evidence from which it could be inferred that the Manager and the Managing Director of the Company had any knowledge of such sale which was manoeuvred by clerk and other representative, nor is there any evidence to show that they took any part in the negotiations for sale or in the sale itself - Mere circumstances that they were in the *defacto* management of affairs of company and were aware of arrivals of goods which were subsequently sold by clerk, could only create suspicion but not proof against them - Held, Manager and Director could not be convicted. (The State of Madras Vs. C.V. Parekh and another - AIR 1971 S.C. 447).

(20) **Rajasthan Cement (Lic. & Control) Order, 1974.- Cognizance against partner** - Proviso to Section 10 provides that if the person is able to prove that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention, he will not be held guilty for such contravention. Hence, the learned Chief Judicial Magistrate committed no error in taking cognizance against Champa Lal, who is another partner of the Firm M/S. Lalit Hard Ware Bliandar, Phalna. However, it will be open for Champa Lal to show that the contravention took place without his knowledge or that he exercised all due diligence to prevent it

There is no prima facie material on record to show that Champa Lal had knowledge of sale of 5 bags cement to Govind Ram at a price higher than the controlled price or that he played any role in negotiating the sale or that he was a party to the sale itself, liability of sale of 5 bags of cement at a higher price by partner Bhanwar Lal cannot be saddled on him. (Champa Lal vs. State Rajasthan - 1978 WL.N. 20).

(21) **Rajasthan Foodgrains Dealers Licensing Order, 1964.- Conviction under - contravention of law alleged to be by the firm** - It has not been alleged that the accused petitioners were persons responsible for the affairs of the business of the firm. The firm has not been arrayed as an accused. Unless the firm is arrayed as accused & is prosecuted, persons alone cannot be prosecuted - Held, conviction cannot be upheld - Revision allowed. (Avinashi Lal vs. State of Rajasthan- 1980 Cr.LR.Raj. 515).

(22) **Rajasthan Wheat (Regulation of Trade) Order, 1973.- Condition No. 3 of the Licence** - The licensee is the firm "Brij Gopal Ved Prakash" and it has nowhere been mentioned that Brij Gopal was the partner in charge of the business of that firm & responsible for conducting its business. The licensed firm was not arrayed as accused - Not mentioned & proved that Brij Gopal was the partner in charge of business of that firm responsible for its conduct - Conviction set aside and confiscation of wheat also set aside. [Brij Gopal Vs. State of Rajasthan - Cr.L-R. (Raj) 1981 page 109.]

(23) **Rajasthan Wheat (Regulation of Trade) Order, 1973,- A partnership firm** was

checked and 99 bags of wheat found there without a licence. In view of section 10, the firm is included in the 'Company'. No evidence on record to show that the petitioners were the partners of the firm. Further, the evidence is completely lacking that any of the petitioners was incharge of, and was responsible to, the firm for conduct of business. Thus it appears that there is no evidence on the basis of which further prosecution of petitioners can be justified. Continuation of a frivolous prosecution can be quashed under inherent powers - Revision accepted. [Smt. Sumitra & Another vs. State of Rajasthan & another - 1981 (6) R.Cr.C.363].

<sup>9</sup>{ **10-A. Offences to be Cognizable and Bailable.**- Notwithstanding anything contained in \*<sup>13</sup>[the Code of Criminal Procedure, 1973 (2 of 1974)] every offence punishable under this Act shall be cognizable <sup>13</sup>[x x x x] }.

#### COMMENTS

(1) All offences under this Act are cognizable i.e. the police can arrest the accused without a warrant.

(2) This section earlier contained the words "and bailable" & these words were omitted from the body of Section by amending Act of 1974. The existence of these words in the heading of the Section is only misleading and has no importance. The heading can be availed of to explain ambiguous words but can not control the plain words of the Statute. The result of omission of these words from the body of the section was that every offence under this Act was not bailable but it was bailable or non-bailable according to the provisions of the Code of Criminal Procedure, 1973. According to the Code, offences punishable for a term less than 3 years are bailable. Hence, offences under sub-clause (i) of clause (a) of sub section (1) of section 7 were bailable, whereas all other offences were non-bailable.

Vide Act No. 18 of 1981, the words "and non-bailable" were inserted. Thus all the, offences committed on or after 1.9.82, were made non-bailable. As the Act 18 of 1981 and subsequent Ordinances have lapsed, the original provisions of this Sec. stand restored.

(3) **E.C. Act, 1955 - Secs. 7,8,10 - Complaint against a company - Impleading chairman & its two Accounts Managers - Not even a word against them in the complaint as to their complicity - Criminal prosecution quashed.**- 900 litres of kerosene oil was found in godown at Bhatia Basil, Kadma, Jamshedpur -complaint against chairman & 2 Accounts Managers & Site Accountant - The petitioner No. 1 is the chairman of the Company based in Bombay while petitioner no.2 is two Accounts Manager based in Calcutta. There is not even a word against them in the complaint as to their complicity. All that is mentioned therein is that there has been contravention of Clause 3(ii) of the Unification Order by the Company and it should be prosecuted for the offence under sections 7, 8 and 10 of the Essential Commodities Act. It is difficult to understand in these circumstances as to how the two petitioners have been roped in by opposite party no.2 in this case. Application allowed (D. Ambani & others vs. State of Bihar & another - (Pat H.C.) -1996(2) EFR 362]

<sup>13</sup>[[**10-B. Power of Court to publish name, place of business etc. of Companies convicted under the Act.**- (1) Where any company is convicted under this Act, it shall be competent for the court convicting the

company to cause the name and place of business of the company, nature of the contravention, the fact that the company has been so convicted and such other particulars as the court may consider to be appropriate in the circumstances of the case, to be published at the expense of the company in such newspapers or in such other manner as the court may direct.

(2) No publication under sub-section (1) shall be made until the period for preferring an appeal against the order of the court has expired without any appeal having been preferred, or such an appeal, having been preferred, has been disposed of.

(3) The expenses of any publication under sub-section (1) shall be recoverable from the company as if it were a fine imposed by the court.

*Explanation.-* For the purposes of this section, 'company' has the meaning assigned to it in clause (a) of the explanation to section 10]]

<sup>13</sup>[[10-C. **Presumption of Culpable Mental State.-** (1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

*Explanation.-* In this section, 'culpable mental state' includes intention, motive, knowledge of a fact and the belief in, or reason to believe a fact.

(2) For the purposes of this section a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.]]

#### COMMENTS

(1) As per sec. 7(1) before amendment Act of 1974, an offence is committed if any person contravenes an order, whether knowingly, intentionally or otherwise, But now the words "whether knowingly, intentionally or otherwise" have been omitted by the amending Act of 1974, and a culpable mental state has been presumed on the part of the accused, leaving it to him to rebut the presumption. Provisions in this regard have been incorporated in Section 10C by the amending Act, 1974.

(2) **E.C. Act, Sec. 10-C- Orissa Rice & Paddy Control Order, 1965-** Cl. 2(f) & 3 - Transporting 93 qtls. 99 kgs. & 700 gms. exceeding the permissible limits (10 qtls) of paddy amounts to storage - there is presumption that he is a dealer and the burden shifts on to him to rebut that presumption by proving to the contrary- section 10C casts heavy burden on the accused to prove its defence plea beyond all reasonable doubts. Once a person stores rice/paddy exceeding the permissible limit the offence is complete & that person is to show as to whether he is a cultivator or land owner or licence holder - Revision dismissed & conviction upheld - (1990 Cr. L.J. 1193).

(3) **E.C. Act, 1955, Secs. 7 & 10C - Andhra Pradesh Procurement (Levy) Order, 1984. - Cl. 10 - Accused has a right to rebut the presumption of culpable mental state. -** Though there is a legal presumption as regards the existence of "mens-rea" for

purposes of punishment under Sec. 7, there is a right vested in the accused u/s 10C to rebut that presumption by adducing sufficient evidence to prove that he did not have the culpable mental state for the act to amount to an offence so as to call for punishment under sec. 7 of the Act.

Accused applied for permit for hulling paddy - he persued it - regularly submitted form 'C'- application was not rejected - In these circumstances accused was under bonafide belief that the permit would be granted at any time & that it was only getting delayed on account of official reasons. Thus, the accused has proved beyond all reasonable doubt that he did not have the culpable mental state while hulling paddy - no offence made out -Appeal allowed. [Balasa Venkatesa Penimal vs. State of A.P.-1990(1) EFR 489]

**11. Cognizance of Offences.-** No court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by a person who is a public servant as defined in Section 21 of the Indian Penal Code (45 of 1860) <sup>18</sup>[ or any person aggrieved or any recognized consumer association, whether such person is a member of that association or not].

<sup>18</sup>[*Explanation.-* For the purposes of this section and section 12A A, "recognised consumer association" means a voluntary consumer association registered under the Companies Act, 1956 (1 of 1956) or any other law for the time being in force.]

#### COMMENTS

(1) Prior to amending Act, 73 of 1986, courts were required to take cognizance of any offence under this Act only on report made by a public servant. Now by virtue of the amendment made by Amending Act 73 of 1986, cognizance shall also be taken by the courts of any offence on a report made by any person aggrieved or any recognized consumer association.

(2) E.C. Act, 1955, Sec.7- E.C. (S.P.) Act, 1981 – Special Courts constituted under Section 12-A – Remained in force till 31.08.1997 – Thereafter E.C. (Special Provisions) Ordinance, 1997 was promulgated – Ordinance lapsed w.e.f. 27.08.1998 – So offence under Section 7 for which cognizance was taken after 27.08.1998 – Could be tried only by an ordinary Court – Cognizance of offence by special court is illegal and without jurisdiction – Petition allowed.

The Essential Commodities (Special Provisions) Act, 1981 was enforced w.e.f. 1.9.1982. The same was originally implemented for five years and later on extended for another ten years. This Act remained in force till 31.08.1997. Thereafter, the Essential Commodities (Special Provisions) Ordinance, 1997 was promulgated, but he said Ordinance elapsed w.e.f. 27.08.1998. Thus, the offence under Section 7 of the Act for which the cognizance was taken after 27.08.1998, could not be tried by a Special Court and could be tried only by an ordinary Court.

The effect of repealing of Essential Commodities (Special Provisions) Act, 1981 and the lapse of the Essential Commodities (Special Provisions) Ordinance, 1997 was considered by a Full Bench of this Court in Anil Kumar v. State of Punjab, 2004 (1) EFR 279 (FB) : 2004 (1) RCR (Criminal) 488 (FB), while dealing with the question as to what

was the effect on the cases which were registered before the repealed Act and the cases in which the Court had taken cognizance. After considering the statutory provisions, it was held as under:-

"We are of the considered view that the cases which were registered and in which the Court has taken cognizance shall continue as if the Special Act has not been repealed by the Central Act."

In the case in hand, the FIR was registered on 9.9.1998 and the final report was prepared by the police on 15.1.1999. Once the Special Court ceased to have the powers to try offence under Section 7 of the Act, after 27.08.1998 when the Ordinance elapsed, the petitioners could not be tried by the special Court and had to be tried by an ordinary Court. Mere fact that the offence was allegedly committed in the year 1995-96 was no ground to loathe the Special Court with the power to try the offence. The relevant date is the one when the cognizance of the offence was taken. Admittedly, the FIR was registered after the Essential Commodities (Special Provisions) Act, 1981 stood repealed and Essential Commodities (Special Provisions) Ordinance, 1997 stood lapsed. At that point of time, the Special Court ceased to exist for the present case and the same required to be tried by an ordinary Court. - Cognizance by Special Judge, is illegal and without jurisdiction. The cognizance of the said offence will now be taken up by the Magistrate, who will proceed with the trial in accordance with law. [Baldev Kishan & Others Vs. State of Punjab = 2007 (1) EFR 296]

(3) If a police officer investigating into an offence, which the Act has declared as cognizable, submits a report in writing u/s 173 (2) Cr.P.C. disclosing an offence under the Act and requesting for proceeding further into the matter, it would satisfy the requirement of Sec. 11 for taking cognizance of the offence so disclosed. [Satya Narayan Musadi Vs. State of Bihar- AIR 1980 SC 506].

(4) **Black Marketing of cement - Final report by police - Cognizance by Magistrate upheld-** 75 bags of cement were sold in black by licence holder and a report was lodged by Tehsildar at Police Station. The police submitted final report as the witnesses joined hands with the accused. The magistrate took cognizance on this report and summoned the accused petitioner. The trial court rejected the objection of accused taken under section 11.

In revision it was held that undoubtedly this report is a report by a public servant and since it contains all the necessary ingredients, it could have been relied upon for initiating the proceedings and taking cognizance under section 3/7 of the Act. There is no ground for interference in this revision petition - Revision dismissed (Mahesh Chandra Vs. State of Rajasthan - 1981 (6) R.Cr.C. 305 and 365-1981 Cr. L.R. (Raj.) 580).

(5) **Who is public servant.** - S.H.O. appeared in the witness box and stated that he was a public servant as an employee of the Rajasthan State. All necessary facts constituting the offence were recited in the report made by S.H.O. In these circumstances, it was held that the trial court was not correct in holding that the report was not made by a public servant. (State Vs. Kishan Lal & Other - I.L.R. (1962) 12 Raj. 579-1962 RLW 608).

(6) **Essentials of a report under section 11.** - If the necessary facts constituting the offence were not mentioned in the report of Sub-Inspector the Magistrate cannot take cognizance of offence u/s 11 and also u/s 190 (1)(b) of Cr.P.C. The charge sheet which was framed by the Magistrate in the present case, on the basis of the police report also shows that it is lacking in essential particulars. So long as the ingredients of the offence alleged against the accused are not mentioned in the report and in the charge, he cannot

meet the case of prosecution. Reference allowed. (Veer Chand Vs. State – I.L.R (1960) 10 Raj. 1134 - 1960 RLW 659).

(7) **Cognizance of offence - Sections 11 & 12AA (e)** - The Supply Officer Dholpur lodged a complaint on 21.2.83 under Section 3/7 of the E.C. Act before the Special court. The petitioner filed an application & submitted that the special court is not competent to take cognizance especially in the light of Section 12AA (e). It was held by the Special Court that it was competent to take cognizance u/s 11 of the E.C. Act - HELD, provisions of section 12AA (e) mandatory in nature and have overriding effect over Section 11 - Special Court could not take cognizance on such complaint of Supply Officer - Order of Special Court taking cognizance set aside - Direction given to return the complaint to supply officer for lodging. F.I.R. at the Police Station. [M/S Ram Prasad Sharma & Sons vs. State of Rajasthan - 1984 R.L.R. 732 - 1984 Cr.L.R. (Raj.) 561].

(8) **E.C. Act, 1955, Sec.11 - Search absolutely illegal & without jurisdiction - order taking cognizance on the basis of illegal search & seizure cannot be sustained** - Facts mentioned in the charge sheet do not disclose any offence - Taking cognizance of the offence on the basis of such a charge sheet is bad in law - Order taking cognizance quashed. [Kanhaiya Sah vs. State of Bihar & Others - 1992(2) EFR 395]

\*<sup>13</sup>[**12. Special provision regarding fine.**- Notwithstanding anything contained in Section 29 of the Code of Criminal Procedure, 1973 (2 of 1974), it shall be lawful for any Metropolitan Magistrate, or any Judicial Magistrate of the first class specially empowered by the State Government in this behalf, to pass a sentence of fine exceeding five thousand rupees on any person convicted of contravening any order made under section 3.]

<sup>6</sup>[**12A. Power to try summarily.**- (1) If the Central Government is of opinion that a situation has arisen where, in the interest of production, supply or distribution of \*<sup>13</sup>[any essential commodity (not being an essential commodity referred to in clause (a) of sub-section (2))] or trade or commerce therein and other relevant consideration it is necessary that the contravention of any order made under Section 3 in relation to such essential commodity should be tried summarily, the Central Government may, by notification in the Official Gazette, specify such order to be a special order for purposes of summary trial under this section, and every such notification shall be laid, as soon as may be after it is issued, before both Houses of Parliament.

<sup>12</sup>[Provided that-

- (a) every such notification issued after the commencement of the Essential Commodities (Amendment) Act, 1971, shall unless sooner rescinded, cease to operate at the expiration of two years after the publication of such notification in the Official Gazette;
- (b) every such notification in force immediately before such commencement shall, unless sooner rescinded, cease to operate at the expiration of two years after such commencement:

Provided further that nothing in the foregoing proviso shall affect any case relating to the contravention of a special order specified in any such notification if proceedings by way of summary trial have commenced before that notification is rescinded or ceases to operate and the provisions of this section shall continue to apply to that case as if that notification had not been rescinded or had not ceased to operate.]

<sup>13</sup>[(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences relating to -

(a) the contravention of an order made under section 3 with respect to -

(i) <sup>27</sup>[XXXX]

(ii) foodstuffs, including edible oilseeds and oils; or

(iii) drugs; and

(b) where any notification issued under sub-section (1) in relation to a special order is in force, the contravention of such special order, shall be tried in a summary way by a Judicial Magistrate of the first class specially empowered in this behalf by the State Government or by a Metropolitan Magistrate and the provisions of section 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trial :

Provided that, in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year:

Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall, after hearing the parties, record an order to that effect and thereafter recall any witnesses who may have been examined and proceed to hear or re-hear the case in the manner provided by the said Code ];

(3) Notwithstanding anything to the contrary contained in the <sup>13</sup>[Code of Criminal Procedure, 1973 (2 of 1974)] there shall be no appeal by a convicted person in any case tried summarily under this section in which the Magistrate passes a sentence of imprisonment not exceeding one month, \*<sup>13</sup>[and of fine not exceeding two thousand rupees], whether or not any order of forfeiture of property or an order under \*<sup>13</sup>[section 452] of the said Code is made in addition to such sentence, but an appeal shall lie where any sentence <sup>13</sup>(xxx) in excess of the aforesaid limits is passed by the Magistrate.

\*<sup>13</sup>[(4) All cases relating to the contravention of an order referred to in clause (a) of sub-section (2), not being a special order, and pending before

a Magistrate immediately before the commencement of the Essential Commodities (Amendment) Act, 1974, and where any notification is issued under sub-section (1) in relation to a special order, all cases relating to the contravention of such special order and pending before a Magistrate immediately before the date of the issue of such notification, shall, if no witnesses have been examined before such commencement or the said date, as the case may be, be tried in a summary way under this section, and if any such case is pending before a Magistrate who is not competent to try the same in a summary way under this section, it shall be forwarded to a Magistrate so competent.]

#### COMMENTS

(1) This new section 12A was inserted vide amending Act 47 of 1964 and was amended vide amending Acts 66 of 1971 and 30 of 1974. According to Section 12-A, before the amending Act of 1974, summary trial was possible only if a special order had been issued in this behalf. But by the amendment of 1974, provision was made for summary trial in all cases where the offences related to the contravention of an order made with respect to cotton or wollen textiles or foodstuffs, including edible oilseeds and oils and drugs. In case of other essential commodities, it was necessary to issue a special order if the procedure of summary trial was sought to be taken advantage of. Under the substituted Section 12-A, the State Government had empowered the Civil Judge and the Chief Judicial Magistrate, Additional Civil Judge and Additional Chief Judicial Magistrate to try the cases summarily vide Notification dated 10-9-74.

(2) Various changes relating to Court, trial, term of imprisonment, bail, remand, pardon, appeal, arrest, revision etc. were made by the Act 18 of 1981. All these amendments were applicable to the offences committed on or after 1-9-82. As the Act 18 of 1981 has lapsed on 31.8.97, similar provisions were made vide E.C. (S.P.) Ordinances, No. 1 of 1998 & 13 of 1998. As both these Ordinances have also lapsed, these changes exist no more.

(3) **Sec. 12A of the E.C. (S.P.) Act, 1981 - Special Court established under Sec.12A has no power to try the cases after the E.C. (S.P.) Act lapsed by efflux of time.-**

Special Court Madurai constituted for trial of E.C. Act cases ceased to exist after October, 1998 when the last period of extension of E.C. (S.P.) Act lapsed.

It is clear that during the period the EC (Special Provision) Act was in force the Special Court constituted for trial of offences under EC Act had exclusive jurisdiction to try such cases. The Special Court had also the power to pass order of remand under Section 167, but the position changed after the EC (Special Provisions). Act lapsed by efflux of time. Thereafter, the position that used to prevail before the EC (Special Provisions) Act was enforced, stood restored and the Judicial Magistrates who were previously competent to try the EC Act cases got the jurisdiction to deal with such cases. The position is beyond any pale of doubt that the remand orders passed by the Special Court at Madurai, long after it had ceased to exercise jurisdiction in cases under the EC Act are incompetent.

- Appeal dismissed by Supreme Court [State of Tamilnadu vs. Paramasiva Pandian = 2002 (1) EFR 1]

(4) E.C. Act 1955, Sec. 12 AA - Revision against the order passed by the special judge rejecting application for releasing the goods seized by the police. - From the perusal of the impugned order it appears that the learned special judge has rejected the application on the assumption that he has no jurisdiction to entertain the same -Special Court has jurisdiction to entertain the application for release of seized commodities. (M/s. Govind Prasad Ram Lal vs. State of U.P. - 1992(2) EFR 444]

(5) Essential Commodities (Special Provisions) Act, 1981- Sec. 12 AC, & Cr.P.C. 1973, Sec. 438- HELD Special Judge under Act 18 of 1981 empowered to entertain bail application u/s 438 Cr.P.C. (Harish vs. State of Rajasthan - 1984 R.L.R, 326)

(6) Rajasthan Rice (Export Control) Order - Chief Judicial Magistrate not specifically empowered under Section 12A on the date of taking cognizance of offence - Notification conferring powers on Chief Judicial Magistrates was issued on 10-9-74 - Held, Order made by Chief Judicial Magistrate on 8-8-74 was without jurisdiction so far as it related to framing of the charge under section 3 read with section 7 of the Essential Commodities Act. (Murari Lal Vs. State of Rajasthan - 1974 WLN 960 - 1975 RLW 45)

<sup>13</sup>[12-B Grant of injunction etc. by Civil Courts.- No Civil Court shall grant an injunction or make any order for any other relief against the Central Government or any State Government or a public officer in respect of any act done or purporting to be done by such Government, or such officer in his official capacity, under this Act or any order made thereunder, until after notice of the application for such injunction or other relief has been given to such Government or officer.]

#### COMMENTS

This new section has been inserted vide amending Act of 1974. Civil Court can grant an injunction or other relief against Central/State Government or a public officer only after giving a notice of the application for such injunction etc. to such government or officer.

**13. Presumption as to Orders.** - Where an order purports to have been made and signed by an authority in exercise of any power conferred by or under this Act, a Court shall presume that such order was so made by that authority within the meaning of the Indian Evidence Act, 1872 (1 of 1872).

**14. Burden of Proof in certain cases.-** Where a person is prosecuted for contravening any order made under section 3 which prohibits him from doing any act or being in possession of a thing without lawful authority or without a permit, licence or other document, the burden of proving that he has such authority, permit, licence or other document shall be on him.

#### COMMENTS

E.C. Act, 1955 - Secs. 7 & 14 - Orissa Rice & Paddy Control Order, 1965 - Petitioner found in possession of 35.25 qls. paddy without a licence - provisions of Sec. 14 are attracted - Failure to rebut presumption attracts provisions of Sec.7 -

Under Sec. 14 of the Act, burden of proof lies on the person who has been prosecuted. The nature of stock is within the special knowledge of petitioners. They are required to prove the same - The person who is found to be in possession of paddy of more than 10 Qls. will be presumed to be engaged in the business of purchase, sale or storage of paddy. Where the presumption is not rebutted, it must follow that he is a dealer. Once he is a dealer & has no licence, cl.3 of the Control Order is contravened & liability u/s 7 is attracted. [Rama Chandra Dora vs. State - 1987 EFR 630]

**15. Protection of action taken under Act.** - (1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of any order made under section 3.

(2) No suit or other legal proceeding shall lie against the Government for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of any order made under section 3.

#### COMMENTS

(1) Unlawful seizure by Tehsildar without any authority of law - Jurisdiction of civil court is not barred by Sec. 15 of the Act. (AIR 1966 A.P. 225)

(2) Goods illegally seized and sold by the Government - seizure, however, not malafide - suit against Government for value of goods being one for damages is barred. (1964 And. WR 333)

(3) E.C. Act, Secs. 3 & 7 - Cr.P.C. Sec. 197 - I.P.C. Sec. 500 - Naib Tehsildar inspected shop of accused as directed by S.D.M.- Report lodged- Accused acquitted on the ground that N.T. was not authorised to inspect - After acquittal complaint filed u/s 500 I.P.C. against N.T. - HELD- Proceedings barred by Sec. 197 Cr.P.C.

The Naib Tahsildar, the present applicant, thus was not authorised to check the shop of the opposite Party No. 1, but was also directed by his Officer, the Sub-Divisional Magistrate, to check the same. If the protection guaranteed under Section 197, Cr.P.C. is not extended to the public servants acting or purporting to act in the discharge of their public duties, the chaos is bound to take place. This officer checked the shop and made a report to his officer who lodged the first information report. The case was investigated and chargesheeted, and, during the trial, the opposite-party was acquitted on the ground that the officer, who checked the shop that is the present applicant, was not an Enforcement Officer. No malice or motive can be assigned to this officer. The learned C.J.M. ought to have read the Notification and also the first information report that were annexed with the application of the present applicant. They were public documents. Fearless, honest and obedient public servants strictly acting in the discharge of their duties, should not be harassed on the grounds of hollow formalities or rituals. The act of the applicant, in checking the shop in the circumstances of the instant case, is so closely connected with the official duty of this officer that it cannot be said to be anything than his duty. By no stretch of imagination, it can be said that the applicant acted in a manner

to malign or harm the opposite party No. 1. (Ranjit Singh vs. Ram Kumar Jain - 1986 EFR 249)

<sup>14</sup>[15A. Prosecution of Public Servants - Where any person who is a public servant is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his duty in pursuance of an order made under section 3, no court shall take cognizance of such offence except with the previous sanction -

- (a) of the Central Government, in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union;
- (b) of the State Government, in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the State.]

#### COMMENTS

This new section has been inserted vide amending Act of 1976 to protect the public servants functioning under the Act against malicious and vexatious complaints. No cognizance shall be taken by the court of any complaint against any public servant except with the previous sanction of Central/State Government.

**16. Repeals and Savings.-** (1) The following laws are hereby repealed:-

- (a) the Essential Commodities Ordinance, 1955 (1 of 1955);
- (b) any other law in force in any State immediately before the commencement of this Act in so far as such law controls or authorises the control of the production, supply and distribution of, and trade and commerce in, any essential commodity.

(2) Notwithstanding such repeal, any order made or deemed to be made by any authority whatsoever, under any law repealed hereby and in force immediately before the commencement of this Act, shall, in so far as such order may be made under this Act, be deemed to be made under this Act, and continue in force, and accordingly any appointment made, licence or permit granted or direction issued under any such order and in force immediately before such commencement shall continue in force until and unless it is superseded by any appointment made, licence or permit granted or direction issued under this Act.

(3) The provisions of sub-section (2) shall be without prejudice to the provisions contained in section 6 of the General Clauses Act, 1897 (10 of 1897), which shall also apply to the repeal of the Ordinance or other law referred to in sub-section (1) as if such Ordinance or other law had been an enactment.

<sup>27</sup>[THE SCHEDULE

(See section 2A)

## ESSENTIAL COMMODITIES

(1) Drugs.

**Explanation:-** For the purposes of this Schedule, "drugs" has the meaning assigned to it in clause (b) of section 3 of the Drugs and Cosmetics Act, 1940 (23 of 1940);

(2) fertilizer, whether inorganic, organic or mixed;

(3) foodstuffs, including edible oilseeds and oils;

(4) hank yarn made wholly from cotton;

(5) petroleum and petroleum products;

(6) raw jute and jute textiles;

(7) (i) Seeds of food-crops and seeds of fruits and vegetables;

(ii) Seeds of cattle fodder; and

(iii) Jute seeds.]

@[(iv) Cotton seed]

## COMMENTS

(1) This schedule has been inserted by Amending Act, 54 of 2006. Prior to this amendment essential commodities were defined in clause (a) of Sec. 2.

@(2) Vide notification No. G.S.R. 3267 dt. 22.12.2009. "Cotton seed" was added to this Schedule for six months. This period was extended to one year vide notification No. G.S.R. 1480 dt. 18.06.2010. Vide notification No. G.S.R. 2988 dt. 22.12.2010, the words "cotton seed" have been added to this Schedule without any time limit. These notifications may please be seen at the end of this Act.

(3) "Foodstuffs" have not been defined in this Act. In general sense food is that which is eaten or drunk for nourishment. It includes all articles used for food or drink by human beings. It also includes the materials which can be used as food after certain preparations of cleaning & grinding etc. Milk, Oil, Ghee, Pickles, Jams, Pepper & Chillies, Dry Mango, Dry Ginger etc. are also included in foodstuffs.

(4) The expression 'food-stuffs' is used in the wider sense so as to include within its ambit adjuncts to nutritive food including condiments, pickles, jams etc. (Sujan Singh Matu Ram Vs. State of Haryana - AIR. 1968 Punjab 363).

(5) Cooked food is 'foodstuff' :- Expression 'foodstuff' is made of two expressions 'food' plus 'stuff'. In other words, the stuff which is used as food would be foodstuff. Therefore foodstuff is that which is taken into the system to maintain life & growth and to

supply waste of tissue. If the raw foodstuff with a view to making it consumable by human beings undergoes a change of its condition by the process of cooking, the derivative is none the less foodstuff. (Welcome Hotel & Others Vs. State of Andhra Pradesh & Others, A.I.R. 1983 SC 1015).

(6) "Rice-bran" is a foodstuff :- The word "foodstuff" is not defined in the Act & therefore it must receive its ordinary & natural meaning, that is to say, a meaning which takes account of and accords with the day to day affairs of life. Cattle and poultry are living components of the natural environment and there is no reason to exclude that which they eat from meaning of the "foodstuff. Any stuff which is commonly used as food by the generality of living beings is foodstuff; it is not legitimate to restrict the meaning of that word to things which are used as food by human beings. Cattle feed & poultry feed are food to the cattle and poultry, and therefore, they are foodstuffs. Since "rice-bran" is commonly used as poultry feed & not uncommonly as cattle feed, it is a foodstuff, and therefore, an essential commodity within the meaning of Sec. 2 (a) (v) of the Act (Satpal Gupta & others Vs. State of Haryana & Others - A.I.R. 1982 SC 798).

\* \* \*

## IMPORTANT NOTIFICATIONS ISSUED BY THE CENTRAL GOVERNMENT UNDER THE E.C. ACT

(1) **Ministry of Agriculture**  
(Department of Food)

### ORDER

New Delhi, the 25th Oct., 1972

**G.S.R. 452(E).**- In exercise of the powers conferred by section 5 of the Essential Commodities Act, 1955 (10 of 1955), the Central Government hereby directs that the power to make orders under sub-section (1) of Section 3 of the said Act, to provide for the prohibition of, or the imposition of restriction on, the storage of food-stuffs shall be exercisable also by a State Government:

Provided that before making an order relating to the aforesaid matter, a State Government shall obtain the prior concurrence of the Central Government.

[No. 203 (Genl.) (10)/88/72-PY - II]

[N.B. Please also see clause 5 of the Removal of (Licensing Requirements, Stock limits and Movement Restrictions) on Specified Foodstuffs Order, 2002]

\* \* \*

- (2) **Ministry of Agriculture**  
(Department of Food)

**ORDER**

**New Delhi, 13th March, 1973**

**G.S.R. 168(E).**- In exercise of the powers conferred by Section 5 of the Essential Commodities Act, 1955 (10 of 1955), the Central Government hereby directs that the power conferred on it by sub-section (1) of section 3 of the said Act to make orders to provide for the matters specified in clause (g) of sub-section (2) thereof shall in relation to food-stuffs be exercisable also by a State Government :

Provided that before making an order providing for the matters specified in the aforesaid clause a State Govt. shall obtain the prior concurrence of the Central Govt.

[No.3 (Genl.) (2)/92/73-PY-II]

\* \* \*

- (3) **Ministry of Industry and Civil Supplies**  
(Department of Civil Supplies & Co-Operation)

**ORDER**

**New Delhi, the 30th November, 1974**

**S.O. 681(E).**- In exercise of the powers conferred by Section 5 of the Essential Commodities Act, 1955 (10 of 1955) the Central Government hereby directs -

- (a) that the powers conferred on it by sub-section (1) of Section 3 of the said Act to make Orders to provide for the matters specified in clauses (d), (e), (f), (g), (h), (i), (ii), and (j) of sub-section (2) thereof shall, in relation to all essential commodities other than foodstuffs and fertiliser (whether inorganic, organic or mixed) be exercisable also by a State Government or, in relation to a Union Territory, by the Administrator thereof, subject to the following conditions, namely :-
- (i) that the delegation of powers under clause (d) shall not extend to inter-state transport or distribution and the powers under that clause shall not be exercised so as to prejudicially affect such transport or distribution in pursuance of any Order issued by the Central Government;

- (ii) that all Orders under clause (f) shall require the prior concurrence of the Central Govt.;
  - (iii) that no order shall be issued in pursuance of the powers hereby delegated if it is inconsistent with any Order issued by the Central Government under the said Act;
  - (iv) that in making an Order relating to any of the matters specified in clause (j), the State Government or, as the case may be, the Administrator of a Union territory shall authorise only an Officer of Govt.;
- (b) that the Order of the Government of India in the Ministry of Commerce No. S.O. 184 dated the 18th June, 1966 issued under Section 5 of the said Act shall stand rescinded.

Provided that, notwithstanding such rescission, any Order (hereinafter referred to as the said Order) made by a State Govt. or an administrator or any Officer subordinate to that State Government or administrator in pursuance of the Order so rescinded and in force immediately before the commencement of this Order, shall be deemed to have been made in pursuance of this Order and under the relevant provisions of section 3 of the said Act, and shall continue in force according to its tenor, and accordingly any action taken or thing done (including any appointment made, licence or permit granted or direction issued) under the said Order and in force immediately before such commencement shall continue in force according to its tenor until and unless it is superseded by any action taken or anything done under any other order made in pursuance of this Order and under the relevant provisions of section 3 of the said Act.

[No. 26 (1)/74-CS-II]

[N.B. – This Notification has been amended by Noti. S.O. 624(E) dt. 7-8-90]

\* \* \*

- (4) **Ministry of Industry and Civil Supplies**  
(Department of Civil Supplies & Co-Operation)

### ORDER

**New Delhi, the 30th November, 1974**

**S.O. 682(E).**— In exercise of the powers conferred by section 5 of the Essential Commodities Act, 1955 (10 of 1955), the Central Government hereby directs—

- (a) that the powers conferred on it by sub-section (1) of section 3 of the said Act to make Orders to provide for the matters specified in clause (c) of sub-section (2) thereof shall in relation to all essential

commodities other than foodstuffs and Fertilisers (whether inorganic, organic or mixed), be exercisable also by a State Government or in relation to a Union territory, by the administrator thereof subject to the following conditions, namely :-

- (i) that where the price at which any essential commodity may be bought or sold is controlled by or under any other law for the time being in force, no Order shall be made in pursuance of the powers hereby delegated;
  - (ii) that where the price is not so controlled, no Order shall be made in pursuance of the powers hereby delegated in respect of any essential commodity :-
    - (A) if the wholesale prices, or retail prices, or both of such commodity have been fixed by the manufacturers or producers thereof with the approval of Central Govt, except on the basis of such prices;
    - (B) in any other case, except with the prior concurrence of the Central Govt;
  - (iii) that no order shall be issued in pursuance of the powers hereby delegated if it is inconsistent with any order issued by the Central Govt. under the said Act;
- (b) that the Order of the Govt. of India in the Ministry of Commerce No S.O. 2314 dated the 30th July, 1966 issued under section 5 of the said Act shall stand rescinded.

Provided that notwithstanding such rescission, any Order (hereinafter referred to as the said Order) made by a State Govt. or an administrator or any officer subordinate to that State Govt. or administrator in pursuance of the order so rescinded and in force immediately before the commencement of this Order, shall be deemed to have been made in pursuance of this Order and under the relevant provisions of section 3 of the said Act, and shall continue in force according to tenor, and accordingly any action taken or thing done (including any appointment made, licence or permit granted or direction issued) under the said Order and in force immediately before such commencement shall continue in force according to its tenor until and unless it is superseded by an action taken or anything done under any other Order made in pursuance of this Order and under the relevant provisions of section 3 of the said Act.

[No. 26 (1)/74-CS. II]

(5) **Ministry of Agriculture & Irrigation**  
(Department of Food)

**ORDER**

**New Delhi, the 9th June, 1978**

**G.S.R. 800.-** In exercise of the powers conferred by section 5 of the Essential Commodities Act, 1955 (10 of 1955), and in supersession of the Order of the Government of India in the late Ministry of Agriculture (Department of Food) No. GSR. 316 (E) dated the 20th June, 1972, the Central Government hereby directs that the powers conferred on it by sub-section (1) of section 3 of the said Act to make orders to provide for the matters specified in clauses (a), (b), (c), (d), (e), (f), (h), (i), (ii) and (j) of sub-section (2) thereof shall, in relation of food-stuffs be exercisable also by a State Government subject to the conditions-

- (1) that such powers shall be exercised by a State Government subject to such directions, if any, as may be issued by the Central Government in this behalf;
- (2) that before making an order relating to any matter specified in the said clauses (a), (c) or (f) or in regard to distribution or disposal of food-stuffs to places outside the State or in regard to regulation of transport of any foodstuff, under the said clause (d), the State Government shall also obtain the prior concurrence of the Central Government; and
- (3) that in making an order relating to any of the matters specified in the said clause (j) the State Government shall authorise only an officer of Government.

[No. 3 (Genl.) (I)/ 78/D & R (I)-59]

[N.B. Please also see clause 5 of the Removal of (Licensing Requirements, Stock limits and Movement Restrictions) on Specified Foodstuffs Order, 2002]

\* \* \*

(6) **New Delhi, Sept. 19, 1979**

**G.S.R. 544(E)-** In exercise of the powers conferred by section 12A of the Essential Commodities Act 1955, (10 of 1955), the Central Government hereby specifies the Fertiliser (Control) Order, 1957 issued under Section 3 of that Act, to be the special Order for purposes of summary trial under the said Section 12A.

\* \* \*

(7)

**Dated June 10, 1982**

**S.O. 396(E).**- In exercise of the powers conferred by Section 5 of the Essential Commodities Act, 1955 (10 of 1955), the Central Government hereby directs that the power conferred by S.O. No.746 (E) dated 16th October, 1981 shall be exercisable also by the State Government or any officer authorised by that Government, or, in relation to a Union Territory, by the Administrator thereof or any officer authorised by that Administrator.

(F. No. 13 (1)/81-Engg.Ind.)

\* \* \*

(8)

**New Delhi, the 31st August, 1982**

**G.S.R. 553(E).**- In exercise of the powers conferred by sub-section(2) of section 1 of the Essential Commodities (Special Provisions) Act, 1981 (18 of 1981), the Central Government hereby appoints the 1st day of September, 1982, as the date on which the said Act shall come into force in all the States and Union Territories except in the Union Territory of Andaman and Nicobar Islands, Arunachal Pradesh, Dadra and Nagar Haveli, Lakshdweep and Mizoram.

(No.26(14)/81-ECR)

[Pub. in Gaz. of India - Extraordinary Pt. II Dt. 31-8-82]

\* \* \*

(9)

Ministry of Agriculture  
**New Delhi, the 10th February, 1984**

**G.S.R. 59(E).**- In exercise of the powers conferred by Section 5 of the Essential Commodities Act, 1955 (10 of 1955), the Central Government hereby directs that the powers conferred on it by sub-section (1) of section 3 of the said Act to make Orders to provide for the matter specified in clause (c) of sub-section (2) of the said section of the said Act be exercisable also by the State Governments in relation to physical/granulated mixtures of Fertilisers.

[Pub. in the Gaz. of India Extra. Pt.II Sec. 3(1) Dt. 10-2-84]

\* \* \*

(10)

**New Delhi, the 1st July, 1984**

**G.S.R. 485(E).**- In exercise of the powers conferred by sub-section (2) of section 1 of the Essential Commodities (Amendment) Act, 1984 (34 of 1984), the Central Government hereby appoints the 1st day of July, 1984, as the date on which the said Act shall come into force;

[F. No. 26/9/80-ECR]

[Pub. in Gaz. of India Extraordinary Pt. II- Dt. 1-7-84]

\* \* \*

(11)

New Delhi, 27th April, 1987

**S.O. 438(E).**- In exercise of the powers conferred by sub-section (2) of section 1 of the Essential Commodities (Second Amendment) Act, 1986 (73 of 1986), the Central Government hereby appoints the 1st day of May, 1987, as the date on which the said Act shall come into force.

[F. No.26(17)/86 ECR]

[Pub. in Gaz. of India Extra. Pt. II Sec.3 (ii) Dt. 27-4-87]

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**MINISTRY OF FOOD AND CIVIL SUPPLIES**

(Department of Civil Supplies)

(12)

New Delhi, 7th August, 1990

**ORDER**

**S.O. 624(E).**- In exercise of the powers conferred by Section 5 of the Essential Commodities Act, 1955 (10 of 1955), the Central Government makes the following Order to amend Order No.S.0.681(E) dated the 30th November, 1974, issued by the erstwhile Ministry of Industry and Civil Supplies (Department of Civil Supplies and Co-operation), as follows :-

- (i) that the delegation of powers under clause (d) of sub-section (2) of section 3 of the Essential Commodities Act, 1955 in so far as it relates to the regulation of retail cement distribution by licences or permits shall stand rescinded with immediate effect;
- (ii) that all orders (hereinafter referred to as the said orders) issued by a State Government or a Union Territory Administration in exercise of the powers delegated to them by the aforesaid Order shall stand modified to the extent specified in (i) above.

Provided that such modification shall not affect-

- (a) the previous operation of the said Order or anything duly done or suffered thereunder;
- (b) any right, privilege, obligation or liability acquired, accrued or incurred under the said Order; or
- (c) any penalty or punishment incurred in respect of any offence committed against the said Order; or
- (d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty or punishment may be imposed as if the said Order had not been modified.

[F. No. 26(3)/90 ECR &amp; E]

[Pub. in Gaz. of India Extra. Pt. II Section 3(ii) dt.7.8.90]

\* \* \*

Notification	Noti. Rescinded	E.C. deleted
[13]*S.0.541 (E) dt.22-7-94	(S.O. 5540 dt.22-12-71	Crude Oil)
[14]*S.0.542 (E) dt.22-7-94	(S.O. 654 dt.1-7-87	Natural Gas)
[15]*S.0.543 (E) dt.22-7-94	(S.O. 211 dt.20-3-89	Hydraulic Brake Fluid)
[16]*S.0.544 (E) dt.22-7-94	(S.O. 211 dt.2-7-93	Non-pressure kerosene wick stove)
[17]*S.0.545 (E) dt.22-7-94	(S.R.O. 2175A dt.29-6-57	Non-ferrous metals)
[18]*S.0.546 (E) dt.22-7-94	(S.O. 2896 dt.18-9-62	Manufactures & Semi manufactures of non- ferrous metals)
[19]*S.0.547 (E) dt.22-7-94	(S.O. 481 dt.7-2-63	Soap)
[20]*S.0.548 (E) dt.22-7-94	(S.O. 1837 dt.14-6-66	Matches)
[21]*S.0.549 (E) dt.22-7-94	(S.O. 2381 dt.8-8-66	Dry cells for Tourches & Hurricane lanterns)
[22]*S.0.550 (E) dt.22-7-94	(S.O. 2878 dt.22-8-68	Tyres & Tubes of Buses & Trucks)
[23]*S.0.551 (E) dt.22-7-94	(S.O. 3840 dt.28-10-68	Dry cells & Batteries for Transistor Radios)
[24]*S.0.552 (E) dt.22-7-94	(S.O. 767 dt.13-2-70	Tyres & Tubes of animal drawn vehicles)
[25]*S.0.553 (E) dt.22-7-94	(S.O. 617(E) dt.1-8-81	Power Threshers)
[26]*S.0.554 (E) dt.22-7-94	(S.O. 760(E) dt.24-10-86	Surgical Implants)

\* Not printed in this book.

\* \* \*

**(27) New Delhi, the 5th August, 1997**

**S.O. 555(E).**- In exercise of the powers conferred by sub-clause (xi) of clause (a) of Sec. 2 of the Essential Commodities Act, 1955 (10 of 1955), the Central Government hereby rescinds the Order of the Government of India in the erstwhile Ministry of Commerce and Industry number S.O. 2232, dated the 13th September, 1960, except as respects things done or omitted to be done before such rescission, with effect from the date of publication of this Order.

[F.No.15(2)/96ECR&E]

\* \* \*

**(28) New Delhi, the 5th August, 1997**

**S.O. 556(E).**- In exercise of powers conferred by sub-clause (xi) of clause (a) of Sec. 2 of the Essential Commodities Act, 1955 (10 of 1955), the Central Government hereby rescinds the Order of the Government of India in the erstwhile Ministry of Commerce number S.O. 84, dated the 5th January, 1967, except as respects things done or omitted to be done

before such rescission, with effect from the date of publication of this Order.

[F.No.15(2)/96-ECR&E]

\* \* \*

**(29) New Delhi, the 5th August, 1997**

**S.O. 557(E).**- In exercise of powers conferred by sub-clause (xi) of clause (a) of Sec. 2 of the Essential Commodities Act, 1955 (10 of 1955), the Central Government hereby rescinds the Order of the Government of India in the erstwhile Ministry of Commerce number S.O. 1931, dated the 21st June, 1966, except as respects things done or omitted to be done before such rescission, with effect from the date of publication of this Order.

[F.No.15(2)/96-ECR&E]

\* \* \*

**(30) New Delhi, the 5th August, 1997**

**S.O. 558(E).**- In exercise of powers conferred by sub-clause (xi) of clause (a) of Sec. 2 of the Essential Commodities Act, 1955 (10 of 1955), the Central Government hereby rescinds the Order of the Government of India in the erstwhile Ministry of Commerce and Industry Notification No. S.O. 3218, dated the 19th October, 1962, except as respects things done or omitted to be done before such rescission, with effect from the date of publication of this Order.

[F.No.15(2)/96-ECR&E]

\* \* \*

**(31) New Delhi, the 5th August, 1997**

**S.O. 559(E).**- In exercise of powers conferred by sub-clause (xi) of clause (a) of Sec. 2 of the Essential Commodities Act, 1955 (10 of 1955), the Central Government hereby rescinds the Order of the Government of India in the erstwhile Ministry of Commerce and Industry number S.O.689, dated the 16th March, 1963, except as respects things done or omitted to be done before such rescission, with effect from the date of publication of this Order.

[F.No.15(2)/96-ECR&E]

\* \* \*

**(32) New Delhi, the 5th August, 1997**

**S.O. 560(E).**- In exercise of powers conferred by sub-clause (xi) of clause (a) of Sec. 2 of the Essential Commodities Act, 1955 (10 of 1955), the Central Government hereby rescinds the Order of the Government of India in the erstwhile Ministry of International Trade number S.O. 3395,

dated the 29th November, 1963, except as respects things done or omitted to be done before such rescission, with effect from the date of publication of this Order.

[F.No.15(2)/96-ECR&E]

\* \* \*

**(33) New Delhi, the 5th August, 1997**

**S.O. 561(E).**- In exercise of powers conferred by sub-clause (xi) of clause (a) of Sec. 2 of the Essential Commodities Act, 1955 (10 of 1955), the Central Government hereby declares the following commodities to be essential commodities for the purposes of the said Act, namely :-

Textile Machinery :

- (i) Knitting Machine
- (ii) Spinning Machine
- (iii) Lace Making Machine
- (iv) Powerloom and
- (v) Processing Machinery.

[F.No.15(2)/96-ECR&E]

[N.B. – Rescinded vide Noti. S.O. 206 dt. 15.2.02]

\* \* \*

**(34) New Delhi, the 29th June, 1999**

**S.O. 517(E).**- In exercise of powers conferred by sub-clauses (v) and (xi) of clause (a) of Sec. 2 of the Essential Commodities Act, 1955 (10 of 1955), the Central Government hereby declares 'Onion' to be an essential commodity for the purposes of the Act.

[F.No.15(3)/99-ECR&E]

[Pub. in Gaz. of India Extra. Pt. II Sec.3(ii) dt.29.6.99]

[N.B. – Rescinded vide Noti. S.O. 1302 (E) dt. 25.11.04]

\* \* \*

**(35) New Delhi, December 29, 2000**

**S.O. 1169(E).**- In exercise of the powers conferred by sub-clause (ii) of clause (a) of Sec. 2 of the Essential Commodities Act, 1955 (10 of 1955), the Central Government hereby rescinds the Order of the Government of India in the erstwhile Ministry of Civil Supplies and Co-operation number S.O. 87 (E), dated, the 10th February, 1978 declaring Tea as an essential commodity, except as respects things done or omitted to be done before such rescission, with effect from the date of publication of this Order.

[F. No. 15 (1) 2000-ECR&E]

\* \* \*

(36) **New Delhi, December 29, 2000**

**S.O. 1170(E).**- In exercise of the powers conferred by sub-clause (ii) of clause (a) of Sec. 2 of the Essential Commodities Act, 1955 (10 of 1955), the Central Government hereby rescinds the Order of the Government of India in the erstwhile Ministry of Commerce number S.O. 2615 (E), dated, the 22nd July, 1968. declaring the coconut husk (raw or retted) as an essential commodity, except as respects things done or omitted to be done before such rescission, with effect from the date of publication of this Order.

[F. No. 15 (1) 2000-ECR&E]

\* \* \*

(37) **New Delhi, December 29, 2000**

**S.O. 1171(E).**- In exercise of the powers conferred by sub-clause (ii) of clause (a) of Sec. 2 of the Essential Commodities Act, 1955 (10 of 1955), the Central Government hereby rescinds the Order of the Government of India in the erstwhile Ministry of Industrial Development number S.O. 526 (E), dated, the 29th September, 1973, declaring coir fibre extracted from coconut husk as an essential commodity, except as respects things done or omitted to be done before such rescission, with effect from the date of publication of this Order.

[F. No. 15 (1) 2000-ECR&E]

\* \* \*

(38) **New Delhi, the 15<sup>th</sup> February, 2002**

**S.O. 206(E).**- In exercise of the powers conferred by sub-clause (xi) of clause (a) of section 2 of the Essential Commodities Act, 1955 (10 of 1955), the Central Government hereby rescinds the following Orders except as respects things done or omitted to be done before such rescission, with effect from the date of publication of this Order, namely:-

1. Order of the Government of India in the erstwhile Ministry of Commerce and Industry number S.O. 2114 dated 21-9-1959 declaring "(i) textiles made from silk, (ii) textiles made wholly or in part from man-made cellulosic and non-cellulosic spun fibres; and (iii) textiles made wholly or in part from man made cellulosic and non-cellulosic filament yarns" as essential commodities.
2. Order of the Government of India in the erstwhile Ministry of Steel and Heavy Industry (Department of Heavy Industries) number S.O. 3594 dated 24-11-1962 declaring "cement" as an essential commodity.
3. Order of the Government of India in the erstwhile Ministry of Commerce number S.O. 2135 dated 15-7-1966 declaring "General Lighting Service Lamps" as an essential commodity.

4. Order of the Government of India in the erstwhile Ministry of Commerce number S.O. 76 dated 4-1-1967 declaring "Household appliances such as electric irons, heaters and the like" as an essential commodity.
5. Order of the Government of India in the erstwhile Ministry of Industrial Development and Internal Trade (Department of Internal Trade) (Civil Supplies Organisation) number S.O. 2532 dated 24-7-1970 declaring "Electrical Cables and Wires" as essential Commodities.
6. Order of the Government of India in the erstwhile Ministry of Industrial Development (Department of Internal Trade) (Directorate General, Civil Supplies) number S.O.492 (E) dated 10-7-1972 declaring "Man-made cellulosic and non-cellulosic staple fibres" as an essential commodity.
7. Order of the Government of India in the erstwhile Ministry of Commerce (Department of Internal Trade) (Civil Supplies Organisation) number S.O. 256 (E) dated 19-4-1974 declaring "(i) Man-made Cellulosic and noncellulosic filament yarn; (ii) Nylon Tyre Yarn/Cord/Fabric " as essential commodities.
8. Order of the Government of India in the erstwhile Ministry of Food and Civil Supplies (Department of Civil Supplies) number S.O. 197 (E) dated 20-3-1991 declaring "(1) Switches for domestic and similar purposes; (2) 2-AMP Switches; (3) 3-Pin Plugs and Sockets Outlets' as essential commodities.
9. Order of the Government of India in the erstwhile Ministry of Food and Consumer Affairs (Department of Consumer Affairs) number S.O. 561 (E) dated 5-8-1997 declaring "Textile Machinery : (i) Knitting Machine; (ii) Spinning Machine; (iii) Lace Making Machine; (iv) Powerloom and (v) Processing Machinery" as essential commodities.

[F. No. 15/1/2002-ECR&E]

[Pub. in Gaz. of India Extra. Pt. II Sec. 3 (i) dt. 15.2.02]

\* \* \*

(39) **New Delhi, the 15<sup>th</sup> February, 2002**

**S.O. 207(E).**- In exercise of the powers conferred by sub-clause (xi) of clause (a) of section 2 of the Essential Commodities Act, 1955 (10 of 1955), the Central Government hereby makes the following amendments, with immediate effect, in the Order of the Government India issued in the erstwhile Ministry of Commerce (Department of Internal Trade), Civil Supplies Organisation Number S.O. 188 (E) dated 31-3-1973 declaring "Yarn made wholly or in part from any of the following materials,

namely:- (i) cotton, (ii) wool; (iii) man-made cellulosic spun fibre; (iv) man-made non-cellulosic spun fiber; (v) silk " as an essential commodity, namely:-

In the said Order for the words "Yarn made wholly or in part from any of the following materials, namely:- (i) cotton; (ii) wool; (iii) man-made cellulosic spun fibre; (iv) man-made non-cellulosic spun fibre; (v) silk", the words "Yarn made wholly from cotton" shall be substituted.

[F. No. 15/1/2002-ECR&E]

[Pub. in Gaz. of India Extra. Pt. II Sec. 3 (i) dt. 15.2.02]

\* \* \*

**(40) New Delhi, March 28, 2002**

**G.S.R. 236(E).**- In exercise of the powers conferred by Section 12-A of Essential Commodities Act, 1955 (10 of 1955), the Central Government being of the opinion that it is necessary that the contravention of Fertiliser (Control ) Order, 1985 made under Section 3 of the said Act, should be tried summarily, hereby specifies the said Order to be special order for the purposes of summary trial under the aforesaid Section 12-A.

[No. 1-1/98 Fert. Law]

\* \* \*

**(41) New Delhi, March 28, 2004**

**G.S.R. 226(E).**- In exercise of the powers conferred by Sec. 12-A of the Essential Commodities Act, 1955 (10 of 1955), the Central Government, being of the opinion that it is necessary that the contravention of Fertilizer (Control) Order, 1985 made under Sec. 3 of the said Act, should be tried summarily, hereby specifies the said order to be a special order for the purposes of summary trial under the said Sec. 12-A.

[No. 1-1/2004-Fert. Law]

\* \* \*

**(42) New Delhi, March 31, 2004**

**S.O. 433(E).**- In exercise of the powers conferred by sub-clause (xi) of clause (a) of Sec. 2 of the Essential Commodities Act, 1955 (10 of 1955) , the Central Government hereby rescinds the following Orders , except as respect things done or omitted to be done before such rescission, with effect from the date of publication of this Order in the Official Gazette, namely-

1. Order of the Government of India in the erstwhile Ministry of Civil Supplies and Cooperation number S.O. 604 (E), dt 2-8-1977 declaring "Exercise Books" as an essential commodity.

2. Order of the Government of India in the erstwhile Ministry of Civil Supplies and Cooperation number S.O. 632(E), dt 25-8-1977 declaring

"Insecticides, fungicides, weedicides and the like " as an essential commodity.

[F. NO. 15/2/2004-ECR &E]

\* \* \*

(43) **New Delhi, the 25th November, 2004**

**S.O. 1302(E).**- In exercise of the powers conferred by Sub-clauses (v) and (xi) of clause (a) of Section 2 of the Essential Commodities Act, 1955 (10 of 1955), the Central Government hereby rescinds with effect from the date of publication of this Order in the Official Gazette, the Order of the Government of India in the erstwhile Ministry of Food and Consumer Affairs (Department of Consumer Affairs) Number S.O. 517 (E) dated the 29th June, 1999 whereby, "Onion " was declared as an essential commodity, except as respects things done or omitted to be done before such rescission.

[F. No. 15/6/2004-ECR &E]

[Pub. in Gaz. of India Extra. Pt. II Sec. 3 (i) dt. 25.11.04]

\* \* \*

(44) **New Delhi, March 28, 2006**

**S.O. 420(E).**- In exercise of the powers conferred by Sec. 12-A of the Essential Commodities Act, 1955 (10 of 1955), the Central Government, being of the opinion that it is necessary that the contravention of **Fertilizer (Control) Order, 1985** made under Sec. 3 of the said Act, should be tried summarily, hereby specifies the said order to be a special order for the purposes of summary trial under the said Sec. 12-A.

[F. No. 1-1/2004-Fert. Law]

\* \* \*

(45) **New Delhi, April 12, 2006**

**S.O. 526(E)** :- Whereas the Central Government is of the opinion that it is necessary and expedient so to do for regulating in public interest the distribution of the essential commodity, namely the drug 'Oseltamivir Phosphate' and the preparations based thereon and for preventing their misuse;

Now therefore, in exercise of the powers conferred by Section 3 of the Essential Commodities Act, 1955 (10 of 1955), the Central Government hereby directs that –

- (a) no person shall sell any preparation containing the drug 'Oseltamivir Phosphate' except in the manner specified herein;

- (b) no manufacturer, distributor, stockist, dealer or any other person licensed to sell drugs shall sell any preparation containing the drug 'Oseltamivir Phosphate' except to the Central Government or a State Government or Union territory Administration or such other agency or agencies as the Government may, by order in writing designate:

Provided that this clause shall not apply to the preparations containing the drug 'Oseltamivir Phosphate' meant for export out of India;

- (c) the manufacturers of any preparation containing the drug 'Oseltamivir Phosphate' shall submit to the Central Government a statement within a period of thirty days, containing therein the quantity of such preparation supplied by them to distributors, stockists, dealers or any other person, up to the date of publication of this order in the Official Gazette;
- (d) the distributors, stockists and dealers holding stock of 'Oseltamivir Phosphate' shall submit to the State Government or Union Territory Administration, as the case may be, a statement within a period of thirty days containing therein the quantity of such preparation available with them from the date of publication of this Order in the Official Gazette;
- (e) the Central Government, State Government or the Union Territory Administration, shall make arrangements for the distribution of 'Oseltamivir Phosphate' and formulations based thereon through the public health systems, as it considers appropriate.

(2) This Order shall come into force on the date of its publication in the Official Gazette and shall remain in force until further orders.

[F.No. 15/3/2006- ECR &E]

[Pub. in Gaz. of India Extra. Pt. II Sec. 3 (ii) dt. 12.4.06]

[Rescinded vide S.O. 2404(E), dt. 18.09.2009]

\* \* \*

(46) **New Delhi, February 12, 2007**

**S.O. 184(E):-** In exercise of the powers conferred by sub-section (2) of Section 1 of the Essential Commodities (Amendment) Act, 2006 (54 of 2006), the Central Government hereby appoints the 12th February, 2007 as the date on which the said Act shall come into force.

[F.No. 26(1)2004- ECR &E Vol. III]

[Pub. in Gaz. of India Extra. Pt. II Sec. 3 (ii) dt. 12.2.07]

\* \* \*

**(47) New Delhi, the 28th March, 2008**

**No. S.O. 747(E).**— In exercise of the powers conferred by Section 12-A of Essential Commodities Act, 1955 (10 of 1955), the Central Government being of the opinion that it is necessary that the contravention of the Fertilizer (Control) Order, 1985 made under Section 3 of the said Act, should be tried summarily, hereby specifies the said order to be a special order for the purposes of summary trial under the said Section 12-A .

\* \* \*

**(48) New Delhi, the 22<sup>nd</sup> August, 2009**

**G.S.R. 597(E).**— In exercise of the powers conferred by sub-section (1) of Section 3 of the Essential Commodities Act, 1955 the Central Government hereby directs that no person, establishment or industrial unit using or consuming more than ten quintals of sugar per month as a raw material for production or consumption or use, in any manner, shall keep in stock, at any time, sugar exceeding \* [ten days] of such use or consumption:

Provided that nothing contained in this order shall apply to any institution belonging to the Central Government or the State Government or an Union Territory administration or a local body or run by a registered charitable trust, hospital, hostel for working men and women and hostel of any educational institution.

**Explanation.**— For the purposes of this Order,-

- (a) The question whether the average use or consumption of sugar by a person, establishment or industrial unit exceeds ten quintals or not, shall be determined by a certificate issued by a Chartered Accountant after taking into account monthly use or consumption of sugar by such person, establishment or unit in the last twelve months;
- (b) "Chartered Accountant" shall have the same meaning as assigned to it in clause (b) of sub-section (1) of section 2 of the Chartered Accountant Act, 1949.

@ [2. This order shall come into force on the 20th day of February, 2010 and shall remain in force for a period of one hundred and eighty days.]

[F. No. 1-17/98-SPY.D.II]

[Pub. in Gaz. of India Extra. Pt. II Sec. 3(i) Dt. 22.08.2009]

\* The words "fifteen days" have been substituted by "ten days" vide notification No. G.S.R. 60 dt. 05.02.2010

@ Para No. 2 was substituted by notification No. G.S.R. 640 dt. 07.09.2009 and again substituted by notification No. G.S.R. 60 dt. 05.02.2010

\* \* \*

**(49) New Delhi, the 7<sup>th</sup> September, 2009**

**G.S.R. 640(E).**- In exercise of the powers conferred by sub-section (1) of section 3 of the Essential Commodities Act, 1955, the Central Government hereby amends the Order notified vide notification numbers, G.S.R. 597 (E) dated the 22<sup>nd</sup> August 2009, published in the Gazette of India, Extraordinary, Part II Section 3, Sub-section (i) namely:-

(i) In the said notification, in paragraph 2, the following paragraph shall be substituted namely:-

'2. This Order shall come into force after twenty eight days of its publication in the Official Gazette i.e. on 19.9.2009 and remain in force for a period of six months.'

[F. No. 1(17)/98-SP-I]

[Pub. in Gaz. of India Extra. Pt. II Sec. 3(i) Dt. 07.09.2009]

\* \* \*

**(50) New Delhi, the 18th September, 2009**

**S.O. 2404(E).**- In exercise of the powers conferred by Sec. 3 of the Essential Commodities Act, 1955 (10 of 1955), the Central Government hereby rescinds the Order of the Government of India, Ministry of Consumer Affairs, Food and Public Distribution (Department of Consumer Affairs) number S.O. 526(E) dated 12<sup>th</sup> April 2006, except as respects things done or omitted to be done before such rescission.

[F. No. 15/3/2006-ECR &amp; E]

\* \* \*

**(51) New Delhi, the 22<sup>nd</sup> December, 2009**

**S.O. 3267(E).**- In exercise of the powers conferred by sub-section (2) of Section 2A of the Essential Commodities Act, 1955 (10 of 1955), the Central Government hereby makes the following order, to regulate the production, quality, distribution and other aspects of cotton seed, namely:-

1. (1) This order may be called the Essential Commodities Order, 2009.

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

2. In the Essential Commodities Act, 1955, in the Schedule, in serial number (7), after item (iii), the following item shall be added, namely:-  
“(iv) cotton seed”.

3. This notification shall remain in force for a period of six months from the date of its publication in the Official Gazette.

[F. No. 15/1/2007-ECR & E]

[Pub. in Gaz. of India Extra. Pt. II Sec. 3(ii) Dt. 22.12.09]

\* \* \*

(52) **New Delhi, 5<sup>th</sup> February, 2010**

**G.S.R. 60(E).**- Whereas the Central Government in the Ministry of Consumer Affairs, Food and Public Distribution, in exercise of the powers conferred by sub-section(1) of Section 3 of the Essential Commodities Act, 1955, had issued notification number G.S.R. 597 (E), dated 22<sup>nd</sup> August, 2009 (hereinafter referred to as the principal notification) which came into effect after twenty-one days of its publication as specified in paragraph 2 thereof;

And whereas vide notification number G.S.R. 640(E), dated 7<sup>th</sup> September, 2009 of the Government of India in the Ministry of Consumer Affairs, Food and Public Distribution, the Central Government amended paragraph 2 of the principal notification to the effect that the principal notification would come into effect after twenty-eight days from the 19<sup>th</sup> day of September, 2009:

And whereas, it is considered necessary and expedient by the Central Government to reduce the period of stocking of sugar from fifteen days to ten days and to extend the period of operation of the principal notification for a period of six months with effect from 20<sup>th</sup> February, 2010:

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the Essential Commodities Act, 1955, the Central Government hereby makes the following further amendments in the principal notification, namely:-

In the principal notification -

- (a) In the first paragraph, for the words "fifteen days", the words "ten days", shall be substituted:
- (b) For paragraph 2, the following paragraph shall be substituted, namely:-  
 "2. This order shall come into force on the 20<sup>th</sup> day of February, 2010 and shall remain in force for a period of one hundred and eighty days."

\* \* \*

**(53) New Delhi, the 29th March, 2010**

**S.O. 705 (E).**- In exercise of the powers conferred by sec. 12-A of Essential Commodities Act, 1955 (10 of 1955), the Central Government, being of the opinion that it is necessary that the contravention of the Fertiliser (Control) Order, 1985 made under sec. 3 of the said act, should be tried summarily, hereby specifies the said order to be a special order for the purposes of summary trial under the said Sec. 12-A.

[F. No.1-1/2008-Fert.Law]

\* \* \*

**(54) New Delhi, the 18th June, 2010**

**S.O. 1480(E).**- In exercise of the powers conferred by sub-section (2) read with the proviso to sub-section (3) of section 2A of the Essential Commodities Act, 1955 (10 of 1955), the Central Government, with the intent to regulate the production, quality distribution and other aspects of cotton seed in the public interest, hereby extends the period of inclusion of cotton seed in the Schedule to the said Act for six months beyond 21<sup>st</sup> day of June, 2010; and for that purpose makes the following amendment in the notification of the Government of India in the Ministry of Consumer Affairs, Food and Public Distribution (Department of Consumer Affairs) number S.O. 3267(E) dated the 22<sup>nd</sup> December, 2009, namely:-

In the said notification, in paragraph 3, for the words "six months", the words "one year" shall be substituted.

[F. No.15/1/2007-ECR&amp;E]

[Pub. in Gaz. of India Extra. Pt. II Sec. 3(ii) Dt. 18.06.2010]

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**(55) New Delhi, the 22<sup>nd</sup> December, 2010.**

**S.O. 2988(E).**— WHEREAS the Central Government is satisfied that it is necessary to do so in the public interest to regulate the production, quality, distribution and other aspects of cotton seed;

AND WHEREAS cotton seed is a commodity in respect of which Parliament has power to make laws by virtue of entry 33 of List –III-concurrent List of the Seventh Schedule to the Constitution of India;

NOW, THEREFORE, in exercise of the powers conferred by clause (a) of sub-section (2) of section 2A, read with section 4, of the Essential Commodities Act, 1955 (10 of 1955) and in consultation with the State Government hereby makes the following amendments in the schedule to the said Act, namely:-

In the Schedule to the Essential Commodities Act, 1955 (10 of 1955), at serial number (7), after item (iii) the following item shall be added, namely:-

“(iv) Cotton seed”.

[F. No. 15/1/ 2007-ECR&E]

[Pub. in Gaz. of India Extra. Pt. II Sec. 3(ii) Dt. 22.12.2010]

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**(56) New Delhi, the 25th November, 2011**

**G.S.R 836(E).**— In exercise of the powers conferred by sub-section (1) read with clause (f) of sub-section (2) of Section 3 of the Essential Commodities Act, 1955 (10 of 1955), the Central Government hereby directs that every domestic producer of sugar shall sell ten per cent of sugar produced with effect from the 1<sup>st</sup> day of October, 2011 and till further order, to the Central Government or as directed by the Central Government under the Levy Sugar Supply (Control) Order, 1979.

[F. No. 2-5/2011-SPY.(SP-I)]

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**(57) New Delhi, the 29th March, 2012**

**S.O. 654 (E).**— In exercise of the powers conferred by sec. 12-A of the

Essential Commodities Act, 1955 (10 of 1955), the Central Government here by notifies that the Fertilizer (Control) Order, 1985 made under Sec. 3 of the said Act as special order for the purposes of the said section.

[F. No. 1-1 /2008-Fert.law]

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## IMPORTANT NOTIFICATIONS ISSUED BY THE STATE GOVERNMENT UNDER THE E.C. ACT

राजस्थान सरकार  
(न्याय विभाग)

(1) जयपुर, दिनांक 10 सितम्बर, 1974

### अधिसूचना

आवश्यक वस्तु अधिनियम, 1955 (केन्द्रीय अधिनियम 10, सन 1955) की धारा 12 (क) के अनुसरण में तथा यह आवश्यकता विनिदेशित करने वाले केन्द्रीय सरकार के विशेष आदेश की उक्त अधिनियम की धारा 3 के अधीन किसी आवश्यक वस्तु के सम्बन्ध में दिये गये किसी आदेश के उल्लंघन का संक्षेपतः विचारण किया जाये, के भी अनुसरण में राज्य सरकार उक्त अधिसूचित आदेश में विनिर्दिष्ट समस्त अपराधों का संक्षेपतः विचारण करने के लिए एतद्वारा निम्नलिखित प्रथम वर्ग के दण्डनायकों को विशेषतः सशक्त करती है:-

1. सिविल न्यायाधीश एवं मुख्य न्यायिक दण्डनायक,  
अपर सिविल न्यायाधीश एवं मुख्य न्यायिक दण्डनायक, तथा  
सिविल न्यायाधीश एवं अपर मुख्य न्यायिक दण्डनायक।

(क्रमांक प. 3 (11) न्याय/64)

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(2) जयपुर, दिनांक 25 नवम्बर, 1974

आवश्यक वस्तु अधिनियम, 1955 (केन्द्रीय अधिनियम 10, सन 1955) की धारा 6-सी के द्वारा प्रदत्त अधिकारों का उपयोग करते हुए राज्य सरकार प्रत्येक जिला एवं सत्र न्यायाधीश को उनके क्षेत्राधिकार के अन्तर्गत उक्त धारा में निदेशित कार्यों के लिए अपीलीय न्यायाधीश नियुक्त करती है।

(संख्या प.3 (35) न्याय/74)

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**(3) Jaipur, December 9, 1986**

**S.O. 137** - In exercise of powers conferred by section 12AA (1) (e) of the Essential Commodities (Amendment) Act, 1986, the State Government hereby authorises all the District Supplies Officers, Additional District Supply Officers, Enforcement Officers and all the Revenue Officers, not below the rank of Tehsildars, to file a complaint in the court of competent jurisdiction under this section within their respective jurisdictions.

[No. F. 17 (26) F.S./Legal/72-II]

[Pub. in Raj. Gaz. Extra. Pt. 4 (c) (II) dt. 9-12-86]

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**(4) Jaipur, February 24, 1987**

**S.O. 202** - In exercise of powers conferred by section 12AA (1) (e) of the Essential Commodities (Amendment) Act, 1986, the State Government hereby further authorises all the Assist. District Supply Officers of Food and Civil Supplies Department to file a complaint in the Court of Competent jurisdiction, under this section , within their respective jurisdiction.

[No. F. 17 (26) F.S./Legal/72-II]

[Pub. in Raj. Gaz Extra. Pt. 4 (c) (II) dt. 24-2-87]

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चिकित्सा एवं स्वास्थ्य विभाग

**(5) जयपुर, दिसम्बर 21, 1988**

**एस.ओ. 223.**— आवश्यक वस्तु अधिनियम, 1955 की धारा 12—कक (1) (ड़) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए राज्य सरकार इस धारा के अधीन औषधि नियन्त्रण संगठन, चिकित्सा विभाग के सभी सहायक औषधि नियन्त्रकों और सभी औषधि निरीक्षकों को उनकी अपनी—अपनी अधिकारिता के भीतर सक्षम अधिकारिता वाले न्यायालय में परिवाद फाइल करने के लिये इसके द्वारा प्राधिकृत करती है।

(एफ. 26 (16) एमई/गुप/1/88)

[Pub. in Raj. Gaz. Extra. Pt. 4 (c) (II) dt. 2-1-89]

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(6)

जयपुर, जनवरी 24, 1998

एफ 2 (25) न्याय/82:- आवश्यक वस्तु (विशेष उपबन्ध) अधिनियम, 1981 (सन् 1981 का केन्द्रीय अधिनियम संख्या 18) के प्रावधानों की प्रभावशीलता समाप्त होने पर, आवश्यक वस्तु अधिनियम, 1955 (सन् 1955 का केन्द्रीय अधिनियम सं. 10) की धारा 6 (सी) के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, राजस्थान उच्च न्यायालय के परामर्श से, राज्य सरकार प्रत्येक जिला एवं सत्र न्यायाधीश को (जिला एवं सत्र न्यायाधीश, जयपुर जिला, जयपुर सहित) उनके क्षेत्राधिकार के अन्तर्गत, उक्त अधिनियम की धारा 6(ए) के तहत पारित जिला कलक्टर के आदेशों के विरुद्ध अपीलों की सुनवाई हेतु, अपीलीय न्यायिक प्राधिकारी नियुक्त करती है।

[Pub. in Raj. Gaz Extra. Pt. 1 (Ka) dt. 31-1-98]

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## SPECIAL FEATURES OF THIS BOOK

1. *Foot Notes relating to amendments made to the Acts/Orders have been eliminated.*
2. *List of amending Acts/Orders has been given at the beginning of the Act/Order.*
3. *Figures denoting amendments correspond to the serial number of such list.*
4. *Figures denoting amendments-*
  - (i) *with asterisk indicate "substitution".*
  - (ii) *without asterisk indicate "addition".*
  - (iii) *with cross marks (x x x x) indicate "deletion".*