IN THE HIGH COURT AT CALCUTTA

(Criminal Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRA 445 of 1988

Tapan Kumar Das

Vs.

The State of West Bengal.

For the Appellant : Mr. Abhra Mukherjee,
Mr. Sauradeep Dutta.

For the State : Mr. Narayan Prasad Agarwal,
Ms. Manisha Sharma.

Heard on : 29.06.2022

Judgment on : **04.08.2022**

Shampa Dutt (Paul), J.:

The appeal has been preferred against the judgment and order dated 27.09.1988 passed by the Ld. Judge, Special Court (E.C. Act) Tamluk, Midnapore in T.R. No. 15 of 1987 (E.G.R.10/87 arising out of Sutahata P.S. Case No. 2 (6) 87) convicting the appellant under Section 7(1)(a)(ii) of the Essential Commodities Act for contravention of the provision of para 5 (2) of the West Bengal Licensing of Dealers of Cement and Distribution of Levy Cement Order, 1982 and sentencing him to suffer rigorous imprisonment for one month and to pay a fine of Rs. 500/- in default to suffer rigorous imprisonment for one month more.

Prosecution case against the appellant is as follows:-

The appellant is a licensed **non-levy cement dealer** of Rajarampur, P.S. Sutahata. **On 05.06.1987** at about 5 P.M. in the afternoon, PW 1 and members of his group visited and inspected the cement godown of the appellant, Tapan Kumar Das at Rajarampur, P.S. Sutahata and found 281 bags of cement in stock. A stock register (Exhibit 2), a sale register (Exhibit 3), printed cash memo book (Exhibit 4) and a challan (Exhibit 8) were produced by the appellant. It appears from the Challan (Exhibit 8), that on 30.05.1987, the appellant received and stored 240 bags of non-levy cement from Durgapur Cement works, Durgapur-3. The appellant allegedly maintained the stock register upon 31.05.1987, sale register upto 26.05.1987 and did not make any entry of the receipt of 240 bags of cement from Durgapur works in his stock-register nor informed about the arrival of the said stock of cement to the licensing authority. As such the accused was prosecuted for two offences each under Section 7 (1) (a) (ii) of the Essential Commodities Act for contravention of the provisions of para 5(1) and 5(2) of the West Bengal Licensing of Dealers of Cement and Distribution of Levy Cement Order, 1982.

The appellant was found **not guilty (thus acquitted)** for contravention of the provision of **para 5(1)** of West Bengal Licensing of Dealers of Cement and Distribution of Levy Cement Order, 1982, but was **found guilty (thus convicted)** for contravention of the provision of **para 5(2)** of the West Bengal Licensing of Dealers of Cement and Distribution of Levy Cement Order, 1982.

Appellant (defence case)

Ld. Lawyer for the appellant Mr. Abhra Mukherjee, submits that the appeal has been filed on the ground that the appellant had **been charged** for two offences under Section 7(1)(a)(ii) of the Essential Commodities Act for contravention of the provisions of para 5(1) and 5(2) of the West Bengal Licensing of Dealers of Cement and Distribution of Levy Cement Order, 1982, but was convicted only under Section 7(1)(a)(ii) of the Essential Commodities Act for contravention of the provision of para 5 (2) of the West Bengal Licensing of Dealers of Cement and Distribution of Levy Cement Order, 1982. The defence of the appellant is innocence (no mens rea) and that due to his illness he could not maintain the stock register (Exhibit 2). Trial Court came to the finding that the accused did not maintain the said stock register from

01.06.1987 to 04.06.1987. The defence of the accused was that he was ill and he had reported the matter of his illness to Mr. Maity, the complainant (PW 1). The Trial Court held that from the evidence on record it was proved that the appellant conducted his business during that period of his illness through an employee and as such he should have maintained the said register also on those days. It was also proved that on 03.06.1987 the appellant sent a messenger to Sub-divisional Controller, Food and Supplies, Tamluk, informing him (Exhibit B) about the arrival of 240 bags of cement from Durgapur works Ltd. and as such he should have maintained the stock register marked Exhibit 2 for the period from 01.06.1987 to 04.06.1987 (four days). Further finding of the Trial Court is that Exhibit A series are hand written cash memos issued by the appellant (through his employee) against the transactions on 01.06.1987 and 02.06.1987 when 130 bags of cement was sold. There was no transaction on 03.06.1987 and 04.06.1987. So it was held by the Trial Court that the appellant had to make an entry only for two days which he could have also done through his employee who issued the hand written cash memos. The case of the defence is that the appellant had **no mens rea** in respect of the said Act as charged and sought **protection of Section 10C of the Essential Commodities Act, 1955**.

Further case of the defence is that he could not maintain the stock register (Exhibit 2) for only two days due to his illness but inspite of his illness he conducted business through his employee who diligently issued hand written cash memo and he also informed (Exhibit B) the Sub-divisional

Controller about the arrival of 240 bags of cement from Durgapur works. The said fact conduct itself proves the circumstances for which the appellant is entitled to benefit under Section 10C of the E.C. Act, 1955. Further case of the defence is that the prosecution could not prove their case before the Trial Court against the appellant beyond reasonable doubt. That the appellant had all along through out his business transactions had acted in bona fide manner without any irregularity and mens rea and did not contravene the provisions of para 5(2) of the West Bengal Licensing of Dealers of Cement and Distribution of Levy Cement Order, 1982 and as such there has been a failure of justice in respect of the appellant in view of the findings leading to the conviction of the appellant. Finally the defence has argued that **non-levy cement is no longer an essential commodity by virtue of the Cement Control (third Amendment) Order, 1982 and the appellant admittedly being a non-levy cement dealer has been wrongly prosecuted and convicted**. The appellant was entitled to benefit of doubt and should have been acquitted by the Trial Judge and as such the said conviction and sentence of the Trial Court not being in accordance with law is liable to be set aside and **the appellant acquitted of all charge**.

State/Prosecution Case

Mr. Narayan Prasad Agarwal Ld. Additional Public Prosecutor submits that the appellant is not entitled to protection of Section 10 (c) of E.C. Act 1955 as the accused had transacted business on 01.06.1987 and 02.06.1987 when he sold 130 bags of cement through his employee Amal Das who issued three hand written cash memos (Exhibit A5 to A7) and he also sent an arrival report (Exhibit B) to the Sub-divisional Controller, Food and Supplies, Tamluk about the arrival of 240 bags of cement from Durgapur works Ltd. on 03.06.1987 and as such there was absolutely no reason not to make the said entries in the stock register (Exhibit 2) on 01.06.1987 and 02.06.1987.

The plea of illness of the appellant is an excuse and not a convincing one and was rightly not accepted by the Trial Court and it is further case of the Ld. Prosecutor that the Trial Court rightly came to the finding that the accused did not properly maintain the stock register, Exhibit 2 correctly and properly from 01.06.1987 to 04.06.1987 inconformity with the provision of para 5(2) of West Bengal Levy Cement Order, 1982 and that he thereby committed an offence u/s 7(1) (a) (ii) of the E.C. Act for contravention of the said provision of West Bengal Levy Cement Order, 1982 and was thus rightly convicted and sentenced. **Hence the appeal is liable to be dismissed** and the judgment under appeal to be affirmed.

Evidence

PW 1 is Amalendu Maity the Sub-Inspector of Food and Supplies posted at Sutahata Block-1. He is the complainant who visited the godown of the appellant on 05.06.1987 and on finding the discrepancies as noted in the written complaint filed the complaint with Sutahata P.S. While deposing on oath before the Court the evidence adduced by him in respect of the provision under which the appellant has been convicted he stated that Exhibit 2 is the stock register and the said stock register did not contain any entry from 01.06.1987 till the date of his inspection that is 05.06.1987. The Trial Court came to the finding that there was a business transaction only on 01.06.1987 and 02.06.1987. On the other days there had been no business transaction. The appellants defence as to non maintenance of the said registrar on the said two days is due to his illness medical papers sent by the I.O. (PW 5). His case was that business on the two days was conducted by his employee. In spite of his illness the appellant had informed the Sub-divisional Controller about receiving a number of cement bags on 03.06.1987 through a messenger (Exhibit B).

PW 2 is **Alok Kumar Gayen** Sub-Inspector of Food and Supplies who accompanied the complainant at the time of inspection. He is a witness to the seizure of stock register marked Exhibit 2 in respect of which the appellant has been convicted.

PW 4 Shek Ibrahim Ali has a MR shop at Basudebpur P.S. Sutahata. This witness has stated that on 05.06.1987 at about 4 to 4.30 P.M. PW 1 the complainant had been to his shop and taken him to the cement shop of the appellant which is close to this witnesses MR shop. This witness has categorically deposed at that time the appellant was not present in his shop and an employee was present. When the complainant enquired about the appellant the employee has also corroborated the defence of the appellant and had stated that the complainant was ill and that he was not attending the shop for the last 8 to 10 days. The employee also stated that the books of accounts were with the appellant. The complainant called the appellant who produced all the registers and documents as asked by the complainant who than seized the books as per seizure list. On being cross examined PW 4 has also corroborated the statement of the appellant that he had not seen the appellant in his shop for about 8 to 10 days.

<u>Analysis of Evidence</u>

Exhibit 2 is the stock register and it is seen that admittedly no entry had been made on 01.06.1987 and 02.06.1987 on the days on which there had been a transaction in the shop of the appellant and his employee had also issued hand written cash memos (Exhibit A2 to A7). **This stock register marked Exhibit 2 shows that the said register has been duly maintained on regular basis by the appellant since 01.11.1986 till 31.05.1987, that is on the date the book was seized**. **The appellant maintained the said register diligently on each and every day during the period under reference as stated above in the said register. It is also seen that on the days when there was no transaction the appellant has noted "Nil" entries on various dates with also the mark 'X' on certain dates.**

The defence case of being ill at the alleged time of offence has been **corroborated by PW 4 who is an independent witness** and PW 5 (Investigating Officer) and PW 4 was present with the complainant PW 1 and another Sub-Inspector PW 2 at the time of inspection. Though it is the complainant's case that the appellant was present at the time of inspection (evidence shows he was subsequently called). PW 2 who is Sub-Inspector of Food and Supplies in his evidence has corroborated the statement of the appellant, that the appellant stated before the inspection team that at the relevant time **he was ill**. **PW 5 is the Investigating Officer in this case**. He has categorically stated in his cross examination that " The accused stated to me that he could not make the register up-to-date due to his illness at the relevant time. **The accused produced the documents and certificate in support of his illness at the relevant time**."

Ld. Advocate for the appellant has relied upon a ruling cited in **AIR 1966 Supreme Court page 43, 1966 CriLJ 71 (Nathulal Vs. State of Madhya Pradesh)** wherein the Court held that :-

> "......**Mens rea is an essential ingredient of a criminal offence**. Doubtless a statute may exclude the element of mens rea, but it is a sound rule of construction adopted in England and also accepted in India to construe a statutory provision creating an offence in conformity with the common law rather than against it unless the statute expressly or by necessary implication excluded mens rea. The mere fact that the object of the statute is to promote welfare activities or to eradicate a grave social evil is by itself not decisive of the question whether the element of guilty mind is excluded from the ingredients of an offence. Mens rea by necessary implication may be excluded from a statute only where it is absolutely clear that the implementation of the object of the statute would otherwise be defeated. The nature of the mens rea that would be implied in a statute creating an offence depends on the object of the Act and the provisions thereof."

The court further observed :-

How to disprove mens rea has been succinctly stated in **Halsbury's Laws of England, 3rd Edition, Col. 10, at p. 288**, thus:

> "When the existence of a particular intent or state of mind is a necessary ingredient of the offence, and prima facie proof of the existence of the intent or state of mind has been given by the prosecution, the defendant may excuse himself by disproving the existence in him of any guilty intent or state of mind, for example, by showing that he was justified in doing the act with which he is charged, or that he did it accidentally, or in ignorance, or that he had an honest belief in the existence of facts which, if they had really existed, would have made the act an innocent one. The existence of reasonable grounds for a belief is evidence of the honesty of the belief."

Section 10 (C) of the Essential Commodities Act lays down :-

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.

The object of the Act, is thus probability to control in general public interest, among others, trade in certain commodities. The object of the Act would not be defeated if mens rea is read as an ingredient of the offence. The provisions of the Act do not lead to any such exclusion. It could not have been the intention of the Legislature to impose heavy penalties like imprisonment for a period upto 3 years and to impose heavy fines on an innocent person who carries on business in terms of the law. Having regard to the scope of the Act it would be legitimate to hold that a person commits an offence under Section 7 of the Act if he **intentionally contravenes** any order made under Section 3 of the Act. The object of the Act would thus serve its purpose and innocent persons will also be protected from harassment.

Now it is to be seen, whether on the facts found the appellant had intentionally contravened the provisions of Section 7 of the Act and the related provisions. Let us look at the facts of the case.

The appellant admittedly as per the written complaint is **a dealer of non-levy cement**. By virtue of carrying on his business he maintains several registers and receipts books and memos as required under the rules.

The appellant has been convicted for violation of the provision of para 5(2) of West Bengal Licensing of Dealers of Cement and Distribution of Levy Cement Order, 1982 that there was no entry made in the stock register on 01.06.1987 to 05.06.1987 in spite of the fact that the appellant through his employee carried on his business and there was transaction on 01.06.1987 and 02.06.1987 during transaction hand written cash memos were also issued (Exhibit A2 to A7). Admittedly there was no transaction from 03.06.1987 to 05.06.1987. The appellant also informed the Sub-divisional Controller about receiving stock of cement on 03.06.1987 through a messenger (Exhibit B). It is the case of the prosecution that in spite of carrying on business the appellant failed to make entry in the stock register from 01.06.1987 to 05.06.1987. The defence of the appellant that he was ill at the relevant time and as such carried on business through his employee has been **corroborated by PW 4 and Exhibit A2 to A7** the hand written cash memos which were issued by his employee who carried on the business in place of the appellant due to the appellants illness. The information of stock received sent to Sub-divisional Controller through messenger proves the appellant's bonafide and sincerity thus **absence of mens rea** in respect of entry dated 01.06.1987 and 02.06.1987 in Exhibit 2. The stock register (Exhibit 2) shows entry on each and every day till 31.05.1987, including nil or X entries.

Further case of the defence is that the said entry not being made in the said stock register was totally unintentional and the entry could not be made only due to his illness. The defence has relied upon another ruling cited in **2007 (4) CHN 1023 Milan Kumar Pal Vs. State** wherein the **Calcutta High Court** while considering an appeal against an order of conviction under Section 7(1) (a) (ii) of the Essential Commodities Act for alleged violation of the provision of paragraph 5(2) of West Bengal Licensing of Dealers of Cement and

Distribution of Levy Cement Order, 1982 relied upon the case of **Nathulal Vs. State of Madhya Pradesh** as referred above.

Section 5(2) of the West Bengal Licensing of Dealers of Cement and Distribution of Levy Cement Order, 1982 lays down:-

Every license shall maintain separately for each place of business, a register containing correct and true accounts of purchase, sale and storage of cement at premises or places, to be written up at the end of each day. The register shall show:

(a) The opening stock of the day,

(b) The quantity received during the day,

(c) The quantity delivered or otherwise disposed of during the day.

(d) The closing stock of the day, and

(e) Such other particulars as the licensing authority may, by order in writing, specify.

The defence has argued that the trial court failed to appreciate **that non-levy cement has virtually been declared to be a non-essential commodity**. The de-controlling of the business in non-levy cement by the Central Government which was effected **by the Cement Control (third Amendment) Order, 1982 read with the provision of Section 5 of the Essential Commodities Act, 1955** adequately expressed the intention of the Central Government that State Government should no longer be permitted to regulate business in non-levy cement. As Central Government has virtually decontrolled the business of non-levy cement, any attempt by the State Government to impose any restrictions on such business will immediately attract Article 254(1) of The Constitution of India.

Defence has brought to the notice of this Court **Article 254 of the Constitution of India**.

Article 254:- Inconsistency between laws made by Parliament and laws made by the Legislatures of States:-

(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it

has been reserved for the consideration of the President and has received his assent, prevail in that State: Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.

The defence has further relied upon two rulings of this Court.

(1) (1990) 1 CALLT 429 HC

(2) 1988 (2) CHN 257

Where in the Hon'ble Court declared that non-levy cement is no longer an essential commodity by virtue of the aforesaid Cement Control (third Amendment) Order, 1982 and as such this court is of the view that the present appellant who is admittedly a non-levy cement dealer ought not to have been prosecuted and convicted for the alleged violation of West Bengal Licensing of Dealers of Cement and Distribution of Levy Cement Order, 1982.

(1) In (1990) 1 CALLT 429 HC (Gautam Roy Vs. Unknown)

The Single Bench of this Court held:-

(1) "..
(2) The Short point involved in the case is as to whether the provisions of West Bengal Licencing of Dealers of Cement and Distribution of levy Cement Order, 1982 are applicable in case of non-levy cement business.
(3) Section 3 of the Essential Commodities Act, inter alia, provides that the Central Government may, in appropriate cases, by, an

order provide for regulating by licences; permits or otherwise the production or manufacture of any essential commodity or for regulating by licences, permits or otherwise the storage, transport, distribution, disposal, acquisition, use or consumption of any essential commodity.

(4) *Section 5 of the said Act of 1955, inter alia, provides that the Central Government may, by notified order, direct that the power to make order of issue notification under Section 3, shall, in relation to such matters and subject to such conditions if any, as may be specified in the direction, be exercisable also by the State Government or such Officer or authority subordinate to a State Government.*

(5) *It has been unequivocally held in the case of Raymond Woolen Mills Ltd. v. State of West Bengal and Ors., reported in 1987 (1) CLJ 257,* ***that non-levy cement is not an essential commodity****. Similar is the view expressed in the case of Safikur Rahaman v. The State of West Bengal and Ors. reported in 1988 (2) CHN 257.*

(6) ……………………………………………………………………

(7) *So far as levy cement is concerned the West Bengal Order regulating the business of any levy cement holds good but as non-levy cement has virtually been declared to be a non-essential commodity, Section 5 of the Essential Commodities Act deprives the State Government from issuing any order regulating the business in non-levy cement as the language used in Section 5 is "subject to such conditions." The decontrolling of the business in non-levy cement by the Central Government which was effected by the Cement Control (third amendment) Order, 1982 read with the provision of Section 5 of the Essential Commodities Act, 1955 adequately expressed the intention of the Central Government that the State Government should no longer be permitted to regulate business in non-levy cement as the expression "subject to such conditions" comes into play. As the Central Government has virtually decontrolled the business of non-levy cement, any attempt by the State Government to impose any restrictions on such business will immediately attract Article 254(1) of the Constitution of India the law made by the State Government will, to that extent be repugnant to the law made by the Central Government and be void. The position will be the same even if such change of law is not made in the Essential Commodities Act but in the Industries (Development and Regulation) Act as the said two laws have the same field of operation so far at least non-levy cement is concerned. A reference may also be made to the case of Motibhai Fulabhai Patel & Co. v. R. Prosad Collector of Central Excise, Baroda and Ors. reported in AIR 1970 SC 829, wherein it has, inter alia, been*

decided that in case of unlawful mixing of duty paid tobacco with non duty paid tobacco, the authority concerned cannot confiscate the entire mixture but can confiscate only the non duty paid protion of the tobacco in the mixture. If the analogy is applied to the case of levy cement and non-levy cement the position that will emerge is that the State Government will retain the power to promulgate any order regulating the business of levy cement but it has no power to regulate the business, by issuance of licence or permits, relating to non-levy cement.

(8) The Court accordingly declared that non-levy cement is no longer an essential commodity by virtue of aforesaid Cement Control (third amendment) Order, 1982 and as such the State Government has no power to enforce the provisions of the West Bengal Licencing of Dealers of Cement and Distribution of Levy Cement Order, 1982 in case of any trade or business in non-levy cement."

(2) In 1988 (2) CHN 257, [Safikur Rahaman Vs. State of West Bengal (Calcutta)] another Single Bench of this Court held:-

"By an order dated 28.02.1982 entitled as the Cement Control (Third Amendment) Order, 1982, the Central Government, under the powers conferred by Sections 18 and 25 of the Industrial (Development and Regulation) Act, 1951, ordered that cement produced in a Cement Plant would be of two categories viz., "Levy Cement" and "Non-levy Cement". It was enjoined by that Cement Control Order, 1982 that all cement producers would have to retain and dispose of 66.6 % of the installed capacity as per Cement Control Order, 1967 and that as regards non-levy cement, i.e. cement produced in excess of 66.6% of the installed capacity the manufacturers and dealers would be entitled to sell, dispose of and deal with non-levy cement freely. There was thus virtually de-control of non-levy cement in excess of 66.6% of the installed capacity in a cement plant."

<u>The Court further held:-</u>

"Cement was a controlled commodity but not an essential commodity prior to February, 1982. The Cement Control Order, 1967, issued by the Central Government in exercise of power conferred by Section 18G and Section 25 of the Industries (Development and Regulation) Act, 1951 provided

for supply, distribution and availability of cement at fair prices. The effect of the Cement Control (Third Amendment) Order, 1982, was virtual decontrol of non-levy cement, i.e. cement, produced in excess of 66.6% of the installed capacity in any cement plant, though the West Bengal Cement (Licensing and Control) Order, 1979 was promulgated by the State Government in exercise of powers conferred by Section 3 of the Act, it related to regulation of business in cement, keeping intact the provisions of the Cement Control Order, 1967. Subsequently, there was another order, the West Bengal Licensing of Dealers of Cement and Distribution of Levy Cement Order, 1982, by the Government of West Bengal. By this order of 1982, the previous order of 1979, i.e. the West Bengal Cement (Licensing and Control) Order, 1979 was repealed. The effect of all these orders, passed by the Central Government or State Government, is that non-levy cement was not an essential commodity as defined in Section 2(a) of the Act."

The Present case was started on 05.06.1987 against the appellant admittedly a non-levy cement dealer and has been stated as such in the written complaint.

Accordingly in view of the said rulings of this court and findings therein as noted above it is clear that since the Amendment of 1982 as discussed...... Non-levy cement is not an Essential Commodity by virtue of Cement Control (third Amendment) Order, 1982 and as such state non-levy cement is no longer an essential commodity by virtue of aforesaid Cement Control (third Amendment) Order, 1982 and the State Government has no power to enforce the provisions of the West Bengal Licencing of Dealers of Cement and Distribution of Levy Cement Order, 1982 in case of any trade or business in non-levy cement and as such the proceedings initiated by the state on 05.06.1987 against the appellant, a non-levy cement dealer under Section 7(1)(a)(ii) of the Essential Commodities Act for contravention of the provision of para 5 (1) and 5 (2) of the West Bengal Licensing of Dealers of Cement and Distribution of Levy Cement Order, 1982 is against the provisions as laid down by the Central Government on 28.02.1982 in the Cement Control (third Amendment) Order, 1982 and accordingly the trial and conviction in the case is also against the said provisions and thus not in accordance with law.

<u>Conclusions</u>

Considering the analysis of evidence and the present position of law relating to dealers in non-levy cement, it is held that Sutahata P.S. Case No. 2(6)/87 started against the appellant under Section 7(1)(a)(ii) of the Essential Commodities Act for contravention of the provision of para 5 (1) and 5 (2) of the West Bengal Licensing of Dealers of Cement and Distribution of Levy Cement Order, 1982 is against the provisions of Cement Control (third Amendment) Order, 1982 and accordingly the conviction and sentencing of the appellant for offence punishable under Section 7(1)(a)(ii) of the Essential Commodities Act for contravention of the provision of para 5 (2) of the West Bengal Licensing of Dealers of Cement and Distribution of Levy Cement Order, 1982 passed by the Ld. Judge, Special Court (E.C. Act) Tamluk, Midnapore on 27.09.1988 being not in accordance with law is hereby set aside.

The appeal is thus allowed.

The appellant/convict is hereby discharged from his Bail bond.

Let a copy of this judgment along with the lower court records be sent down to the trial court immediately.

Urgent Photostat Certified copy of this Judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)