

***Mens rea* is not an essential condition for imposing interest and penalty, considering the language of the provisions – SC**

19 May 2023



## Summary

The Supreme Court (SC) has allowed the Revenue's appeal and held that *mens rea* is not necessary for levying interest and penalty. The SC stated that the penalty and interest leviable under Section 45 and Section 47(4A) of the Gujarat Sales Tax Act, 1969 ('Act'), are statutory and mandatory in nature since the provisions use the word 'shall'. Therefore, no discretion is vested with the authority as to decide whether the penalty and interest are to be levied under the said provisions or not. The SC also stated that in the instant matter, the relevant sections do not prescribe words such as *mens rea* or satisfaction of assessing officer and/or other words such as those used in Section 11 AC of the Central Excise Act, 1956. Accordingly, the absence of guilty intention does not hold significance here where the penalty is automatic.

### Facts of the case

- M/s Saw Pipes Limited (the assessee) is engaged in the business of executing indivisible works contracts involving coal tar and enamel coating on pipes.
  - The assessee had opted for the payment of lumpsum tax as provided under Section 55A of the Act and deposited @2% tax on works contract sales vide Entry-1 of the relevant notification.
  - The assessing officer (AO), while passing the assessment order, raised tax demand, along with interest and penalty under Section 45(6) and Section 47 (4A) of the Act stating that the assessee is not covered under the Entry-1 of the relevant notification and tax shall be paid under residuary entry @12%.
  - The Commissioner dismissed the appeal filed by the assessee. Aggrieved by the order of the Commissioner, the respondent filed an appeal before the Tribunal, wherein the Tribunal confirmed the tax demand, along with interest and penalty.
  - The HC has set aside the interest and penalty demand, stating that the assessee has acted under bonafide belief.
  - Aggrieved by the HC's order, the Revenue has appealed before the SC.
  - The issue before the SC is whether while imposing/levying penalty and interest under Section 45(6) and Section 47(4A) of the Act, *mens rea* on part of the assessee is required to be considered.
- observed that the assessee had not concealed any particulars or deliberately furnished inaccurate particulars of any transaction liable to tax as contemplated under Section 45(2) of the Act. However, Section 45(5) of the Act provides that in case the differential tax is more than 25%, the dealer will be deemed to have failed to pay the tax to the extent of the difference.
- **Penalty and interest under Section 45(6) and Section 47(4A) is statutory in nature:** The SC observed that the impugned sections use the phrase 'shall be levied'. Accordingly, the SC concluded that the interest and penalty leviable under the impugned sections is a statutory and mandatory penalty, and there is no discretion vested with the Commission as to whether to levy the penalty leviable or not.
  - **Penalty is automatic:** Penalty is an integral part of assessment, and the levy of penalty is automatic. Since the phrase used in Section 45(6) of the Act is 'shall be levied', the moment it is found that the dealer is deemed to have failed to pay the tax, penalty will be applicable.
  - **Mens rea is not an essential ingredient for contravention of provisions of a civil act:** The SC held that in the instant matter, the intention of legislation is unambiguous and specifically prescribe levy of penalty u/s 45(6) once any eventuality as mentioned in Section 45 (5) occurs. The impugned sections do not use other words such as *mens rea* and/or satisfaction of the assessing officer and/or other language as used in Section 11AC of the Central Excise Act 1944.

### SC observations and ruling [Civil Appeal No. 3481 OF 2022, order dated 17 April 2023]:

- **No concealment or inaccurate details:** The SC

- **Penalty and interest is statutory and mandatory:**

Based on the aforesaid provisions for the levy of penalty and interest, and the language used therein, on strict interpretation, the SC held that the levy of penalty and interest is statutory and mandatory, and allowed the Revenue's appeal.

#### Our comments

Contrary to the present ruling, in the case of Hindustan Steels Limited, the SC had held that *mens rea* is an important element in any penal proceedings. The SC had observed that the discretion to impose a penalty must be exercised judicially and after the consideration of all the relevant circumstances. The penalty cannot be imposed merely because it is lawful to do so. Even in the case of Akbar Badruddin Jiwani, the SC had held that the requisite *mens rea* must be established while imposing a penalty.

However, in the case of Dharamendra Textile, the SC had held that when the phrase 'shall be leviable' has been used, the adjudicating authority will have no discretion. This is a statutory penalty and there is no discretion whether to levy a penalty or not or to levy any penalty lesser than what is prescribed.

The Revenue authorities may attempt to use this decision as justification for pursuing penalty proceedings, but it is important to consider the decision's implications, considering the precise language used in the interest and penalty provisions under the applicable legislation.

# Contact us

To know more, please visit [www.grantthornton.in](http://www.grantthornton.in) or contact any of our offices as mentioned below:

---

## NEW DELHI

National Office,  
Outer Circle,  
L 41, Connaught Circus,  
New Delhi - 110001  
T +91 11 4278 7070

## NEW DELHI

6th Floor, Worldmark 2,  
Aerocity,  
New Delhi - 110037  
T +91 11 4952 7400

## AHMEDABAD

Unit No - 603 B, 6th Floor,  
Brigade International  
Financial Center,  
GIFT City Gandhinagar,  
Ahmedabad - 382355

## BENGALURU

5th Floor, 65/2, Block A,  
Bagmane Tridib,  
Bagmane Tech Park,  
CV Raman Nagar,  
Bengaluru - 560093  
T +91 804 243 0700

---

## CHANDIGARH

B-406A, 4th Floor,  
L&T Elante Office Building,  
Industrial Area Phase I,  
Chandigarh - 160002  
T +91 172 433 8000

## CHENNAI

9th floor, A wing, Prestige  
Polygon, 471 Anna Salai,  
Mylapore Division, Teynampet,  
Chennai - 600035  
T +91 44 4294 0000

## DEHRADUN

Suite No 2211, 2nd Floor,  
Building 2000, Michigan Avenue,  
Doon Express Business Park,  
Subhash Nagar,  
Dehradun - 248002  
T +91 135 264 6500

## GURGAON

21st Floor, DLF Square,  
Jacaranda Marg,  
DLF Phase II,  
Gurgaon - 122002  
T +91 124 462 8000

---

## HYDERABAD

Unit No - 1, 10th Floor,  
My Home Twitza, APIIC,  
Hyderabad Knowledge City,  
Hyderabad - 500081  
T +91 40 6630 8200

## KOCHI

6th Floor, Modayil Centre Point,  
Warriam Road Junction,  
MG Road  
Kochi - 682016  
T +91 484 406 4541

## KOLKATA

16th floor, Ambuja Eco-Centre,  
Plot No. 4, EM Bypass, EM Block,  
Salt-Lake Sector-V, Kolkata,  
West Bengal - 700091  
T +91 33 4444 9300

## MUMBAI

11th Floor, Tower II,  
One International Center,  
SB Marg Prabhadevi (W),  
Mumbai - 400013  
T +91 22 6626 2600

---

## MUMBAI

Kaledonia, 1st Floor,  
C Wing,  
(Opposite J&J Office),  
Sahar Road, Andheri East,  
Mumbai - 400069

## NOIDA

Plot No 19A, 2nd Floor,  
Sector - 16A,  
Noida - 201301  
T +91 120 485 5900

## PUNE

3rd Floor, Unit No 310-312,  
West Wing, Nyati Unitree,  
Nagar Road, Yerwada  
Pune - 411006  
T +91 20 6744 8800

---

For more information or for any queries, write to us at [GTBharat@in.gt.com](mailto:GTBharat@in.gt.com)



Follow us @GrantThorntonIN

© 2023 Grant Thornton Bharat LLP. All rights reserved.

"Grant Thornton Bharat" means Grant Thornton Advisory Private Limited, the sole member firm of Grant Thornton International Limited (UK) in India, and those legal entities which are its related parties as defined by the Companies Act, 2013, including Grant Thornton Bharat LLP.

Grant Thornton Bharat LLP, formerly Grant Thornton India LLP, is registered with limited liability with identity number AAA-7677 and has its registered office at L-41 Connaught Circus, New Delhi, 110001.

References to Grant Thornton are to Grant Thornton International Ltd. (Grant Thornton International) or its member firms. Grant Thornton International and the member firms are not a worldwide partnership. Services are delivered independently by the member firms.