2025:DHC:9632-DB

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment reserved on: 09.09.2025***
Judgment delivered on: 01.11.2025

\+ LPA 727/2024 and CM APPL. 43486/2024

COMPETITION COMMISSION OF INDIA .....Appellant

Through: Mr. N. Venkataraman, ASG, Mr. Shivshankar, Mr. Ankur Singh, Mr. Kaustav Som and Ms. Pritha Banerjee, Advs.

versus

GEEP INDUSTRIES & ORS. .....Respondents

Through: Mr. Ravisekhar Nair, Mr. Parthsarathi Jha and Ms. Aayushi Sharma, Advs. for R-1 to 4.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Appeal has been preferred under Clause 10 of the Letters Patent assailing the **Judgment dated 26.04.2024**[1], whereby the learned Single Judge of this Court allowed W.P.(C) No. 10332/2023 titled *Geep Industries (India) Pvt. Ltd. & Ors. v. Competition Commission of India* and set aside the Order dated

[1] Impugned Judgement

18.07.2023 passed by the **Competition Commission of India**[2], insofar as it confirmed the demand of interest on the penalty amounts imposed upon the Respondents.

2. By the said Order dated 18.07.2023, the CCI, *inter alia*, upheld the demand of interest on the penalty amounts with retrospective effect, i.e., from 10.12.2018 till the date of payment, as conveyed through demand notices dated 09.05.2023 issued to the Respondents under the **Competition Commission of India (Manner of Recovery of Monetary Penalty) Regulations, 2011**[3]. The underlying penalties had earlier been imposed under Section 27 of the **Competition Act, 2002**[4], *vide* the CCI's Order dated 30.08.2018.

BRIEF FACTS:

3. Proceedings under the Competition Act were initiated against Respondent No. 1, Geep Industries (India) Pvt. Ltd., and Respondent Nos. 2 to 4, who are the Directors of Respondent No. 1.

4. Upon completion of inquiry, the Appellant *vide* Order dated 30.08.2018, found the Respondents guilty of engaging in cartelization in the Dry Cell Batteries market in India, in violation of the provisions of Section 3(3)(a) read with Section 3(1) of the Competition Act.

5. Consequently, the Respondents were directed to cease and desist from such anti-competitive conduct, and monetary penalties were imposed under Section 27(b) of the Competition Act. A penalty of Rs. 9,64,06,682/- was imposed on Respondent No. 1, Rs. 1,10,386/- on Respondent No. 2, Rs. 1,29,839/- on Respondent No. 3, and Rs. 2,40,452/- on Respondent No. 4, with a direction to deposit the

[2] CCI
[3] 2011 Regulations
[4] Competition Act

same within 60 days of receipt of the order. The said order was received by the Respondents on 10.09.2018.

6. Aggrieved thereby, the Respondents preferred Competition Appeal Nos. 87-90 of 2018 before the **National Company Law Appellate Tribunal**[5], which had assumed the jurisdiction of the erstwhile Competition Appellate Tribunal.

7. By Interim Orders dated 29.11.2018 and 30.11.2018, the NCLAT stayed the operation of the CCI's Order, subject to the condition that Respondent No. 1 deposits 10% of the penalty amount and Respondent Nos. 2 to 4 deposit their respective penalties in full.

8. Subsequently, by Judgment dated 31.03.2023, the NCLAT upheld the finding of contravention but reduced the quantum of penalty imposed on Respondent No. 1 to Rs. 2.41 crores, being 1% of its turnover for each year of cartel participation, while maintaining the penalties imposed on the Directors.

9. Pursuant to the NCLAT's Judgment dated 31.03.2023, the CCI issued Demand Notices dated 09.05.2023 to the Respondents under Regulation 3 of the 2011 Regulations. By these notices, the Respondents were directed to deposit the penalty amounts within thirty days, along with interest at the rate of 1.5% per month, calculated from 10.12.2018, i.e., the 91st day from the receipt of the CCI's original order dated 30.08.2018 (which as per CCI, after allowing 60 days for payment under that order and an additional notional 30 days as provided in the demand notice). The payment was to be made into the Consolidated Fund of India within 30 days of receipt of the respective demand notices.

[5] NCLAT

10. The Respondents, objecting to the levy of interest, submitted an application dated 30.06.2023 seeking further permission to pay the penalty in instalments. The said request was rejected by the CCI *vide* Order dated 18.07.2023, wherein the CCI reaffirmed the demand of interest on the penalty amounts; however, allowed the Respondents to pay the penalty in installments. In doing so, the CCI placed reliance on the decision of the NCLAT in ***SCM Soilfert Ltd. v. Competition Commission of India***[6], which had held that the liability to pay penalty and interest continues to subsist notwithstanding the pendency of an appeal.

11. Aggrieved by the said Order, the Respondents preferred W.P.(C) No. 10332/2023 before the learned Single Judge of this Court.

12. By the Impugned Judgment dated 26.04.2024, the learned Single Judge allowed the Writ Petition, holding that the issuance of a demand notice in the prescribed form under the 2011 Regulations is a mandatory precondition before any interest can be levied. Accordingly, the learned Single Judge set aside the CCI's Order dated 18.07.2023 to the extent it imposed interest on the penalty amounts from 10.12.2018.

13. The CCI, being aggrieved by the said Impugned Judgment, has preferred the present Appeal before this Court.

SUBMISSIONS OF THE APPELLANT/ CCI:

14. Learned ASG appearing for the Appellant-CCI would submit that the Impugned Judgment, passed by the learned Single Judge, is

[6]2018 SCC OnLine NCLAT 462

erroneous in law and requires interference, as it misinterprets the provisions of the 2011 Regulations, particularly Regulations 3 and 5.

15. It would be further submitted by the learned ASG that the learned Single Judge failed to appreciate that the provisions of the Competition Act are *sui generis* in nature and cannot be compared with taxation statutes, and therefore, the principles applicable to tax laws, which were relied upon in the Impugned Judgment, have no application to the present case.

16. The learned ASG would further contend that one of the principal objectives of imposing a monetary penalty under Section 27(b) of the Competition Act is to act as a deterrent and prevent recurrence of anti-competitive conduct, and that the imposition of interest on delayed payment of such penalty serves the same deterrent purpose; however, by exempting the Respondents from liability to pay interest, the Impugned Judgment effectively encourages deliberate delay in payment and undermines the punitive intent of the Competition Act.

17. It would be argued by the learned ASG that a conjoint reading of Regulations 3 and 5 of the 2011 Regulations clearly shows that the liability to pay interest arises automatically upon the expiry of the period prescribed in the penalty order, and that such liability is not dependent upon the issuance or receipt of a demand notice.

18. The learned ASG for the Appellant would submit that the interpretation adopted by the learned Single Judge with respect to Regulation 3 is erroneous, as the said provision merely governs the procedural form and content of a demand notice, and does not determine when the liability to pay interest accrues; rather, the

obligation to pay interest arises upon expiry of the period specified in the penalty order itself, and the subsequent issuance of a demand notice merely quantifies the amount payable.

19. The learned ASG would further contend that once the stay orders passed by the NCLAT stood vacated by its judgment dated 31.03.2023, the Respondents became liable to pay interest for the delayed payment of penalty, and that the Impugned Judgment wrongly extinguishes the Appellant's statutory entitlement to such interest, which is both inequitable and contrary to the object of the Competition Act. To bolster these arguments, reliance would be placed by the learned ASG on the judgment of the Hon'ble Supreme Court in ***State of U.P. v. Prem Chopra***[7].

20. It would also be urged by the learned ASG that the learned Single Judge failed to consider that, owing to the stay orders of the NCLAT, the Appellant was legally restrained from issuing demand notices under the 2011 Regulations, and therefore, any procedural lapse in not issuing such notices was a direct result of the judicial order; consequently, this inability should not have been held against the Appellant but should have been viewed in its favour, since the non-issuance arose from judicial restraint rather than administrative omission.

21. The learned ASG further argued that the principle of restitution fully applies in the present case, and therefore, upon vacation of the stay orders, the CCI ought to be restored to the position it would have occupied had the stay not operated, thereby entitling it to recover interest on the penalty amount in accordance with the 2011

[7] (2024) 12 SCC 426

Regulations and for this reliance would be placed on the judgment of the Hon'ble Supreme Court in ***State of Rajasthan v. J.K. Synthetics Ltd.***[8].

SUBMISSIONS OF THE RESPONDENTS:

22. Learned counsel for the Respondents would submit that interest on any penalty amount can be levied only in accordance with the 2011 Regulations, and that unless the procedures laid down therein are strictly followed, the Appellant-CCI has no authority to direct payment of interest on any delayed payment of penalty.

23. Learned counsel for the Respondents would further contend that Regulations 3(1) and 3(2) of the 2011 Regulations specifically require the issuance and service of a demand notice in Form-I, which must specify both the amount of penalty and the date by which payment is to be made, and that a period of 30 days is provided for compliance; therefore, interest under Regulation 5 arises only upon failure to comply with such demand notice, and in the absence of the notice, the levy of interest is invalid and unsustainable in law.

24. It would further be submitted by the learned counsel for the Respondents that the Appellant's contention, that the Impugned Judgment erroneously equated the Competition Act with taxation statutes, is indeed misconceived, since the learned Single Judge did not draw a substantive comparison between the two enactments but merely observed that the procedural requirements for the "issuance" and "service" of demand notices, and the subsequent levy of interest, are *in pari materia* with similar provisions under the Income Tax Act, 1961; therefore, the reference made in the Impugned Judgment was

[8] (2011) 12 SCC 518

procedural in nature and not substantive, and the CCI's objection on this ground is misplaced.

25. Learned counsel for the Respondents would further argue that the Impugned Judgment correctly held that interest on delayed payment of penalty can be levied only in accordance with the mandatory procedure prescribed under the 2011 Regulations, and therefore, the Judgment suffers from no legal infirmity and warrants no interference by this Hon'ble Court.

ANALYSIS:

26. We have heard the learned counsel for both parties at considerable length and have given our thoughtful consideration to the submissions advanced. We have also carefully examined the Impugned Judgment, as well as the pleadings, materials, and documents placed on record in the present Appeal and responses thereto.

27. At the outset, we consider it appropriate to reproduce the relevant portion of the Impugned Judgment, which reads as follows:

> "**12.** Heard learned Counsel appearing for the Parties and perused the material on record.
> **13.** To understand the scheme of Regulations and the power to levy penalty, it is necessary to extract the few provisions of the 2011 Regulations. Regulations 2(c), 2(e), 2(g), 3, 4, 5 and Form-I of 2011 Regulations read as under:
> *****
> **14.** A perusal of Regulation 3(1) indicates that where a penalty has been imposed on an enterprise by the Commission, then the Commission shall issue a demand notice as set out in Form-I appended to the regulations. A perusal of Regulation 3 read with Form-I postulates that a person against whom penalty has been imposed has to be first informed regarding levy of penalty. This Form-I is to be issued regardless the person against whom a penalty has been imposed was present during the hearing or at the time of final order was passed. Form-I specifies the correct amount of penalty that is due and payable by the person against whom the

penalty has been imposed and the amount which has become due and payable. Form-I also specifies that in case a person fails to deposit the amount of penalty within the time stipulated, he shall be liable to pay simple interest @ 1.5% for every month or part of a month comprised in the period commencing from the date immediately after the expiry of the period mentioned in the demand notice and ending with the date on which the amount is paid. The said stipulation was introduced in Form-I on 25.06.2014. The specific insertion of the said clause intimating that the interest is due and payable on failure to pay the amount of penalty read with the mandatory provision of Regulation 3(1) of the 2011 Regulations makes it clear that unless and until a person, against whom a penalty has been imposed, is informed by giving a notice in Form-I appended to the Regulations, interest is not leviable.

15. Regulation 3(2) of the 2011 Regulations provides that a demand notice under sub-regulation (1) shall provide a time of 30 days from the date of service of the demand notice to the enterprise concerned to deposit the penalty in the manner specified in the said notice. The same is reflected in Form-I which stipulates the date within which the amount has to be paid and it further stipulates that in case of failure to deposit the amount of penalty within the time stipulated, interest is chargeable.

16. It is pertinent to mention that the amount of interest which is stipulated in the notice is the amount that is stipulated in Regulation 5 of the 2011 Regulations. Regulation 5 also specifically states that if the amount specified in the demand notice is not paid within the period specified then interest is leviable. It is further fortified that the demand notice also stipulates that the amount has to be paid within 30 days of the receipt of the demand notice under Form-I. These provisions are, therefore, completely mandatory.

17. The Apex Court in Mohan Wahi v. Commissioner, Income Tax, Varanasi and Ors, **(2001) 4 SCC 362**, while considering on the power to impose interest on the delayed payment of penalty amount, has observed as under:

> "**13.** Section 156 of the Act provides as under:
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> > "156. *Notice of demand*.—When any tax, interest, penalty, fine or any other sum is payable in consequence of any order passed under this Act, the Assessing Officer shall serve upon the assessee a notice of demand in the prescribed form specifying the sum so payable."
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> **14.** If the amount specified in the notice of demand under Section 156 is not paid within the time limited by sub-section (1) or extended under sub-section (3) of Section 220, then the assessee shall be deemed to be in default under sub-section (4) of Section 220. Tax recovery certificate can be issued under Section 222 when an

assessee is in default or is deemed to be in default. Proceedings for recovery of tax under the Second Schedule can be initiated against a defaulter. Thus Section 156 provides for a vital step to be taken by the Assessing Officer without which the assessee cannot be termed a defaulter. The use of the term "shall" in Section 156 implies that service of demand notice is mandatory before initiating recovery proceedings and constitutes foundation of subsequent recovery proceedings.

15. We have already stated that the finding of fact recorded by CIT (Appeals) and the Tribunal was that notice of demand was not served on the assessee. The very foundation for initiating the recovery proceedings, therefore, was non-existent and the assessee could neither have been deemed to be in default nor any proceedings for recovery of tax could have been initiated against him.

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17. In *Homely Industries* v. *STO* [(1976) 3 SCC 705 : 1976 SCC (Tax) 383 : (1976) 37 STC 483] also the significance of service of demand notice came up for the consideration of this Court and it was held that there can be no recovery without service of a demand notice; if such notice was not served, the recovery proceedings are not maintainable in law and are invalid and the same along with the recovery certificates are liable to be quashed.

18. In *Ram Swarup Gupta* v. *Behari Lal Baldeo Prasad* [(1974) 95 ITR 339 (All) (DB)] a Division Bench of the Allahabad High Court referred to the effect of the Taxation Laws (CVRP) Act, 1964 on the law laid down by this Court in *Seghu Buchiah Setty case* [(1964) 52 ITR 538: AIR 1964 SC 1473] and held: (ITR p. 342)

> "The effect of these provisions is to dispense with the need of issuing a fresh notice of demand and the recovery certificate and to allow the original recovery proceedings to continue, but only for the amount found due after reduction in the appeal, and it is for this purpose that the taxing authority is required to send intimation of the fact of the reduction to the assessee and to the Tax Recovery Officer. As the proceedings for recovery can be continued only for the amount that finally remains due, and not for any amount in excess thereof, the requirement of sending intimation to the Tax Recovery Officer becomes an essential duty of the taxing authority and must be held to be a mandatory condition. Non-compliance of that condition will be an illegality in the procedure and will invalidate the proceedings. A

> sale held in proceedings initiated and continued for the recovery of an amount in excess of the amount payable by the assessee, after its reduction in appeal, will be invalid. Such a sale is not validated by clause (*c*) of Section 3 of the Act."

The Division Bench decision of the Allahabad High Court in *Ram Swarup Gupta case* [(1974) 95 ITR 339 (All) (DB)] was cited with approval before this Court in *Union of India* v. *Jardine Henderson Ltd.* [(1979) 2 SCC 258: 1979 SCC (Tax) 117: (1979) 118 ITR 112] though it was distinguished for its applicability to the facts of the case before this Court. The Division Bench of the Orissa High Court has held in *Sunil Kumar Singh Deo* v. *Tax Recovery Officer* [(1987) 166 ITR 882 (Ori) (DB)] that non-service of demand notice goes to the root of the jurisdiction of the officer initiating recovery proceedings. We find ourselves in agreement with the view so taken. Incidentally, we may refer to three Division Bench decisions of the High Court of Madhya Pradesh viz. *Ghanshyamlal* v. *State of M.P.* [1961 MPLJ 218 (DB) (SN)] , *Manmohan Lal Shukla* v. *Board of Revenue, M.P.* [1964 MPLJ 32 (DB)] and *Premchand Ramchand* v. *Board of Revenue, M.P.* [1964 MPLJ 337 (DB)] Section 146 of the M.P. Land Revenue Code, 1959 provides that before issuing any process for recovery of arrears of land revenue the Tahsildar or Naib Tahsildar *may* cause a notice of demand to be served on any defaulter. Chief Justice P.V. Dixit speaking for the Division Benches, in all the three cases, has held that the word "may" has the imperative meaning of "shall" and no proceedings for recovery can be initiated without service of notice of demand failing which the proceedings would suffer from jurisdictional defect. For a long period of time the High Court of Madhya Pradesh has been taking this view consistently."

18. Similarly, the Apex Court in State of Kerala v. Joy Varghese, Kerala Rubber Products, **(1999) 9 SCC 124** has observed as under:

> "**2.** Having regard to the phraseology of Section 23(3) of the Kerala General Sales Tax Act, the liability of the dealer to pay penal interest on the tax assessed or any other amount due under that Act arises only if such tax or amount is not paid ―within the time specified therefor in the notice of demand‖. There being no notice of demand, it was held that the liability to pay penal interest did not arise. It is necessary to emphasise that this is not a case of payment of interest at the ordinary statutory rate but a case of penal interest and it is, therefore, that the Act provides

that the liability to pay the same arises only after there has been a failure to comply with the provisions of a notice in that behalf."

19. The Apex Court in Mumbai Agricultural Produce Market Committee v. Hindustan Lever Ltd., **(2008) 5 SCC 575** has observed as under:

"**20.** So far as the question of payment of interest is concerned, it must be referable to the statute. When the statute controls the levy, the interest payable thereupon, as envisaged thereunder must also govern the field. The general principle of restitution may not apply in this case."

20. The Apex Court in Steel Authority of India Limited v. Commissioner of Central Excise, Raipur **(2019) 6 SCC 693** has observed as under:

"**26.** In short, therefore, the principle may be taken to be established that while levy of interest is a part of the adjective law, yet to levy interest there must be substantive provision. Demand for interest can be made only if the legislature has specifically intended collection of interest. We must look at the statutory provisions."

21. The Apex Court in J.K. Synthetics Ltd. v. Commercial Taxes Officer, **(1994) 4 SCC 276** has observed as under:

"**16.** It is well-known that when a statute levies a tax it does so by inserting a charging section by which a liability is created or fixed and then proceeds to provide the machinery to make the liability effective. It, therefore, provides the machinery for the assessment of the liability already fixed by the charging section, and then provides the mode for the recovery and collection of tax, including penal provisions meant to deal with defaulters. Provision is also made for charging interest on delayed payments, etc. Ordinarily the charging section which fixes the liability is strictly construed but that rule of strict construction is not extended to the machinery provisions which are construed like any other statute. The machinery provisions must, no doubt, be so construed as would effectuate the object and purpose of the statute and not defeat the same. (See *Whitney* v. *IRC* [1926 AC 37 : 42 TLR 58] , *CIT* v. *Mahaliram Ramjidas* [(1940) 8 ITR 442 : AIR 1940 PC 124 : 67 IA 239] , *India United Mills Ltd.* v. *Commissioner of Excess Profits Tax, Bombay* [(1955) 1 SCR 810 : AIR 1955 SC 79 : (1955) 27 ITR 20] and *Gursahai Saigal* v. *CIT, Punjab* [(1963) 3 SCR 893 : AIR 1963 SC 1062 : (1963) 48 ITR 1]). But it must also be realised that provision by which the authority

> is empowered to levy and collect interest, even if construed as forming part of the machinery provisions, is substantive law for the simple reason that in the absence of contract or usage interest can be levied under law and it cannot be recovered by way of damages for wrongful detention of the amount. (See *Bengal Nagpur Railway Co. Ltd.* v. *Ruttanji Ramji* [AIR 1938 PC 67: 65 IA 66: 67 CLJ 153] and *Union of India* v. *A.L. Rallia Ram* [(1964) 3 SCR 164, 185-90: AIR 1963 SC 1685]). Our attention was, however, drawn by Mr Sen to two cases. Even in those cases, *CIT* v. *M. Chandra Sekhar* [(1985) 1 SCC 283 : 1985 SCC (Tax) 85 : (1985) 151 ITR 433] and *Central Provinces Manganese Ore Co. Ltd.* v. *CIT* [(1986) 3 SCC 461 : 1986 SCC (Tax) 601 : (1986) 160 ITR 961] , all that the Court pointed out was that provision for charging interest was, it seems, introduced in order to compensate for the loss occasioned to the Revenue due to delay. But then interest was charged on the strength of a statutory provision, may be its objective was to compensate the Revenue for delay in payment of tax. But regardless of the reason which impelled the Legislature to provide for charging interest, the Court must give that meaning to it as is conveyed by the language used and the purpose to be achieved. Therefore, any provision made in a statute for charging or levying interest on delayed payment of tax must be construed as a substantive law and not adjectival law. So construed and applying the normal rule of interpretation of statutes, we find, as pointed out by us earlier and by Bhagwati, J. in the *Associated Cement Co. case* [(1981) 4 SCC 578 : 1982 SCC (Tax) 3 : (1981) 48 STC 466] , that if the Revenue's contention is accepted it leads to conflicts and creates certain anomalies which could never have been intended by the Legislature."

22. A perusal of the above shows that the interest can be levied only in a manner provided by the statute. Further, the Hon'ble Apex Court in a number of Judgments has held that when there is a power, coupled with duties, to do a thing in a particular way it should be done in that way only and other modes are forbidden. This principle was first laid down in Taylor v. Taylor, **(1876) 1 Ch.D 426**. Subsequently, it was upheld by the Privy Council in Nazir Ahmad v. Emperor, **1936 SCC OnLine PC 41**. The Hon'ble Apex Court has subsequently relied on this principle in various judgments such as Shiv Kumar Chadha v. Municipal Corporation of Delhi, **(1993) 3 SCC 161** and Ramchandra Keshav Adke v. Govind Joti Chavare, **(1975) 1 SCC 559** making it mainstream in the India Legal Jurisprudence.

23. In view of the above, the Impugned Order dated 18.07.2023 is

> set aside inasmuch as it levies interest on the delayed payment of penalty amount from 10.12.2018 till the date of payment.
> **24.** The writ petition is allowed. Pending application(s), if any, stand disposed of."

28. From the foregoing discussion and the analysis undertaken by the learned Single Judge, it is evident that the conclusions reached therein rest primarily on an interpretation of the relevant provisions of the 2011 Regulations, and on the application of principles laid down by the Hon'ble Supreme Court in various judgments interpreting provisions analogous to those contained in the 2011 Regulations. Upon a careful and independent consideration of the reasoning and findings recorded therein, we find ourselves in complete agreement with the views expressed by the learned Single Judge in the Impugned Judgment.

29. Before delving into the factual matrix of the present case, it is important to note the relevant provisions of the 2011 Regulations. These regulations were framed under the powers conferred by Section 64(2)(g), read with Sections 36 and 39(1) of the Competition Act. Section 36 empowers the CCI to regulate its own procedure, while Section 39(1) provides that where a person fails to pay any monetary penalty imposed under the Act, the CCI shall recover such penalty in the manner prescribed by the regulations. The relevant provisions of the 2011 Regulations are reproduced below for ready reference:

> "**(c)** "**demand notice**" means a notice issued by the Commission to an enterprise from whom any penalty is recoverable under the Act;
>
> **(e)** "**enterprise in default**" means an enterprise which has not paid the penalty imposed on it within the stipulated time despite the demand notice duly served upon;
>
> **(g)** "**penalty**" means a monetary penalty or fine or any other sum imposed by the Commission and realisable under the Act;

3. Issuance of demand notice. (1) Where a penalty has been imposed on an enterprise by the Commission, the Secretary shall issue a demand notice as set out in Form I appended to these regulations and shall serve it through the recovery officer, to the enterprise concerned after expiry of the period specified for the purpose in the order of imposition of penalty by the Commission at its last address known to the Commission and in the case of a joint account to all the joint holders of such account at their last addresses known to the Commission.

(2) A demand notice issued under sub-regulation (1) shall provide a time of thirty days from the date of service of the demand notice to the enterprise concerned to deposit the penalty in the manner specified in the said notice:

Provided that where the Commission has any reason to believe that it will be detrimental if the full period of thirty days aforesaid is allowed, it may direct the enterprise concerned that the sum specified in the demand notice shall be paid within such period being a period less than the period of thirty days aforesaid, as may be specified by the Commission in the demand notice.

(3) Upon receipt of demand notice the enterprise shall pay the penalty, through challan as set out in Form II appended to these regulations, in favour of Pay & Accounts Officer (PAO), Ministry of Corporate Affairs, Head No. 1475.00.105.05, Sub-Head-05 – 'Penalties imposed by Competition Commission of India'.

(4) One copy of the challan shall be submitted by the enterprise to the recovery officer immediately but not later than seven days of the payment and the recovery officer shall make an entry in the penalty recovery register to the same effect.

(5) The Commission may, at any time, rectify any clerical or arithmetical mistake made in the demand notice.

5. Interest on penalty. If the amount specified in any demand notice is not paid within the period specified by the Commission, the enterprise concerned shall be liable to pay simple interest at one and one half per cent, for every month or part of a month comprised in the period commencing from the day immediately after the expiry of the period mentioned in demand notice and ending with the day on which the penalty is paid:

Provided that the Commission may reduce or waive the amount of interest payable by the enterprise concerned if it is satisfied that default in the payment of such amount was due to circumstances beyond the control of the enterprise concerned:

Provided further that where as a result of an order of the Competition Appellate Tribunal or the High Court or the Supreme Court of India, as the case may be the amount of penalty payable has been reduced, the interest shall be reduced accordingly and the excess interest paid, if any, shall be refunded in accordance with regulation 14."

30. A plain reading of Regulation 3 reveals that whenever the CCI imposes a monetary penalty on an enterprise, a formal demand notice is required to be issued through the Recovery Officer in Form I, after the expiry of the period specified in the penalty order. The Regulation further provides that the enterprise shall ordinarily be granted a period of 30 days from the date of *service* of the demand notice to deposit the penalty amount in the prescribed manner. Notably, Regulation 3(2) unambiguously stipulates that the 30-day period commences "*from the date of service of the demand notice to the enterprise*", which emphasizes that computation of time begins only upon such service.

31. Moreover, the Regulation also empowers the CCI to curtail the prescribed 30-day period if it considers that granting the entire duration would be detrimental to the public interest, and to direct payment within a shorter period. The Regulation further prescribes that the enterprise must make payment of the penalty through a challan in Form II and furnish a copy thereof to the Recovery Officer within seven days of payment, whereupon the Recovery Officer shall record the payment in the Penalty Recovery Register. The CCI is also vested with the power to rectify any clerical or arithmetical mistake in the demand notice.

32. Regulation 5 of the 2011 Regulations, on the other hand, provides the framework for the levy of interest on delayed payment of penalty. It mandates that if the amount specified in the demand notice is not paid within the period stipulated by the CCI, the concerned enterprise becomes liable to pay simple interest at the rate of 1.5% per month, or for any part of a month, for the entire duration commencing from the day immediately after the expiry of the payment period

mentioned in the demand notice and continuing until the penalty is actually paid.

33. The Regulation also incorporates equitable safeguards by empowering the CCI to reduce or waive the interest amount if it is satisfied that the default occurred due to circumstances beyond the control of the enterprise. Furthermore, where an appellate or superior judicial authority, such as the Appellate Tribunal, High Court, or Supreme Court, subsequently reduces the amount of penalty payable, the interest payable shall also stand proportionately reduced, and any excess interest already paid shall be refunded to the enterprise in accordance with Regulation 14.

34. In addition to the above, the 2011 Regulations also contain other procedural and administrative provisions designed to ensure effective implementation and recovery of penalties. These include provisions relating to the issuance of recovery certificates in cases of default, the duties and functioning of the Recovery Officer, maintenance of the Penalty Recovery Register, modes of recovery, including reference to income-tax authorities for assistance in recovery proceedings, and refund of excess penalty or interest if already paid. Collectively, these provisions establish a structured and comprehensive mechanism for the enforcement, recovery, and regulation of monetary penalties under the Competition Act.

35. Now turning to the facts of the present case, it is an admitted fact that the CCI never issued a notice to the Respondents in Form I, as mandated under Regulation 3 of the 2011 Regulations, before imposing the interest upon the penalty. As noted earlier, Regulation 3(2) categorically provides that the 30-day period for payment shall

begin *"from the date of service of the demand notice to the enterprise."*

36. Once it stands established that no demand notice was ever issued to the Respondents, the question of any default in payment does not arise. Regulation 5 of the 2011 Regulations, which provides for the imposition of interest *"if the amount specified in the demand notice is not paid within the period specified by the Commission",* can operate only when a valid and duly served demand notice, as required under Regulation 3, exists in respect of a recoverable penalty. Regulation 5 further clarifies that *"the enterprise concerned shall be liable to pay simple interest at one and one half per cent, for every month or part of a month comprised in the period commencing from the day immediately after the expiry of the period mentioned in demand notice and ending with the day on which the penalty is paid".*

37. We are, therefore, of the considered opinion that where a demand notice itself has not been served, the statutory precondition for invoking Regulation 5 is not fulfilled. To hold otherwise would not only violate the principle of legality but would also unjustly penalize the Respondent for no fault of its own, which would be contrary to the statutory mandate and the settled principles of law.

38. The issuance of a demand notice under Regulation 3 and the consequent imposition of interest for default under Regulation 5 form part of a sequential and mandatory statutory process. These provisions nowhere empower the CCI to impose interest retrospectively or from a date preceding the valid service of a demand notice. Since these procedural requirements are both mandatory and chronological, they

must be followed in that precise manner alone, and any deviation therefrom renders the levy of interest legally unsustainable.

39. Significantly, the CCI could not point to a single provision under the Competition Act or the 2011 Regulations that authorizes the automatic or mandatory accrual of interest merely upon the expiry of the period stipulated in the penalty order. On the contrary, Regulation 3 expressly mandates the issuance of a demand notice in Form I, and interest under Regulation 5 accrues only upon failure to make payment within the time specified in such notice. Therefore, the CCI's assumption that interest accrues by operation of law after the penalty order's period expires is wholly misplaced and unsupported by the statutory scheme.

40. It is pertinent to note that the 2011 Regulations have since been replaced by the **Competition Commission of India (Manner of Recovery of Monetary Penalty) Regulations, 2025**[9], and the corresponding provisions are almost identical to those contained in the earlier Regulations. The relevant provisions of the 2025 Regulations read as under:

> "**3. Issuance of demand notice.**
> **(1)** Where a penalty has been imposed upon an enterprise or person by the Commission, the Secretary shall issue to it, a demand notice as set out in Form I appended to these regulations with a copy to the recovery officer, along with copy of the order passed by the Commission imposing the penalty, at its last address known to the Commission.
> **(2)** A demand notice issued under sub-regulation (1) shall provide a time period of not less than 60 (sixty) days from the date of receipt of order of the Commission to the enterprise or person concerned, to deposit the penalty in the manner specified in the said notice.
> **(3)** Upon receipt of the demand notice, the enterprise or the person, as the case may be, shall pay the penalty, through challan as set out in Form II appended to these regulations, in favour of the Pay &

[9] 2025 Regulations

Accounts Officer (PAO), Ministry of Corporate Affairs, Head No. 1475.00.105.05, [Sub-Head – 00] – 'Penalties imposed by Competition Commission of India'.

(4) One copy of the challan shall be submitted by the enterprise or the person, as the case may be, to the recovery officer immediately but not later than 07 (seven) days of the payment and the recovery officer shall make an entry in the penalty recovery register to the same effect.

(5) The Commission may, at any time, rectify any clerical or arithmetical mistake made in the demand notice.

5. Interest on penalty.

If the amount specified in the demand notice is not paid within the period specified in the said notice, the enterprise or the person concerned, as the case may be, shall be liable to pay simple interest at one per cent, on the amount outstanding, for every month or part of a month comprised in the period commencing from the day immediately after the expiry of the period mentioned in demand notice and ending with the day on which the penalty is paid:

Provided that the Commission may reduce or waive the amount of interest payable by the enterprise or the person concerned if it is satisfied that default in the payment of such amount was due to circumstances beyond the control of the enterprise or the person concerned, as the case may be:

Provided further that where as a result of an order of the National Company Law Appellate Tribunal or a High Court or the Supreme Court of India, as the case may be, the amount of penalty payable has been reduced, the interest shall be reduced accordingly and the excess interest paid, if any, shall be refunded in accordance with regulation 14."

41. It is further significant to observe that the Competition Act underwent a comprehensive and far-reaching amendment by Parliament through *Act 9 of 2023*. The said amendment was intended to strengthen the institutional framework of the CCI, streamline procedural aspects, and ensure greater transparency in the enforcement of competition law. Despite these extensive legislative changes, there is nothing indicative that the Parliament chose not to modify, clarify, or expand the provisions relating to the recovery of penalties or the levy of interest thereon, either under the principal Act or through any supplementary amendment to the 2011 Regulations or new

Regulations that is of 2025. This deliberate omission is not accidental but demonstrative of a conscious legislative intent to uphold the existing procedural safeguards embedded within the Regulations.

42. The legislative silence, in the face of such a sweeping statutory overhaul, unmistakably conveys the Parliament's endorsement of the procedure laid down under Regulations 3 and 5 of the 2011 Regulations, which make the issuance of a demand notice a *condition precedent* for the accrual of any liability to pay interest. Had the legislature intended to empower the CCI to impose interest automatically from the date of the penalty order, it could have explicitly provided for such an automatic accrual mechanism in the amended Act. The absence of such a provision clearly militates against the interpretation advanced by the CCI.

43. We are also of the firm opinion that any attempt by the CCI to impose interest retrospectively, or without compliance with the prescribed statutory procedure, would not merely constitute a procedural irregularity but a substantive violation of constitutional guarantees under Articles 14, 19, 21, 265, and 300A of the Constitution of India. These provisions collectively safeguard individuals and enterprises from arbitrary or excessive executive action, ensure fairness and non-discrimination in administrative processes, and prohibit the imposition or collection of any tax, duty, or charge except by the authority of law. The levy of interest without the statutory foundation of a valid demand notice would, therefore, offend both the rule of law and the constitutional prohibition against deprivation of property without valid authority of law.

44. We are in complete agreement with the view taken by the learned Single Judge, which, by now, is no longer *res integra*, that the well-established maxim *expressio unius est exclusio alterius* squarely applies to the present case. When the law prescribes that a particular act must be performed in a specific manner, it must be done in that manner alone and not otherwise. The statutory framework under the 2011 Regulations explicitly mandates the issuance and service of a demand notice prior to the imposition of interest; hence, this procedure cannot be circumvented or substituted by administrative assumption or executive expediency.

45. Any deviation from this prescribed course would not only nullify the legislative intent but also render the entire recovery mechanism arbitrary and ultra vires. Therefore, when the law provides a specific and mandatory procedure for the imposition of interest, the CCI cannot travel beyond it under the guise of interpretation or administrative necessity.

46. Imposing interest on the penalty is a penal provision and it is settled law that a penal provision must be construed strictly as provided in the statute. The argument advanced by the CCI that the principle of restitution fully applies in the present case, and therefore, upon vacation of the stay orders, the CCI ought to be restored to the position it would have occupied had the stay not operated, thereby entitling it to recover interest on the penalty amount in accordance with the 2011 Regulations, cannot be accepted without the support of an express statutory mandate.

47. The principle of restitution, though equitable in nature, cannot be invoked to override explicit statutory provisions or to introduce a

liability not contemplated under the governing law. The levy of interest partakes the character of a substantive imposition and, in the absence of a clear legislative provision authorizing such recovery, the same cannot be sustained merely on equitable considerations.

48. Neither the statute, nor the 2011 Regulations, expressly authorise or enable the CCI to impose interest on the penalty from a retrospective date, and such a course would not be in consonance with the express scheme of the 2011 Regulations. The statutory framework contemplates a specific sequence, issuance of a demand notice under Regulation 3, service thereof upon the enterprise concerned, and the accrual of interest only upon default in payment beyond the prescribed period therein. Any deviation from this sequence would amount to rewriting the Regulation itself and would defeat the very procedural safeguards intended by the legislature.

49. In this context, reference to the decision of the Hon'ble Supreme Court in ***Excel Crop Care Ltd. v. CCI***[10] is apposite, as the Apex Court made certain significant observations while considering the construction of penal provisions under the Competition Act. The relevant excerpt of the said judgment is reproduced below:

> "**65.** In the aforesaid backdrop, the moot question is as to whether penalty under Section 27(*b*) of the Act has to be on "total/entire turnover" of the company covering all the products or it is relatable to "relevant turnover" viz. relating to the product in question in respect whereof provisions of the Act are contravened. Section 27 of the Act stipulates nature of the orders which CCI can pass after enquiry into agreements or abuse of dominant position. This section empowers CCI to pass various kinds of orders the nature whereof is spelt out in clauses (*a*), (*b*), (*d*) and (*g*) [clauses (*c*) and (*f*) stand omitted]. As per clause (*b*), CCI is empowered to inflict monetary penalties, the upper limit whereof is 10% "of the average

[10] (2017) 8 SCC 47

of turnover for the last three preceding financial years". Operative portion of Section 27 of the Act is reproduced below:

> "**27. *Orders by Commission after inquiry into agreements or abuse of dominant position*.**—Where after inquiry the Commission finds that any agreement referred to in Section 3 or action of an enterprise in a dominant position, is in contravention of Section 3 or Section 4, as the case may be, it may pass all or any of the following orders, namely:
>
> ***
>
> (*b*) impose such penalty, as it may deem fit which shall be not more than ten per cent *of the average of the turnover for the last three preceding financial years*, upon each of such person or enterprises which are parties to such agreements or abuse:
>
> Provided that in case any agreement referred to in Section 3 has been entered into by a cartel, the Commission may impose upon each producer, seller, distributor, trader or service provider included in that cartel, a penalty of up to three times of its profit for each year of the continuance of such agreement or ten per cent of its turnover for each year of the continuance of such agreement, whichever is higher."
>
> (emphasis supplied)

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80. We have given our serious thought to this question of penalty with reference to "turnover" of the person or enterprise. At the outset, it may be mentioned that Section 2(*y*) which defines "turnover" does not provide any clarity to the aforesaid issue. It only mentions that turnover includes value of goods or services. There is, thus, absence of certainty as to what precise meaning should be ascribed to the expression "turnover". Somewhat similar position appears in EU statute and in order to provide some clear directions, EU guidelines on the subject have been issued. These guidelines do refer to the concept of "relevant turnover". Grappling with the very same issue, the judgment of the Competition Appeal Court of South Africa in ***Southern Pipeline Contractors* v. *Competition Commission*, 2011 SCC OnLine ZACAC 5**, provides the answer in the following manner: (SCC OnLine ZACAC para 51)

> "***51.*** The concept of "turnover" is not defined in the Act and is only referred to in Section 59(2), being annual turnover. There is thus some uncertainty as to the precise meaning of "turnover". However, Section 59(3) refers on more than one occasion to "the contravention"; in particular, in dealing with the nature, duration, gravity and extent "of the contravention", the loss or damage suffered

> as a result, of "the contravention" the market circumstances in which "the contravention" took place and the level of profit derived from "the contravention". *Thus there is a legislative link between the damage caused and the profits which accrue from the cartel activity*. The inquiry, in terms of Section 59(20), appears to envisage that consideration be given to the benefits which accrue from the contravention; that is to amount to affected turnover. *By using the baseline of affected turnover, the implications of the doctrine of proportionality that is between the nature of the offence and benefit derived therefrom, the interests of the consumer community and the legitimate interests of the offender can be taken more carefully into account and appropriately calibrated*."
>
> (emphasis supplied)

81. The judgment in ***Southern Pipeline Contractors* v. *Competition Commission*, 2011 SCC OnLine ZACAC 5** reveals that the Court therein was concerned with the provisions of Section 59 of the Competition Act, 1998 of South Africa which also provides for maximum penalty of 10% of the annual turnover. The Court held that the appropriate amount of penalty had to be determined keeping into consideration the damage caused and the profits which accrue from the cartel activity. The appeal court used the words "affected turnover". It determined the amount of penalty on the basis of these guidelines issued by the European Union (EU) and the Office of Fair Trade (OFT). In that case the company concerned Southern Pipeline Contractors was a multi-product company and the "affected turnover" was comparatively small.

82. It is interesting to note that the parties on either side are resting their cases on the same principle of statutory interpretations. Pertinently, Section 27(*b*) of the Act while prescribing the penalty on the "turnover", neither uses the prefix "total" nor "relevant". It is in this context, taking aid of the applicable and well-recognised principle of statutory interpretations we have to determine the issue.

83. In the absence of specific provision as to whether such turnover has to be product specific or entire turnover of the offending company, we find that adopting the criteria of "relevant turnover" for the purpose of imposition of penalty will be more in tune with ethos of the Act and the legal principles which surround matters pertaining to imposition of penalties. For arriving at this conclusion, we are influenced by the following reasons.

84. Under Section 27(*b*) of the Act, penalty can be imposed under two contingencies, namely, where an agreement referred to in Section 3 is anti-competitive or where an enterprise which enjoys a

dominant position misuses the said dominant position thereby contravening the provisions of Section 4. In case where the violation or contravention is of Section 3 of the Act it has to be pursuant to an "agreement". Such an agreement may relate to a particular product between persons or enterprises even when such persons or enterprises are having production in more than one product. There may be a situation, which is precisely in the instant case, that some of such enterprises may be multi-product companies and some may be single product in respect of which the agreement is arrived at. If the concept of total turnover is introduced it may bring out very inequitable results. This precisely happened in this case when CCI imposed the penalty of 9% on the total turnover which has already been demonstrated above.

85. Interpretation which brings out such inequitable or absurd results has to be eschewed. This fundamental principle of interpretation has been repeatedly made use of to avoid inequitable outcomes. The Canadian Supreme Court in ***Canadian Pacific Ltd.* v. *Ontario*, 1995 SCC OnLine Can SC 62**, wherein the expression "use" occurring in the Environment Protection Act was given restricted meaning. The principle that absurdity should be avoided was explained in the following manner: (SCC OnLine Can SC paras 16-21)

> The expression "for any use that can be made of [the natural environment]" has an identifiable literal or "plain" meaning when viewed in the context of the EPA as a whole, particularly the other clauses of Section 13(1). When the terms of the other clauses are taken into account, it can be concluded that the literal meaning of the expression "for any use that can be made of [the natural environment]" is "any use that can conceivably be made of the natural environment by any person or other living creature". In ordinary circumstances, once the "plain meaning" of the words in a statute have been identified there is no need for further interpretation. Different considerations can apply, however, in cases where a statute would be unconstitutional if interpreted literally. This is one of those exceptional cases, in that a literal interpretation of Section 13(1)(*a*) would fail to meet the test for overbreadth established in ***R.* v. *Heywood*, 1994 SCC OnLine Can SC 98**.
>
> The State objective underlying Section 13(1)(*a*) EPA is, as Section 2 of the Act declares, "the protection and conservation of the natural environment". This legislative purpose, while broad, is not without limits. In particular, the legislative interest in safeguarding the environment for "uses" requires only that it be preserved for those "uses" that are normal and typical, or that are likely to become

normal or typical in the future. Interpreted literally, Section 13(1)(*a*) would capture a wide range of activities that fall outside the scope of the legislative purpose underlying it, and would fail to meet Section 7 overbreadth scrutiny. There is, however, an alternative interpretation of Section 13(1)(*a*) that renders it constitutional. Section 13(1)(*a*) can be read as expressing the general intention of Section 13(1) as a whole, and Section 13(1)(*b*) through (*h*) can be treated as setting out specific examples of "impairment(s) of the quality of the natural environment for any use that can be made of it". When viewed in this way, the restrictions place on the word "use" in clauses (*b*) through (*h*) can be seen as imported into clause (*a*) through a variant of the ejusdem generis principle. Interpreted in this manner, Section 13(1)(*a*) is no longer unconstitutionally overbroad, since the types of harms captured by clauses (*b*) through (*h*) fall squarely within the legislative intent underlying the section. In light of the presumption that the legislature intended to act in accordance with the Constitution, it is appropriate to adopt this interpretation of Section 13(1)(*a*). Thus, the sub-section should be understood as covering the situations captured by Section 13(1)(*b*) through (*h*), and any analogous situations that might arise.

86. We would also like to quote the following observations from ***State of Jharkhand* v. *Govind Singh*, (2005) 10 SCC 437: 2005 SCC (Cri) 1570**: (SCC p. 445, para 20)

> "***20.*** While interpreting a provision the court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. (See *CST* v. *Popular Trading Co.* [*CST* v. *Popular Trading Co.*, (2000) 5 SCC 511]) The legislative casus omissus cannot be supplied by judicial interpretative process."

87. Likewise, the following passages from the judgment of this Court in ***CIT* v. *J.H. Gotla*, (1985) 4 SCC 343: 1985 SCC (Tax) 670** shed light of similar nature: (SCC pp. 359-60, paras 45-47)

> "***45.*** In ***K.P. Varghese* v. *ITO*, (1981) 4 SCC 173: 1981 SCC (*Tax*) 293** this Court emphasised that a statutory provision must be so construed, if possible, that absurdity and mischief may be avoided.
>
> ***46.*** Where the plain literal interpretation of a statutory provision produces a manifestly unjust result which could never have been intended by the legislature, the Court might modify the language used by the legislature so as to achieve the intention of the legislature and produce a

rational construction. The task of interpretation of a statutory provision is an attempt to discover the intention of the legislature from the language used. It is necessary to remember that language is at best an imperfect instrument for the expression of human intention. It is well to remember the warning administered [**Ed.**: The reference is to ***Cabell* v. *Markham*, 148 F 2d 737 at p. 739 (2d Cir 1945)**] by Judge Learned Hand that one should not make a fortress out of dictionary but remember that statutes always have some purpose or object to accomplish and sympathetic and imaginative discovery is the surest guide to their meaning.

47. We have noted the object of Section 16(3) of the Act which has to be read in conjunction with Section 24(2) in this case for the present purpose. If the purpose of a particular provision is easily discernible from the whole scheme of the Act which in this case is, to counteract the effect of the transfer of assets so far as computation of income of the assessee is concerned then bearing that purpose in mind, we should find out the intention from the language used by the legislature and if strict literal construction leads to an absurd result i.e. result not intended to be subserved by the object of the legislation found in the manner indicated before, and if another construction is possible apart from strict literal construction then that construction should be preferred to the strict literal construction. Though equity and taxation are often strangers, attempts should be made that these do not remain always so and if a construction results in equity rather than in injustice, then such construction should be preferred to the literal construction. Furthermore, in the instant case we are dealing with an artificial liability created for counteracting the effect only of attempts by the assessee to reduce tax liability by transfer. It has also been noted how for various purposes the business from which profit is included or loss is set off is treated in various situations as assessee's income. The scheme of the Act as worked out has been noted before."

88. In ***Southern Motors* v. *State of Karnataka*, (2017) 3 SCC 467**, the Court explained the task that is to be undertaken by a court while interpreting such statutes: (SCC pp. 490-92, paras 35-36)

"***35.*** The following excerpts **from *State of Jharkhand* v. *Tata Steel Ltd.*, (2016) 11 SCC 147**, being of formidable significance are also extracted as hereunder: (SCC pp. 161-62, paras 26-27)

'*26.* In ***Oxford University Press* v. *CIT*, (2001) 3 SCC 359**, Mohapatra, J. has opined that

interpretation should serve the intent and purpose of the statutory provision. In that context, the learned Judge has referred to the authority in ***State of T.N.* v. *Kodaikanal Motor Union (P) Ltd.*, (1986) 3 SCC 91** wherein this Court after referring to ***K.P. Varghese* v. *ITO*, (1981) 4 SCC 173** and ***Luke* v. *IRC*, 1963 AC 557** has observed: ***Oxford University Press* v. *CIT*, (2001) 3 SCC 359**, SCC p. 376, para 33)

> "*33.* … '*17.* The courts must always seek to find out the intention of the legislature. Though the courts must find out the intention of the statute from the language used, but language more often than not is an imperfect instrument of expression of human thought. As Lord Denning said [**Ed.**: The reference is to ***Seaford Court Estates Ltd.* v. *Asher*, (1949) 2 KB 481 (CA)**] it would be idle to expect every statutory provision to be drafted with divine prescience and perfect clarity. As Judge Learned Hand said [**Ed.**: The reference is to ***Cabell* v. *Markham*, 148 F 2d 737 at p. 739 (2d Cir 1945)**, we must not make a fortress out of dictionary but remember that statutes must have some purpose or object, whose imaginative discovery is judicial craftsmanship. We need not always cling to literalness and should seek to endeavour to avoid an unjust or absurd result. We should not make a mockery of legislation. To make sense out of an unhappily worded provision, where the purpose is apparent to the judicial eye "some" violence to language is permissible.' ***State of T.N.* v. *Kodaikanal Motor Union (P) Ltd.*, (1986) 3 SCC**, SCC p. 100, para 17)"

27. Sabharwal, J. (as his Lordship then was) has observed thus: ***Oxford University Press* v. *CIT*, (2001) 3 SCC 359**, SCC p. 384, para 58)

> "***58.*** … It is well-recognised rule of construction that a statutory provision must be so construed, if possible, that absurdity and mischief may be avoided.

It was held that construction suggested on behalf of the Revenue would lead to a wholly unreasonable result which could never have been intended by the legislature. It was said that the literalness in the interpretation of Section 52(2) must be eschewed and the court should try to arrive at an interpretation which avoids the absurdity and the mischief and makes the provision rational, sensible, unless of course, the hands of the court are tied and it cannot find any escape from the tyranny of literal interpretation. It is said that it is now well-settled rule of construction that where the plain literal interpretation of a statutory provision produces a manifestly absurd and unjust result which could never have been intended by the legislature, the court may modify the language used by the legislature or even "do some violence" to it, so as to achieve the obvious intention of the legislature and produce a rational construction. In such a case the court may read into the statutory provision a condition which, though not expressed, is implicit in construing the basic assumption underlying the statutory provision."'

36. As would be overwhelmingly pellucid from hereinabove, though words in a statute must, to start with, be extended their ordinary meanings, but if the literal construction thereof results in anomaly or absurdity, the courts *must* seek to find out the underlying intention of the legislature and in the said pursuit, can within permissible limits strain the language so as to avoid such unintended mischief."

89. The principle of strict interpretation of a penal statute would support and supplement the aforesaid conclusion arrived at by us. In a recent Constitution Bench judgment in ***Abhiram Singh* v. *C.D. Commachen*, (2017) 2 SCC 629**, this Court scanned through the relevant case law on the subject and applied this principle even while construing "corrupt practice" in elections which is of a quasi-criminal nature. We would like to reproduce the following discussion from the said judgment: (SCC p. 694, para 100)

"***100.*** Election petitions alleging corrupt practices have a quasi-criminal character. Where a statutory provision implicates penal consequences or consequences of a quasi-criminal character, a strict construction of the words used by the legislature must be adopted. The rule of strict interpretation in regard to penal statutes was enunciated in a judgment of a Constitution Bench of this Court in ***Tolaram Relumal* v. *State of Bombay*, (1955) 1 SCR 158** wherein it was held as follows: (AIR pp. 498-99, para 8 : SCR p. 164)

> '***8.*** … It may be here observed that the provisions of Section 18(1) are penal in nature and it is a well-settled rule of construction of penal statutes that if two possible and reasonable constructions can be put upon a penal provision, the court must lean towards that construction which exempts the subject from penalty rather than the one which imposes penalty. It is not competent to the court to stretch the meaning of an expression used by the legislature in order to carry out the intention of the legislature. As pointed out by Lord Macmillan in ***London and North Eastern Railway Co.* v. *Berriman*, 1946 AC 278 (HL)**: (AC p. 295)
>
> > "… Where penalties for infringement are imposed it is not legitimate to stretch the language of a rule, however beneficent its intention, beyond the fair and ordinary meaning of its language."'

This principle has been consistently applied by this Court while construing the ambit of the expression "corrupt practices". The rule of strict interpretation has been adopted in ***Amolakchand Chhazed* v. *Bhagwandas Arya*, (1977) 3 SCC 566**. A Bench of three Judges of this Court held thus: (SCC p. 572, para 12)

> '***12.*** … Election petitions alleging corrupt practices are proceedings of a quasi-criminal nature and the onus is on the person who challenges the election to prove the allegations beyond reasonable doubt.'"

90. In such a situation even if two interpretations are possible, one that leans in favour of infringer has to be adopted, on the principle of strict interpretation that needs to be given to such statutes.

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94. The doctrine of "purposive interpretation" may again lean in favour of "relevant turnover" as the appropriate yardstick for imposition of penalties. It is for this reason the judgment of the

> Competition Appeal Court of South Africa in ***Southern Pipeline Contractors* v. *Competition Commission*, 2011 SCC OnLine ZACAC 5**, as quoted above, becomes relevant in Indian context as well inasmuch as this Court has also repeatedly used same principle of interpretation. It needs to be repeated that there is a legislative link between the damage caused and the profits which accrue from the cartel activity. There has to be a relationship between the nature of offence and the benefit derived therefrom and once this co-relation is kept in mind, while imposing the penalty, it is the affected turnover i.e. "relevant turnover" that becomes the yardstick for imposing such a penalty. In this hue, doctrine of "purposive interpretation" as well as that of "proportionality" overlaps.
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> **95.** In fact, some justifications have already appeared in this behalf while discussing the matter on the application of doctrine of proportionality. What needs to be repeated is only that the purpose and objective behind the Act is to discourage and stop anti-competitive practice. Penal provision contained in Section 27 of the Act serves this purpose as it is aimed at achieving the objective of punishing the offender and acts as deterrent to others. Such a purpose can adequately be served by taking into consideration the relevant turnover. It is in the public interest as well as in the interest of national economy that industries thrive in this country leading to maximum production. Therefore, it cannot be said that the purpose of the Act is to "finish" those industries altogether by imposing those kinds of penalties which are beyond their means. It is also the purpose of the Act not to punish the violator even in respect of which there are no anti-competitive practices and the provisions of the Act are not attracted.
>
> *********
>
> **97.** Thus, we do not find any error in the approach of the order of COMPAT interpreting Section 27(*b*)."
>
> ***(emphasis supplied)***

50. So far as the reliance placed by the CCI upon the judgment in ***Prem Chopra*** (*supra*) is concerned, in our considered opinion, the said judgment has no application whatsoever to the facts and circumstances of the present case. The distinguishing features are several and fundamental. The most glaring difference lies in the fact that, in ***Prem Chopra*** (*supra*), the levy of interest was explicitly authorized by operation of law, as Section 38-A of the **United**

Provinces Excise Act, 1910[11] categorically mandated the payment of interest on any excise revenue that remained unpaid beyond a period of three months from the date on which it became due. The statutory provision itself created a direct and automatic liability, independent of any procedural act or notice by the authority.

51. In sharp contrast, under the Competition Act and the 2011 Regulations, there exists no *pari materia* provision that creates an equivalent or automatic liability to pay interest upon the expiry of a particular time period, without following the procedure.

52. It is therefore evident that the statutory foundation present in ***Prem Chopra*** (*supra*) for the imposition of interest is completely absent in the present framework governing the CCI. The attempt of the CCI to draw parity with a provision that expressly empowers interest recovery is thus misconceived. The relevant statutory provision in ***Prem Chopra*** *(supra)* that is Section 38A of the United Provinces Excise Act reads as under:

> "**38-A. Interest on arrears of excise revenue -** (1) Where any excise revenue has not been paid within three months from the date on which it becomes payable, interest at such rate not exceeding twenty four per cent per annum, as may be prescribed, shall be payable from the date such excise becomes payable till the date of actual payment:
> Provided that until a higher rate is prescribed, the rate of interest will be eighteen per cent per annum."

53. Similarly, reliance on the judgment of ***J.K. Synthetics Ltd.*** (*supra*) does not advance the case of the CCI. The context and statutory framework in ***J.K. Synthetics Ltd.*** (*supra*) are materially

[11] United Provinces Excise Act

distinct. First and foremost, the trigger for imposition of interest, in that case, was based on the statutory provision which provided for such payment of interest from the date specified by the Government for the payment of Royalty, rent etc. and not contingent upon an independent and separate "Demand Notice" as is the case herein.

54. Further, in ***J.K. Synthetics Ltd.*** (*supra*), the liability to pay interest had already accrued prior to the grant of any interim stay by the Court. The stay merely suspended the enforcement of recovery, but it did not annul the statutory liability to pay interest. When the petition was eventually dismissed, the pre-existing interest liability revived automatically under the law. In contrast, in the present case, the CCI's claim for interest is unsustainable because no such liability ever arose in the first place. The precondition for the accrual of interest under Regulation 5 of the 2011 Regulations is the prior issuance and service of a demand notice in Form I under Regulation 3. Since no such demand notice was ever issued to the Respondent, the statutory trigger for the imposition of interest was entirely absent. Therefore, the attempt of the CCI to equate the present case with ***J.K. Synthetics Ltd.*** (*supra*) is fundamentally flawed both in law and on the facts.

55. Pithily put, the imposition of interest on the penalty that is recoverable is contingent upon and triggered by the non-compliance with the "Demand Notice" as expressly specified in the 2011 Regulations. The principle of restitution cannot be invoked in a manner such as to give retrospective operation to the triggering event, namely the "Demand Notice" itself.

***DECISION*:**

56. For the reasons stated hereinabove, we find no infirmity, legal or factual, in the Impugned Judgment dated 26.04.2024 passed by the learned Single Judge in W.P.(C) No. 10332/2023. The learned Single Judge has rightly held that in the absence of a valid demand notice under Regulation 3, the levy of interest by the CCI is without jurisdiction and contrary to the mandatory procedural scheme of the 2011 Regulations. Accordingly, the Impugned Judgment merits affirmation, and the present Appeal stands dismissed.

57. The present appeal, along with pending application(s), if any, is disposed of in the aforesaid terms.

58. No Order as to costs.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

NOVEMBER 01, 2025/sm/kr