



Tax alert: **Bombay High Court rules corporate guarantees to group companies without consideration, not taxable under GST**

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The Bombay High Court has ruled that corporate guarantees issued without consideration on behalf of group companies do not constitute a taxable supply under GST.

In a nutshell



The Bombay High Court has held that, in the absence of consideration, corporate guarantee provided on behalf of group companies cannot be held to be taxable under GST law.

Reliance has been placed on the Supreme Court judgement wherein it was held that service tax was not payable on corporate guarantee issued on behalf of subsidiary companies, due to absence of consideration.



The Court noted that GST circulars have clarified that corporate guarantee services provided to a related party even without a consideration will be treated as supply of service and that such services were taxable even before insertion of Rule 28(2) in CGST Rules, 2017. However, GST would not be applicable based on the Supreme Court judgement and the fact that there is no consideration in the case.



Corporate guarantees are issued to safeguard the financial health of associate enterprises. There is no security like a bank guarantee and is dependent on the creditworthiness of the parent-company/guarantor. Thus, corporate guarantee to subsidiary is not in nature of 'supply'.



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Background

- The Petitioner¹, D Co had provided corporate guarantees in favour of banks to secure loans borrowed by its group entities.
- Deed of corporate guarantee mentioned that the Petitioner has not received and shall not receive any security, fee, commission, or any other consideration from the borrower.
- State tax authorities had undertaken detailed investigation covering the period from FY 2017–18 to FY 2022–23. The corporate guarantees were shown in book of accounts. However, no GST liability was raised in respect of the corporate guarantees.
- Subsequently, the Directorate General of GST Intelligence (DGGI) initiated a separate investigation and issued summons in July 2023 alleging non-payment of GST on such guarantees.
- In the meantime, the Ministry of Finance issued Notification No. 52/2023-Central Tax, dated 26 October 2023 as per which Rule 28(2) was inserted in CGST Rules, 2017 which provided for a valuation mechanism in case of corporate guarantee services provided to a related party recipient located in India. Also, Circular No. 204/2023 dated 27 October 2023 was issued clarifying that activity of providing corporate guarantee service to a related party would be treated as a taxable supply even when made without consideration.
- Relying on the circular, the authorities issued a Show Cause Notice (SCN), proposing to levy GST @ 1% per annum on the amount of corporate guarantees issued by the Petitioner as per Rule 28(c) of CGST Rules, 2017.
- Aggrieved by the initiation of such proceedings, the Petitioner filed a writ petition before the Bombay High Court challenging the SCN. Key contentions are as follows:
 - Corporate guarantee qualifies as "actionable claim," which is neither a supply of goods nor supply of service, and hence not taxable.
 - Issuance of such guarantee to an associate company is an in-house guarantee and does not qualify as a supply of services.
 - There is no consideration paid or received and hence there would be no GST liability.
 - Rule 28(2) is ultra vires to the provisions of GST Law.

High Court judgement

- By providing guarantee against any loan /credit facility, the guarantor basically assists the principal debtor in availing such facility, which has an element of service.
- Corporate guarantee that was entered into by the Petitioner is only for the limited purpose of securing the loans to its subsidiaries. The Petitioner is not doing the business of corporate guarantee on a regular basis.
- Distinguishing bank guarantee vis-à-vis corporate guarantee, it was noted as follows:
 - For banks, providing bank guarantee is part of their regular course of business and they charge on the higher side. Further, they are instruments of security of the customer and failure to honour the guarantee is treated as deficiency of services of the bank under banking laws.
 - Corporate guarantee is an in-house guarantee to safeguard financial health of their associate companies and is not issued to customers generally.
 - Corporate guarantee is issued without security, whereas bank guarantee mostly requires security against offer of such guarantee. Corporate guarantee is meant to provide assurances to the beneficiaries with same thin line distinction. Corporate guarantee depends on the credit worthiness of

¹ M/s. DP Jain & Co. Vs. UOI & Ors, 2026-VIL-474-BOM

the parent company/ guarantor.

- It held that executing a corporate guarantee to its subsidiary is not in the nature of supply and hence not taxable under GST law.
- The High Court took note of the GST circulars² which clarify that a corporate guarantee issued to a group company (i.e., a related person) or subsidiary is liable to GST even in the absence of consideration, both prior to and subsequent to the insertion of Rule 28(2), which prescribes a deemed valuation mechanism of 1% of the guarantee amount.

However, it observed that the issue is effectively covered by the Supreme Court decision³ of service tax regime wherein it was held that corporate guarantee provided to group companies without consideration would not fall within banking and other financial services and is hence a non-taxable service. Noting the specific clauses in the agreements which provide that Petitioner has neither received nor shall receive any commission from the borrower company for providing corporate guarantee, it was held that this case would be covered by the Supreme Court decision and GST would not be applicable, thereby quashing and setting aside the SCN.

- The court held that challenge made for declaring Rule 28(2) as ultra vires is not sustainable, stating that fiscal statutes are subject to minimal judicial interference. It emphasized that the legislature has wide discretion in matters of taxation and that courts should not interfere unless there is a clear transgression of constitutional principles.⁴

Comments

This is a favourable ruling of the Bombay High Court wherein it has been held that GST would not be applicable in respect of corporate guarantees provided on behalf of group companies without consideration. Noting the circulars in the GST regime that has clarified that GST would be applicable on corporate guarantees provided on behalf of related parties even in cases where there is no consideration, the Court has relied on the Supreme Court judgement⁵ to hold that in absence of consideration the corporate guarantee provided on behalf of group companies would not be taxable.

However, for the facts of the case, the primary basis is reliance placed upon the Supreme Court judgement which was pertaining to a transaction under the service tax regime where in it was held that in the absence of consideration service tax was not applicable on the corporate guarantee provided to group companies. The judgment does not deal with the aspect that service tax law didn't contain a provision taxing supply of goods and services between related persons even without consideration, unlike entry 2 of Schedule I of GST Law. Further developments on the matter should be closely tracked.

² Circular No. 204/2023 dated 27.10.2023 and Circular No. 225/2024-GST dated 11.07.2024

³ Commissioner of CGST & Central Excise Vs. Edelweiss Financial Services Ltd., MANU/SC/0648/2023

⁴ Hoechst Pharmaceuticals Ltd. Vs. State of Bihar, MANU/SC/0392/1983, State of West Bengal Vs. Kesoram Industries Limited MANU/SC/0038/2004

⁵ Commissioner of CGST & Central Excise Vs. Edelweiss Financial Services Ltd., MANU/SC/0648/2023

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