D.P. Jain & Co. Infrastructure Pvt. Ltd. vs. Union of India & Ors.

GST liability on Corporate Guarantee provided by a parent/holding company to banks on behalf of its subsidiary companies without any consideration — validity of CBIC Circular No. 204/16/2023 and Rule 28(2) of CGST Rules, 2017.

Date of Order: May 6, 2026
Case Law No: GIB-BHC-2026-40
Source: GST INDIA Biz (www.gstindia.biz)

CASE DESCRIPTION / SUMMARY

BACKGROUND

The Petitioner, D.P. Jain & Co. Infrastructure Pvt. Ltd., is engaged in construction of National and State Highways. The Petitioner executed three Corporate Guarantees in favour of State Bank of India and Bank of Maharashtra against term loans sanctioned to its subsidiary/group companies for highway projects in Tamil Nadu and Gujarat under NHAI HAM/TOT models. All three guarantee deeds specifically contained a clause that the Petitioner (guarantor) has not received and shall not receive any security, fee, commission, or any other consideration from the borrower for providing the guarantee. The guarantees were executed on 03.11.2020, 28.12.2021 and 08.08.2022 — all prior to 26.10.2023.

The DGGI, Coimbatore Zonal Unit (Respondent No. 2) issued a Summons dated 20.07.2023 alleging non-payment of GST on corporate guarantees. Subsequently, the Ministry of Finance issued Circular No. 204/16/2023 dated 27.10.2023 declaring corporate guarantee as a taxable supply of service even without consideration. Rule 28 of CGST Rules was amended by inserting Sub-Rule (2) vide Notification No. 52/2023-CT dated 26.10.2023 (further amended retrospectively by Notification No. 12/2024-CT dated 10.07.2024), prescribing deemed valuation at 1% per annum of the guarantee amount. A Show Cause Notice No. 02/2025-GST dated 28.01.2025 was issued demanding GST on the corporate guarantees. State tax authorities (Respondent No. 5) had already conducted a detailed investigation for FY 2017-18 to 2022-23 and had not levied any GST on the corporate guarantees after examining all books and records.

COURT OBSERVATIONS

"*It is nobody's case that Petitioner is doing the business of providing corporate guarantee on a regular basis. The corporate guarantee that was entered into by Petitioner is only for the limited purpose of securing the loans to its subsidiaries. Corporate guarantees are issued in order to safeguard the financial health of their associate enterprises and to provide it support... Corporate guarantee is actually an in-house guarantee and is not issued to customers generally.*" (Para 52)

"*Admittedly, all three corporate guarantees in the present case, wherein specific clause is 'the corporate guarantor hereby declares and agrees that the corporate guarantor has not received and shall not receive any security, fee, commission or any other consideration from the borrower for giving this deed so long as any monies remain due and payable by the borrower to the lender under the common loan agreement and the other finance documents'. This clause itself shows that, the supply was not for consideration.*" (Para 63)

"*Now the issue is covered under the judgment of the Hon'ble Apex Court in the case of Commissioner of CGST & Central Excise Vs. Edelweiss Financial Services Ltd., (supra), wherein in specific words the Hon'ble Apex Court has observed that, issuance of corporate guarantee to group companies without any consideration would not fall within the ambit of taxable service. Therefore, there is a substance in the contention of the learned Counsel for the Petitioner that execution of corporate guarantee is in the nature of contingent contract which becomes enforceable only at the instance of the bank/financial institution in the event of a default. There was no flow of consideration for the rendering of services. Therefore, taxability does not arise.*" (Para 68)

"*Thus, executing a corporate guarantee to its subsidiary is not in the nature of supply and supply of service taxable under Section 9 of the CGST Act, 2017.*" (Para 70)

"*In the light of the well settled legal position the impugned challenge made before us declaring Sub-Rule 2 of Rule 28 be declared as ultravires is not sustainable. There could be a valid reason administratively, economically etc., which goes in the decision making process before such Rule is amended.*" (Para 79)

FINAL VERDICT

The Writ Petition was partly allowed. The Show Cause Notice No. 02/2025-GST dated 28.01.2025 and the Summons dated 20.07.2023 issued by DGGI were quashed and set aside. However, the prayers to declare the GST Circulars and Sub-Rule 28(2) as ultra vires were rejected.

ADDITIONAL FOOTNOTES

CASES REFERRED BY THE COURT

Case	Citation
Commissioner of CGST & Central Excise vs. Edelweiss Financial Services Ltd.	MANU/SC/0648/2023
Scholoss HMA Pvt. Ltd. vs. Union of India	(2025) 26 Centax 382 (Bom.)
JSW Steel Ltd. vs. Directorate General of GST Intelligence	(2024) 24 Centax 12 (Del.)
Torrent Investment Pvt. Ltd. vs. Union of India & Ors.	R/SCA No. 12179/2024, decided 20.08.2024
Vedanta Ltd. vs. Union of India	(2025) 26 Centax 244 (Bom.)
R.K. Garg vs. Union of India	MANU/SC/0074/1981
Hoechst Pharmaceuticals Ltd. vs. State of Bihar	MANU/SC/0392/1983
State of West Bengal vs. Kesoram Industries Limited	MANU/SC/0038/2004

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