TORRENT POWER LTD. v. UNION OF INDIA & ORS.

Validity and GST treatment of corporate guarantees under Section 15(4), Rule 28(2) and Schedule I.

Date of Order: August 14, 2026
Case Law No: GIB-AHC-2026-97
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CASE DESCRIPTION / SUMMARY

BACKGROUND

The petitioners, who had furnished corporate guarantees for subsidiaries, challenged the levy of GST on such guarantees and questioned the validity of Rule 28(2), Section 15(4) and the related CBIC Circulars. They contended that a corporate guarantee furnished without consideration did not constitute a taxable supply and challenged the deemed valuation mechanism of 1%.

The Court examined the statutory framework governing supply, related-party transactions, business, valuation and corporate guarantees, including the effect of Schedule I and the amendments to Rule 28(2). The Court also examined separate proceedings initiated under Section 74 in relation to corporate guarantees.

COURT OBSERVATION

The Court held that the GST regime differs materially from the erstwhile service-tax regime because Section 7(1)(c) read with Schedule I contains a deeming mechanism for specified supplies between related persons even without consideration. The Court therefore did not accept the proposition that the absence of consideration by itself excludes corporate guarantees from GST.

The Court examined the true nature of a corporate guarantee and held that its supply ultimately benefits the subsidiary, which can therefore constitute the recipient for GST purposes. The Court also examined the statutory meaning of guarantee and distinguished it from pledge and other forms of security.

On valuation, the Court examined the GST Council's deliberation and the 1% benchmark incorporated in Rule 28(2). It ultimately held that Rule 28(2) was intra vires, but the expression "whichever is higher" had to be read down.

Regarding Section 74, the Court held that invocation requires a strict showing of fraud, wilful misstatement or suppression. It examined whether the statutory controversy surrounding the taxability of corporate guarantees could itself establish the necessary mala fide intent.

FINAL VERDICT

The Court held Rule 28(2) of the CGST Rules intra vires, subject to reading down the expression "whichever is higher." It further held that levy of GST on corporate guarantees furnished prior to 26.10.2023 under Rule 28(2) violated Articles 14 and 19(1)(g), although levy could apply from that date where the guarantees continued. Section 15(4) was held intra vires.

The actions of the Revenue under Section 74 were quashed and set aside, with provision for refund/adjustment of excess GST deposited. The impugned Circulars were also set aside to the extent they were contrary to the Court's observations and directions.

CASE REFERRED BY COURT

The Court considered a substantial number of precedents. The principal cases actually discussed in its analysis include:

- Union of India & Anr. v. Mohit Minerals Pvt. Ltd. — Supreme Court
- Directorate General of GST Intelligence (HQS) v. Gameskraft Technologies (P.) Ltd. — Supreme Court — 2026
- Commissioner of CGST & Central Excise v. Edelweiss Financial Services Ltd. — Supreme Court
- Maitreya Doshi v. Anand Rathi Global Finance Ltd. — Supreme Court — 2023,
- Infrastructure Leasing and Financial Services Ltd. v. HDFC Bank Ltd. & Anr. — Supreme Court — 2023,
- Govind Saran Ganga Saran v. Commissioner of Sales Tax — Supreme Court — 1985
- Ashok Leyland Ltd. v. State of T.N. — Supreme Court — 2004
- D.P. Jain & Co. Infrastructure Pvt. Ltd. v. Union of India & Ors. — Bombay High Court — 06.05.2026.
- Faridabad Iron & Steel Traders Association v. Union of India — Delhi High Court.
- Coca Cola India Pvt. Ltd. v. Commissioner of Central Excise, Pune-III — Bombay High Court 2009.
- Phoenix ARC Pvt. Ltd. — Supreme Court.
- Uniworth Textiles Ltd. v. Commissioner of Central Excise, Raipur — Supreme Court — 2013.