Sterlite Power Transmission Limited & Others v. Union of India & Others

GST on corporate guarantee given by holding company for a related person's bank borrowings – validity of Rule 28(2) deemed value of 1% per annum.

Date of Order: November 17, 2026
Case Law No: GIB-DHC-2026-140
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CASE DESCRIPTION / SUMMARY

Background

A batch of writ petitions (including Sterlite Power Transmission, ReNew, Jindal Stainless and Azure Power) challenged show cause notices and demands raised on corporate guarantees issued without consideration to banks for group companies, along with Rule 28(2) of the CGST Rules inserted by Notification No. 52/2023-CT dated 26.10.2023 (deemed value of 1%), its amendment by Notification No. 12/2024 dated 10.07.2024 ("located in India" and "per annum"), and Circular Nos. 204/16/2023-GST and 225/19/2024-GST. The Court framed five issues: (a) whether such a guarantee is a supply of services under Section 7(1)(c) read with Entry 2 of Schedule I, and who is the recipient; (b) whether it is excluded as an actionable claim or security; (c) whether Rule 28(2) is intra vires and constitutional; (d) the time of supply and the position for guarantees before 01.07.2017, up to 25.10.2023 and the retrospective effect of the 2024 amendment; and (e) validity of the Circulars.

Final Verdict

The Court held that a corporate guarantee for a related person is a supply of services even without consideration, the service being assumption of the risk of default, with the related person as recipient; Edelweiss was distinguished as it arose under the service tax definition requiring consideration (Paras 71–72, 121). It is neither an actionable claim nor a security (Para 122). Rule 28(2) is intra vires, but making 1% p.a. a fixed minimum is arbitrary under Article 14, so it is read down as a rebuttable presumption displaced by a lower open market value proved by the supplier on cogent material; the proviso is valid (Paras 87–91, 123–124). A guarantee is a single supply on execution and on each renewal, extension or enhancement, taxed under Section 13(2)(a)/(b) and not as a continuous supply; guarantees before 01.07.2017 are not taxable unless renewed, those from 01.07.2017 to 25.10.2023 are taxable but valued under the then Rules without Rule 28(2), and the 2024 amendment is validly retrospective (Paras 125–126). The Circulars are valid but must be read

in conformity with the judgment (Para 127). **The notices and demands are set aside to the extent contrary to these findings and the proper officers must determine liability afresh after hearing; questions such as Section 74 limitation are left open, and the petitions are partly allowed (Paras 128–131).**

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