IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 2087 OF 2025

M/s. D P Jain & Co. Infrastructure Private Limited., Dharampeth U-6, Himalaya Accord Apartments Opp. Law College, Amravati Road, Nagpur-440010 (M.S.), Thr. its General Manager (Accounts) Mr. Sanjay Bole. **PETITIONER**

Versus

1. Union of India, Thr. the Secretary, Ministry of Finance Department of Revenue North Block New Delhi - 110001.

2. Senior Intelligence Officer/Assistant Commissioner Directorate General of GST Intelligence, Coimbatore Zonal Unit 155-1, Laksmanan Street Ukkadam, Coimbatore-641001.

3. Joint Director/Additional Director Directorate General of GST Intelligence, Coimbatore Zonal Unit 155-1, Laksmanan Street, Behind Ukkadam Bus Stand, Ukkadam, Coimbatore- 641001.

4. Additional/Joint Commissioner of CGST & Central Excise Nagpur-I Commissionerate GST Bhavan Telangkhedi Road, Civil Lines Nagpur-440001.

5. Assistant Commissioner of State Tax (Investigation) MUM-INV-D-013, Investigation-A Cabin No.-7, 2nd Floor, C-Wing Goods and Services Tax (GST) Bhavan, Mazagon, Mumbai-400010.

6. State of Maharashtra, Thr. its Additional Chief Secretary (Finance) Secretaries Cabin, Main building, Mantralaya, Madam Kama Road, Hutatma Rajguru Chowk, Mumbai-400032. **RESPONDENTS**

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Mr. Bharat Raichandani, Advocate a/w Mr. R.K. Joshi, Advocate for the Petitioner.
Mr. Kunal Nalamwar, Advocate for the Respondent Nos. 2 to 4.
Mr. A.J. Gohokar, AGP for the Respondent No. 5 & 6/State.

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CORAM : URMILA JOSHI PHALKE AND NIVEDITA P. MEHTA, JJ.

RESERVED ON : 24th APRIL, 2026.

PRONOUNCED ON : 06th MAY, 2026.

ORAL JUDGMENT :- (PER : URMILA JOSHI PHALKE, J.)

1. Heard.

2. **Rule.** Rule made returnable forthwith. Heard finally by the consent of learned Counsel appearing for the respective parties.

3. The Petitioner through this Petition challenging the proceedings initiated by the impugned Circular No.204/16/2023 dated 27.10.2023 and Circular No.225/19/2024-GST dated 11.07.2024 issued by the Respondent No.1/Ministry of Finance Department of Revenue by which it is declared that Corporate Guarantee will be treated as taxable supply of service and proceedings initiated by the Respondent No.2 by issuing the impugned Summons dated 20.07.2023.

4. The Petitioner Company M/s D.P. Jain & Co. infrastructure Pvt. Ltd., is engaged in the business of Construction of National and State Highways in respect of projects awarded by the National Highways Authorities and State Corporations.

5. As per the contention of the Petitioner the State Bank of India by its letter dated 10.09.2020, sanctioned a term

loan of Rs. 310.63 crores in favour of DPJ Pollachi HAM Project Private Limited for construction of two to four lane of road from Madathukulam to Pollachi in the State of Tamil Nadu under NHAI HAM Model. As per Clause/Condition No. 33 of the said sanctioned letter, there was a pre-condition to furnish corporate guarantee of the Petitioner to meet any cost overturn or shortfall during the entire tenure of the loan. A Security Trustee Agreement dated 03.11.2020 was entered into between DPJ Pollachi HAM Project Private Limited and State Bank of India and SBICAP Trustee Company Ltd., was appointed as security Trustee on behalf of and for the benefit of the Lender Bank. Accordingly, a deed of Corporate Guarantee was executed between the Petitioner and State Bank of India and SBICAP Trustee Company Ltd., on 03.11.2020, as the loan was sanctioned on the condition that it will be backed by an irrevocable and unconditional corporate guarantee in favour of Security Trustee acting in benefit of Lender Bank. Clause 13 of said deed of Corporate Guarantee by which the Petitioner has declared that corporate guarantor i.e. the Petitioner has not received and shall not receive any security, fee, commission, or any other consideration from the borrower.

6. Similarly, the Bank of Maharashtra by letter dated 29.07.2022 sanctioned a credit facility by way of term loan of Rs. 507.36 crores, in favour of D P Jain Bangalore Chennai Expressways Private Limited for construction of four lane of road from Arrakonam to Kanchipuram in the State of Tamil Nadu under NHAI HAM Model. As per Clause/Condition No. 43 of said sanctioned letter, a Catalyst Trusteeship Ltd., was appointed as security Trustee on behalf of and for the benefit of the Lender Bank and to hold the security to be created pursuant to the transaction document in accordance with the terms of Sanction Letter, including the Corporate Guarantee by the Petitioner. As per Clause 9 of said deed of Corporate Guarantee, the Petitioner declared that it has not received and shall not receive any security, fee, commission, or any other consideration from the borrower for giving this Guarantee. The said Corporate Guarantee was executed on 08.08.2022.

7. The Bank of Maharashtra by letter dated 24.09.2021 sanctioned a credit facility by way of term loan of Rs. 1196 crores, in favour of D P Jain TOT Toll Roads Private Limited for Tolling, Operation, Maintenance and Transfer of Palanpur-

Radhanpur-Samkhiyali section of NH-27 in the State of Gujarat under TOT Model. As per Clause (g) of said sanctioned letter, pre-condition was to execute a corporate guarantee of Petitioner. A Security Trustee Agreement dated 28.12.2021 was also executed and Catalyst Trusteeship Ltd. was appointed as security Trustee on behalf of and for the benefit of the Lender Bank. The Petitioner has executed a Corporate Guarantee dated 28.12.2021 and in view of Clause 9 declared that that corporate guarantor i.e. the Petitioner has not received and shall not receive any security, fee, commission, or any other consideration from the borrower for giving the Guarantee.

8. As per the contention of the Petitioner, the Assistant Commissioner of State Tax/Respondent No. 5 carried out the detailed investigation against the Petitioner Company for the year 2017-18 to 2022-23. As per the requirement the Petitioner has supplied all the documents to the Respondent No. 5 including financial statement, concession agreements and GST annual return. The three Corporate Guarantees were shown in book of accounts mentioning the expenses for corporate guarantee deed. The Respondent No. 5 though verified books of

accounts, balance sheet, and all documents, no action was raised against the Petitioner as to the said Corporate Guarantees.

9. Subsequently, the Respondent No.2 has initiated the investigation against the Petitioner by issuing a summons dated 20.07.2023 alleging non-payment of GST without stating the nature and purpose of investigation and the period of investigation and under which provisions of law such investigation was initiated. The said summons was vague. The Petitioner by its letter dated 25.09.2023, informed Respondent No. 2 that Assistant Commissioner of State Tax/Respondent No. 5 had already carried out the investigation against the Petitioner Company. However, the Deputy Director, DGGI, Coimbatore Zonal Unit, an officer of Respondent No. 1, wrote a letter dated 05.10.2023 to the Assistant Commissioner of the State Tax stating that the Petitioner had submitted a letter dated 25.09.2023 with a copy of the indent dated 03.07.2023 issued by the Assistant Commissioner State Tax and stated that the subject matter of investigation done by the Respondent No. 2 is not covered by the State Tax investigation.

10. Subsequently, the Respondent No. 1 issued a Notification No. 52/2023-Central Tax, dated 26.10.2023 by which Rule 28 of the Central Goods and Services Tax Rule, 2017 was amended and Sub-Rule (2) was inserted. The said impugned Sub-Rule (2) in Rule 28 amended by Notification No. 12/2024-Central Tax, dated 10.07.2024.

11. The further Circular-No-204/16/2023, dated 27.10.2023 was issued on the subject of taxability of corporate guarantee in GST and clarified that activity of providing corporate guarantee will be treated as a taxable supply of service. It is further contended that, the activity of providing corporate guarantee by a person on behalf of another related person or by the holding Company for sanction of credit facilities to its subsidiary Company, to the bank/financial institutions, even when made without any consideration will be treated as a taxable supply of service and thereby initiated proceeding against the present Petitioner holding liable to pay tax for the said corporate guarantee.

12. It is the contention of the Petitioner that, the Respondent No.1, without examining any legal provisions of Central Goods and Services Tax Act, 2017, (for short CGST Act, 2017) and at its own assumption by the impugned Circulars declared that providing “Corporate Guarantee” is “Taxable Supply of Service” under CGST Act, 2017. The Respondent No.1 in the impugned Circulars had clarified that the activity of providing corporate guarantee will be treated as taxable supply of service. The Respondent No.3 on the basis of said impugned Circulars has demanded huge amount of GST by issuing impugned show cause notice by treating the same as service. The Respondents, have completely ignored the provisions of law, that goods and services are two different terms and expression defined under the law and a transaction which is actionable claim and specified covered within the definition of ‘goods’ under the CGST Act, 2017/MGST Act, 2017, cannot be treated as ‘service’ either by issuing Circular. No notification has been issued to specify that transaction of actionable claim will be treated as service and not as goods, whereas Schedule-III specifically excluded transaction is actionable claim [other than specified actionable claim as defined in Section 2(102A)].

Therefore, the Respondents have acted illegally and contrary to the provisions of the Act, and therefore, these notifications are not valid and contrary to the law, and therefore, be declared as ultravires and be quashed and set aside.

13. Petitioner also seeks quashing and setting aside the impugned Sub-Rule (2) of Rule 28 of the Central Goods and Services Tax Rule, 2017 as inserted by the Notification No. 52/2023-Central Tax, dated 26.10.2023 and further amended by Notification No. 12/2024 Central Tax, dated 10.07.2024, issued by Respondent No.1 as well as corresponding Sub-Rule (2) of Rule 28 of the Maharashtra Goods and Services Tax Rules, 2017 (for short MGST Rules, 2017) made by the Respondent No.6 as the same are ultravires to the provisions of CGST Act, 2017 and Maharashtra Goods and Services Tax Act, 2017 (for short MGST Act, 2017).

14. The Petitioner also seeks quashing and setting aside of the impugned show cause notice issued to it be bad in law, without jurisdiction and ultravires to the provisions of CGST Act, 2017 and MGST Act, 2017.

15. This Petition is strongly opposed by the Respondent Nos. 2, 3 and 4 by filing reply on the ground that indent letter dated 03.07.2023 issued by the Respondent No.5 to the Petitioner did not cover the 'corporate guarantee issue'. Accordingly, a letter dated 05.10.2023 was issued to the Assistant Commissioner of State Tax, Investigation-A, Mumbai informing, that since the impugned subject matter was not being covered in their investigation, the Respondent No.2 is proceeding with the investigation against the Petitioner only in respect of the non-payment of GST on the Corporate Guarantees issued. It is the further contention of the Respondent Nos. 2 to 4 that, in view of clause (b) of Sub-Section (2) of Section 6 of the CGST/MGST Act, 2017 where a proper officer under the State GST has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act, only on the same subject matter. Since the impugned subject of payment of GST on Corporate Guarantees dealt by this office was different from the investigation initiated by the Respondent No.5, and therefore, the action initiated is legal and proper one.

16. It is the further stand of the Respondent Nos. 2 to 4 that, the Petitioner has challenged Notification No. 52/2023-Central Tax dated 26.10.2023 which inserted impugned Rule 28(2) of the CGST Rules, 2017 and CBIC clarification Circular No. 204/16/2023 dated 27.10.2023. It is contended that, in view of Rule 28(1) of the CGST Rules, 2017, wherein when there is no commission or consideration, the transaction value shall be treated as zero and by the said Notification dated 26.10.2023, i.e. before insertion of Sub Rule 2 of Rule 28 of CGST Rules 2017, valuation of the supply is to be done as per the valuation rules existing before 26.10.2023. As Corporate Guarantee is not a commodity or service which is available or supplied in open market, hence, open market value of such supplies as prescribed in clause 'a' of Rule 28 and open market value of supply of goods or services of like kind and quality as prescribed in clause 'b' of Rule 28 cannot be determined and therefore, valuation cannot be done as per clause 'a' or 'b' of Rule 28. Accordingly, it is to be done by clause 'c' of Rule 28 of CGST Rules 2017, and therefore, the action of the present Respondent No.2 initiating the proceeding for recovery of the

GST on corporate guarantee is proper and legal one and Writ Petition deserves to be dismissed.

17. The Respondent Nos. 5 and 6 also clarified in their reply that, the investigation visit and DRC proceedings which was initiated by the Respondent No.5 did not cover the corporate guarantee issue. Therefore, it is crystal clear that subject of corporate guarantee issue is different and not covered in the investigation by the Respondent No.2, and therefore, the Petition deserves to be dismissed.

18. Heard Mr. Raichandani, learned Counsel for the Petitioner, who submitted that these corporate guarantees are executed by the Petitioner for the security of loans which are advanced by the State Bank of India and Bank of Maharashtra in favour of the banks. It is submitted that, the Respondent No.1 issued Notification No. 52/2023-Central Tax, dated 26.10.2023 which inserted impugned Sub-Rule (2) in Rule 28 of the Central Goods and Services Tax Rule, 2017 (for short CGST Rules, 2017) and the same was amended by the Notification No. 12/2024 Central Tax dated 10.07.2024. The Respondent No. 1,

through its Board, issued Circular-No-204/16/2023 dated 27.10.2023 on the subject taxability of corporate guarantee in GST and stated that activity of providing corporate guarantee will be treated as a taxable supply of service. It is further stated that, the activity of providing corporate guarantee by a person on behalf of another related person or by the holding Company for sanction of credit facilities to its subsidiary Company, to the bank/financial institutions, even when made without any consideration will be treated as a taxable supply of service. It is further stated in the Notification that, where the corporate guarantee is provided by a holding Company, for its subsidiary Company, those two entities also fall under the category of related persons and the value will be determined as per Rule 28 of the CGST Rules, 2017. The said Circular further states that, considering different practices being followed by the field formations and taxpayers in determining such taxable value, in order to provide uniformity in practices and ease of implementation, Sub-Rule (2) has been inserted in Rule 28 of CGST Rules vide Notification No. 52/2023 dated 26.10.2023. He submitted that, it is a settled principle of law that, a tax liability cannot be created by a circular, where in this circular it

is mentioned that providing corporate guarantee will be treated as a taxable supply of service, whereas, Respondent No. 1 has no power either to issue such circular under Section 168 of the CGST Act, 2017 and nor has power to treat a corporate guarantee “taxable supply of service”. Any activity is taxable or not has to be determined by due process of adjudication and if is prejudged by Respondent No. 1 by addressing to all the officers, then of course, the entire process of adjudication become fruitless.

19. The Respondent No. 5 has already examined the records for the covering from year 2017-18 to 2022-23, for four days and entire assessment made and demand determined were paid and there cannot be two assessments for the same period and entire exercise done by Respondent No. 2 is illegal and without jurisdiction.

20. It is further submitted by the learned Counsel for the Petitioner that, Respondent No. 1, without examining any legal provisions of CGST Act and at its own assumption by the impugned Circulars declared that providing “corporate

guarantee" is a "taxable supply of service" under the CGST Act, 2017, whereas as per Section 9 of the CGST Act, GST is leviable on supplies of "goods" or "services" or both. Whereas, "goods" has been defined under Section 2(52) of the Act, which includes "actionable claim". However, as per Schedule-III of the Act, "actionable claims" (other than specified actionable claim as defined in Section 2(102A) like gambling) are the activity or transactions which shall be treated neither as a supply or goods nor a supply of service. Taxable supply is defined under Section 2(108) of the CGST Act, 2017 means a supply of goods or services or both which is leviable to tax under GCST Act. Firstly, providing Corporate Guarantee is not a taxable supply under CGST Act/MGST Act, 2017 and secondly Corporate Guarantee is only could fall within the realm of 'actionable claim', which is neither a supply of goods and nor supply of service, hence not taxable.

21. He further submitted that, the said Circular was issued on 26.10.2023 and Rule 28 by inserting Sub-Rule 2 by Notification No.12/2024 dated 10.07.2024 and amended retrospectively with effect from 26.10.2023. It is clarified in

the Notification dated 11.07.2024 that in respect of supply of services of providing corporate guarantee between related persons, in respect of corporate guarantee issued or renewed before 26.10.2023, the valuation of the said supply is to be done in accordance with Rule 28, as it existed during that time. However, if the corporate guarantee is issued or renewed on or after 26.10.2023, then the valuation of the said supply will be required to be done as per Rule 28(2) of CGST Rules, 2017. All the corporate guarantees executed by the Petitioner are prior to the said amendment as well as the Notification dated 26.10.2023. For all above these grounds the proceedings initiated against the present Petitioner is illegal and deserves to be quashed and set aside.

22. It is the contention of the Petitioner that, in view of specific clause in the corporate guarantee agreement there is no consideration paid or received by the Petitioner, and therefore, the Petitioner is not liable to pay the GST. The Petitioner further contended that, the above Circular has been challenged before the various High Courts and the various High Courts have taken the cognizance of the issue

involved and stayed the further proceedings, and therefore, the Petitioner is not liable to pay the said GST on corporate guarantees.

23. Learned Counsel for the Petitioner has placed reliance on ***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.)***; ***R/ Special Civil Application No. 12179/2024 Torrent Investment Pvt. Ltd. Vs. Union of India & Ors., decided on 20.08.2024 & Vedanta Ltd. Vs. Union of India, (2025) 26 Centax 244 (Bom.)***.

24. As per the contentions of the Respondents, the provisions of CSST Act, 2017 and Rules made thereunder and the Notification issued under the CGST Act, 2017 and the MGST Act, 2017 and Rules made thereunder and the Notification issued under the MGST Act, 2017 are the same except for certain provisions. Therefore, unless it is specifically mentioned to such dissimilar provision or reference to the CGST Act, 2017, Rules made thereunder or

Notification issued under the CGST Act, 2017 would also be a reference to the same provisions under the MGST Act, 2017 and Rules made thereunder and Notification issued under MGST Act, 2017 and vice versa.

25. It is the contention of the Respondents that, the Petitioner Company is liable to pay GST on corporate guarantee in view of the amendment in Rule 28(2) of the CGST Act. It is further contention of the Respondents that, in view of Circulars issued on 11.07.2024 it has been clarified that the valuation may be done on a proportionate basis. Three corporate guarantees were provided by the Petitioner which commenced on 03.11.2020, 28.12.2021 and 08.08.2022, and therefore, the Petitioner is liable to pay the GST in view of Section 28(1)(c).

26. Before entering into the merits of the issue involved, it is necessary to refer some definitions. Here in the present Writ Petition, the entire issue revolves around initiation of proceeding of non-payment of GST on corporate guarantees.

27. The definition of "consideration" is given under Section 2(31) of the CGST Act, 2017, which reads as under:

> *"2(31). "consideration" in relation to the supply of goods or services or both includes-*
>
> *(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;*
>
> *(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:*
> *Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply."*

28. The phrase "services" for the purpose of CGST Act, is defined in Section 2(102) of the CGST Act, which reads as under:

> *"2(102). "services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged."*
>
> *Explanation : For the removal of doubts, it is hereby clarified that the expression "services" includes facilitating or arranging transactions in securities:*

29. The definition of "related person" for the purpose of this Act which is referred in Section 15 of the CGST Act, 2017, which is reproduced below:

> *"Explanation : For the purposes of this Act,-*
>
> *(a) persons shall be deemed to be "related persons" if-*
>
> *(i) such persons are officers or directors of one another's businesses;*
>
> *(ii) such persons are legally recognised partners in business;*
>
> *(iii) such persons are employer and employee;*
>
> *(iv) any person directly or indirectly owns, controls or holds twenty-five per cent. or more of the outstanding voting stock or shares of both of them;*
>
> *(v) one of them directly or indirectly controls the other;*
>
> *(vi) both of them are directly or indirectly controlled by a third person;*
>
> *(vii) together they directly or indirectly control a third person; or*
>
> *(viii) they are members of the same family;*
>
> *(b) the term "person" also includes legal persons;*
> *(c) persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related."*

30. The term "supply" is defined under Section 7 of the CGST Act, 2017 which includes all forms of supply such

as sale, transfer, barter, exchange, licence, rental, lease or disposal of goods or services or both, made or agreed to be made in the course or furtherance of business and for a consideration and includes activities mentioned in Schedule I to the Act which are made or agreed to be made without a consideration.

31. The term “Guarantee” has been defined in Black’s law Dictionary as “The assurance that a contract or legal act will be duly carried out”; “To assume a suretyship obligation; to agree to answer for a debt or default”.

32. In simple language, a guarantee means the promise for doing of something or a promise to make payment of certain debt or performance of certain duty of another person’s contractual obligation if that other person fails to make good the performance or pay his debt or fulfil his obligation, as the case may be.

33. The term “guarantee” or to be precise “contract of guarantee” has been defined in Section 126 of the Indian Contract Act, 1872, which provides that a contract of

guarantee is a contract to perform the promise, or discharge the liability, of a third party in case of his default. On a joint reading of Section 126 of the Indian Contract Act, 1872 and Section 2(11) of The Companies Act, 2013, a Corporate Guarantee can be inferred as an affirmation usually made by a larger company, on behalf of another business entity which usually would be a smaller company. It is a guarantee to a lender that a loan will be repaid, guaranteed by a company other than the one who took the loan.

34. A corporate guarantee is an agreement between a borrower, lender and guarantor, whereby the guarantor takes on the responsibilities of debt repayment, if the borrower defaults. Corporate guarantees are often provided by holding or group companies without any charges or consideration. The primary objective of these guarantees is to facilitate the smooth operations of subsidiary or group companies.

35. The corporate guarantee by its very definition is a financial guarantee provided by one Company i.e. the

Guarantor on behalf of another entity i.e. the borrower to assure repayment of a loan on fulfillment of an obligation.

36. In the common parlance 'corporate guarantee' is a guarantee of one corporate unit to keep itself responsible for the financial obligations or any other contractual obligations of the principal debtor to the creditor on behalf of principal debtor while 'bank guarantee' is a guarantee given by the bank on behalf of the applicant to cover its payment obligations to third party. Corporate guarantees are issued without any security, whereas bank guarantee mostly require security against offer of such guarantee and financial instrument is issued by the bank or financial institutions towards the fulfillment of the party's financial obligations to a beneficiary.

37. The principle of valuation in case of GST is that the value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is

the sole consideration for the supply. When such supply is between related persons, its value will be determined by the valuation rules as prescribed.

38. Thus, the term “services” means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination to another form, currency or denomination for which a separate consideration is charged. 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.

39. Reverting back to the facts of the present case, the Petitioner had challenged the initiation of the proceedings by the Respondent Nos. 1 and 2 against the Petitioner for non-payment of the GST on corporate guarantees. Undisputedly, the Petitioner has executed the corporate guarantee against the sanctioned term loan of Rs. 310.63 crores vide sanction letter dated 10.09.2020 by State Bank of India in favour of DPJ Pollachi HAM Project Private Limited for construction of two to

four lane of road from Madathukulam to Pollachi in the State of Tamil Nadu. Undisputedly, clause 13 of the deed of guarantee dated 03.11.2020 specifically provides that corporate guarantor (Petitioner) has not received and shall not receive any security, fee, commission, or any other consideration from the borrower for giving this deed. Similarly, the Petitioner has also executed a corporate guarantee in favour of the Bank of Maharashtra for the loan sanctioned in favour of D P Jain Bangalore Chennai Expressways Private Limited dated 08.08.2022, wherein also vide Clause 9 the Petitioner has declared that it has not received and shall not receive any security, fee, commission, or any other consideration from the borrower for giving this guarantee. The Petitioner has also executed a corporate guarantee against the sanctioned credit facilities by way of term loan of Rs. 1196 crores by the Bank of Maharashtra by sanctioned letter dated 24.09.2021 and in the said corporate guarantee also the similar clause 9 by which it was declared that the Petitioner has not received and shall not receive any security, fee, commission, or any other consideration from the borrower for giving this guarantee.

40. It is canvassed by the learned Counsel for the Petitioner that, regarding the said activity of the Petitioner the Respondent No. 5 has carried out detailed investigation against the Petitioner Company covering the period of investigation from 2017-2018 to 2022-2023 and the Petitioner has also submitted the detailed reply and thereby the Respondent No.2 has submitted a copy of indent dated 03.07.2023. All records were already submitted before the Respondent No.5. All three corporate guarantees, the Petitioner incurred legal charges which were duly shown in the accounts ledger duly mentioning the expenses for corporate guarantee deed as such respondent No.5 even though verified books of accounts and all other documents has not levied any GST on the corporate guarantee provided by the Petitioner. It is further submitted that, despite the investigation was carried out by the Respondent No.5, the Respondent No.2 initiated the investigation against the Petitioner by issuing summons dated 20.07.2023 alleging non-payment of GST without stating the nature and purpose of investigation. Despite the Petitioner has intimated about the investigation carried out by the Respondent No.5 this proceeding was initiated in view of the amendment by

Notifications dated 26.10.2023 and 10.07.2024. The Respondent No.1 through its Board issued Circular No. 204/16/2023 dated 27.10.2023 including the corporate guarantee in GST and stated that activity of providing corporate guarantee will be treated as taxable supply of service. It is specifically stated that, activity of proceeding corporate guarantee by a person on behalf of another related person or by holding of company for the sanction of credit facilities to its subsidiary Company, to the bank/financial institutions, even when made without any consideration will be treated as a taxable supply of service.

41. It is submitted that, the Respondent No.1 without examining any legal provisions of the CGST Act, 2017 and at its own assumption by the impugned circulars declared that providing corporate guarantee is a taxable supply of service under CGST Act, 2017, whereas as per Section 9 of the CGST Act, GST is leviable on supplies of “goods” or “services” or both. Whereas, “goods” has been defined under Section 2(52) of the Act, which includes “actionable claim”. But as per para 6 of Schedule-III of the Act, “actionable claims”

(other than specified actionable claim as defined in Section 2(102A) like gambling) are the activity or transactions which shall be treated neither as a supply or goods nor a supply of service. The Taxable supply is defined under Section 2(108) of the Act which means a supply of goods or services or both which is leviable to tax under GCST Act. Corporate Guarantee is not a taxable supply under CGST Act/MGST Act, 2017 and secondly Corporate Guarantee is only could fall within the realm of 'actionable claim', which is neither a supply of goods and nor supply of service, hence not taxable.

42. As per Section 2(1) of the Act, actionable claim has the same meaning as assigned to it in Section 3 of the Transfer of Property Act, 1882 under claim to be debt, whether such debt be existent, accruing, conditional or contingent is an actionable claim. An actionable claim is of course as its nomenclature suggests, only a claim and further held that such claim, may be existent, accruing, conditional or contingent.

43. Thus, it is submitted that, the activity of providing corporate guarantee is not covered under the supply of goods and by this circular the Respondents amended the Rule 28 against the legal provisions. Therefore, the said Rule requires to be declared as ultravires.

44. He also invited our attention towards the Notification dated 27.10.2023 and submitted that it is clarified that Rule 28 of Central Goods and Services Tax Rules, 2017 prescribes the method for determining the value of the supply of goods or services or both between related parties, other than where the supply is made through an agent. In terms of Rule 28 of CGST Rules, 2017 the taxable value of such supply of service shall be the open market value of such supply.

45. He submitted that by notification dated 11.07.2024 it was clarified that, Sub-Rule (2) of Rule 28 of CGST Rules, 2017 has been amended retrospectively with effect from 26.10.2023 vide Notification No. 12/2024 dated 10.07.2024 and it is further clarified that, however if the

corporate guarantee is issued or renewed on or after 26.10.2023, then the valuation of the said supply will be required to be done as per Rule 28(2) of CGST Rules,2017. He submitted that, the said Notification specifically states that, in respect of supply of services of providing corporate guarantee between related persons, in respect of corporate guarantee issued or renewed before 26.10.2023, the valuation of the said supply is to be done in accordance with Rule 28, as it existed during that time.

46. He submitted that, Rule 28 of CGST Rules, 2017 deals with value of supply of goods or services or both between distinct or related persons, other than through an agent. Sub-Rule 1(c) specifically states that, if the value is not determinable under clause (a) or (b), be the value as determined by the application of Rule 30 or Rule 31, in that order: Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related

person. It is submitted that, the execution of the corporate guarantee is neither supply nor a service, and therefore, GST is not leviable against the said corporate guarantee.

47. *Per contra*, it is the contention of the Respondent Nos. 2 to 4 that, Rule 28(2) of the, CGST Rules, 2017 has been inserted vide Notification No. 52/2023-Central Tax dated 26.10.2023 and that they have not issued any Corporate Guarantee post this date, owing to which no case of non-payment of GST exists against them and that prior to 26.10.2023, valuation is to be done in terms of Rule 28(1) of the CGST Rules, 2017, wherein there is no commission or consideration, the transaction value shall be treated as zero. In the instant case, since all the corporate guarantees are provided by the taxpayer before 26.10.2023, i.e. before insertion of Sub Rule 2 of Rule 28 of CGST Rules 2017, valuation of the supply is to be done as per the valuation Rules existing before 26.10.2023.

48. It is further submitted that, as Corporate Guarantee is not a commodity or service which is available or supplied in

open market, hence open market value of such supplies as prescribed in clause ‘a’ of Rule 28 and open market value of supply of goods or services of like kind and quality as prescribed in clause ‘b’ of Rule 28 cannot be determined. Thus, in light of the above, valuation cannot be done as per clause ‘a’ or ‘b’ of Rule 28. Therefore, the valuation of supply of corporate guarantee services is to be done by the application of Rule 30 or Rule 31, in that order, as prescribed in clause ‘c’ of Rule 28 of CGST Rules, 2017. Since cost of supply of corporate guarantee services cannot be determined; valuation is to be done as prescribed in clause ‘c’ of Rule 28 of CGST Rules 2017. Therefore, the valuation of ‘corporate guarantee’ prescribed and in view of Rule 31 of CGST Rules, 2017, valuation of supply for computing the tax liability is 1% per annum on the amount guaranteed in the impugned show cause notice, and therefore, the Petitioner is liable to pay the GST over that corporate guarantee.

49. Rule 28 of the CGST Rules, 2017, reads as under:

> *“28. Value of supply of goods or services or both between distinct or related persons, other than through an agent*

(1) The value of the supply of goods or services or both between distinct persons as specified in sub-section (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall-

(a) be the open market value of such supply;

(b) if the open market value is not available, be the value of supply of goods or services of like kind and quality;

(c) if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order:

Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person:

Provided further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services.

(2) Notwithstanding anything contained in sub-rule (1), the value of supply of services by a supplier to a recipient who is a related person located in India, by way of providing corporate guarantee to any banking company or financial institution on behalf of the said recipient, shall be deemed to be one per cent. of the amount of such guarantee offered per annum, or the actual consideration, whichever is higher:

Provided that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the value of said supply of services."

50. Circular No. 119/11/2023-GST dated 17.07.2023 reads as follows:

CIRCULAR NO. 199/11/2023-GST [F. NO. CBIC-20001/5/2023-GST]

CLARIFICATION REGARDING TAXABILITY OF SERVICES PROVIDED BY AN OFFICE OF AN ORGANISATION IN ONE STATE TO OFFICE OF THAT ORGANISATION IN ANOTHER STATE, BOTH BEING DISTINCT PERSONS

CIRCULAR NO. 199/11/2023-GST [F. NO. CBIC-20001/5/2023-GST], DATED 17-7-2023

Various representations have been received seeking clarification on the taxability of activities performed by an office of an organisation in one State to the office of that organisation in another State, which are regarded as distinct persons under section 25 of Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'the CGST Act'). The issues raised in the said representations have been examined and to ensure uniformity in the implementation of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act hereby clarifies the issue in succeeding paras.

2. Let us consider a business entity which has Head Office (HO) located in State-1 and a branch offices (BOs) located in other States. The HO procures some input services e.g. security service for the entire organisation from a security agency (third party). HO also provides some other services on their own to branch offices (internally generated services).

3. The issues that may arise with regard to taxability of supply of services between distinct persons in terms of sub-section (4) of section 25 of the CGST Act are being clarified in the Table below: —

S. No	Issues	Clarification
1.	Whether HO can avail the input tax credit (hereinafter referred to as 'ITC') in respect of common input services procured from a third party but attributable to both HO and BOs or exclusively to one or more BOs, issue tax invoices under section 31 to the said BOs for the said input services and the BOs can then avail the ITC for the same or whether is it mandatory for the HO to follow the Input Service Distributor (hereinafter referred to as 'ISD') mechanism for distribution of ITC in respect of common input services procured by them from a third party but attributable to both HO and BOs or exclusively to one or more BOs?	It is clarified that in respect of common input services procured by the HO from a third party but attributable to both HO and BOs or exclusively to one or more BOs, HO has an option to distribute ITC in respect of such common input services by following ISD mechanism laid down in Section 20 of CGST Act read with rule 39 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as 'the CGST Rules'). However, as per the present provisions of the CGST Act and CGST Rules, it is not mandatory for the HO to distribute such input tax credit by ISD mechanism. HO can also issue tax invoices under section 31 of CGST Act to the concerned BOs in respect of common input services procured from a third party by HO but attributable to the said BOs and the BOs can then avail ITC on the same subject to the provisions of sections 16 and 17 of CGST Act. In case, the HO distributes or wishes to distribute ITC to BOs in respect of such common input services through the ISD mechanism as per the provisions of section 20 of CGST Act read with rule 39 of the CGST Rules, HO is required to get itself registered mandatorily as an ISD in accordance with Section 24(*viii*) of the CGST Act. Further, such distribution of the ITC in respect a common input services procured from a third party can be made by the HO to a BO through ISD mechanism only if the said input services are

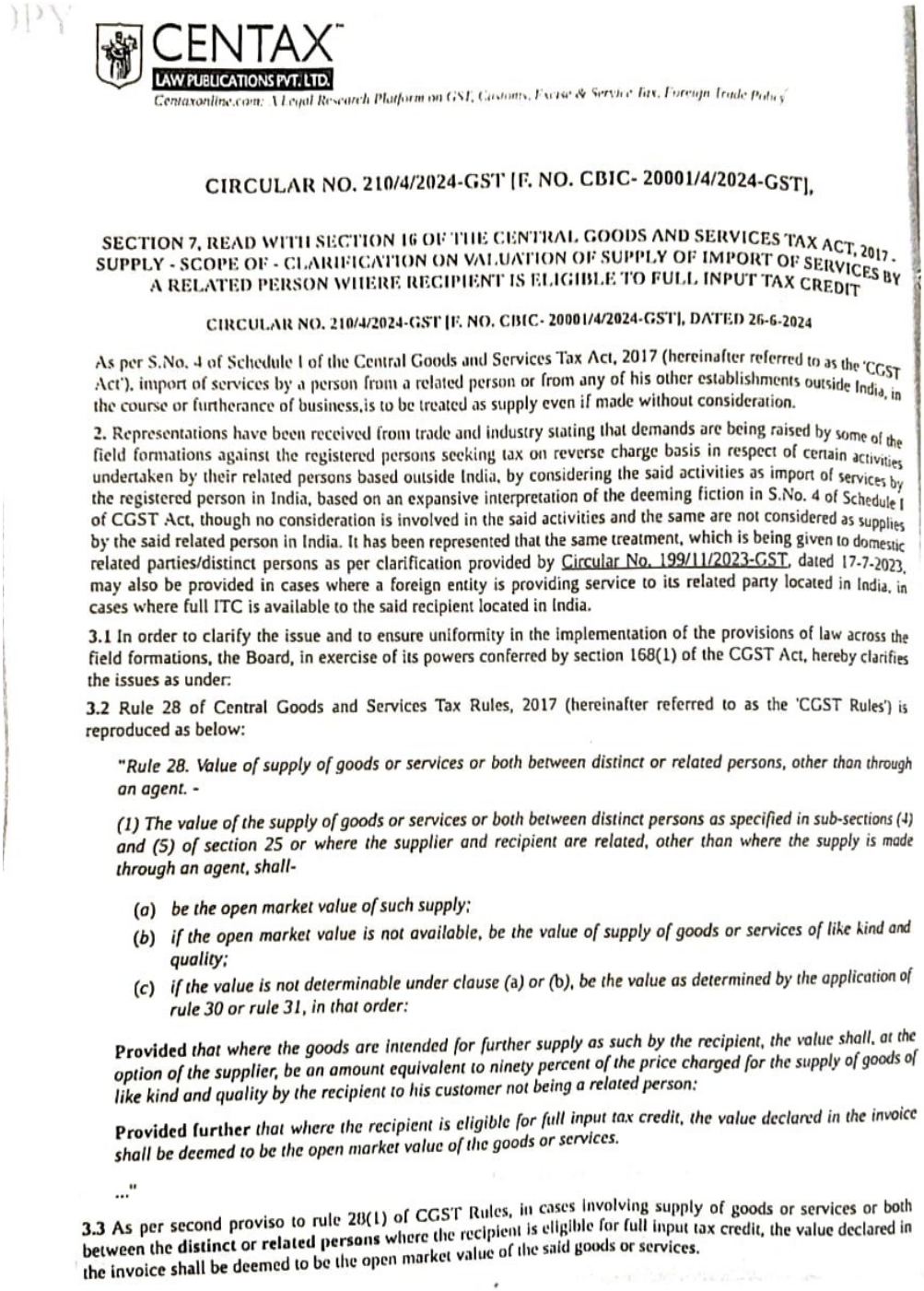
		attributable to the said BO or have actually been provided to the said BO. Similarly, the HO can issue tax invoices under section 31 of CGST Act to the concerned BOs, in respect of any input services, procured by HO from a third party for on or behalf of a BO, only if the said services have actually been provided to the concerned BOs.
2.	In respect of internally generated services, there may be cases where HO is providing certain services to the BOs for which full input tax credit is available to the concerned BOs. However, HO may not be issuing tax invoice to the concerned BOs with respect to such services, or the HO may not be including the cost of a particular component such as salary cost of employees involved in providing said services while issuing tax invoice to BOs for the services provided by HO to BOs. Whether the HO is mandatorily required to issue invoice to BOs under section 31 of CGST Act for such internally generated services, and/ or whether the cost of all components including salary cost of HO employees involved in providing the said services has to be included in the computation of value of services provided by HO to BOs when full input tax credit is available to the concerned BOs.	The value of supply of services made by a registered person to a distinct person needs to be determined as per rule 28 of CGST Rules, read with sub-section (4) of section 15 of CGST Act. As per clause (a) of rule 28, the value of supply of goods or services, or both between distinct persons shall be the open market value of such supply. The second proviso to rule 28 of CGST Rules provides that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services. Accordingly, in respect of supply of services by HO to BOs, the value of the said supply of services declared in the invoice by HO shall be deemed to be open market value of such services, if the recipient BO is eligible for full input tax credit Accordingly, in cases where full input tax credit is available to a BO, the value declared on the invoice by HO to the said BO in respect of a supply of services shall be deemed to be the open market value of such services, irrespective of the fact whether cost of any particular component of such services, like employee cost etc., has been included or not in the value of the services in the invoice. Further, in such cases where full input tax credit is available to the recipient, if HO has not issued a tax invoice to the BO in respect of any particular services being rendered by HO to the said BO, the value of such services may be deemed to be declared as Nil by HO to BO, and may be deemed as open market value in terms of second proviso to rule 28 of CGST Rules.
3.	In respect of internally generated services provided by the HO to BOs, in cases where full input tax credit is not available to the concerned BOs, whether the cost of salary of employees of the HO involved in providing said services to the BOs, is mandatorily required to be included while computing the taxable value of the said supply of services provided by HO to BOs.	In respect of internally generated services provided by the HO to BOs, the cost of salary of employees of the HO, involved in providing the said services to the BOs, is not mandatorily required to be included while computing the taxable value of the supply of such services, even in cases where full input tax credit is not available to the concerned BO.

4. It is requested that suitable trade notices may be issued to publicize the contents of this circular.

5. Difficulty if any, in the implementation of this circular may be brought to the notice of the Board.

Sanjay Mangal
Principal Commissioner (GST)

50(i). Circular No. 210/4/2024-GST dated 26.06.2024 reads as follows:



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CIRCULAR NO. 210/4/2024-GST [F. NO. CBIC- 20001/4/2024-GST],

SECTION 7, READ WITH SECTION 16 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - SUPPLY - SCOPE OF - CLARIFICATION ON VALUATION OF SUPPLY OF IMPORT OF SERVICES BY A RELATED PERSON WHERE RECIPIENT IS ELIGIBLE TO FULL INPUT TAX CREDIT

CIRCULAR NO. 210/4/2024-GST [F. NO. CBIC- 20001/4/2024-GST], DATED 26-6-2024

As per S.No. 4 of Schedule I of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the 'CGST Act'), import of services by a person from a related person or from any of his other establishments outside India, in the course or furtherance of business,is to be treated as supply even if made without consideration.

2. Representations have been received from trade and industry stating that demands are being raised by some of the field formations against the registered persons seeking tax on reverse charge basis in respect of certain activities undertaken by their related persons based outside India, by considering the said activities as import of services by the registered person in India, based on an expansive interpretation of the deeming fiction in S.No. 4 of Schedule I of CGST Act, though no consideration is involved in the said activities and the same are not considered as supplies by the said related person in India. It has been represented that the same treatment, which is being given to domestic related parties/distinct persons as per clarification provided by Circular No. 199/11/2023-GST, dated 17-7-2023, may also be provided in cases where a foreign entity is providing service to its related party located in India, in cases where full ITC is available to the said recipient located in India.

3.1 In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168(1) of the CGST Act, hereby clarifies the issues as under:

3.2 Rule 28 of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the 'CGST Rules') is reproduced as below:

"Rule 28. Value of supply of goods or services or both between distinct or related persons, other than through an agent. -

(1) The value of the supply of goods or services or both between distinct persons as specified in sub-sections (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall-

(a) *be the open market value of such supply;*
(b) *if the open market value is not available, be the value of supply of goods or services of like kind and quality;*
(c) *if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order:*

Provided *that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person:*

Provided further *that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services.*

..."

3.3 As per second proviso to rule 28(1) of CGST Rules, in cases involving supply of goods or services or both between the **distinct or related persons** where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the said goods or services.

55

3.4 It may be noted that *vide* Circular No. 199/11/2023-GST, dated 17-7-2023, clarification has been issued regarding taxability of services provided by an office of an organisation in one State to the office of that organisation in another State, both being distinct persons.It has been clarified in the said circular that as per the second proviso to rule 28(1) of CGST Rules, in respect of supply of services by Head Office(HO) to Branch Offices(BO) of an organisation, the value of the said supply of services, declared in the invoice by HO shall be deemed to be open market value of such services, if the recipient BO is eligible for full input tax credit. It has also been clarified *vide* the said circular that in cases where full input tax credit is available to the recipient, if HO has not issued a tax invoice to the BO in respect of any particular services being rendered by HO to the said BO, the value of such services may be deemed to be declared as Nil by HO to BO, and may be deemed as open market value in terms of second proviso to rule 28(1) of CGST Rules.

3.5 The second proviso to Rule 28(1) of CGST Rules, is applicable in all the cases involving supply of goods or services or both between the distinct persons as well as the related persons, in cases where full ITC is available to the recipient. Accordingly, it is evident that the clarification which has been issued *vide* Circular No. 199/11/2023-GST, dated 17-7-2023 in respect of supplies of services between distinct persons in cases where full ITC is available to the recipient, is equally applicable in respect of import of services between related persons.

3.6 In case of import of services by a registered person in India from a related person located outside India, the tax is required to be paid by the registered person in India under reverse charge mechanism. In such cases, the registered person in India is required to issue self-invoice under section 31(3)(f) of CGST Act and pay tax on reverse charge basis.

3.7 In view of the above, it is clarified that in cases where the foreign affiliate is providing certain services to the related domestic entity, and where full input tax credit is availableto the said related domestic entity, the value of such supply of services declared in the invoice by the said related domestic entity may be deemed as open market value in terms of second proviso to rule 28(1) of CGST Rules. Further, in cases where full input tax credit is available to the recipient, if the invoice is not issued by the related domestic entity with respect to any service provided by the foreign affiliate to it, the value of such services may be deemed to be declared as Nil, and may be deemed as open market value in terms of second proviso to rule 28(1) of CGST Rules.

4. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

5. Difficulty, if any, in the implementation of the above instructions may please be brought to the notice of the Board.

Sanjay Mangal
Principal Commissioner (GST)

51. The issue which comes up for resolution is whether executing a corporate guarantee would be taxable. Rule 28(1)(c) states that, if the value is not determinable under clause (a) or (b), be the value as determined by the application of Rule 30 or Rule 31, in that order. The proviso shows that, where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person.

52. From the facts on record, it is evident that, the Petitioner has executed a corporate guarantee which is a guarantee given by the corporate to cover their own exposure or exposure of some other related entity to their Bank. Bank guarantees are issued by Bank on a regular basis as a part of their business of Banking. 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. For banks, providing bank guarantee is part of their regular course of business and they charge rate on the higher side. Further, these are fool proof instruments of security of the customer and failure to honour the guarantee is treated as a deficiency of services of the bank under banking laws. Corporate guarantee is actually an in-house guarantee and is not issued to customers generally.

53. While considering whether the corporate guarantee is taxable one has to look the issue in view of Section 15 of the CGST Act, 2017.

54. Section 15 deals with value of taxable supply, which reads as under:

> *"**15. Value of taxable supply.***
>
> *(1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.*
>
> *(2) The value of supply shall include-*
>
> *(a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;*
>
> *(b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;*
>
> *(c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;*
>
> *(d) interest or late fee or penalty for delayed payment of any consideration for any supply; and*
>
> *(e) subsidies directly linked to the price excluding subsidies provided by the Central Government and the State Governments.*

Explanation : For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.

(3) The value of the supply shall not include any discount which is given-

(a) before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and

(b) after the supply has been effected, if-

(i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and

(ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

(4) Where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed.

(5) Notwithstanding anything contained in sub-section (1) or sub-section (4), the value of such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed.

"Explanation : For the purposes of this Act,-

(a) persons shall be deemed to be "related persons" if-

(i) such persons are officers or directors of one another's businesses;

(ii) such persons are legally recognised partners in business;

(iii) such persons are employer and employee;

(iv) any person directly or indirectly owns, controls or holds twenty-five per cent. or more of the outstanding voting stock or shares of both of them;

(v) one of them directly or indirectly controls the other;

> *(vi) both of them are directly or indirectly controlled by a third person;*
>
> *(vii) together they directly or indirectly control a third person; or*
>
> *(viii) they are members of the same family;*
>
> *(b) the term "person" also includes legal persons;*
>
> *(c) persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related."*

55. For the purposes of this Section the related person is defined in the explanation. This Section provides for value of taxable supply. The value of a supply of goods or services shall be the transaction value, which is the price actually paid or payable for the said supply, where the supplier and the recipient of the supply are not related and the price is the sole consideration of supply. This Section enumerates the items which are to be included in the value.

56. The imposition of goods and services tax GST on corporate guarantee has been challenged before this Court on the premise that issuance of such guarantee to an associate company is an in-house guarantee and does not qualify as a supply of services. It is submitted that, the 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.

What is executed by the Petitioner was a corporate guarantee in favour of banks i.e. State Bank of India and Bank of Maharashtra against the loan advanced in favour of borrowers namely DPJ Pollachi HAM Project Private Limited, D P Jain Bangalore Chennai Expressways Private Limited, D P Jain TOT Toll Roads Private Limited. The Respondents have taken a view that valuation of supply of corporate guarantee services is to be done in view of clause (c) of Rule 28 of CGST Rules, 2017. Since cost of supply of corporate guarantee services cannot be determined, valuation is to be done as prescribed in clause (c) of Rule 28 of CGST Rules, 2017. Therefore, the valuation of corporate guarantee prescribed and valuation of supply for competing the tax liability is 1% per annum on the amount guaranteed in the impugned show cause notice, and therefore, the Petitioner is liable to pay GST over that corporate guarantee.

We are, however, unable to agree with this proposition as corporate guarantee is a guarantee given by the corporate to cover their own exposure or exposure of some other related entity to their bank. A bank guarantee is given by a bank on behalf of the customer to the beneficiary bank guaranteeing the payment in case of default by customer, whereas corporate guaranties are issued in order to safeguard the financial health of their associate enterprises and to provide it support. Admittedly, corporate guarantee is actually an in-house guarantee and is not issued to customers generally. It is not the case of the Respondents that, the Petitioner is doing the business of corporate guarantee on a regular basis.

57. This aspect was considered by the Hon'ble Apex Court in the judgment of ***Commissioner of CGST & Central Excise Vs. Edelweiss Financial Services Ltd., MANU/SC/0648/2023***, wherein, the challenge was to the concurrent finding in favour of the Assessee recorded by the Principal Commissioner GST which was upheld by the CGST Tribunal. The Hon'ble Apex Court has considered the

observation of the Tribunal in para 8 and 9, which are reproduced as under:

> *"8. The criticality of 'consideration' for determination of service, as defined in Section 65B (44) of Finance Act, 1994, for the disputed period after introduction of 'negative list' regime of taxation has been rightly construed by the adjudicating authority. Any activity must, for the purpose of taxability under Finance Act, 1994, not only, in relation to another, reveal a 'provider', but also the flow of 'consideration' for rendering of the service. In the absence of any of these two elements, taxability under Section 66B of Finance Act, 1994 will not arise. It is clear that there is no consideration insofar as 'corporate guarantee' issued by respondent on behalf of their subsidiary companies is concerned.*
>
> *9. The reliance placed by Learned Authorised Representative on the 'non-monetary benefits' which may, if at all, be of relevance for determination of assessable value under Section 67 of Finance Act, 1994 does not extend to ascertainment of 'service' as defined in Section 65B(44) of Finance Act, 1994. 'Consideration' is the recompense for the 'contractual' undertaking that authorizes levy while 'assessable value' is a determination for computing the measure of the levy and the latter must follow the former."*

58. The Hon'ble Apex Court observed that, the above would suggest that this was a case where the assessee had not received any consideration while providing corporate guarantee to its group companies. No effort was made on behalf of the Revenue to assail the above finding or to demonstrate that issuance of corporate guarantee to group companies without consideration would be a taxable service. In these

circumstances, in view of such conclusive finding of both forums, we see no reason to admit this case basing upon the pending Civil Appeal No. 428 @ Diary No.42703/2019, particularly when it has not been demonstrated that the factual matrix of the pending case is identical to the present one.

59. Thus, the Hon'ble Apex Court's decision on the issue whether the corporate guarantee are taxable under the service tax regime, the Hon'ble Apex Court held that, corporate guarantee given without consideration are not taxable within the meaning of the act. The Hon'ble Apex Court further considered that, an activity to be taxable under the Finance Act, 1994, it must not only involve a provider but also a flow of consideration for the rendering of the service. In the absence of either of these elements, taxability under Section 66B of the Finance Act, 1994 does not arise.

60. Whether the act of the Petitioner is within the scope of Section 7 i.e. supply which is defined thereunder:

> (1) For the purposes of this Act, the expression-supply includes--

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

(b) import of services for a consideration whether or not in the course or furtherance of business; and

(c) the activities specified in Schedule I, made or agreed to be made without a consideration;

61. Thus, A plain reading of the definition of the term, “supply” as above would indicate that the meaning attributed to the term is that of wide amplitude, but, yet is an inclusive one. On a perusal of the definition it can be seen that the essential ingredients required for an activity/transaction to come within the meaning and scope of supply as defined above.

62. Similarly, Section 2(102) defines “service” as meaning anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

63. In view of clause (a) of Sub-Section (1) of Section 7 of the CGST Act, 2017, a supply of services such as sale, transfer, license, rental or lease made for consideration is a supply.

As per the Respondents the activity of providing corporate guarantee covered under “supply of service”, hence taxable. The meaning and scope of supply under the GST as defined can be understood in terms of following 6 parameters which can be adopted to characterized a transaction as supply: (i) Supply of goods or services. Supply of anything other than goods or services does not attract GST; (ii) Supply should be made for consideration; (iii) Supply should be made in the course or in furtherance of business; (iv) Supply should be made by taxable person; (v) Supply should be taxable supply and (vi) Supply should be made within the tax.

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.

64. As already observed that the Hon'ble Apex Court in the case of ***Commissioner of CGST & Central Excise Vs. Edelweiss Financial Services Ltd.,*** (supra) wherein it was held that issuance of Corporate Guarantee to a group company without consideration would not fall within banking and other financial services and was thus held to be non-taxable service.

65. The Hon'ble Apex Court after considering the submissions of both the sides, found that in the present case, assessee had not received any consideration while providing corporate guarantee to its Indian group companies. There was no effort made on behalf of the Appellant to assail the finding or to show that issuance of corporate guarantee to group companies in India without consideration would be a taxable

service. By observing this, the Hon'ble Apex Court has dismissed the appeal filed by the department.

66. Thus, it was held that for an activity to be taxable under the Finance Act, 1994, it must not only involve a 'provider' but also a flow of 'consideration' for the rendering of the service. In the absence of either of these elements, taxability under Section 66B of the Finance Act, 1994 does not arise. The Hon'ble Apex Court found that there was no consideration for the corporate guarantees issued by the respondent on behalf of their subsidiary companies then it is not a taxable service.

67. By applying the above said terms to the facts of the present case, admittedly, the impugned Circular No. 204/16/2023 dated 27.10.2023 has clarified that the activity of providing corporate guarantee by a person on behalf of another related person, or by the holding company for sanction of credit facilities to its subsidiary company, to the bank/financial institutions, even when made without any consideration will be treated as a taxable supply of service. It is further clarified by the said circular that the supply of service of providing

corporate guarantee to any banking company or financial institution by a supplier to a related recipient, on behalf of the said recipient, was taxable even before the insertion of Sub-Rule (2) in Rule 28 of CGST Rules, 2017 with effect from 26.10.2023, whereas the aforesaid impugned circulars were issued by the Respondent No.1 through its board in exercise of powers conferred by Section 168(1) of the CGST Act, 2017.

68. However, 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.

There was no consideration for the corporate guarantees were issued by the Petitioner on behalf of the companies.

69. Thus, considering the corporate guarantee is a guarantee of one corporate unit to keep itself responsible for the financial obligations or any other contractual obligations of the principal debtor to the creditor on behalf of principal debtor. Corporate guarantees are issued without any security, whereas bank guarantee mostly require security against offer of such guarantee. Corporate guarantees are meant to provide assurances to the beneficiaries with same thin line distinction. Corporate guarantee depends on the credit worthiness of the parent-company/guarantor.

70. 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.

71. The specific clauses in all three guarantees specifically states that the Petitioner has neither received any commission and shall not receive any commission from the borrower company for providing corporate guarantee. In

absence of any consideration, the case of the Petitioner would cover by the judgment of the Hon'ble Apex Court, and therefore, the proceeding initiated against the present Petitioner by issuing show cause notice No.02/2025-GST dated 28.01.2025 issued by the office of the Respondent No.3 and made answerable to Respondent No.4 deserves to be quashed and set aside.

72. The another issue raised by the Petitioner is regarding the constitutional validity of the amendment 28(2) by contending that the said amendment is against legal provisions, and therefore, be declared as ultravires. As far as the issue regarding the constitutional validity is concerned, the scope of judicial interference on challenge to vires is settled.

73. Judicial intervention when faced with constitutional challenge to fiscal statutes has been the subject matter before the Hon'ble Apex Court since the initiation of the Constitution of India. It is well settled that there is a minimal scope for challenge to constitutional validity. The

law is very clear that Legislature should be allowed some play in the joints because it has to deal with complex problems which do not admit of a solution through any doctrine or straitjacket formula.

74. It is observed by the Hon'ble Apex Court in the case of ***R. K. Garg vs. Union of India, MANU/SC/0074/1981***, that every legislation particularly in economic matters is essentially empiric and it is based on experimentation. There may be crudities, inequities and even possibilities of abuse but on that account alone it cannot be struck down as invalid. These can always be set right by the Legislature by passing amendments. The Court must therefore adjudge the constitutionality of such legislation by the generality of its provisions. Laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc. Moreover, there is always a presumption in favour of the constitutionality of a statute and the burden is upon he who attacks it to show that there has been a clear transgression of the constitutional principles. The Legislature understands and correctly

appreciates the needs of its own people; its laws are directed to problems made manifest by experience and its discrimination is based on adequate grounds.

75. In considering the constitutionality, the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation.

76. The basic principles governing legislative power in the context of the present case can be culled out by the Hon'ble Apex Court in the case of ***Hoechst Pharmaceuticals Ltd. Vs. State of Bihar, MANU/SC/0392/1983***: and in the decision of the Constitution Bench in ***State of West Bengal Vs. Kesoram Industries Limited MANU/SC/0038/2004***, and held that, in matters of taxation, the Court must defer to legislative judgment and policy. Where a statute empowers the Government to grant exemption from tax to any specified class, in public interest, the Court would not question the policy of the Government in exercising this power or interfere

merely because the exemption granted has been confined to new units and not extended to all units doing the same business. Mere excessiveness of tax or the absence of corrective machinery would not render the tax as an unreasonable burden and thereby violative of Article 19(1)(g).

77. A taxing statute is not *per se* regarded as a restriction on freedom under Article 19(1)(g) even if it imposes some hardships in individual cases. The mere excessiveness of tax or even the circumstances that its imposition might tend towards the diminution of earnings or profits of the persons of incidence does not, *per se*, and without more, constitute violation of rights under Article 19(1)(g). Courts do not usually interfere with attacks on the ground of it being excessive or it imposes a heavy burden on trade and commerce or that the profits of business are greatly reduced thereby. Taxation law is not open to attack on the ground of inequality, even though the result of taxation may be that the total burden on different persons may be unequal. Courts in view of the inherent complexity of fiscal adjustment

of diverse elements permit a larger discretion to the Legislature in matter of classification. The power of Legislature to classify is of wide range and flexibility so that it can adjust its system of taxation in all proper and reasonable ways.

78. The Hon'ble Apex Court has time and again reiterated that Courts do not sit in appeal over the decisions of the Government to do merit review of the subjective decision and that Government decisions concerning public revenue have an intricate economic value attached to them and to elevate the standard of review on the basis of subjective understanding of the subject matter being extraordinary would be dehors the review jurisdiction.

79. 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. The objective behind it may be safeguard or

administrative reasons, and therefore, the prayer of the present Petitioner for declaring it ultravires is not sustainable. Hence, we proceed to pass the following order.

O R D E R

i. The Writ Petition is **partly allowed**.

ii. The prayer in prayer clause (A) and (B) are hereby rejected.

iii. The show cause notice No.02/2025-GST dated 28.01.2025 issued by the office of the Respondent No.3 and made answerable to Respondent No.4 is hereby quashed and set aside.

iv. The proceedings initiated by the Respondent No.2 by issuing impugned summons dated 20.07.2023 is also quashed and set aside.

80. Rule is made absolute in the aforesaid terms.

81. Pending application/s, if any, shall stand disposed of accordingly.

(NIVEDITA P. MEHTA, J.) **(URMILA JOSHI PHALKE, J.)**

S.D.Bhimte