ECONOMIC LAWS PRACTICE
ADVOCATES & SOLICITORS

RECENT DEVELOPMENTS IN DIRECT & INDIRECT TAX

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DIRECT TAX - RECENT CASE LAWS

Mumbai ITAT[1] held that Securitization Trusts are not AOPs to be taxed at MMR, but Revocable Trusts and the income of such Trust is taxable in the hands of the security receipts holders and not the Trust

FACTS OF THE CASE

- The Assessee was a trust created by Asset Reconstruction Company India Ltd. (**ARCIL**) under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (**SARFAESI Act**) to acquire and resolve non-performing assets (**NPAs**). ARCIL was acting as trustee of the Assessee trust and managing the trust structure.
- The Assessee trust raised funds from Qualified Institutional Buyers (**QIBs**) by issuing Security Receipts (**SRs**).
- The Assessee filed a nil return on the basis that the contributions were revocable and therefore, income arising from the trust was taxable in the hands of SR holders under sections 61 to 63 of the Income-tax Act, 1961 (**ITA**) and not in the hands of the trust.
- The Assessing Officer (**AO**) rejected this position and held that the Assessee was taxable as an Association of Persons (**AOP**) or alternatively, that the trust was not revocable and that beneficiaries' shares were indeterminate therefore attracting taxation at the maximum marginal rate under section 164(1) of the ITA.
- On appeal, the Commissioner (Appeals) held in favour of the Assessee by accepting that the trust was validly constituted and the contributions were revocable. Therefore, the income was taxable in the hands of SR holders and rejected the AOP characterization.
- Aggrieved by this, the revenue preferred an appeal before the Income Tax Appellate Tribunal (**ITAT**) Mumbai.

ASSESSEE'S CONTENTION

- The Assessee trust contended that it was a securitisation trust and the structure was not an artificial device but a statutorily recognised mechanism for acquisition and realisation of stressed financial assets.
- It was submitted that the trust deed expressly provided for revocability and the SR holders retained sufficient rights to reassume control over contributions/income.
- On this basis, it was argued that sections 61 to 63 of the ITA squarely applied and accordingly, income was taxable in the hands of the SR holders and not trust.
- The assessee contended that the income distributed to the various contributors had already been taxed in their respective hands therefore, taxing the same income again in the hands of the assessee would result in double taxation.
- The Assessee trust further argued that it could not be treated as an AOP, as there was no inter se agreement or joint action among investors to carry on business or earn income collectively.
- Reliance was placed on the decision in ARCIL Retail Loan Portfolio-001-A-Trust[2], where the Hon'ble ITAT held that such securitisation trusts were revocable trusts within the meaning of sections 61 to 63 of the ITA, that income was taxable in the hands of contributors/SR holders and not in the hands of the trust. Moreover, such trusts could not be assessed as AOPs, and Section 164 of the ITA had no application.

REVENUE'S CONTENTION

- The revenue contended that the Assessee trust was taxable as an AOP. As investors had effectively come together with a common objective of earning income from NPA recovery.

[1] ITA NO. 8415/MUM/2025.

[2] [2026] 182 taxmann.com 849 (Mumbai - Trib.)

- It was argued that the benefit of sections 61 to 63 of the ITA was not available, as the trust was not genuinely revocable in substance.
- Without prejudice, the revenue submitted that even if treated as a trust, the beneficiaries' shares were indeterminate, thereby attracting section 164(1) of the ITA and taxation at the maximum marginal rate.
- The revenue also alleged that the structure was made with the intention to avoid tax and that the profit or surplus arising from asset realisation should be taxed at the trust level, rejecting the argument of double taxation.

TRIBUNAL'S DECISION

- Hon'ble Tribunal observed that the assessee is a securitisation trust constituted under the SARFAESI Act and governed by RBI guidelines. Further, observed that contributors/SR holders retain effective control over the underlying assets and income of the Assessee. Accordingly, on this basis it was held that the assessee qualifies as a revocable trust, and therefore Sections 61 to 63 of the ITA are applicable. Accordingly, the income arising from the trust is taxable in the hands of the SR holders and not in the hands of the trust.
- The Assessing Officer's contention that the assessee is an AOP under Section 2(31) was rejected, since:
  - There is no common design to earn income jointly, and
  - The relationship is governed by pre-defined trust and contractual rights.
- The Tribunal held that Section 164 is not applicable, as:
  - The trust is revocable, and
  - Income is specifically attributable to the contributors.
- It was further observed that Finance Act, 2016 amendments and CBDT clarifications are clarificatory, reinforcing the taxation in the hands of investors.
- Hon'ble Tribunal relied on the decision of the coordinate bench in the case of ARCIL Retail Loan Portfolio-001-A-Trust upheld the order of the CIT(A) and deleted the addition made by the AO.

ELP Comments

The ruling reiterates the pass-through nature of ARC securitisation trusts and reinforces the principle that income arising from such trusts should be taxable directly in the hands of SR holders, i.e. the investors in the ARC, rather than at the trust level. The decision also provides continued judicial support for the validity of revocable trust structures adopted by ARCs and strengthens certainty around the tax treatment.

ITAT Lucknow bench[3] held that exemption from capital gains tax under section 54 of the ITA is not available where investment was in 'plinth' and residential house was not constructed within prescribed period

FACTS OF THE CASE

- The Assessee sold a property situated at Pune during the relevant assessment year, resulting in long-term capital gains and claimed exemption under section 54 of the ITA for acquisition of Unit under construction at Aamby Valley City, Pune.
- By the due date prescribed under section 139(1) of the ITA, the Assessee had utilised only a part of the capital gains towards the acquisition of the new asset.
- Moreover, Assessee filed a belated return under section 139(4) and claimed exemption under section 54 of the ITA.
- The AO disallowed the claim under Section 54 of the ITA on the grounds that the Assessee had neither purchased a residential house nor invested whole of the capital gains for acquisition of a residential house under construction. Further, the assessee also failed to deposit the unutilised capital gains in the notified Capital Gains Account before the due date under section 139(1) of the ITA.
- The Commissioner (Appeals) upheld the disallowance. Aggrieved by this, the Assessee preferred an appeal before the ITAT Lucknow.

ASSESSEE'S CONTENTION

- The Assessee contended that the investment in the Unit/Plinth at Aamby Valley was intended for construction of a residential villa and therefore should not be treated as a mere purchase of land or plinth.
- Relying on CBDT Circulars, the Assessee contended that such allotment is deemed construction and qualifies for section 54/54F relief if completed within the prescribed period.
- The Assessee argued that section 54(2) of the ITA is procedural, and exemption should not be denied if the capital gains are utilized within the prescribed period, even without deposit under the Capital Gains Account Scheme.
- It was further contended that payments made up to the return filing date under section 139(4) should qualify for exemption.
- Relying on the decision of Hon'ble Lucknow ITAT in *Smt. Arti Kumaria*[4] The Assessee submitted that bona fide intention to invest in a residential house is the key requirement and procedural non-compliance should not defeat the exemption.
- The Assessee contended that construction could not be completed due to Supreme Court restrictions on Aamby Valley and relying on Pradeep Kumar Jain[5] argued that exemption should not be denied where non-completion is due to factors beyond the Assessee's control.

REVENUE'S CONTENTION

- The revenue contended that acquisition of a mere plinth/plot does not qualify as a residential house under Section 54 of the ITA.
- It was argued that the agreement merely contemplated future construction and did not establish purchase or construction of a house.

[3] ITA No.360/LKW/2023

[4] ITA No. 97/LKW/2017

[5] ITA No.190/CHD/2019

- The Assessee failed to prove commencement, substantial investment or completion of construction within the prescribed period.
- Further, only part of the capital gains was utilised by the due date under section 139(1) of the ITA, and the balance was not deposited under section 54(2) of the ITA.
- Since section 54(1) of the ITA is subject to section 54(2) of the ITA, non-compliance with the deposit requirement disentitled the exemption.
- Accordingly, the AO and CIT(A) rightly denied the section 54 of the ITA claim.

TRIBUNAL'S DECISION

- The Hon'ble ITAT held that acquisition of a plinth/plot under a lease, where future construction was merely contemplated, does not amount to purchase or construction of a residential house for the purposes of section 54 of the ITA.
- The Hon'ble ITAT noted absence of evidence regarding commencement, substantial investment, or progress of construction within the prescribed period.
- The Hon'ble ITAT rejected reliance on subsequent Supreme Court restrictions on Aamby Valley, observing that such restrictions arose after expiry of the prescribed period under section 54 of the ITA. The decision in Pradeep Kumar Jain (Supra) was distinguished on facts.
- Further, failure to deposit unutilised capital gains under section 54(2) of the ITA before the due date under section 139(1) of the ITA also disentitled the Assessee from claiming exemption.
- Accordingly, the Hon'ble ITAT held that neither purchase nor construction was completed within the prescribed period and upheld denial of exemption under section 54 of the ITA.

ELP Comments

This ruling brings forth the importance of investing whole of the capital gains while purchasing an under construction residential property. This has been categorically discussed in the case of Mrs. Seema Sabharwal[6] and Hasmukh N. Gala[7]. The ruling also reiterates the importance of complying with the deposit requirements under section 54(2) of the ITA where the capital gains amount remains uninvested as on the due date prescribed for filing tax returns.

[6] ITA NO. 272 /CHD/ 2017

[7] ITA NO. 7512/MUM/ 2013

INDIRECT TAX - RECENT CASE LAWS

Delhi High Court reiterates that education consultancy services to foreign universities qualify as export of services and not intermediary services

FACTS OF THE CASE

- Fateh Education Consulting Private Limited[8] (the **Petitioner**) was engaged in providing education consultancy, marketing and recruitment support services to foreign universities. The services included promotion of courses, counselling of prospective students and assistance in the admission process for students intending to study abroad.
- The Petitioner entered into agreements with foreign universities on a principal-to-principal basis and received consideration directly from such universities in convertible foreign exchange. No consideration was charged from students in India.
- The Petitioner filed refund claims under Section 54 of the CGST Act for the period September 2023 to March 2024 on account of export of services with payment of tax.
- The Department issued a Show Cause Notice (**SCN**) alleging that the Petitioner was acting as an "intermediary" under Section 2(13) of the Integrated Goods and Services Tax Act, 2017 (**IGST Act**), on the ground that it was promoting courses of foreign universities, identifying prospective students and assisting in the recruitment/admission process.
- The refund claims were ultimately rejected on the premise that the Petitioner was facilitating supply between foreign universities and students and was therefore acting as an intermediary, disentitling it from export benefits.
- Aggrieved by the rejection order, the Petitioner approached the Delhi High Court challenging the classification of its services as intermediary services.

RULING OF DELHI HIGH COURT

- The Delhi HC held that the controversy is no longer res integra in light of earlier decisions including *Commissioner of Delhi Goods and Service Tax v. Global Opportunities Private Limited*[9] and the Bombay High Court ruling in *K.C. Overseas Education Pvt. Ltd.*[10].
- The Court reiterated that the determinative factor for identifying intermediary services is whether the service provider is supplying services on its own account or merely facilitating a supply between two other persons.
- It was observed that the Petitioner had entered into agreements directly with foreign universities, raised invoices on such universities and received consideration from them. The Petitioner did not charge students, had no authority to bind the universities, could not guarantee admission, and was not operating in a principal-agent relationship.
- The Court held that mere assistance in admission or recruitment of students does not convert the service provider into an intermediary, particularly where the services are rendered independently on principal-to-principal basis.
- Relying on earlier precedents including *Ernst & Young Ltd.*[11], *Vodafone India Ltd.*[12] and *Blackberry India Pvt. Ltd.*[13], the Court reiterated that the location of the end beneficiary is not determinative and that a person supplying services on its own account cannot be treated as an intermediary merely because the services facilitate the

[8] 2026(5) TMI 632 – DELHI HC
[9] 2025 (10) TMI 371 - DELHI HC
[10] 2025 (9) TMI 469 – SC
[11] 2023 (3) TMI 1117 - DELHI HC
[12] 2021 (10) TMI 1286 – SC
[13] 2024 (11) TMI 830 - SC

business objectives of the recipient.

- The HC further noted that even the Department did not dispute that the factual matrix was materially similar to the earlier precedents governing the issue.
- Accordingly, the Court set aside the rejection order and directed the refund claim to be processed and granted along with applicable statutory interest within two months.

ELP Comments

This ruling assumes significance in the context of the long-standing controversy surrounding classification of education consultancy and recruitment support services provided to foreign universities as "intermediary services" under Section 2(13) of the IGST Act. The dispute primarily pertains to the period prior to the legislative changes introduced to address the scope and taxability of intermediary-related transactions, during which refund claims in several cases were denied by treating such services as intermediary services.

The Delhi High Court has once again emphasised the importance of examining the true contractual relationship, the person liable to pay consideration, and whether the supplier is acting on its own account. The judgment reinforces that absence of authority to bind the foreign university, coupled with direct contractual arrangements and receipt of consideration from the overseas entity, strongly militates against characterization as an intermediary.

Bombay High Court holds GST proceedings against amalgamating company post-merger are void ab initio

FACTS OF THE CASE

- *Vodafone Idea Limited (**Petitioner**)*[14], was formed pursuant to the merger of Vodafone Mobile Services Limited (**VMSL**) and Vodafone India Limited with Idea Cellular Limited pursuant to an order passed by the National Company Law Tribunal (**NCLT**).
- The fact of such merger was duly intimated to the GST authorities at the time of amendment of the GST registration of Idea Cellular Limited.
- Prior to the merger, VMSL had transferred its telecom tower business to ATC Telecom Infrastructure on a slump sale basis as a going concern.
- Subsequently, the Directorate General of GST Intelligence (**DGGI**) initiated investigation in relation to such transaction and issued summons to the Petitioner.
- A Show Cause Notice dated 01.08.2024 (**SCN**) was issued under Section 74 of the CGST Act to VMSL proposing demand of tax, interest and penalty on the ground that transfer of a going concern constitutes an exempt supply and accordingly, input tax credit was not admissible.
- The Petitioner filed detailed replies and specifically informed the authorities that VMSL had ceased to exist pursuant to the merger approved by the NCLT.
- Despite this, the Department proceeded to pass the adjudication order against VMSL, leading to filing of the writ petition before the Bombay High Court.

RULING OF BOMBAY HC

- The High Court observed that pursuant to the NCLT-approved scheme of amalgamation, VMSL had ceased to exist in the eyes of law.
- The Court noted that the fact of merger had already been intimated to the GST authorities and was also specifically brought to their notice during the adjudication proceedings.
- The Department argued that the Supreme Court's decision in *Maruti Suzuki India Limited*[15], which held that proceedings against a non-existent entity are void, was rendered in the context of the Income Tax Act and therefore would not apply to GST proceedings.
- Rejecting this contention, the Court held that the principle laid down in *Maruti Suzuki India Limited* would equally apply under the GST regime. Reliance was also placed on the Bombay High Court decision in *Reliance Industries Limited*[16], wherein it was held that proceedings initiated against a non-existent entity are void ab initio, even if the amalgamated entity participates in such proceedings.
- The Court also rejected the Department's reliance on Section 87 of the CGST Act and held that the provision only applies to transactions between amalgamating entities during the intervening period between the effective date of merger and the date of the merger order.
- It was further held that Section 87 does not authorize the Department to issue a SCN or continue proceedings against an entity which has ceased to exist pursuant to amalgamation.
- Accordingly, the Court held that the SCN issued to VMSL was without jurisdiction and consequently, the entire proceedings and adjudication order stood vitiated and liable to be quashed.

[14] 2026 (5) TMI 162 - BOMBAY HIGH COURT

[15] [2019] 416 ITR 613

[16] [2025] 479 ITR 770

ELP Comments

This decision is significant as the Bombay High Court has expressly recognised that the settled principle laid down in Maruti Suzuki India Limited—that proceedings against a non-existent entity are void in law—would apply with equal force to proceedings under the GST regime as well, notwithstanding that the said ruling was rendered in the context of the Income Tax Act.

This decision also provides important clarity on Section 87 of the CGST Act. The Court has clarified that the provision is intended only to address tax liability arising during the intervening period of amalgamation and does not permit issuance or continuation of proceedings against an entity which has ceased to exist in law.

The ruling therefore reinforces that proceedings initiated against a non-existent entity suffer from a fundamental jurisdictional defect and are liable to be set aside notwithstanding participation by the amalgamated entity in the proceedings.

Gauhati High Court sets aside show cause notice under section 73 issued after completion of GST Audit

FACTS OF THE CASE

- The GST returns of *M/s Surya Business Private Limited*[17] (the **Petitioner**) pertaining to FY 2017-18 were selected for audit under Section 65 of the Assam Goods and Service Tax Act, 2017 (**AGST Act**). The department issued an audit notice requiring production of books of accounts and records. The Petitioner furnished the required documents, and the audit was conducted by the Deputy Commissioner of State Tax.
- After verification, audit observations were issued under Rule 101(4) of the Assam Goods and Service Tax Rules, 2017. The observations included issues relating to alleged short payment of tax, suppression or unreconciled turnover and other documentations.
- The Petitioner submitted a detailed reply with clarifications and supporting material, including explanations relating to turnover reconciliation and ITC reversal entries.
- On consideration of the reply, the department issued the final audit report under Section 65(6). The substantive objections were dropped, and only interest liability for late payment of tax was determined as payable.
- The Petitioner paid the interest and intimated the authorities, seeking closure. Thereafter, the department issued a fresh show cause notice ('SCN') in Form GST DRC-01 under Section 73 for the same period, alleging short payment of tax and excess availment of ITC.

RULING OF GAUHATI HC

- The Gauhati HC set aside the SCN issued under Section 73, holding that it was not maintainable in the facts of the case. The Court noted that "audit" under Section 2(13) of the AGST Act involves examination of records, returns, and other documents to verify declared turnover, tax paid, refund claimed, ITC availed, and overall statutory compliance.
- The Court held that once a comprehensive audit under Section 65 had been conducted for the relevant period and the petitioner had discharged the liability determined in that audit, issuance of a fresh Section 73 notice on the same subject matter would undermine the audit process and render it redundant.
- The Court observed that Section 65(7) permits initiation of proceedings under Section 73 or Section 74 only where the audit results in detection of tax not paid, short paid, erroneously refunded, or ITC wrongly availed or utilised.
- In the present case, the final audit report did not record any surviving discrepancy regarding short payment of tax or wrongful availment of ITC, except the interest liability for delayed payment, which had already been paid.
- The Court rejected the department's contention that the ITC issue had not been considered during audit, finding that the petitioner had dealt with ITC related aspects in its reply to the audit observations and no inconsistency was ultimately found by the department.
- The Court also took note of Instruction No. 13/2023-GST dated 26.12.2023, which contemplated dropping notices generated through IIT Big Data Software where audit proceedings had already been completed, at least to the extent the issues had been covered earlier.

ELP Comments

This judgment is an important precedent for taxpayers facing automated or system-generated notices covering issues that have already been examined during departmental audit, scrutiny, or investigation proceedings. The ruling

[17] WP(C)/6322/2023

reinforces the principle of finality in tax proceedings. Taxpayers often invest substantial time and resources in responding to audits and furnishing voluminous reconciliations and documents. If identical issues are subsequently reopened through data analytics-driven notices, it leads to duplication of proceedings and unnecessary litigation. This decision provides strong support to challenge such repetitive notices and to seek closure where liabilities determined during audit have already been discharged.

The judgment will be particularly useful in cases where:

- *audit objections have been dropped after detailed submissions;*
- *tax or interest determined during audit has been paid through DRC-03;*
- *fresh notices are issued on substantially identical grounds; or*
- *automated notices are generated without considering prior proceedings.*

Bombay HC (Nagpur Bench) holds corporate guarantees issued without consideration are not taxable under GST; quashes DGGI proceedings

FACTS OF THE CASE

- *M/s D.P. Jain & Co Infrastructure Pvt Ltd*[18] (**Petitioner**) had provided corporate guarantees in favour of banks and financial institutions on behalf of its group entities/subsidiaries for securing credit facilities and loans. All the corporate guarantees were executed prior to 26.10.2023, i.e. before insertion of the specific valuation mechanism under Rule 28(2) of the CGST Rules, and were issued without any commission, fee or consideration from the borrower entities.
- The guarantee documents expressly recorded that the petitioner had neither received, nor would receive, any security, fee, commission or other consideration from the borrower entities for issuance of such guarantees.
- The State GST authorities had earlier conducted investigation proceedings for FYs 2017-18 to 2022-23 and examined the petitioner's books of account, balance sheets, GST returns, and related documents, including the corporate guarantees. No GST liability was raised in relation to such guarantees during those proceedings. Subsequently, the Directorate General of GST Intelligence (**DGGI**) initiated separate proceedings by issuing summons alleging non-payment of GST on corporate guarantees.
- During the pendency of the investigation, the Central Government issued Notification No. 52/2023-Central Tax dated 26.10.2023 inserting Rule 28(2) in the CGST Rules, prescribing a deemed valuation mechanism for corporate guarantees provided between related persons. Circular No. 204/16/2023-GST dated 27.10.2023 (**Circular 204**) and Circular No. 225/19/2024-GST dated 11.07.2024 (**Circular 225**) further clarified that furnishing corporate guarantees by a holding company for its subsidiary, even without consideration, would constitute taxable supply of services under GST.
- Based on the above, the Department initiated proceedings alleging non-payment of GST on such corporate guarantees and issued show cause notice relying upon Rule 28(2), Circular 204 and Circular 225.
- Aggrieved, the Petitioner challenged before the Bombay HC (Nagpur Bench) constitutional validity of Rule 28(2) of the CGST Rules, validity of the aforesaid Circulars and summons and show cause notice issued by the Department.
- The Petitioner contended that issuance of corporate guarantee without consideration does not qualify as "supply" under Section 7 of the CGST Act, as consideration is an essential element of taxable supply. It was further argued that Rule 28 of the CGST Rules only prescribes valuation mechanism and cannot artificially create a taxable supply in absence of consideration. Reliance was placed on the decision of the Hon'ble Supreme Court in *Edelweiss Financial Services Ltd.*[19] rendered under the erstwhile Service tax regime.
- The Department contended that corporate guarantees provided between related parties are covered within the scope of supply under Schedule I read with Section 7 and Rule 28(2), and therefore GST is payable even where no consideration is charged.

RULING OF BOMBAY HC

- The Bombay HC partly allowed the writ petition and held that corporate guarantees issued by the Petitioner without consideration are not taxable as supply of services under GST. Key findings of the HC inter alia include:
  - Rule 28 of the CGST Rules merely prescribes a valuation mechanism for taxable supplies and cannot determine whether a transaction constitutes "supply" under Section 7 of the CGST Act.
  - A corporate guarantee, unlike a bank guarantee issued in the ordinary course of business, is generally

[18] 2026 (5) TMI 500 – Bombay High Court

[19] 2023 (4) TMI 170 – SC Order

furnished by a holding/group company to protect or support its own financial exposure or that of its subsidiaries/group entities. Such guarantees are in the nature of contingent contracts, becoming enforceable only upon default by the borrower.

- The HC observed that the Petitioner was not engaged in the business of commercially providing guarantees and the guarantees were furnished only to secure loans for its subsidiaries/group entities.
- Corporate guarantees issued without consideration, merely to protect or support group entities/subsidiaries, do not satisfy the essential ingredients of "supply". Absence of consideration is fatal to taxability, particularly where there is no flow of consideration or commercial benefit accruing to the guarantor.
- Accordingly, since all the guarantees in the present case were issued without consideration, such transactions could not be treated as taxable supply under Section 7 read with Section 9 of the CGST Act.
- Under the erstwhile Service tax regime, the Hon'ble Supreme Court in Edelweiss Financial Services Ltd., has held that issuance of corporate guarantee without consideration is not taxable.
- Applying the same principle under GST, the HC held that issuance of corporate guarantees without consideration cannot be treated as taxable supply of service.
- The HC further held that circulars cannot enlarge the scope of charging provisions or create tax liability where the statute itself does not contemplate levy of tax.
- However, the HC rejected the constitutional challenge to Rule 28(2) of the CGST Rules and observed that delegated fiscal legislation enjoys a strong presumption of constitutionality. Merely because the provision may operate harshly in certain cases would not render it ultra vires. The HC further observed that there may be valid administrative or economic considerations underlying such delegated legislation.

- Accordingly, the HC quashed the summons, show cause notice and proceedings initiated against the Petitioner in relation to GST on corporate guarantees issued without consideration.

ELP Comments

This ruling is significant as it recognizes a threshold distinction between a taxable supply and a mere intra-group financial support arrangement. The HC accepted that a corporate guarantee issued without consideration, and not as part of any regular business of issuing guarantees, cannot automatically be equated with a bank guarantee issued for a fee in the ordinary course of banking business.

The ruling is favourable on the levy issue. However, the HC did not strike down Rule 28(2) of the CGST Rules as ultra vires. The HC observed that fiscal legislation and delegated valuation provisions carry a strong presumption of validity and that courts ordinarily allow greater latitude to the legislature / rule-making authority in taxation matters. Accordingly, Rule 28(2) continues to remain on the statute book, which becomes particularly relevant for corporate guarantees issued or renewed on or after 26.10.2023.

However, the ruling may require careful application for the following reasons:

- *The guarantees before the HC were issued prior to 26.10.2023. The judgment strengthens the position that valuation provisions cannot, by themselves, create levy where the underlying transaction itself is not a taxable supply.*
- *The HC substantially relied on the Hon'ble Supreme Court's decision in Edelweiss Financial Services Ltd. rendered under the erstwhile service tax regime. While the principle that consideration is central to taxability remains relevant, the GST framework is materially different inasmuch as Section 7 read with Schedule I contains a deeming fiction for certain supplies between related persons even when made without consideration. Accordingly, Department may argue in future cases that service tax precedents cannot be mechanically applied to GST, particularly where Schedule I is specifically invoked.*
- *The constitutional validity of Rule 28(2) has been kept intact. Consequently, for corporate guarantees issued or*

renewed on or after 26.10.2023, the prescribed valuation mechanism of 1% per annum of the guaranteed amount, or actual consideration, whichever is higher, continues to require careful evaluation. While the threshold argument on "whether there is a supply at all" may still be available depending on facts, the risk profile for post-26.10.2023 guarantees is materially different.

- *While the HC observed that a corporate guarantee is distinct from a commercial bank guarantee, the judgment does not conclusively examine whether such activity could qualify as a shareholder activity and therefore fall outside the scope of "supply" itself. Similarly, the issue whether corporate guarantees qualify as "actionable claims" under Schedule III has also been left open.*
- *The judgment is at variance with the position adopted by the CBIC in Circular 204 and Circular 225, where intra-group corporate guarantees between related persons have been treated as taxable supplies even in the absence of consideration. In view of this divergence, the possibility of further litigation, including an appellate challenge by the Department, cannot be ruled out.*

The ruling therefore marks an important development in the evolving jurisprudence on taxability of intra-group corporate guarantees under GST. Similar challenges relating to validity of Rule 28(2) and the aforesaid circulars are presently pending before various High Courts including in cases involving Sterlite Power Transmission Limited[20], ACME Cleantech Solutions Pvt Ltd[21], KSW Energy Limited[22] and Vedanta Limited[23] . It remains to be seen how other HCs approach the issue.

We trust you will find this an interesting read. For any queries or comments on this update, please feel free to contact us at insights@elp-in.com or write to our authors:

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[20] 2024 (84) GSTL. 42 (Del)

[21] TS-258-HC(P&H)-2024-GST

[22] WP 12498/2024 – Karnataka High Court

[23] 2025 (94) G.S.T.L. 370 (Bom)

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