

[2026] 186 taxmann.com 865 (Article)©

Date of Publishing: May 22, 2026

## Corporate Guarantees Under GST: Bombay High Court Reasserts That No Tax Can Arise Without Consideration

**ASHWARYA SHARMA**

Advocate, Co-Founder &amp; Legal Head, RB LawCorp

### 1. Introduction

The levy of GST on corporate guarantees has steadily evolved into one of the most litigated and commercially sensitive disputes under the indirect tax regime. Large business groups, particularly in the infrastructure, manufacturing, energy and financing sectors, frequently extend corporate guarantees to banks and financial institutions on behalf of their subsidiaries or associate concerns in order to facilitate credit arrangements and project financing. Traditionally, such guarantees were regarded as internal financial support mechanisms intended to protect group investments and maintain business continuity rather than independent revenue-generating activities.

However, the GST department has consistently attempted to characterize such guarantees as taxable supplies of service, even where no guarantee commission or consideration was charged. The controversy assumed greater significance after the insertion of Rule 28(2) of the CGST Rules prescribing a deemed valuation mechanism for corporate guarantees and the issuance of Circular No. 204/16/2023-GST. These developments led to substantial tax exposure for corporate groups across the country, with authorities initiating widespread investigations and show cause proceedings solely on the premise that a corporate guarantee between related parties automatically constitutes a taxable supply.

In this backdrop, the decision of the Hon'ble Bombay High Court in *D P Jain And Co. Infrastructure Pvt Ltd v. Union Of India* [2026] 186 taxmann.com 392 (Bombay) [ assumes considerable importance. The Court has delivered another progressive and legally significant ruling on the foundational issue of whether a corporate guarantee furnished without consideration can at all be subjected to GST. The judgment revisits the very architecture of "supply" under Section 7 of the CGST Act and draws an important distinction between commercial bank guarantees and intra-group corporate support arrangements.

More importantly, the ruling reiterates a fundamental principle of tax jurisprudence that valuation provisions and departmental circulars cannot independently create a taxable event where none exists under the charging section itself. The judgment therefore has far-reaching implications not only for pending disputes involving corporate guarantees but also for the broader interpretation of related party transactions under GST.

### 2. The Corporate Guarantee Controversy Under GST

Under the GST framework, the department has consistently taken the position that where a holding company or related entity provides a corporate guarantee to a bank or financial institution for loans availed by its subsidiary, such activity constitutes a supply of service between related persons. This interpretation gained further momentum after

the introduction of Rule 28(2) of the CGST Rules, which prescribed a deemed taxable value for corporate guarantees at 1% of the guaranteed amount irrespective of whether any actual consideration was charged.

The real controversy, however, lies at a more fundamental level — whether a corporate guarantee issued without any fee, commission or monetary benefit can at all qualify as a “supply” under Section 7 of the CGST Act. Taxpayers have consistently argued that such guarantees are merely shareholder functions or business support activities undertaken to protect investments and facilitate funding for subsidiaries. According to this line of reasoning, the absence of consideration strikes at the very root of taxability.

The department, on the other hand, has sought to invoke Schedule I of the CGST Act dealing with transactions between related persons to argue that even services rendered without consideration can be taxable under GST. This conflict between the concepts of “supply”, consideration, related party transactions and valuation fiction has resulted in extensive litigation before various High Courts across the country.

### **3. Factual Background**

The Petitioner challenged proceedings initiated pursuant to Circular No. 204/16/2023-GST dated 27.10.2023 and Circular No. 225/19/2024-GST dated 11.07.2024 whereby corporate guarantees were sought to be treated as taxable supplies of service under GST with deemed valuation mechanism.

The Petitioner had executed various corporate guarantee agreements on behalf of its associate companies for the purpose of enabling such entities to secure financial assistance from banks and financial institutions for execution of projects. The corporate guarantees were reflected in the books of account, though admittedly no commission or consideration was received by the Petitioner for issuance of such guarantees.

Subsequently, show cause notices were issued proposing GST liability on the basis of amended Rule 28(2) and the aforesaid Board Circulars. The Petitioner therefore challenged not only the show cause proceedings but also sought quashing of Rule 28(2) of the CGST Rules as inserted by Notification No. 52/2023-Central Tax dated 26.10.2023 on the ground that the same travelled beyond the scope of the charging provisions contained in the CGST Act.

### **4. Submissions on Behalf of the Petitioners**

The Petitioners contended that it is a settled principle of law that a tax liability cannot be created merely through issuance of a departmental circular. According to the Petitioners, the impugned circulars effectively prejudged the issue by directing authorities to treat corporate guarantees as taxable supplies of service, thereby rendering the adjudicatory process itself meaningless.

It was argued that the Respondents proceeded purely on assumptions without examining the statutory framework of the CGST Act. Under Section 9 of the Act, GST is leviable only on supplies of goods or services or both. The Petitioners emphasized that “taxable supply” under Section 2(108) necessarily means a supply which is otherwise leviable to tax under the Act and therefore the existence of a valid supply itself is a precondition for taxability.

The Petitioners further contended that corporate guarantees could, at best, fall within the realm of “actionable claims”. Since actionable claims other than specified actionable claims are covered under Schedule III and treated neither as supply of goods nor supply of services, the activity itself falls outside the GST net.

A central plank of the Petitioner’s argument was that the corporate guarantee agreements specifically recorded that no consideration, commission or fee was payable for issuance of such guarantees. In the absence of consideration, the essential ingredients of supply were missing. The Petitioners also relied upon interim orders passed by various High Courts staying similar proceedings concerning corporate guarantees.

### **5. Submissions on Behalf of the Respondent Government**

The Respondents contended that the Petitioner was liable to pay GST on corporate guarantees in view of the amendment introduced in Rule 28(2) of the CGST Rules. According to the department, once the legislature had

prescribed a deemed valuation mechanism for corporate guarantees between related parties, GST liability automatically followed.

The Government further relied upon Circular dated 11.07.2024 to contend that valuation in such cases was required to be determined on a proportionate basis. The department therefore argued that the issuance of corporate guarantees between related parties constituted a taxable supply irrespective of whether consideration was actually charged.

## **6. Discussion and Findings of the High Court**

### **6.1 Scope of “Supply” Under Section 7**

The High Court examined the definition of “supply” 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 made in the course or furtherance of business for consideration and also includes activities specified in Schedule I undertaken without consideration.

The Court noted that the concept of supply under GST cannot be interpreted in isolation from the statutory requirement of consideration except to the limited extent specifically contemplated under Schedule I.

### **6.2 Nature and Meaning of Corporate Guarantee**

The Court extensively discussed the meaning of “guarantee” with reference to Black’s Law Dictionary and Section 126 of the Indian Contract Act, 1872. It observed that a contract of guarantee essentially involves an assurance to discharge the liability of a third person in the event of default.

The Court further noted that a corporate guarantee is ordinarily furnished by a holding company or group entity in order to facilitate financial assistance for its subsidiaries or associate concerns. Such guarantees are generally issued without charging any consideration and primarily serve the purpose of protecting group investments and ensuring operational continuity of related entities.

### **6.3 Distinction Between Bank Guarantee and Corporate Guarantee**

One of the significant aspects of the judgment is the distinction drawn between a bank guarantee and a corporate guarantee. The Court observed that a bank guarantee is a commercial financial instrument issued by banks in the ordinary course of business for consideration and usually backed by security arrangements. In contrast, a corporate guarantee is essentially an intra-group support mechanism issued by a parent or associate company to safeguard the financial health of related enterprises.

The Court categorically held that corporate guarantees are not ordinarily issued as an independent business activity and therefore cannot automatically be equated with commercial guarantees issued by banks or financial institutions.

### **6.4 Reliance on Edelweiss Judgment**

The High Court placed substantial reliance on the decision of the Hon’ble Supreme Court in *Commissioner of CGST and Central Excise v. Edelweiss Financial Services Ltd.*, [2023] 149 taxmann.com 76 (SC). The Court in *Edelweiss* had held under the service tax regime that corporate guarantees issued without consideration are not taxable services. The Court had specifically observed that for an activity to be taxable, there must exist both a service provider and a flow of consideration for rendition of such service.

Applying the ratio of *Edelweiss*, the High Court held that issuance of corporate guarantees without consideration cannot be subjected to GST merely because the parties are related entities.

### **6.5 Absence of Consideration Defeats Taxability**

The Court ultimately concluded that the execution of a corporate guarantee is in the nature of a contingent arrangement which becomes enforceable only upon default by the borrower. More importantly, the agreements in

question specifically recorded that the Petitioner neither received nor was entitled to receive any commission for providing the guarantees.

In the absence of consideration, the Court held that the very foundation of taxability collapsed. The proceedings initiated through the show cause notices were therefore liable to be quashed. The High Court unequivocally held that executing a corporate guarantee to its subsidiary is not in the nature of supply or supply of service taxable under Section 9 of the CGST Act, 2017.

## **7. Conclusion**

The judgment in *D P Jain* marks significant judicial intervention in the continuing controversy surrounding GST on corporate guarantees. At a time when the department has aggressively pursued tax demands solely on the basis of valuation rules and circulars across India, the Court has restored focus on the foundational requirement that there must first exist a taxable “supply” before any question of valuation can arise.

The ruling is particularly important because it recognizes the commercial realities of modern corporate functioning. Corporate guarantees are often extended not as independent commercial services but as integral business support measures intended to protect investments, facilitate financing and ensure survival of group entities. Treating every such arrangement as a taxable supply merely because parties are related would lead to artificial taxation divorced from commercial substance.

Equally significant is the Court’s reiteration that circulars cannot create a levy where the parent statute itself does not contemplate one. The judgment therefore reinforces an important constitutional limitation on delegated legislation and administrative interpretation under tax laws.

At a practical level, the decision is likely to provide substantial relief to corporate groups facing enormous GST exposure on historical guarantee transactions where no consideration was ever charged. However, unless the controversy is conclusively settled either through legislative clarification or authoritative pronouncement by the Supreme Court under GST law itself, litigation on the issue is likely to continue across jurisdictions.

For now, the High Court has once again reaffirmed a basic but vital principle of indirect taxation — in the absence of consideration and a legally recognizable supply, GST cannot be imposed merely through deeming fictions and circular-based assumptions.