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The Guarantee That Cost Nothing - Until the Tax Demand Arrived

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The Bombay High Court draws a line in the sand on GST liability for corporate guarantees but leaves several battles yet to be fought.

D.P. Jain & Co. Infrastructure Pvt. Ltd. v. *Union of India* [2026] 186 taxmann.com 392 (Bombay)

A. THE PROVOCATION

A Guarantee Without a Price Tag and Yet – A Tax Demand

There is an inherent paradox at the heart of the GST authorities' position in this case. The Petitioner executed three corporate guarantees in favour of State Bank of India and Bank of Maharashtra, securing term loans of approximately ₹2,014 crores advanced to its subsidiary and group companies for NHAI highway projects. Each guarantee deed carried one unambiguous declaration: the guarantor had not received, and shall not receive, any fee, commission, or consideration whatsoever.

And yet, a show cause notice arrived demanding GST on the act of providing corporate guarantee. The Revenue's weapon was Circular No. 204/16/2023 dated 27th October 2023, declaring that corporate guarantees which was extended without any consideration constitute a taxable supply of service. To complete the architecture, Rule 28(2) of the CGST Rules was inserted simultaneously, deeming the value of such supply at 1% per annum on the guaranteed amount. Where consideration did not exist, the executive simply decided to invent it.

"A circular cannot create what the statute does not. Consideration is not a procedural technicality it is the very foundation of the levy."

B. THE LEGAL FRAMEWORK

When the Charging Section Speaks, a Circular Cannot Whisper Otherwise

Section 7(1)(*a*) defines supply as transactions made for a consideration. That consideration is not a procedural prerequisite it is constitutive of taxability itself. A valuation rule, being merely the measure of a tax that already exists, cannot precede and substitute for the conditions that create it. The Ministry's powers under Section 168 are administrative and clarificatory; they do not extend to declaring non-taxable activities taxable by executive fiat.

The Court found direct and binding authority in the Supreme Court's decision in *Commissioner of CGST & Central Excise* v. *Edelweiss Financial Services Ltd.* [2023] 149 taxmann.com 76 (SC) : for an activity to be taxable, there must be both a provider and a flow of consideration. In its absence, taxability simply does not arise. The Revenue's appeal in Edelweiss had been dismissed on precisely this finding, and the Bombay High Court applied it without hesitation. The show cause notice and summons were quashed and set aside.

The constitutional challenge to Rule 28(2) was declined courts rightly defer to legislative judgment in fiscal matters but this must not be misread. Upholding Rule 28(2) as constitutionally valid is not the same as holding that it independently creates taxability. A provision that measures a levy cannot precede the levy itself.

C. The Unanswered Questions - Where the Real Battle Lies?

The judgment is a decisive victory on its facts, but significant questions remain unresolved and the Revenue will not abandon the field quietly.

First, the Schedule I question.

The Court does not engage with Entry 2 of Schedule I, which deems supplies between related persons, made in the course or furtherance of business, as taxable even without consideration. Edelweiss arose under the Finance Act, 1994, which had no such deeming provision. Whether that ruling is directly transposable to a GST framework equipped with Schedule I particularly for holding-subsidiary guarantees is a question Revenue is likely to press harder in future proceedings.

The shareholder activity argument.

A parent company providing a guarantee to protect its subsidiary's borrowing is arguably acting as a shareholder safeguarding its investment, not as a commercial service provider. This characterisation, well-established in EU VAT jurisprudence, would take such transactions outside the scope of supply altogether independent of the consideration debate.

The actionable claim argument and the statutory distinction the Court left untouched.

This is perhaps the most structurally significant argument raised in the case, and one the Court declined to rule upon. The Petitioner's contention was pointed: "goods" and "services" are two distinct expressions under the CGST Act, and a transaction that qualifies as an actionable claim falling within the definition of "goods" under Section 2(52) cannot be reclassified as a "service" through a circular. No notification has been issued to specify that actionable claims shall be treated as services rather than goods. Critically, Schedule III expressly excludes actionable claims, other than specified actionable claims such as gambling, from the scope of both supply of goods and supply of services. A corporate guarantee is a contingent, conditional claim squarely within the meaning of an actionable claim under Section 3 of the Transfer of Property Act, 1882. If this characterisation is accepted, the consequence is categorical: the transaction is outside the GST net entirely, not merely non-taxable for want of consideration. The Petitioner argued, and rightly so, that the impugned Circulars acted contrary to the express provisions of the statute and were therefore ultra vires and liable to be quashed. The Court's silence on this argument leaves it fully available and arguably more potent for future litigation.

When Debt in One Law Becomes a Service in Another - The IBC Contradiction

The Supreme Court in *State Bank of India* v. *Doha Bank Q.P.S.C.* [2026] 185 taxmann.com 918 (SC) has characterised corporate guarantees as 'financial debt' under the Insolvency and Bankruptcy Code. An obligation recognised as debt in one statutory framework cannot comfortably be taxed as a commercial service in another. When read alongside the actionable claim argument, this cross-statutory characterisation only reinforces the case that corporate guarantees are financial obligations in nature not commercial services rendered for consideration.

D. Key Take way and Way Forward

A Battle Won - The War Continues

For taxpayers holding pre-October 2023 no-consideration guarantees with pending proceedings, D.P. Jain provides authoritative shelter, grounded in Supreme Court precedent and clean statutory reasoning.

But the wider contest is far from over. The **Schedule I** question, **the shareholder activity argument**, the post-amendment landscape under Rule 28(2), and most potently, **the actionable claim route** which, if accepted, would remove corporate guarantees from the GST framework entirely regardless of consideration or related-party status all remain live and contested. The Revenue, having lost on the consideration ground, will not retreat; it will regroup.

Corporate groups in infrastructure and real estate sector where **restricted ITC eligibility turns this levy into a direct and unrecoverable cost** cannot afford to be passive. Document the commercial rationale for every inter-group guarantee. Record the absence of consideration **at the time of execution, not as an afterthought when the demand arrives**. Most importantly, plead the **Schedule III exclusion as a primary and independent line of defence**, because if accepted, it closes the GST door on corporate guarantees entirely, regardless of consideration, related-party status, or the amendment to Rule 28(2). Further this litigation **must be watched closely** as it climbs the judicial hierarchy because the questions left open today will define the compliance landscape tomorrow.

The law, in this space, is still being written
