

[2023 LiveLaw \(SC\) 281](#)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
HRISHIKESH ROY; J., MANOJ MISRA; J.
CIVIL APPEAL /2023 @ Diary No(s).5258/2023; MARCH 17, 2023

COMMISSIONER OF CGST AND CENTRAL EXCISE
versus
M/S EDELWEISS FINANCIAL SERVICES LTD.

Service Tax - Issuance of a corporate guarantee on behalf of group companies without consideration is not a taxable service.

(Arising out of impugned final judgment and order No.A/ 85986/2022 in STA No.87134/2018 dated 16-02-2022 passed by the Custom Excise Service Tax Appellate Tribunal, West Zonal Bench at Mumbai)

For Petitioner(s) Mr. N. Venkatraman, A.S.G. Mr. Tathagat Sharma, Adv. Mr. Mukesh Kumar Maroria, AOR Mr. V.C. Bharathi, Adv. Mr. Sidharth Sinha, Adv. Mr. Pratyush Srivastava, Adv. Mr. Bhuvan Kapoor, Adv.

For Respondent(s) Mr. Bharat Rai Chandani, Adv. Mr. Aneesh Mittal, AOR Ms. Komal, Adv. Mr. Gaurav Titotia, Adv. Mr. Deepak Kumar, Adv.

ORDER

Delay condoned.

2. Heard Mr. Tathagat Sharma, learned counsel for the petitioner.
3. The challenge here is to the concurrent finding in favour of the assessee recorded by the Principal Commissioner GST which was upheld by the CEST Tribunal, through the impugned order on 16.02.2022. The learned counsel would submit that this case is similar to Civil Appeal No. 428/2020 @ Diary No.42703/2019 (*^{1ST} Commissioner of Service Tax Audit II Delhi IV Vs. M/S DLF Cyber City Developers Ltd.*) and therefore the matter should be admitted and tagged with the pending case.
4. Responding to the above, Mr. Bharat Rai Chandani, learned counsel for the assessee on caveat would read Section 65 (12) of the Finance Act, 1994 to point out that issuance of corporate guarantee to a group company without consideration would not fall within banking and other financial services and is therefore not taxable service. He would also read Section 65B (44) of the Finance Act 1994 to point out that the definition of service would indicate that it relates to only such service which is rendered for valuable consideration.
5. The counsel would next advert to paragraph 3.1.12 of the Commissioner's order where the following was recorded:-

“further, the consideration can be of two types viz., monetary consideration and non monetary consideration. In the present case, the Assessee has argued that they have not received any consideration. In such case it's for the department to prove that the Assessee's claim is wrong. It is observed that nowhere in the Show Cause Notice, attempt has been made to prove that the Assessee received either monetary or nonmonetary consideration in any form. It is not alleged or proved in the Show Cause Notice as to how the Assessee got any benefit from their subsidiaries in monetary or non-monetary terms for the Corporate Guarantees issued. Missing this vital point, valuation of the consideration using provisions of Section 67(1) of the Finance Act, 1994 become a futile exercise.”

6. Mr. Rai Chandani then read paragraphs 8 and 9 of the judgment of the Tribunal, which are extracted below :-

“8. The criticality of ‘consideration’ for determination of service, as defined in section 65 B(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 65 B(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.”

7. 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.

8. In consequence, the Civil Appeal stands dismissed.

9. Pending application(s), if any, stand closed.

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