

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
MUMBAI**

**WEST ZONAL BENCH**

**SERVICE TAX APPEAL NO: 85425 OF 2017**

[Arising out of Order-in-Original No. 68/ST-VII/CD/2016 dated 27/12/2016  
passed by Commissioner of Service Tax, Mumbai-VII.]

**Hindustan Construction Company Ltd**

Hincon House LBS Marg, Vikhroli (West)  
Mumbai-400 083.

**...Appellant**

*versus*

**Commissioner of Service Tax**

**Mumbai -VII**

16<sup>th</sup> Floor, Satra Plaza, Palm Beach Road, Sector 19D,  
Vashi, Navi Mumbai – 400705

**...Respondent**

APPEARANCE:

Shri Bharat Raichandani, Advocate for the appellant

Shri Vinod Kumar, Assistant Commissioner (AR) for the respondent

**CORAM:**

**HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)  
HON'BLE MR ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)**

**FINAL ORDER NO: A / 86212/2023**

DATE OF HEARING: 17/07/2023  
DATE OF DECISION: 22/08/2023

PER: DR. SUVENDU KUMAR PATI

Confirmation of duty demand of 6,03,08,357/- under  
section 73(2) of the Finance Act, 1994 along with statutory  
interest on the confirmed amount as per provision of section 75

of the Finance Act, 1994 with equal penalty under Section 78 and additional penalty under Section 77 of the said Act against the appellant for providing 'corporate guarantee' to one M/s Lavasa Corporation Ltd against loan obtained from various financial institutions in exchange of 'credit protection fee' is assailed in this appeal.

2. The fact of the case, in a nutshell, is that the appellant M/s Hindustan Construction Company Ltd is a holder of service tax registration number, who had been engaged in providing various services. During the course of EA 2000 audit, it was noticed that for the period October 2008 to March 2013, the appellant had recovered fees against 'corporate guarantee' @ 1% of the loan amount received by its related party, M/s Lavasa Corporation Ltd from financial institutions. It had also provided credit protection services and recovered credit protection fees on quarterly basis from M/s Lavasa Corporation Ltd but on both the counts no service tax was paid by the appellant.

3. Computation of taxable services by the Respondent Department for the period come to ₹67,29,060/- and ₹4,02,02,485/- respectively for providing these two services by putting these services in the category of "Banking and Other Financial Services" that was pointed out to the appellant to be payable. Appellant accepted the tax liability raised in the audit report for the period post 1<sup>st</sup> July 2012 and paid the tax amount along with interest but for the balance amount on both for

“credit protection fees” as well as “corporate guarantee” it was put to show cause notice with demand for the recovery of the same along with interest and penalties, as noted above.

4. The matter was adjudicated upon and duty demand along with interest and penalties, as stated above, was confirmed against the appellant by the Commissioner in his order. The appellant is before us challenging the legality of the said order.

5. During the course of hearing of the appeal, Learned Counsel for the appellant, Shri Bharat Raichandani, submitted that the allegations against appellant that credit protection fee and fee for corporate guarantee received by the appellant from M/s Lavasa Corporation Ltd can never be considered as “Banking and Other Financial Services” for the reason that appellant is neither a “body corporate” nor a “commercial concern” as defined under section 65(12) of the Finance Act, 1994 since it is a registered company registered under the Indian Companies Act, 1956. In placing reliance on the judgment delivered in the case of *Sterlite Industries India Ltd vs. Commissioner of GST and Central Excise, Tirunelveli* reported in 2019-TIOL-879-CESTAT-MAD, he further submitted that ‘corporate guarantee’ and ‘bank guarantee’ bear different meanings and ‘bank guarantee’ is a guarantee from bank /lending institution insuring the liabilities of the debtor whereas ‘corporate guarantee’ is a guarantee in which corporation agrees to take up the responsibility for completion of duties and obligations of the debtor to its lender.

Further, placing reliance on the judgment of this Tribunal passed in *Commissioner of CGST and Central Excise vs. Edelweiss Financial Services Ltd* reported in 2022-TIOL-1192-CESTAT-MUM which has been upheld by the Hon'ble Supreme Court as reported in 2023-TIOL-26-SC-ST, he also argued that there is no service tax liability against 'corporate guarantee' since the same is excluded from the definition provided in Section 65(12) of the Finance Act, 1994 and exclusion of 'corporate guarantee' extended to holding company for the business activity of its subsidiary companies from the ambit of service tax liability stood decided by this Tribunal in the case of *DLF Cyber City Developers Ltd vs. Commissioner of Service Tax, Delhi - IV* reported in 2019-TIOL-3725-CESTAT-CHD and *Asmitha Microfin Ltd v. Commissioner of Customs, Central Excise & Service Tax, Hyderabad-III* reported in 2020 (33) GSTL 250 (Tri.-Hyd.) for which order of the Commissioner is unsustainable both in law and facts and the same is required to be set aside.

6. Per *contra* Learned Authorised Representative for respondent-department objects the submissions on the ground that there is no thin line distinction available between 'corporate guarantee' and 'bank guarantee' and the relied upon decisions cited by the Learned Counsel for the appellant, namely, *Edelweiss Financial Services Ltd (supra)* by the Hon'ble Supreme Court and *DLF Cyber City Developers Ltd (supra)* of the Tribunal cited *supra* were passed in the context in which there was no consideration flowing from the loanee to the guarantor. In

supporting the reasoning and rationality of the order passed by the Commissioner he further submitted that it was also decided during the admission of the appeal against *DLF Cyber City Developers Ltd (supra)* that mere presumption that the associate of the assessee have received loan facility at a lower rate because of guarantee extended would be of no consequences if there was no consideration flowing from the banks/financial institutions or from their associates but in the instant case not only fee was collected by them but realization of the same happened in ever quarter against which demand was rightly confirmed by the Commissioner and the same needs non interference by this Tribunal.

7. We have perused the case records, written submissions and the relied upon judgments. Before delving into the issue we would like to highlight on the distinction between 'corporate guarantee' and 'bank guarantee' and thereafter, proceed to deal with the provisions of law vis-à-vis judicial precedent available on the issue. 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. As held by the ITAT in *Micro Inks Ltd vs. Assessee, ITA*. 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.

8. Be that as it may, what can be observed is that both bank and corporate guarantees are meant "to provide assurances to the beneficiaries" with same thin line distinction that while bank guarantee relies on the credit worthiness of a financial institutions, corporate guarantee depends on the credit worthiness of the parent-company/guarantor. Further, while bank guarantee involves a third party institution as guarantor, corporate guarantee involves a company within the same corporate group or structure as a guarantor. Apart from these thin line distinction, the core purpose of bank guarantee and corporate guarantee are almost similar for the reason that both provide a kind of assurance to the creditor and fulfill their obligations in the event the party for whom they stand guarantor fail to discharge its obligation. This being so, we are of the considered view that the distinction available in the *Sterlite Industries India Ltd's* case, cited above, at para 6.6 which has highlighted some of the operational differences in the working/functioning of those two institutions, namely, bank and company without expressly giving a finding that both are two different concepts or both connote two different meanings. It is, perhaps, for this reason that in its subsequent decision by another Bench of the Tribunal, comprising of one of the Members of the *Sterlite Industries India Ltd's*, demand was confirmed

against the guarantor M/s Robo India for the reason that guarantor-company had guaranteed to indemnify the bank against any loss and provided guarantee through their banker Standard Chartered Bank at the behest of M/s Dexia, the debtor. We are, therefore, unable to accept the submission made on behalf of the appellant that 'corporate guarantee' though has not been exclusively referred in Section 65(12) of the Finance Act 1994, by placing reliance on the decision of this Tribunal passed in *Edelweiss Financial Service Ltd (supra)*, the appellant would not further strengthen its case for the reason that in the said decision it has been clearly held that 'corporate guarantee', in practice, is **akin to** 'bank guarantee'. However, while referring the provisions contained in Section 65(12) of the Finance Act, 1994, may be because of typographical error or due to oversight of the provision clearly enumerating words as "providing bank guarantee" under sub-clause (ix) of the said provision, it has been noted that specific enumeration about 'corporate guarantee' was not available for which legislative intent is unarguable. For better clarity we reproduce para 6 of the said order to say that its first sub-para and last sub-para are carrying contradictory meaning, with reference to the statutory definition incorporated in between those two paras.

"6. *The exclusion of 'corporate guarantee' extended by a holding company for the business activities of its subsidiary companies from the ambit of levy stands decided by the Tribunal in re DLF Cyber City Developers Ltd. It is also clear that, even if 'corporate guarantee' is, in practice, akin to 'bank guarantee', the definition of*

*'banking and other financial services', viz.*

*'a) the following services provided by a banking company or a financial institution including a non-banking financial company or any other body corporate or [commercial concern], namely :-*

*xxxxx*

*(ix) other financial services, namely, lending, issue of pay order, demand draft, cheque, letter of credit and bill of exchange, transfer of money including telegraphic transfer, mail transfer and electronic transfer, providing bank guarantee, overdraft facility, bill discounting facility, safe deposit locker, safe vaults, operation of bank accounts;"';' (emphasis supplied)*

*in section 65(12) of Finance Act, 1994 amplifies 'other financial services' with specific enumeration without including 'corporate guarantee' therein. The legislative intent to exclude 'corporate guarantees' is, thus, unarguable. The monitorial engagement of Reserve Bank of India arises from its own statutory empowerment and to graft that supervision on a tax statute for determining tax liability is not tenable."*

9. To bring more clarity to the above observation, when both corporate guarantee and bank guarantee are held to be akin (similar to something) to each other, the only inference that can be drawn is that incorporation of one of it would mean presence of the other. Having said so we have no second opinion on the issue that purpose of 'corporate guarantee' and 'bank guarantee' are one and same and while one is the species the other one is its genesis. Difference that is undisputedly there is that "bank guarantee" is open to all its consumers while corporate guarantee is confined to the subsidiary or related units of the company. We further want to place it on record that the contention of the Learned Counsel that



the appellant being registered under the Indian Companies Act, 1956 is not a 'body corporate' is unacceptable for the reason that Section 2(11) of the Companies Act, 2013 defines 'body corporate' to include a private company, public company, personal company, small company, limited liability partnership, foreign company, etc. including a corporation incorporated under the Companies Act, 1956. The appellant having received consideration against providing guarantee to its related company M/s Lavasa Corporation Ltd in the form of 'corporate guarantee' and 'credit protection guarantee' service is liable to pay service tax and, therefore, demand raised against the appellant is justified except for the extended period since the issue remained unsettled due to divergent opinion expressed by different judicial forums. Hence the order.

**Order**

10. The appeal is allowed in part and the order passed by the Commissioner is modified to the extent of setting aside the liabilities imposed on the appellant for the extended period.

*(Order Pronounced in Open Court on 22/08/2023)*

**(DR. SUVENDU KUMAR PATI)**  
***Member (Judicial)***

**(ANIL G. SHAKKARWAR)**  
***Member (Technical)***