



NO GUARANTEE FOR CORPORATE GUARANTEE UNDER GST.....?

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“**C**orporate Guarantees” is very common term used in corporate world. It is a guaranty by one business house or by one Corporate House or by a Holding company for another group company or subsidiary company. Generally, guarantee by one entity for other entity is given at the time of loan being availed by other group company. In other words, when any subsidiary company availed any loan i.e Term Loan or Working capital loan from any Financial Institute (FI) than Holding company stands as guarantor for subsidiary company. Such understandings are covered or termed as *Corporate Guarantee*. Means one corporate entity stands as guarantor for another corporate entity.

These guarantees are mostly given by holding company/group companies without any charges or consideration. The objective of such guarantees is to felicitate the subsidiary company or group company for its smooth sailing. In open market no parallel or identical transactions happens except when Banks give guarantees for its customers for specific purposes i.e Financial Guarantees, Performance guarantees, Earnest money Deposit guarantee or Bid Bond Guarantee, Guarantee for Payment of Customs duty Advance Payment Guarantee (APG), Deferred Payment Guarantee (DPG), Shipping Guarantee etc. and charge commission for the same. Charges or commission charges vary from bank to bank. Under GST such services of bankers are treated as supply of services and subject to GST.

But in case of *Corporate Guarantees*, no charges are paid by the recipient for these services. Moreover, are unsecured in nature. No security is offered by the recipient to guarantor. In case such services are provided for fee or commission than it would be dealt accordingly and GST shall be charged like bank guarantee services as provided and are subject to GST.

Schedule-I of Section 7 of CGST Act, 2017 deals with the transactions or activities treated as supply even if made without consideration. As per clause-2 to the said schedule, supply of goods or services or both between related parties or distinct persons as specified in Section 25, which made in the course or furtherance of business are subject to GST even if made without consideration. So service like *corporate guarantee* or guarantee for subsidiary company is an activity agreed upon between two corporate entities without consideration and is in course or furtherance of business.

Is Corporate Guarantee a supply?

It's a big question if *Corporate Guarantee* is a supply. The meaning or scope of supply as per GST laws is as under:

Section 07 of CGST Act, defines scope of Supply as under:

- (1) *For the purposes of this Act, the expression –supply includes--*
- (a) *all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;*
 - (b) *import of services for a consideration whether or not in the course or furtherance of business and*
 - (c) *the activities specified in Schedule I, made or agreed to be made without a consideration;*
 - (d) *omitted*

(1A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.

(2) Notwithstanding anything contained in sub-section (1),
(a) activities or transactions specified in Schedule III; or
(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council,

shall be treated neither as a supply of goods nor a supply of services

Providing bank guarantee by bankers is a business, where in bank charges for such service are being charged. Bank also keep some security at the time of providing such guarantees. More over bank is into that business and fee or commission charged by the bank is a value for the transaction on which GST is levied.

Whereas in case of *Corporate Guarantee* as provided by a holding company for subsidiary is a need base arrangements and that too free of any fee or charges. These guarantees are unsecured in nature. So in absence of any fee or commission, its valuation for levy of GST is another issue.

As per rules 27 to 35 of valuation under Section 15 of CGST Act, none of the rules talk about the valuation of such services. If we take identical services than again it may not be justified to consider bank services as identical services for corporate guarantee as these are not of similar in nature.

Rule 28. Value of supply of goods or services or both between distinct or related persons, other than through an agent.-

The value of the supply of goods or services or both between distinct persons as specified in sub-section (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall-

(a) be the open market value of such supply;

(b) if the open market value is not available, be the value of supply of goods or services of like kind and quality;

(c) if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order:

Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person:

Provided further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services.
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30. Value of supply of goods or services or both based on cost.-

Where the value of a supply of goods or services or both is not determinable by any of the preceding rules of this Chapter, the value shall be one hundred and ten percent of the cost of production or manufacture or the cost of acquisition of such goods or the cost of provision of such services.

31. Residual method for determination of value of supply of goods or services or both.-

Where the value of supply of goods or services or both cannot be determined under rules 27 to 30, the same shall be determined using reasonable means consistent with the principles and the general provisions of section 15 and the provisions of this Chapter:

Provided that in the case of supply of services, the supplier may opt for this rule, ignoring rule 30.

Is Corporate Guarantee an actionable Claims?

If we take *Corporate Guarantee* as actionable claims, then schedule-III to Section- 7 of CGST Act, deals it as neither supplies of goods nor of services.

Para 6 to schedule -III treat Actionable claims, other than *lottery, betting and gambling* as activities or transactions which are neither supply of goods nor supply of services or both.

Is Corporate Guarantee a “Business Auxiliary Services”?

In service tax there was levy of tax on Business Auxiliary services. In GST *Corporate Guarantee* can be covered under Services Auxiliary to financial services (other than to insurance and pensions) under SAC 99715. So services of “Corporate Guarantee” can be treated as Taxable services. But then the challenge of valuation of such services emerged as these are generally provided without fee or commission. If any holding company charges some fee or commission, which is quite possible in case of foreign company, then valuation of such transactions or *transaction value* can be questioned or challenged.

Conclusion:

From above paras it is clear that there can be different arguments for *corporate guarantee* to tax or not to tax under GST. But in our opinion, to bring some relief to business with a spirit of ease of doing business government should come out with some clarifications on *corporate guarantee* transactions in either way:

- Treat such transactions under Schedule-III of section 7 of CGST Act, and keep such transactions as neither supply of goods nor the supply of services,
- Issue some specific guidelines for the valuation as done in case of Air Tickets, sale/purchase of 2nd hand vehicles or foreign currency exchange and levy GST at some rate.