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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment reserved on: 27.10.2026***
Judgment pronounced on: 17.11.2026
Judgment uploaded on: 17.11.2026

\# **CNR No. DLHC010095132024**

\+ W.P.(C) 2966/2024, CM APPL. 12196/2024

STERLITE POWER TRANSMISSION LIMITED & ORS.
.....Petitioners

Through: Mr. Balbir Singh, Sr. Adv. with Mr. Kumar Visalaksh, Mr. Rahul Khurana, Mr. Udit Jain, Mr. Arihant Tater, Mr. Ajitesh Dayal Singh, Mr. Pranav Bansal, Mr. Vibhor Sharma, Ms. Disha Jham, Mr. Vedant Kohli and Mr. Karan Sachdev, Advs.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Ms. Tanvi Nigam, SPC for UOI.
Mr. Shashank Dixit, CGSC along with Mr. Kunal Raj, Adv.
Mr. Shagun Shahi Chugh and Ms. Rimpy Rohilla, Advs.
Mr. N. Venkatraman, ASG with Mr. Atul Tripathi, SSC with Mr. Akshay Sagar, Mr. Shubham Mishra and Mr. Gaurav Mani Tripathi, Advs.

\# **CNR No. DLHC010482292024**

\+ W.P.(C) 10924/2024, CM APPL. 45008/2024

M/S RENEW PRIVATE LIMITED .....Petitioner

Through: Mr. Sujit Ghosh, Senior Advocate with Ms. Mannat Waraich, Ms. Anshika Agarwal, Mr. Chirag Motwani and Ms. Vidhi Chhabra, Advs.

versus

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UNION OF INDIA & ORS. .....Respondents

Through: Ms. Manisha Agrawal Narain, CGSC with Mr. Ayush Srivastava, Adv. for UOI.
Mr. Sumit K. Batra and Ms. Priyanka Jindal, Advs. for GNCTD.
Mr. N. Venkatraman, ASG with Mr. Atul Tripathi, SSC with Mr. Akshay Sagar, Mr. Shubham Mishra and Mr. Gaurav Mani Tripathi, Advs.
Mr. Farman Ali, CGSC along with Ms. Usha Jamnal, Adv.

CNR No. DLHC010710362024

\+ W.P.(C) 14622/2024, CM APPL. 61385/2024

JINDAL STAINLESS HISAR LIMITED NOW MERGED WITH JINDAL STAINLESS LIMITED .....Petitioner

Through: Mr. Harsh Makhija, Adv.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Ms. Monica Benjamin, SSC along with Ms. Laiba Arif and Ms. Prerika Narang, Advs. for R-1 to 3.
Mr. Ruchesh Sinha, SSC along with Ms. Upasna Vashistha, Adv. for R-1 & 3.
Mr. Vedansh Anand, SPC with Mr. Shivam Kumar, GP for UOI.
Ms. Manisha Agrawal Narain, CGSC with Mr. Ayush Srivastava, Adv. for UOI.

CNR No. DLHC010792312024

\+ W.P.(C) 15738/2024, CM APPL. 66100/2024

MS AZURE POWER INDIA PVT LTD .....Petitioner

Through: Mr. Sujit Ghosh, Senior Advocate with Ms. Mannat Waraich, Ms. Anshika Agarwal, Mr. Chirag Motwani

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and Ms. Vidhi Chhabra, Advs.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Bhagvan Swarup Shukla, CGSC along with Mr. Sawan Kumar Shukla, Mr. Mukesh Kumar Pandey, Mr. Praveen Gupta, Ms. Shreya Mishra and Mr. Anupam Pandey, Advs. for UOI.

Mr. N. Venkataraman, ASG with Mr. Chandrashekar Bharathi, Mr. Shivshankar, Advs. with Mr. Anurag Ojha, SSC with Mr. Dipak Raj, Mr. Aditya Chaudhary, Mr. Garima Kumar, Mr. Aayushman Bhatt, Mr. Deep Raj, Advs.

Ms. Vaishali Gupta, PC with Ms. Rashi Aggarwal, Adv. for R-2.

\# **CNR No. DLHC010953282024**

\+ W.P.(C) 17559/2024, CM APPL. 74775/2024

NAMBI BUILDWELL LIMITED .....Petitioner

Through: Ms. Kavita Jha, Sr. Adv. along with Mr. Shammi Kapoor, Ms. Swati Agarwal, Mr. Sandeep Gupta and Ms. Kanika Sethi, Advs.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. N. Venkataraman, ASG with Mr. Chandrashekar Bharathi, Mr. Shivshankar, Advs. with Mr. Anurag Ojha, SSC with Mr. Dipak Raj, Mr. Aditya Chaudhary, Mr. Garima Kumar, Mr. Aayushman Bhatt, Mr. Deep Raj, Advs.

Ms. Iram Majid, CGSC along with Mr. Mohd Suboor, Mr.

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Mohd Saad Khan, Mr. Amaan Siddiqui and Mr. Goutham M S, Advs.

CNR No. DLHC010615032025

\+ W.P.(C) 12955/2025, CM APPL. 52912/2025

JITF URBAN INFRASTRUCTURE SERVICES LTD .....Petitioner

Through: Mr. Jay Savla, Sr. Adv. along with Mr. Prabhat Chaurasia and Mr. Rajpal Singh, Advs.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Theepa Murugesan, SPC along with Mr. Yogesh Dubey, Adv. for UOI.

Mr. N. Venkatraman, ASG with Mr. Atul Tripathi, SSC with Mr. Akshay Sagar, Mr. Shubham Mishra and Mr. Gaurav Mani Tripathi, Advs.

CNR No. DLHC010632072025

\+ W.P.(C) 13341/2025, CM APPL. 54668/2025

ESSAR POWER LIMITED .....Petitioner

Through: Mr. Rishi Agrawala, Mr. Alok Yadav, Mr. Daksh Arora and Mr. Abhishek Anand, Advs.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. P. S. Singh, CGSC along with Ms. Shivangi Sharma, Mr. Ankit Bansal and Ms. Natasha Goel, Advs.

Mr. N. Venkataraman, ASG with Mr. Chandrashekar Bharathi, Mr. Shivshankar, Advs. with Mr. Anurag Ojha, SSC with Mr. Dipak Raj, Mr. Aditya Chaudhary, Mr. Garima Kumar, Mr. Aayushman Bhatt, Mr. Deep Raj, Advs.

CNR No. DLHC010632252025

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\+ W.P.(C) 13358/2025, CM APPL. 54715/2025, CM APPL. 3848/2026

MS GAIL INDIA LIMITED .....Petitioner

Through: Ms. Mannat Waraich, Ms. Anshika Agarwal, Mr. Chirag Motwani and Ms. Vidhi Chhabra, Advs.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Jagdish Chandra, CGSC with Ms. Maanya Saxena, Adv. for UOI.

Mr. N. Venkatraman, ASG with Mr. Aditya Singla, SSC along with Ms. Arya Suresh Nair, Mr. Akhil Sharma, Mr. Dhananjay Gautham, Adv and Ms. Nehaol Shri L. V., Advs.

\# **CNR No. DLHC011048252025**

\+ W.P.(C) 19506/2025, CM APPL. 81421/2025

ESSAR SHIPPING LIMITED .....Petitioner

Through: Mr. Rishi Agrawala, Mr. Alok Yadav, Mr. Daksh Arora and Mr. Abhishek Anand, Advs.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Ravindra Vikram Singh (SPC) with Mr. V.K Singh, Mr. Ajay Rathore and Mr. Kunal Pal, Advs. for R-1/UOI.

Mr. Satish Aggarwal, Sr. Standing Counsel with Mr. Gagan Vaswani, Adv. for R-4.

\# **CNR No. DLHC010003182025**

\+ W.P.(C) 214/2025, CM APPL. 970/2025, CM APPL. 53742/2026

AVAADA ENERGY PVT LTD & ORS. .....Petitioners

Through: Mr. Ankur Sood, Ms. Romila Mandal, Mr. Prajwal Suman and Mr. Dhaman Trivedi, Advs.

versus

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UNION OF INDIA & ORS. .....Respondents

Through: Dr. Abhishek Khanna, SPC for R-1/UOI.
Ms. Arunima Dwivedi, SSC along with Ms. Himanshi Singh, Ms. Monalisha Pradhan and Mr. Suman Ghosh, Advs. for R-1 and R-3.
Mr. Satish Kumar Aneja, Adv.

CNR No. DLHC010232082025

\+ W.P.(C) 5238/2025, CM APPL. 23838/2025

SAEL LIMITED & ANR. .....Petitioners

Through: Mr. Kumar Visalaksh, Mr. Rahul Khurana, Mr. Udit Jain, Mr. Arihant Tater, Mr. Ajitesh Dayal Singh, Mr. Pranav Bansal and Mr. Vibhor Sharma, Advs.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Devvrat Yadav, Mr. Kartik Sharma, Mr. Manhan Chawla, Ms. M Shuaib Zahoor, Ms.Pearl Sharma and Ms.Geeta Thareja, Advs.

CNR No. DLHC010301612025

\+ W.P.(C) 6436/2025

FUTURE BRANDS LIMITED .....Petitioner

Through: Mr. Kumar Visalaksh, Mr. Rahul Khurana, Mr. Udit Jain, Mr. Arihant Tater, Mr. Ajitesh Dayal Singh, Mr. Pranav Bansal and Mr. Vibhor Sharma, Advs.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. N. Venkatraman, ASG with Mr. Aditya Singla, SSC along with Ms. Arya Suresh Nair, Mr. Akhil Sharma, Mr. Dhananjay Gautham, Adv and Ms. Nehaol

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Shri L. V., Advs.

\# **CNR No. DLHC010350682025**

\+ W.P.(C) 7639/2025

ISP TECHNOLOGIES PRIVATE LIMITED .....Petitioner

Through: Mr. Pradeep Singh Rawat, Mr. Lalit Mohan Pant and Mr. Abhinav Kalra, Advs.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Ms. Shagun Shahi Chugh, Mr. Varun Chugh, Ms. Rimpy Rohilla and Ms. Barkha, Advs.

\# **CNR No. DLHC010397372025**

\+ W.P.(C) 8990/2025

LOGIX REALTORS PRIVATE LIMITED .....Petitioner

Through: Mr. Pradeep Singh Rawat, Mr. Lalit Mohan Pant and Mr. Abhinav Kalra, Advs.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Sahaj Garg, SPC with Mr. Sanjay Pal, GP and Mr. Prakhar Negi, Advs. for UOI.
Mr. Arun Khatri, SSC with Mr. Pranavjeet Singh, Adv. for CGST.

\# **CNR No. DLHC011083812025**

\+ W.P.(C) 280/2026, CM APPL. 1254/2026, CM APPL. 3918/2026, CM APPL. 5523/2026, CM APPL. 9779/2026, CM APPL. 9784/2026, CM APPL. 11199/2026

HERO FUTURE ENERGIES PVT LTD .....Petitioner

Through: Mr. J. Salva, Sr. Adv. along with Mr. Yash Srivastava, Ms. Satakshi Sood and Ms. Naimishi Verma, Advs.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Ms. Tanvi Nigam (SPC) with Mr. Divyansh Nigam, Adv. for R-1.

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Mr. N. Venkataraman, ASG with Mr. Chandrashekar Bharathi, Mr. Shivshankar, Advs. with Mr. Anurag Ojha, SSC with Mr. Dipak Raj, Mr. Aditya Chaudhary, Mr. Garima Kumar, Mr. Aayushman Bhatt, Mr. Deep Raj, Advs.

\# **CNR No. DLHC011083102025**

\+ W.P.(C) 281/2026, CM APPL. 1255/2026, CM APPL. 3981/2026, CM APPL. 5521/2026, CM APPL. 11198/2026, CM APPL. 29377/2026, CM APPL. 29379/2026, CM APPL. 29664/2026

HERO SOLAR ENERGY PRIVATE LIMITED .....Petitioner

Through: Mr. J. Salva, Sr. Adv. along with Mr. Yash Srivastava, Ms. Satakshi Sood and Ms. Naimishi Verma, Advs.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Abhishek Mahajan, SPC for R-1.

Mr. Piyush Beriwal and Ms. Rucita Srivastava, Advs. for R-2 to R-4.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE BHARAT PARASHAR

J U D G M E N T

ANIL KSHETARPAL, J.:

A. FOREWORD:

1. The present batch of Petitions invites this Court to venture upon a substantial and rather interesting question of law as to whether the issuance of a corporate guarantee by a holding/parent company in favour of a financial institution, in respect of the financial obligations

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of its subsidiary/group company, constitutes a '*supply and/or supply of service*' under Sections 7 and 9 of the Central Goods and Services Tax Act, 2017[1], consequently making it a taxable event attracting the imposition of Goods and Services Tax (GST) at the rate of 1% under Rule 28(2) of the Central Goods and Services Tax Rules, 2017[2].

2. While raising the aforestated issue, the Petitioners herein also call upon this Court to read down Notification No.52/2023-Central Tax dated 26.10.2023[3] and the Circular No.204/16/2023-GST dated 27.10.2023[4], *vide* which sub-rule 2 was inserted into Rule 28, prescribing deemed value of 1% for the supply of services by way of providing corporate guarantee to any banking company or financial institution on behalf of a related person. The applicability and interpretation of the said provision came to be clarified further *vide* the IC-2023.

3. In addition, the Petitioners also calls this Court to read down Notification No.12/2024 dated 10.07.2024[5], *vide* which the IN-2023 came to be amended, by incorporating the following expressions, '*located in India*' and '*per annum*', into sub-rule 2 along with the proviso thereto. A challenge also stands raised towards the Circular No.225/19/2024-GST dated 11.07.2024, *vide* which the applicability of Rule 28(2) was clarified.

4. At the outset, we must also highlight that the Petitioners in W.P.(C) 15738/2024 and W.P.(C) 12955/2025, have raised certain

[1] hereinafter referred to as 'Act of 2017'
[2] hereinafter referred to as 'Rules of 2017'
[3] hereinafter referred to as 'Impugned Notification/IN-2023'
[4] hereinafter referred to as 'Impugned Circular/IC-2023'
[5] hereinafter referred to as 'Impugned Notification/IN-2024'

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additional issues and challenges beyond those identified hereinabove. However, the scope of the present judgment is confined to the taxability of corporate guarantees and the issues pertaining to Rule 28(2) of the Rules of 2017, IN-2023, IN-2024, IC-2023 and IC-2024, while leaving open the additional issues raised, in the aforementioned Petitions, for consideration in appropriate proceedings.

5. Before turning towards examination of the rival arguments advanced by learned counsels representing the parties, we deem it appropriate to reproduce the relevant constitutional and statutory provisions relied upon by the learned counsels during the course of their respective submissions, as the same shall also form the basis of our analysis thereafter. The relevant provisions are reproduced hereinbelow-

Constitution of India

12. Definition.—In this Part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

14. Equality before law.—The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

19. Protection of certain rights regarding freedom of speech, etc.—(1) All citizens shall have the right—

(g) to practise any profession, or to carry on any occupation, trade or business.

246A. Special provision with respect to goods and services tax.—(1) Notwithstanding anything contained in articles 246 and 254, Parliament, and, subject to clause (2), the Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State.

(2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

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Explanation.—The provisions of this article, shall, in respect of goods and services tax referred to in clause (5) of article 279A, take effect from the date recommended by the Goods and Services Tax Council.

265. Taxes not to be imposed save by authority of law.—No tax shall be levied or collected except by authority of law.

292. Borrowing by the Government of India.—The executive power of the Union extends to borrowing upon the security of the Consolidated Fund of India within such limits, if any, as may from time to time be fixed by Parliament by law and to the giving of guarantees within such limits, if any, as may be so fixed.

293. Borrowing by States.—(1) Subject to the provisions of this article, the executive power of a State extends to borrowing within the territory of India upon the security of the Consolidated Fund of the State within such limits, if any, as may from time to time be fixed by the Legislature of such State by law and to the giving of guarantees within such limits, if any, as may be so fixed.

(2) The Government of India may, subject to such conditions as may be laid down by or under any law made by Parliament, make loans to any State or, so long as any limits fixed under article 292 are not exceeded, give guarantees in respect of loans raised by any State, and any sums required for the purpose of making such loans shall be charged on the Consolidated Fund of India.

(3) A State may not without the consent of the Government of India raise any loan if there is still outstanding any part of a loan which has been made to the State by the Government of India or by its predecessor Government, or in respect of which a guarantee has been given by the Government of India or by its predecessor Government.

(4) A consent under clause (3) may be granted subject to such conditions, if any, as the Government of India may think fit to impose.

366. Definitions.—In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say—

(11) "Federal Court" means the Federal Court constituted under the Government of India Act, 1935;

(12) "goods" includes all materials, commodities, and articles;

(12A) "goods and services tax" means any tax on supply of goods, or services or both except taxes on the supply of the alcoholic liquor for human consumption;

(26A) "Services" means anything other than goods;

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ACT OF 2017

Section 2. Definitions.-

In this Act, unless the context otherwise requires,-

(1) "actionable claim" shall have the same meaning as assigned to it in section 3 of the Transfer of Property Act, 1882 (4 of 1882);

(17) "business" includes –

(a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;

(b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);

(c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;

(31) "consideration" in relation to the supply of goods or services or both includes-

(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;

(32) "continuous supply of goods" means a supply of goods which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, whether or not by means of a wire, cable, pipeline or other conduit, and for which the supplier invoices the recipient on a regular or periodic basis and includes supply of such goods as the Government may, subject to such conditions, as it may, by notification, specify;

(33) "continuous supply of services" means a supply of services which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, for a period exceeding three months with periodic payment obligations and includes supply of such services as the Government may, subject to such conditions, as it may, by

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notification, specify;

(93) "recipient" of supply of goods or services or both, means-

(a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;

(b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and

(c) where no consideration is payable for the supply of a service, the person to whom the service is rendered,

and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied;

(101) ―securities‖ shall have the same meaning as assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956;

(102) "services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;

Explanation.- For the removal of doubts, it is hereby clarified that the expression "services" includes facilitating or arranging transactions in securities;

Section 7. Scope of supply.-

(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;

(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.

Explanation.- For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;]

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(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;

(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.

(3) Subject to the provisions of [sub-sections (1), (1A) and (2)], the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as-

(a) a supply of goods and not as a supply of services; or

(b) a supply of services and not as a supply of goods.

Section 8. Tax liability on composite and mixed supplies.-

The tax liability on a composite or a mixed supply shall be determined in the following manner, namely:-

(a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and

(b) a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.

Section 9. Levy and collection.-

(1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption [and un-denatured extra neutral alcohol or rectified spirit used for manufacture of alcoholic liquor, for human consumption] on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

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(2) The central tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.

(3) The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

(4) The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both.

(5) The Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services:

Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax:

Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory and also he does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.

Section 13. Time of Supply of Services.-

(2) The time of supply of services shall be the earliest of the following dates, namely:-

(a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier; or

(b) the date of provision of service, if the invoice is not issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier; or

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(c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply.

Provided that where the supplier of taxable service receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice relating to such excess amount.

Explanation .- For the purposes of clauses (a) and (b)-

(i) the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment;

(ii) "the date of receipt of payment" shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.

Section 15. Value of Taxable Supply.-

(1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

(4) where the value of the supply of goods or services or both cannot be determined under subsection (1), the same shall be determined in such manner as may be prescribed.

(5) Notwithstanding anything contained in sub-section (1) or sub-section (4), the value of such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed.

Section 164. Power of Government to make rules.-

(1) The Government may, on the recommendations of the Council, by notification, make rules for carrying out the provisions of this Act.

(2) Without prejudice to the generality of the provisions of sub-section (1), the Government may make rules for all or any of the matters which by this Act are required to be, or may be, prescribed or in respect of which provisions are to be or may be made by rules.

(3) The power to make rules conferred by this section shall include the power to give retrospective effect to the rules or any of them from a date not earlier than the date on which the provisions of this Act come into force.

(4) Any rules made under sub-section (1) or sub-section (2) may provide that a contravention thereof shall be liable to a penalty not exceeding ten thousand rupees.

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Section 168. Power to issue instructions or directions.-

(1) The Board may, if it considers it necessary or expedient so to do for the purpose of uniformity in the implementation of this Act, issue such orders, instructions or directions to the central tax officers as it may deem fit, and thereupon all such officers and all other persons employed in the implementation of this Act shall observe and follow such orders, instructions or directions.

(2) The Commissioner specified in clause (91) of section 2, sub-section (3) of section 5, clause (b) of sub-section (9) of section 25, sub-sections (3) and (4) of section 35, sub-section (1) of section 37, sub-section (6) of section 39, [section 44] , sub-sections (4) and (5) of section 52], [sub-section (1) of section 143, except the second proviso thereof], clause (l) of sub-section (3) of section 158 and section 167 shall mean a Commissioner or Joint Secretary posted in the Board and such Commissioner or Joint Secretary shall exercise the powers specified in the said sections with the approval of the Board.

SCHEDULE I

[See section 7]

ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION

(1) Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.

(2) Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business:

Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.

(3) Supply of goods-

(a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or

(b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.

(4) Import of services by a 1[person] from a related person or from any of his other establishments outside India, in the course or furtherance of business.

SCHEDULE III

[See section 7]

ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES

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1. Services by an employee to the employer in the course of or in relation to his employment.

2. Services by any court or Tribunal established under any law for the time being in force.

3. (a) the functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;

(b) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or

(c) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.

4. Services of funeral, burial, crematorium or mortuary including transportation of the deceased.

5. Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

6. Actionable claims, other than [specified actionable claims].

7. Supply of goods from a place in the non-taxable territory to another place in the nontaxable territory without such goods entering into India.

8. (a) Supply of warehoused goods to any person before clearance for home consumption;

[(aa) Supply of goods warehoused in a Special Economic Zone or in a Free Trade Warehousing Zone to any person before clearance for exports or to the Domestic Tariff Area]

(b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.]]

9. Activity of apportionment of co-insurance premium by the lead insurer to the co-insurer for the insurance services jointly supplied by the lead insurer and the co-insurer to the insured in coinsurance agreements, subject to the condition that the lead insurer pays the central tax, the State tax, the Union territory tax and the integrated tax on the entire amount of premium paid by the insured.

10. Services by insurer to the reinsurer for which ceding commission or the reinsurance commission is deducted from reinsurance premium paid by the insurer to the reinsurer, subject to the condition that the central tax, the State tax, the Union territory tax and the integrated tax is paid by the reinsurer on the gross reinsurance premium payable by

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the insurer to the reinsurer, inclusive of the said ceding commission or the reinsurance commission.]

Explanation [1].- For the purposes of paragraph 2, the term "court" includes District Court, High Court and Supreme Court.

[Explanation 2.- For the purposes of [clause (a) of] paragraph 8, the expression "warehoused goods" shall have the same meaning as assigned to it in the Customs Act, 1962 (50 of 1962).]

[Explanation 3.- For the purposes of clause (aa) of paragraph 8, the expressions "Special Economic Zone", "Free Trade Warehousing Zone" and "Domestic Tariff Area" shall have the same meanings respectively as assigned to them in section 2 of the Special Economic Zones Act, 2005.]

RULES OF 2017

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

(2) Notwithstanding anything contained in sub-rule (1), the value of supply of services by a supplier to a recipient who is a related person [located in India], by way of providing corporate guarantee to any banking company or financial institution on behalf of the said recipient, shall be deemed to be one per cent of the amount of such guarantee offered [per annum], or the actual consideration, whichever is higher.]

[Provided that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the value of said supply of services.]

INDIAN CONTRACT ACT, 1872

126. "Contract of guarantee", "surety", "principal debtor" and "creditor".—A "contract of guarantee" is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the "surety"; the person in respect of whose default the guarantee is given is called the "principal debtor", and the person to whom the guarantee is given is called the "creditor". A guarantee may be either oral or written.

127. Consideration for guarantee.—Anything done, or any promise made, for the benefit of the principal debtor, may be a sufficient consideration to the surety for giving the guarantee.

140. Rights of surety on payment or performance.—Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor.

145. Implied promise to indemnify surety.—In every contract of

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guarantee there is an implied promise by the principal debtor to indemnify the surety, and the surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee, but, no sums which he has paid wrongfully.

TRANSFER OF PROPERTY ACT, 1882

3. In this Act, unless there is something repugnant in the subject or context,-

"actionable claim" means a claim to any debt, other than a debt secured by mortgage of immoveable property or by hypothecation or pledge of moveable property, or to any beneficial interest in moveable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent;

INCOME TAX ACT, 1961

Meaning of international transaction.

92B. (1) For the purposes of this section and sections 92, 92C, 92D and 92E, "international transaction" means a transaction between two or more associated enterprises, either or both of whom are non-residents, in the nature of purchase, sale or lease of tangible or intangible property, or provision of services, or lending or borrowing money, or any other transaction having a bearing on the profits, income, losses or assets of such enterprises, and shall include a mutual agreement or arrangement between two or more associated enterprises for the allocation or apportionment of, or any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided to any one or more of such enterprises.

INCOME TAX ACT, 2025

163. (1) For the purposes of this Chapter, the expression "international transaction" means a transaction between two or more associated enterprises, one of which is necessarily a non-resident, and includes—

(c) capital financing, lending or borrowing of money, including,—

(i) any type of long-term or short-term borrowing, lending or guarantee; or

(ii) purchase or sale of marketable securities; or

(iii) any type of advance, payments or deferred payment or receivable or any other debt arising during the course of business;

(d) provision of services, including provision of market research, market development, marketing management, administration, technical service, repairs, design, consultation, agency, scientific research, legal or accounting service;

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INSOLVENCY AND BANKRUPTCY CODE, 2016

3. In this Code, unless the context otherwise requires,—

(11) "debt" means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;

5. In this Part, unless the context otherwise requires,—

(8) "financial debt" means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes—

(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;

SECURITY CONTRACT REGULATIONS ACT, 1956

2. In this Act, unless the context otherwise requires,—

(h) “securities” include—

(i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;

[(ia) derivative;

(ib) units or any other instrument issued by any collective investment scheme to the investors in such schemes;]

[(ic)security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;]

[(id) units or any other such instrument issued to the investors under any mutual fund scheme;]

(ii) Government securities;

(iia) such other instruments as may be declared by the Central Government to be securities; and

(iii) rights or interest in securities;

[(i) “spot delivery contract” means a contract which provides for,—

(a) actual delivery of securities and the payment of a price therefore either on the same day as the date of the contract or on the next day, the actual period taken for the despatch of the securities or the remittance of money therefore through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality;

(b) transfer of the securities by the depository from the account of a beneficial owner to the account of another beneficial owner when

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such securities are dealt with by a depository;]

[(j) "stock exchange" means—

(a) any body of individuals, whether incorporated or not, constituted before corporatisation and demutualisation under sections 4A and 4B, or

(b) a body corporate incorporated under the Companies Act, 1956 (1 of 1956) whether under a scheme of corporatisation and demutualisation or otherwise,

for the purpose of assisting, regulating or controlling the business of buying, selling or dealing in securities.]

B. CONTENTION OF THE PARTIES:

6. The Petitioners in this batch have been represented by different learned counsel. Their submissions overlap substantially, though certain counsel have also advanced additional submissions peculiar to the Petitions represented by them. We have heard learned senior counsel and counsel for the parties at length and have perused the paperbook, the written submissions and the judgments relied upon, all of which have been duly considered.

7. To avoid repetition, the submissions are recorded under the following heads:

I. Submissions on behalf of the Petitioners – (i) common arguments raised by the Petitioners; and (ii) additional submissions on behalf of the respective Petitioners; and

II. Submissions on behalf of the Respondents – (i) independent submissions; and (ii) reply submissions, recorded under the same heads as the Petitioners' grounds.

III. Rejoinder submissions on behalf of the Petitioners.

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I. SUBMISSIONS ON BEHALF OF THE PETITIONERS

i. Common arguments raised by the Petitioners

8. The Petitioners have, with varying degrees of emphasis, made the following common submissions:

8.1. The furnishing of a corporate guarantee by a holding company for its subsidiary does not constitute a 'supply' of 'services' under Section 7 of the Act of 2017, when read in light of Section 7(1), Section 7(1A), Schedule I and Schedule II thereof;

8.2. A corporate guarantee is merely a shareholder activity, undertaken to protect the investment of the holding company, and is not an activity in the course or furtherance of 'business';

8.3. In the absence of 'consideration' as defined under Section 2(31) of the Act of 2017, a corporate guarantee cannot be taxed, in light of ***Commissioner of CGST & Central Excise v Edelweiss Financial Services Ltd.***[6] and ***M/s D.P. Jain & Co. Infrastructure Pvt. Ltd. v. Union of India & Ors.***[7];

8.4. The subsidiary cannot be treated as the 'recipient' under Section 2(93) of the Act of 2017, in light of Sections 126, 127, 140 and 145 of the Indian Contract Act, 1872[8];

8.5. A corporate guarantee is an 'actionable claim', falling within Entry 6 of Schedule III read with Section 7(2)(a) of the Act of 2017;

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[6] MANU/SC/0648/2023

[7], W.P. No. 2087/2025, decided on 06.05.2026 by the High Court of Bombay

[8] hereinafter referred to as 'Act of 1872'

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8.6. Rule 28(2) of the Rules of 2017 is *ultra vires* the Act of 2017, arbitrary, and violative of Articles 14, 19(1)(g), 246A and 265 of the Constitution;

8.7. Rule 28(2), as inserted by IN-2023 and amended by IN-2024, cannot be applied retrospectively, and guarantees executed prior to 26.10.2023, and those executed prior to 01.07.2017, are not exigible to tax;

8.8. A corporate guarantee is a one-time undertaking and not a 'continuous supply of services' under Section 2(33) of the Act of 2017, and its 'time of supply' under Section 13 thereof is to be determined accordingly; and

8.9. The IC-2023 and IC-2024 are *ultra vires* Section 168 of the Act of 2017 and are otherwise arbitrary.

9. Mr. Balbir Singh, Mr. Sujit Ghosh, learned senior counsels alongside learned counsels representing the Petitioners, under Ground A have made the following submissions:

9.1 At the outset, it is contended that a charging provision must be strictly construed, and no tax can be imposed by inference, intendment or purposive interpretation. As the Act of 2017 does not separately define 'supply', the expressions 'supply' and 'supply of services' in Section 7 must bear their ordinary meaning, namely, an activity done by one person to another. A taxable supply must be established within the four corners of Section 7 and cannot be presumed merely because the transaction confers an economic or commercial benefit on the subsidiary. Reliance is placed on ***Sales Tax Commissioner v Modi***

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Sugar Mills[9]***; J.K. Synthetics Ltd. v Commercial Taxes Officer***[10]***; A.V. Fernandez v State of Kerala***[11]***; and Bimal Chandra Banerjee v State of Madhya Pradesh***[12]*.*

9.2 It is further argued that a supply under Section 7 read with Schedule I requires, *firstly*, an identifiable supply of goods or services and, *secondly*, that it be made in the course or furtherance of business. Section 7(1)(c) read with Entry 2 of Schedule I dispenses only with consideration in specified related-person transactions, and not with the underlying supply or its connection with the supplier's business. Neither Schedule I nor the relationship under the Explanation to Section 15 converts every corporate or shareholder activity into a taxable supply. It is argued that unless a legally recognisable supply is first established, GST cannot be levied on the basis of an executive circular or the valuation mechanism in Rule 28(2) of the Rules of 2017.

9.3 Learned senior counsel representing the Petitioner in W.P.(C) 15738/2024, submitted that supply means 'giving and taking', and a corporate guarantee supplies nothing; it is merely a promise to pay in a future contingency which may never arise. Unlike Entry 1, the deeming fiction in Section 7(1)(c) read with Entry 2 of Schedule I does not dispense with an actual supply, and Schedule I cannot mean that GST is payable irrespective of supply.

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[9] 1960 (10) TMI 65
[10] (1994) 4 SCC 276
[11] (1957) 1 SCC 582
[12] (1970) 2 SCC 467

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9.4 It is argued that Schedule II only classifies transactions which already constitute a 'supply' under Section 7(1). Section 7(1A) is subservient to Section 7(1), and Entry 5(e) of Schedule II, agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act, is a classification provision which cannot independently determine taxability or cure the absence of a supply.

9.5 Relying on the CBIC Circular dated 03.08.2022 and on the judgment of the Bombay High Court in ***Tata Sons Private Limited v. Union of India & Ors.*** [13], it is contended that Entry 5(e) requires an examination of the underlying contractual obligation and its nexus with the alleged supply. Under Paragraph Nos.4 to 6.1 of the Circular, the entry requires an independent agreement either express or implied to refrain from an act, tolerate an act or situation, or do an act, coupled with a flow of consideration from the other party. These elements are absent in a corporate guarantee furnished by a holding company.

9.6 It is the case of the Petitioners that taxing an activity which is not a supply of services exceeds the legislative competence under Article 246A read with Article 366(12A) of the Constitution, and, absent an underlying supply, the levy cannot be sustained by resort to Rule 28(2) or the impugned Circulars.

9.7 The Petitioners in W.P.(C) 10924/2024, 15738/2024 and 13358/2025 submit that, notwithstanding the wide amplitude of 'services' under Article 366(26A) of the Constitution and Section 2(102) of the Act of 2017, every activity cannot be taxed merely because it is not goods, money or securities, as that would confer

[13] BHC-OS:11242-DB

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unbridled power on the Respondents to tax any arrangement. Relying on ***Directorate General of Goods and Services Tax Intelligence (HQS) Vs. Gameskraft Technologies (P.) Ltd.***[14], it is contended that a taxable supply must be both a legally recognised form of supply and an economic supply of services, and neither the Act of 2017 nor any other law, including the Act of 1872, recognises the arrangement as an independent supply of service by the holding company to its subsidiary.

10. Learned senior counsels and counsels representing the Petitioners, under Ground B, have made the following submissions-

10.1 It is contended that a corporate guarantee securing the obligations of a subsidiary is a shareholder activity, undertaken to protect the holding company's investment and to facilitate its business operations. To elaborate the aforestated, it is contended that an activity performed primarily for the holding company's own benefit is not a supply of services merely because the subsidiary derives an incidental benefit by way of access to finance or better borrowing terms. The legal obligation between the holding company and its subsidiary only reinforces that the guarantee serves the holding company's own interests. The holding company is neither in the business of providing guarantees nor furnishes them as a regular commercial activity for profit.

10.2 The Petitioners, while distinguishing the bank guarantee, have argued that a bank issues guarantees as a financial product in its regulated business, ordinarily for consideration and against margin

[14] 2026 INSC 595

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money or counter-security. A holding company furnishes a guarantee by reason of its investment and shareholder relationship, without carrying on any business of guarantees or necessarily charging a fee. Therefore, a corporate guarantee is, 'quasi-capital' or a shareholder contribution, and has not been recognised as a provision of services in certain decisions under the transfer pricing provisions of the Income Tax Act, 1961[15].

10.3 Reliance is placed on ***Sterlite Industries India Ltd. v Commissioner of GST & Central Excise***[16] and ***Micro Ink Limited v ACIT***[17], which acknowledge corporate guarantees as shareholder contribution or quasi-capital; and ***Cadila Pharmaceuticals Ltd. v DCIT***[18], which is stated to hold that a parent company's guarantee, absent any cost, outflow or economic sacrifice, cannot be equated with a bank guarantee or warrant imputation of guarantee commission on assumptions. The Petitioners in W.P.(C) 10924/2024, 15738/2024 and 13358/2025 also rely on ***Centel Communications Co. v Commissioner of Internal Revenue***[19] (United States Court of Appeals, 7th Circuit), which holds that shareholders guaranteeing an investee company's borrowings assume additional financial risk to protect their investment and do not render services.

10.4 Further, reliance is also placed on Australian GST Ruling GSTR 2006/1 to argue that even if the Subsidiary Company

[15] hereinafter referred to as 'Act of 1961'
[16] 2019 (25) G.S.T.L. 277 (Tri.-Chennai)
[17] [2015] 63 taxmann.com 353
[18] 2026 (5) TMI 1062
[19] 920 F.2d 1335 (7th Cir., decided on 17.12.1990)

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compensates the Holding Company for providing the corporate guarantee, such payment may be additional consideration for the same guarantee supplied to the Bank/Lender, rather than consideration for an independent service to the Subsidiary.

10.5 The same Petitioners also submitted that, since the Act of 2017 neither defines 'economic supply' nor prescribes a test for it, accordingly recourse must be had to international commercial and taxation jurisprudence, particularly the Organisation for Economic Co-operation and Development (OECD) Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, January, 2022[20], as under:

> (a) in order to substantiate the applicability of the OECD Guidelines, it has been contended that the Respondents themselves, in the Agenda for the 52nd GST Council Meeting, referred to Rule 10TD of the Income Tax Rules, 1962[21], pertaining to Safe Harbour, which is said to be the basis of the 1% valuation, resting upon the arm's length principle in Chapter IV of the OECD Guidelines;
>
> (b) under Paragraph No.7.6 of Chapter VII, an intra-group service exists only if a service is actually rendered, judged by the '*Benefits Test*', i.e., whether an independent enterprise in comparable circumstances would pay a third party for the activity or perform it in-house; a parent-subsidiary relationship or an incidental economic benefit is insufficient;

[20] hereinafter referred to as 'OECD Guidelines'
[21] hereinafter referred to as 'Safe Harbour Rules'

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(c) a corporate guarantee cannot ordinarily be procured from an unrelated party, as no independent enterprise not engaged in the business of guarantees would expose its balance sheet and creditworthiness for an unrelated entity; and

(d) under Paragraph No.7.9, activities of a holding company undertaken solely by virtue of its ownership interest, to protect its investment, are not intra-group services even if the subsidiary incidentally benefits. Thus, corporate guarantee arises from the ownership interest, fails the Benefits Test and is a shareholder activity, not an independent economic supply. It is also contended that the Respondents have adopted a selective approach to the OECD Guidelines and the OECD Commentary, under which corporate guarantees are stated to be not taxable.

10.6 Reference is made to Section 7(1)(a) and Entry 2 of Schedule I, which require the supply to be in the course or furtherance of business. It is contended that the inclusive definition in Section 2(17) cannot extend to every activity having an indirect benefit to the holding company. 'Incidental or ancillary' presupposes an identifiable principal business, and the subsidiary's business cannot be substituted for that of the alleged supplier. Reliance is placed on ***State of Tamil Nadu & Anr. v Board of Trustees of the Port of Madras***[22] and Paragraph No.52 of ***D.P. Jain*** *(Supra)*.

10.7 The Petitioners in W.P.(C) 19506/2025 and 13341/2025 add that the wide definition of 'business' does not dispense with identifying an actual supply to an identifiable recipient, and a board

[22] 1999 4 SCC 630

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resolution authorising a guarantee merely evidences corporate approval, not rendition of a taxable service. The Petitioners in W.P.(C) 15738/2024, rely on ***Aerocom Cushions Private Limited Vs. Assistant Commissioner (Anti Evasion)***[23] to contend that 'business' does not cover corporate guarantees.

11. The Petitioners under Ground C, have made the following submissions:

11.1 It is argued that since no consideration is charged, the guarantee is not a supply. The Deeds of Guarantee of Petitioner Nos.2 and 3 in W.P.(C) 2966/2024 expressly bar any fee or commission while the guaranteed obligations subsist, and Clause 12 of the guarantees in W.P.(C) 5238/2025 and 6436/2025 provides that none is payable. The guarantees are furnished at the instance of the lender, without any fee, commission, security or other consideration from the subsidiary.

11.2 It had been submitted that under Section 2(31), consideration must be a payment, or the monetary value of an act or forbearance, having a direct nexus with the supply. However, nothing flows to the holding company here. The loan to the subsidiary under a separate financing arrangement is not consideration to the holding company; the guarantee cannot be consideration for itself; and the subsidiary's benefit is not consideration, since the holding company acts as a shareholder and its enforceable undertaking runs in favour of the lender.

[23] BHC-NAG-348-DB

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11.3 Reference has been made to Section 127 of the Act of 1872, which treats anything done or promised for the principal debtor's benefit as sufficient consideration for a guarantee, cannot be imported into Section 2(31). Since it merely validates a guarantee where no consideration flows from the debtor to the surety; the two enactments operate in distinct fields and are not *pari materia*. Reliance is placed on ***State of Gujarat v Mansukhbhai Kanjibhai Shah***[24]. The Petitioners in W.P.(C) 19506/2025 and 13341/2025 added that Section 145 of the Act of 1872 neither creates an implied obligation to pay guarantee commission nor establishes consideration under Section 2(31).

11.4 Reference has been made to the judgment in ***Edelweiss*** *(Supra)*, wherein the Supreme Court held that a corporate guarantee furnished to group companies without consideration was not a taxable service under the service tax regime. It is argued that even as per the ratio in ***Gameskraft*** *(Supra)* a direct nexus between consideration and supply is required, which is absent.

11.5 A reference is also made to the judgment of Bombay High Court in ***D.P. Jain*** *(Supra)*, wherein the Court while following ***Edelweiss*** *(Supra)*, held that corporate guarantees furnished without fee, commission or other consideration do not attract GST. The Petitioners in W.P.(C) 19506/2025 and 13341/2025 submit that ***D.P. Jain*** *(Supra)* granted relief against departmental action on guarantees issued before Rule 28(2), without striking down the Rule, and must be applied according to its precise ratio.

[24] (2020) 20 SCC 360

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12. The Petitioners under Ground D have made the following submissions:

12.1 Reference has been made to Section 126 of the Act of 1872, to argue that a contract of guarantee involves the surety/holding company, the principal debtor/subsidiary and the creditor/lender. It is argued that the guarantee runs in favour of the creditor, who obtains additional security and direct recourse against the holding company on default, whereas the subsidiary merely obtains finance under an independent lending arrangement and acquires no contractual right under the guarantee.

12.2 While substantiating the term Recipient under Section 2(93)(c), it is contended that a recipient is a person to whom the service is actually rendered. Absent any contract with, or service rendered to, the subsidiary, it cannot be the recipient merely as the ultimate or indirect economic beneficiary; hence, the lender, being the promisee and beneficiary of the guarantee, is the recipient. It is their case that the statutory requirement of rendition to the recipient cannot be replaced by the concept of an indirect beneficiary, and the impugned Circulars cannot deem a recipient contrary to Section 2(93). Additionally, it is also contended that the subsidiary is also not privy to the contract of guarantee.

12.3 Further reference has also been made to Sections 140 and 145 of the Act of 1872. It is argued that Section 140 confers rights on the surety against the debtor on payment of the guaranteed debt, whereas Section 145 creates an implied obligation on the debtor to indemnify the surety for sums rightfully paid. Accordingly, that obligation flows

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from the subsidiary to the holding company and arises only on discharge of the debtor's liability, thereby establishing no reciprocal supply by the holding company; since an obligation to indemnify is not a contract for the supply of services. The Petitioners in W.P.(C) 2966/2024 and 214/2025 submit that the reliance on Sections 140 and 145 in ***Torrent Power Ltd. v. Union of India & Ors.***[25] is misplaced.

13. The Petitioners under Ground E have made the following submissions:

13.1 Without prejudice to the primary plea that no supply exists, a corporate guarantee is argued to be an 'actionable claim' under Section 2(1) of the Act of 2017, which adopts Section 3 of the Transfer of Property Act, 1882[26] and includes a claim to a debt, whether existing, accruing, conditional or contingent. It is argued that a corporate guarantee is a contingent claim to a debt, crystallising on the subsidiary's default thereby enabling the lender to recover from the guarantor. Referring to Entry 6 of Schedule III read with Section 7(2)(a), it is argued that the aforesaid provisions treat actionable claims, other than specified actionable claims such as lottery, betting and gambling, as neither goods nor services, hence, the transaction cannot be indirectly taxed as a supply of services. The aforesaid exclusion is stated to be applicable to the entire transaction and cannot be circumvented by artificially segregating its components.

13.2 The Petitioners in W.P.(C) 12955/2025 rely on Paragraph nos.21 and 24 of the Constitution Bench decision in ***Sunrise***

[25] R/SCA No. 12175/2024 and connected matters, decided on 14.08.2026 by the High Court of Gujarat
[26] hereinafter referred to as 'Act of 1882'

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Associates v Government of NCT of Delhi[27], explaining an actionable claim as an incorporeal right encompassing claims to debts and beneficial interests, including contingent claims. The Petitioners in W.P.(C) 10924/2024, 15738/2024 and 13358/2025 rely on ***Gameskraft*** *(Supra)*, which recognised a creditor's right to recover money advanced under a private transaction as an actionable claim.

13.3 The Petitioners in W.P.(C) 2966/2024 submit that transferability is not essential under Section 3 of the Act of 1882, as otherwise even specified actionable claims, such as those relating to gambling and online gaming, would not qualify for tax.

13.4 The Petitioners in W.P.(C) Nos.10924/2024, 15738/2024 and 13358/2025 submit that, 'debt' being undefined in the Act of 1882, its meaning must be drawn from other sources. Reference in furtherance thereof, has been made to Article 366(8) of the Constitution, which is argued to include guarantee liabilities within 'debt', and Sections 3(11) and 5(8)(i) of the Insolvency and Bankruptcy Code, 2016[28] recognise them as 'debt' and 'financial debt', respectively. Reliance is placed on ***Hotel & Restaurant Association v Star India Pvt. Ltd.***[29] and ***Ahmedabad Private Primary Teachers' Association v Administrative Officer***[30].

13.5 It is contended that though the principal debtor and the guarantor are distinct persons, the underlying debt is the same, and the guarantor becomes liable to discharge it on default. Relying on ***Laxmi***

[27] (2006) 5 SCC 603
[28] hereinafter referred to as 'IBC'
[29] 2006 (11) TMI 540
[30] (2004) 1 SCC 755

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Pat Surana v Union Bank of India and Anr.[31], it is contended that the guarantor's liability is co-extensive and co-terminous with that of the borrower under Section 128 of the Act of 1872, and the lender may proceed against both. As Section 3 of the Act of 1882 includes contingent debts, enforceability only upon default does not take the guarantee outside actionable claims.

13.6 Alternatively, the Petitioners in W.P.(C) 19506/2025 and 13341/2025 submit that the guarantee instrument, the lender's debt claim and the surety's rights upon payment are distinct legal concepts, and the exclusion must be applied with reference to the precise rights involved, not presumed merely because the guarantee creates a contingent obligation.

14. The Petitioners under Ground F have made the following submissions:

14.1 It is argued that Section 15 and Rule 28 operate only after a taxable supply is established. Sections 7 and 9 govern the existence and levy of a supply, Section 15 the valuation framework, and Section 164 the rule-making power. Rule 28(2) cannot create the taxable event, determine the recipient, assume every related-party guarantee to be taxable while prescribing its value, or enlarge Sections 7 and 9.

14.2 On the aforesaid strength, it had been contended that a delegated legislation cannot travel beyond the parent enactment or create an artificial taxable value unsupported by the transaction, and a deeming fiction in delegated legislation cannot enlarge constitutional

[31] 2021 8 SCC 481

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competence. The parent Act lays down no discernible policy or standard supporting the 1% valuation, and delegating the measure of tax without guidance is an abdication of an essential legislative function, amounting to excessive delegation. Deeming the value at 1% per annum irrespective of the actual facts is impermissible.

14.3 It is argued that a tax enactment, shall take into consideration four components of a levy, namely, the taxable event, the person liable, the rate and the measure of tax, which must be ascertainable from the taxing statute itself and bear a rational nexus with one another. Reliance in this regard is placed on ***Govind Saran Ganga Saran v Commissioner of Sales Tax***[32]***; State of Rajasthan v Rajasthan Chemists Association***[33]***; A.V. Fernandez (Supra); and Mineral Area Development Authority & Anr. v Steel Authority of India Ltd. & Anr.***[34]. It is argued that the 1% valuation ignores relevant factors, such as the economic value of the service, the guarantor's risk, the subsidiary's creditworthiness, the risk of default, the likelihood of invocation, the actual duration of the guarantee and the amount, if any, invoked. It thus lacks a rational nexus between the object and the measure of tax and travels beyond Articles 246A and 265 of the Constitution.

14.4 The Petitioners in W.P.(C) 2966/2024, 5238/2025 and 6436/2025 submit that, absent a nexus between the measure and the alleged service, Rule 28(2) taxes the guaranteed amount itself, which is a direct tax on money beyond Article 246A. The burden, equivalent

[32] 1985 SCC OnLine SC 326
[33] (2006) 6 SCC 773
[34] 2024 INSC 554

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to 0.18% of the guaranteed amount per annum, arises irrespective of whether consideration is received, a service is independently rendered or the guarantee is invoked. Reliance in this regard is placed on ***Bharat Sanchar Nigam Ltd. v Union of India***[35] ***and State of Madras v Gannon Dunkerley & Co. (Madras) Ltd.***[36].

14.5 It is contended that the deemed value of 1% tax is borrowed from the Safe Harbour Rules and from commission charged by banks on bank guarantees, without any independent assessment of corporate guarantees. It is argued that while Safe Harbour is optional and permits taxpayers to establish the actual arm's length price, Rule 28(2) makes the benchmark a compulsory fiction, with no opportunity to establish the actual value or its inapplicability. With respect to the Income Tax benchmarks, it is argued that the same operate under a distinct framework and cannot be mechanically imported, as determining an arm's length price differs from establishing and valuing a supply under Sections 7 and 15 of the Act of 2017. Bank and corporate guarantees being commercially and legally distinct, bank commission is no rational benchmark for a guarantee furnished as a shareholder measure.

14.6 The Petitioners in W.P.(C) 15738/2024, pointed out that the GST Council itself accepted that banks charge between 0.5% and 3%, and sometimes nothing. Where a guarantee can be furnished at no cost, the fiction cannot assume a fixed 1% irrespective of the facts. In this regard, reliance is placed on ***Union of India and Another v. A***

[35] (2006) 3 SCC 1
[36] 1968 SCC OnLine SC 177

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Sanyasi Rao and Others[37]***; Wipro Ltd. v Assistant Collectors of Customs***[38]***; and Munjaal Manishbhai Bhatt v Union of India***[39]. On this Court's query as to why open market value under Rule 28(1) could not be extended to corporate guarantees, it was argued that the actual consideration could well be lower than 1%, rendering the Rule arbitrary.

14.7 Further, it has also been contended that the 'whichever is higher' formula under Rule 28(2) is illusory in gratuitous transactions, where actual consideration is nil, making 1% the sole basis of valuation. They submit that the reading down in ***Torrent Power*** *(Supra)* does not cure the independent arbitrariness of mandating a presumptive 1% valuation irrespective of the transaction's nature or ascertainable commercial value. Such a rigid mechanism, which excludes alternative valuation methods, is arbitrary. Reliance is placed on ***Munjaal Manishbhai Bhatt*** *(Supra)*, ***Wipro Ltd.*** *(Supra)* and ***Federation of Hotels & Restaurant Associations of India v. Union of India***[40].

14.8 It is their case that Rule 28(2) singles out related-party corporate guarantees for a mandatory deemed valuation of 1% per annum, while other related-party transactions are valued under the general framework of Rule 28, including open market value. There is no intelligible differentia or rational nexus with the object of the Act of 2017 for such onerous treatment, reliance in this regard has been

[37] (1996) 3 SCC 465
[38] 2015 14 SCC 161
[39] 2022 (5) TMI 397
[40] 2016 (44) S.T.R. 3 (Del.)

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placed upon ***State of Madhya Pradesh v Gopal D. Tirthani***[41] and ***Navtej Singh Johar v Union of India***[42].

14.9 The Petitioners in W.P.(C) 10924/2024, 15738/2024, 13358/2025 and 214/2025 contend that the proviso creates unequal tax burdens: while recipients eligible for full ITC are taxed on invoice value, those ineligible for ITC, such as power generators supplying exempt output, bear the deemed 1% as an actual cost, resulting in cascading. This differential treatment of similarly situated guarantees is challenged as arbitrary and violative of Articles 14, 19(1)(g) and 265 of the Constitution.

14.10 In conclusion, it is their case that Rule 28(2), insofar as it mandates a uniform deemed value of 1% per annum of the guaranteed amount irrespective of the actual consideration, nature and commercial value of the transaction, is *ultra vires* the parent enactment, arbitrary, confiscatory and violative of Articles 14, 19(1)(g), 246A and 265 of the Constitution.

15. The Petitioners under Ground G have made the following submissions:

15.1 It is contended that Rule 28(2) introduced by IN-2023 with effect from 26.10.2023, is neither retrospective nor clarificatory. The Petitioners contend that guarantees executed between 01.07.2017 and 26.10.2023 cannot be taxed by applying a subsequently introduced valuation mechanism. Accordingly, the 2019-2023 demand in W.P.(C) 12955/2025 is argued to be unsustainable. It is their case that

[41] AIR 2003 SC 2952
[42] AIR 2018 SC 4321

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for the pre-amendment period, the then-operative Rule 28 and, where applicable, Rules 30 and 31 must be considered, without presuming a supply or eligibility under the provisos. IC-2024 itself distinguishes guarantees issued or renewed before and after 26.10.2023.

15.2 With respect to IN-2024, which amended Rule 28(2) retrospectively from 26.10.2023, it is argued that the same is independently arbitrary and unconstitutional, inasmuch as the said notification instead of curing a procedural defect or clarifying an existing mechanism, imposes substantive liabilities on concluded transactions.

15.3 It is argued that the taxable event, if any, crystallises on execution of the guarantee, and guarantees executed before 01.07.2017 cannot be taxed. Accordingly, the seven guarantee deeds in W.P.(C) Nos. 19506/2025 and 13341/2025, having been executed and delivered between 31.12.2009 and 30.12.2015, constitute completed pre-GST transactions and cannot be taxed merely because they remain enforceable after 01.07.2017. In the absence of any established post-GST issuance, renewal, extension, amendment or novation, continued enforceability or the lender's subsisting right of invocation cannot constitute a fresh supply. They have impressed upon the Court that the Respondents must identify the specific post-GST taxable event, if any, on a deed-wise basis and any distinct post-GST supply so established must be taxed and valued strictly under the provisions applicable to that period.

16. The Petitioners, under Ground H, have made the following submissions:

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16.1 It is contended that a corporate guarantee is a one-time contingent undertaking with a continuing obligation, and not a 'continuous supply of services' under Section 2(33) of the Act of 2017, which contemplates a continuous or recurrent supply under a contract for a period exceeding three months with periodic payment obligations. A notional value under Rule 28 cannot create periodic payment obligations or convert a single undertaking into a recurring supply. ***Torrent Power*** *(Supra)* is stated to have recognised the same and declined to treat a fee-free guarantee as a continuous supply.

16.2 It is further contended that the continued subsistence of a guarantee gives rise to no fresh or recurring liability. Execution, extension, renewal, amendment and invocation are distinct legal events, and neither the passage of time, nor continued enforceability, nor the disclosure of a contingent liability in the books or financial statements of the subsidiary, creates a fresh supply every year. The Petitioner in W.P.(C) 15738/2024, added that the subsidiary does not reflect the guarantee in its books of account at all.

16.3 Without prejudice, the Petitioners in W.P.(C) 214/2025 submit that, if taxable at all, the time of supply is governed by Section 13(2)(b), and not the residuary Section 13(2)(c). Where no invoice is issued within the prescribed period, clause (b) fixes the time of supply as the date of provision of service, which is the date of execution of the guarantee, and the absence of an invoice or payment does not render the said clause inapplicable. The Petitioners in W.P.(C) 19506/2025 and 13341/2025 add that Section 13 presupposes a taxable supply and cannot independently create one.

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16.4 It is also their case that the levy for future years under the impugned Circulars, where the guarantee extends beyond one year, is illegal. The guaranteed obligation reduces each year, and the guarantee may not run its full tenure, therefore, the deemed value, if any, must be spread across the tenure, and cannot be levied and collected upfront in the first year.

17. The Petitioners, under Ground I, have made the following submissions:

17.1 It is contended that IC-2023 and IC-2024 are *ultra vires* Section 168 of the Act of 2017, which empowers the CBIC only to issue instructions for uniformity in implementation, and not to create a taxable event, legislate administratively or pre-empt issues falling within the domain of the adjudicating authorities. By declaring a taxable supply, identifying the supplier and recipient, characterising the service, fixing the time of supply and prescribing the valuation, the impugned Circulars are stated to expand the levy by executive instruction. It is argued that a circular can neither enlarge Sections 7 and 9, nor deem a recipient contrary to Section 2(93), nor create a taxable event by implication; nor can the rule-making powers under Sections 15 and 164 create a charging event absent under Section 7. Reliance is placed on ***Union of India v Karvy Stock Broking Ltd.***[43]; ***Faridabad Iron & Steel Traders Association v Union of India***[44]; and ***Harivansh Lal Mehra v State of Maharashtra***[45].

[43] (2019) 11 SCC 631
[44] 2004 (178) E.L.T. 1099 (Del.)
[45] (1971) 2 SCC 54

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17.2 Further, IC-2024 is assailed on the ground that it declares guarantees taxable even prior to the introduction of Rule 28(2), on the premise that the Rule merely provides a valuation mechanism, whereas a circular cannot retrospectively establish a taxable event without a clear statutory basis. It is also argued that having characterised the service as the assumption of the risk of default, IC-2024 directs valuation on the entire guaranteed amount, irrespective of whether the loan is fully, partly or not at all disbursed, though the value ought to bear a reasonable nexus with the risk actually undertaken.

17.3 It is their case that IC-2023 arbitrarily assigns a nil value to personal guarantees furnished by directors, owing to RBI restrictions on the payment of consideration, while subjecting corporate guarantees to Rule 28(2), even though lenders may equally prohibit commission on corporate guarantees. It is argued that the source of a restriction cannot alter the character or value of a transaction, and the distinction so drawn is violative of Article 14 of the Constitution.

17.4 It is further contended that, under IC-2024, the taxability of a takeover of a loan by another bank depends upon the formal issuance of a fresh guarantee or renewal of the existing one, rather than upon the alleged benefit or risk. A guarantee already taxed may thus be taxed again merely upon a change of lender, without any mechanism to adjust the tax already paid.

17.5 The Petitioners in W.P.(C) 10924/2024, 15738/2024 and 13358/2025 submit that, by Paragraph No.122(F) of ***Torrent Power (Supra)***, the Gujarat High Court had set aside the impugned Circulars

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to the extent contrary to its observations and directions, and, relying on ***Kusum Ingots & Alloys Ltd. v Union of India & Anr.***[46], that such invalidation is not confined to its territorial jurisdiction.

ii. Additional submissions on behalf of the respective Petitioners

18. The additional submissions of the respective Petitioners, not covered by the common grounds, are recorded counsel-wise hereinbelow. The Petitioners in W.P.(C) 5238/2025 and 6436/2025 have adopted the common grounds and have not advanced any additional submissions.

Additional submissions on behalf of the Petitioners in W.P.(C) 2966/2024

18.1 Learned senior counsel contends that ***Torrent Power*** *(Supra)* is distinguishable, inasmuch as the Gujarat High Court framed, but did not decide, the question whether a corporate guarantee, being a shareholder activity, constitutes a supply of service; and relied upon Section 127 of the Act of 1872 without considering the definition of 'consideration' under Section 2(31) of the Act of 2017. The remaining grounds on which ***Torrent Power*** *(Supra)* is sought to be distinguished, namely, its reliance on Sections 140 and 145 of the Act of 1872 and on Entry 5(e) of Schedule II, and its rejection of the plea of actionable claim, stand recorded under Grounds A, D and E.

[46] (2004) 6 SCC 254

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Additional submissions on behalf of the Petitioners in W.P.(C) 10924/2024, 15738/2024 and 13358/2025

18.2 It is contended that Section 126 of the Act of 1872 recognises a single tripartite agreement between the surety, the principal debtor and the creditor. The request of the subsidiary to the holding company to furnish a guarantee cannot be dissected into a separate agreement for supply of service, there being no distinct offer, acceptance or consensus between them. It is argued that, in the absence of any provision permitting vivisection of a composite transaction, and Sections 2(30) and 8 of the Act of 2017 taxing composite supplies according to the principal supply, the Respondents cannot artificially segregate alleged *inter se* services between the holding company and its subsidiary.

18.3 Reliance in this regard is placed on ***Levob Verzekeringen BV v Staatssecretaris van Financiën***[47], wherein the Court of Justice of the European Communities held that a single economic supply should not be artificially divided, and that its nature and essential features determine the tax liability.

Additional submissions on behalf of the Petitioners in W.P.(C) 214/2025

18.4 It is contended that the Department, having accepted ***D.P. Jain*** *(Supra)* without challenge, cannot take inconsistent stands against similarly situated assessees, contrary to Article 14 of the Constitution and the principles of consistency and judicial discipline. Reliance is

[47] Case C-41/04, Court of Justice of the European Communities (First Chamber)

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placed on ***Indian Oil Corporation Ltd. v Collector of Central Excise***[48]; ***Union of India v Kaumudini Narayan Dalal***[49]; ***CCE v Tata Engineering & Locomotives Co. Ltd.***[50]; ***Birla Corporation v CCE***[51]; and ***Jayaswals Neco Ltd. v CCE***[52].

Additional submissions on behalf of the Petitioners in W.P.(C) 19506/2025 and 13341/2025

18.5 It is contended that the levy conflates the shareholder relationship, the contingent obligation owed to the lender and a taxable supply, and that neither the related-party relationship, nor the commercial benefit to the subsidiary, nor the continued enforceability of the guarantees, nor a notional valuation mechanism independently establishes a supply. They pray that the levy and proceedings be set aside insofar as they tax the continued subsistence of the seven pre-GST deeds, absent any post-GST issuance, renewal or other taxable event, and that IC-2023, IC-2024 and Rule 28(2) be confined to the limits of the parent enactment.

Additional submissions on behalf of the Petitioners in W.P.(C) 12955/2025

18.6 Without prejudice to Ground E, it is contended that a corporate guarantee is a 'security', excluded from 'services' under Section 2(102) of the Act of 2017. Section 2(101) adopts the definition under

[48] (2007) 13 SCC 803
[49] (2000) 124 ELT 323 (Tri.)
[50] (2003) 11 SCC 193
[51] (2005) 6 SCC 95
[52] (2007) 13 SCC 807

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Section 2(h) of the Securities Contracts (Regulation) Act, 1956[53], which is inclusive and not confined to the instruments enumerated therein. Reliance is placed on ***Naresh Agarwala & Co. v Canbank Financial Services Ltd.***[54] and ***Sahara India Real Estate Corporation Ltd. v SEBI***[55]. It is argued that a guarantee, being security furnished to the creditor and enforceable upon the default of the debtor under Sections 126 to 128 of the Act of 1872, cannot be a taxable service.

18.7 It is further contended that a pledge of shares cannot attract GST, securities being excluded from 'services', and the show cause notices are, therefore, without jurisdiction. One of the Petitioners submits that its case involves no contract of guarantee, but only a pledge of shares, which is distinct from a guarantee, and hence no supply arises.

18.8 These Petitioners also assail the invocation of the extended period of limitation under Section 74 of the Act of 2017, which can be invoked only in cases of fraud, wilful misstatement or suppression of facts with intent to evade tax, none of which is established. It is submitted that all the show cause notices invoke Section 74, though the issue is purely interpretative and involves no fraud or suppression. The Petitioners in W.P.(C) 19506/2025 and 13341/2025 point out that ***Torrent Power*** *(Supra)* granted partial relief with respect to the proceedings under Section 74.

[53] hereinafter referred to as 'Act of 1956'
[54] (2010) 6 SCC 178
[55] (2013) 1 SCC 1

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II. SUBMISSIONS ON BEHALF OF THE RESPONDENTS

19. Mr. N. Venkataraman, learned ASG, advanced his submissions on behalf of the Respondents under two categories, namely, (A) independent submissions, constituting the affirmative case of the Respondents for the levy and the valuation under Rule 28(2), including the answer to the query of this Court as to how and why the value was fixed at 1%; and (B) reply submissions, answering the grounds of the Petitioners under the same heads as Grounds A to I.

i. Independent submissions on behalf of the Respondents

20. On the nature of a corporate guarantee and the undisputed facts, the learned ASG has made the following submissions:

20.1 It is argued that a corporate guarantee substitutes a traditional bank guarantee as collateral, enabling the borrower to avail a loan without blocking its funds or furnishing collateral. It is extended by the holding company and accepted by the lender on the strength of the valuation and creditworthiness of the holding company, as an assurance that the holding company will repay the loan to the extent of the default of the subsidiary.

20.2 It is further contended that a corporate guarantee involves three parties, namely, the lender, the borrower/subsidiary and the guarantor/holding company. The loan transaction is only between the lender and the borrower, and the guarantor becomes relevant only upon default, and to the extent thereof. According to the Respondents, the lender cannot recover directly from the guarantor. It is argued to

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be undisputed that all the corporate guarantees in the present batch were extended without consideration.

21. On the scheme of the Act of 2017 vis-à-vis the erstwhile indirect tax regimes, the learned ASG has made the following submissions:

21.1 It is argued that, under the erstwhile regime, sales tax and service tax required the passing of consideration to trigger the charge, whereas customs and central excise duties were triggered upon import or manufacture, consideration not being a *sine qua non*. Service tax, in particular, was consideration-based and not contract-based, requiring a provider, a recipient, rendition of service and payment of consideration.

21.2 It is further submitted that GST subsumed these levies into a single tax on supply under Sections 7 and 9 of the Act of 2017, and departs from service tax inasmuch as, while taxing supplies for consideration under Section 7(1)(a), it also taxes the activities specified in Schedule I under Section 7(1)(c), even without consideration. Therefore, the mandate of Parliament is, that Section 7 covers supplies with or without consideration. Further, it is argued that the Petitioners herein have not challenged the *vires* of Section 7(1)(c).

22. On the taxability of a corporate guarantee between related persons under Section 7(1)(c) read with Entry 2 of Schedule I, the learned ASG has made the following submissions:

22.1 It is submitted that Entry 2 of Schedule I covers supplies between related persons, or between distinct persons under Section 25,

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made in the course or furtherance of business. Explanation (a) to Section 15 deems persons to be related, *inter alia*, where any person directly or indirectly owns, controls or holds 25% or more of the outstanding voting stock or shares of both, where one directly or indirectly controls the other, and where both are directly or indirectly controlled by a third person. It is his case that the Petitioners admit that a holding company and its subsidiary are related persons; such a supply, therefore, falls within Entry 2 and is taxable even without consideration.

22.2 It is further argued that Parliament brought related-person transactions within Schedule I as they are predominantly not at arm's length and any consideration therein is unrealistic. Market guarantors, who enable borrowers to avail loans without collateral, always charge an arm's length consideration from the borrower, whereas the same transaction between a holding company and its subsidiary will almost never be at arm's length. Hence, with or without consideration, a guarantee by a holding company for its subsidiary is a taxable supply under Section 7(1)(c) read with Entry 2 of Schedule I.

23. On the classification of the supply under Section 7(1A) read with Schedule II, the learned ASG has made the following submissions:

23.1 It is submitted that Section 7(1A) does not define supply *de hors* Section 7(1), but operates harmoniously with it; once a transaction is a supply under Section 7(1), Schedule II classifies it as a supply of goods or of services, and operates only *qua* the transactions listed therein. In the Additional Written Submissions, the Respondents

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fully agree that Section 7(1A) is subservient to Section 7(1) and that, unless a case falls under Section 7(1), Section 7(1A) read with Schedule II cannot be invoked. Therefore, Entry 5(e) of Schedule II is not relied upon to establish the supply, which is traced to Section 7(1)(c) read with Entry 2 of Schedule I, but only to classify it as a supply of service.

23.2 It is further submitted that Entry 5(e) treats 'agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act' as a supply of service. The Petitioners aver that holding companies do not generally provide corporate guarantees and did so only because their subsidiaries were involved; though irrelevant, the admitted fact that they did so constitutes 'agreeing to do an act'. A corporate guarantee, being an agreement to pay the defaulted amount if the subsidiary fails to repay, is thus classifiable as a supply of service.

24. On the valuation framework under Section 15 of the Act of 2017 and Rule 28(2) of the Rules of 2017, the learned ASG has made the following submissions:

24.1 It is submitted that Section 9(1) levies tax on the value determined under Section 15. Under Section 15(1), the value is the transaction value only where the supplier and the recipient are not related and the price is the sole consideration. Thus, related-party supplies are excluded from Section 15(1), and their value is to be determined under Sections 15(4) and 15(5).

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24.2 It is further argued that Section 15(4) invokes the general valuation principles under the Rules for all supplies whose value cannot be determined under Section 15(1), including related-party supplies; whereas Section 15(5), which operates notwithstanding Sections 15(1) and 15(4), empowers the Government to notify specified supplies and prescribe their value in the Rules themselves, in which case the general principles do not apply.

24.3 It is submitted that Rule 28(1), which deals with supplies between distinct and related persons, is not in issue. It is his case that Rule 28(2), inserted by IN-2023 under Section 164, identifies the supply of service by way of a corporate guarantee to a banking company or financial institution on behalf of the recipient, and prescribes its value as 1% of the amount of guarantee per annum or the actual consideration, whichever is higher, thereby satisfying the twin requirements of Section 15(5).

24.4 It is also submitted that, whether the power is traced to Section 15(5) or to Section 164, both originate in the recommendation of the GST Council, and the source is, therefore, immaterial. The issue is stated to be no longer *res integra* in view of Paragraph No.58.2 of ***Gameskraft*** *(Supra)*, which reads as under:

> "*58.2 A conjoint reading of Sections 15(4), 15(5), 164 and Section 2(87) reveals a common statutory thread, namely the requirement of recommendation of the GST Council. Consequently, whether Rule 31A traces its source to Section 15(4), Section 15(5), or the general rule-making power under Section 164, the foundational statutory requirement remains identical and intact. Once it is established that Rule 31A was introduced pursuant to recommendations of the GST Council, the controversy regarding the precise source of delegated authority loses much of its significance.*"

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25. In answer to the query of this Court as to why the value was fixed at 1%, the learned ASG has made the following submissions:

25.1 It is submitted that, since the power under Sections 15(4), 15(5) or 164 can be exercised only on the recommendation of the GST Council, the answer lies in the minutes and deliberations of the Council.

25.2 It is submitted that Rule 28(2) originates in Agenda Item 3(ii) of the 52nd GST Council Meeting, concerning corporate guarantees between related persons, including by a holding company to its subsidiary. Paragraph Nos.4.1 to 5 of the Agenda, is argued to have placed the following before the Council:

> (a) a corporate guarantee between related companies, including by a holding company to its subsidiary, is taxable under Schedule I as a supply in the course or furtherance of business, even without monetary consideration (Paragraph Nos.4.1 and 4.2);
>
> (b) its value would otherwise be determined under Rule 28, mainly on open market value or the value of like services, or under Rules 30 or 31; however, corporate guarantees, unlike bank guarantees, are peculiar to a corporate group, third-party comparisons may be unavailable or not relatable, and the commission depends on factors such as the creditworthiness of the company, the amount guaranteed, borrowing history, soundness of financial statements, current cash flows and income of the company guaranteed, and its relationship with the lender,

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owing to which field formations and taxpayers found it difficult to arrive at the open market value (Paragraph No.4.3);

(c) where the recipient is eligible for full input tax credit, the invoice value, if any, is deemed to be the open market value under the second proviso to Rule 28, but difficulties arose where it is not; banks charge between 0.5% and 3% for bank guarantees, and sometimes nothing, depending on the client relationship; and, as Rule 10TD of the Safe Harbour Rules fixes 1% of the amount guaranteed as the minimum acceptable fee for corporate guarantees in eligible international transactions, the same was proposed for valuation under GST (Paragraph No.4.4); and

(d) the Law Committee recommended that the applicability of the proposed Rule 28(2) be clarified by a circular, placed at Annexure-A (Paragraph Nos. 4.6 and 5).

25.3 On the strength of the aforestated, it is his case that the Agenda thus explained the difficulty caused by the non-availability of open market values, owing to the peculiar relationship between holding and subsidiary companies, and adopted the minimum fee under the Income Tax Rules, 1962. He argued that by Paragraph Nos.4.16 to 4.18 of the minutes of the 52nd Meeting held on 07.10.2023, the Council accepted the recommendations of the Law Committee along with the circular, and Rule 28(2) was accordingly inserted under Section 164.

25.4 It is further submitted that, by way of the IN-2024, Rule 28(2) was amended with effect from 26.10.2023 to deem the value at 1% of

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the amount of guarantee per annum, and to confine the Rule to recipients located in India, thereby removing exports from its scope. These amendments are argued to have arisen from Paragraph Nos.3 to 5 of the Agenda for the 53rd Meeting, approved by Paragraph Nos.4.138 to 4.141 of the minutes of the meeting held on 22.06.2024. Thus, it is his case that Rule 28(2), its amendments, IC-2023 and IC-2024 were all issued on the recommendations of the GST Council.

25.5 It is contended that the said recommendations, having been adopted by a unanimous vote of all the voting States and the Union, are binding on the delegated legislature, and the wisdom of the GST Council must prevail.

26. In response to the submissions of the Petitioners on the levy for future years and the nature of the supply, the learned ASG has, without prejudice to one another, made the following alternative submissions, the answer to which is stated to lie in Section 13 of the Act of 2017:

26.1 It is his case that Section 13(2)(a) and (b) turn on the date of invoice under Section 31, which does not assist in the present case, and hence do not apply. Section 13(2)(c) operates independently and fixes the time of supply as the date on which the recipient shows the receipt of services in its books of account. Clause 18(b)(ii) of Indian Accounting Standards[56] 24 requires the subsidiary to disclose every guarantee given or received, and Clause 18(b) the outstanding balance of commitments, including guarantees, in every reporting period while the liability subsists. Thus, the time of supply can be determined each

[56] hereinafter referred to as 'Ind AS'

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year, and a taxable supply arises in each year in which receipt is so recorded.

26.2 It is argued that, in such a case, the expression '1% of the amount of such guarantee offered per annum' may be judicially interpreted to mean the amount subsisting in each year. For a ten-year guarantee of Rs.100 crores, instead of 10% of Rs.100 crores, the value would be 1% of the subsisting amount each year after setting off repayments; on pre-closure in the seventh year, there would be no supply for the remaining three years; and an increase in the guaranteed amount would be valued accordingly. It is submitted that, on the aforesaid reading, a pre-GST guarantee would be taxable only for its surviving years from 01.07.2017.

26.3 Alternatively, it is submitted that, under Section 13(5)(a), which applies where Sections 13(2) to 13(4) do not assist, the time of supply is the due date of the periodical return to be filed by the subsidiary, so that the supply would arise every year on the return due date traceable to the anniversary of the guarantee, with the same consequences. However, if Section 13(5) is triggered only once, Rule 28(2) would apply fully in the first year, i.e., 10% of Rs.100 crores for a ten-year guarantee, without set-off for repayments, and guarantees entered into before 01.07.2017 would not be taxed. It is urged that this Court may, nonetheless, harmoniously construe Rule 28(2) to extend year-wise valuation, which would only defer the tax without diluting the Rule; either way, the Revenue would collect the same tax, save in the rarest of rare cases.

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26.4 On the question of continuous supply, the learned ASG stated that, on a literal reading, a multi-year guarantee would not be a 'continuous supply of services' under Section 2(33), since 'periodic payment obligations' are absent in a Schedule I transaction without consideration, the other elements being satisfied. However, it is his contention that if periodic payment were insisted upon, no Schedule I supply could ever be a continuous supply, which could not have been intended. Rule 28(2) supplies, by legal fiction, the element of consideration absent in Schedule I transactions, and the deemed value must, therefore, be treated as deemed consideration establishing periodic payment obligations, a deeming fiction being required to be carried to its logical end. Reliance in this regard is placed upon ***Ashok Leyland Ltd. v State of Tamil Nadu***[57].

26.5 It is further contended that, if a taxable supply arises every year, guarantees subsisting in the GST regime are taxable for the surviving years; and if it arises only once, guarantees whose supply concluded before 01.07.2017 are not taxable. For the period before 26.10.2023, Rule 28(2) being only a valuation mechanism, the transaction was taxable from 01.07.2017 and valued under Rule 31 read with Rule 28(c), and under Rule 28(2) thereafter.

26.6 It is his case that Rule 28(2) is beneficial, as it brings certainty of value, is confined to recipients in India and extends the benefit of input tax credit. Hence, this Court may, on a harmonious construction of Rules 28(2) and 31, extend the same to the period before 26.10.2023, or give it effect from 01.07.2017. Then, supplies to

[57] (2004) 3 SCC 1

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recipients located outside India would be outside the levy from 01.07.2017 and, Rule 28(2) being the specific mechanism, Rule 31 cannot be used to value them, the intention of the GST Council being that exports must not bear GST.

ii. <u>Reply submissions on behalf of the Respondents</u>

27. The learned ASG has controverted the submissions of the Petitioners, under the same heads as Grounds A to I, as recorded hereinbelow.

28. In reply to Ground A, the learned ASG has made the following submissions:

28.1 Against the contention that the charge must be strictly construed and established within the four corners of Section 7, it is submitted that once a guarantee by a holding company for its subsidiary is a taxable supply under Section 7(1)(c) read with Entry 2 of Schedule I, classified as a supply of service under Section 7(1A) read with Schedule II, the charge under Section 9 is triggered on a plain reading, and tax is payable on the value under Rule 28(2) read with Section 15(5). A charge so triggered cannot be assailed on any other ground.

28.2 Against the contention that every activity cannot be taxed merely because it is not goods, money or securities, and that the arrangement is not a legally recognised supply, it is argued that the same runs contrary to Paragraph Nos.51.6 to 51.9 of ***Gameskraft*** *(Supra)*, wherein it was held that Section 7(1) employs expressions of the widest amplitude, namely, ‘includes’, ‘all forms of supply’ and ‘such as’; that the forms of supply in Section 7(1)(a) are illustrative

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and not exhaustive; that Article 366(12A) deliberately adopts 'supply', in contradistinction to 'transfer' in Article 366(29A); and that GST taxes supplies, and not merely transfers of title or conventional sales. It is contended that Paragraph No.85 thereof also reiterates ***Union of India v Mohit Minerals Pvt. Ltd.***[58], which held that Section 7 defines supply with a broad brush, GST is supply-centric, and fiscal legislation must adapt to emerging commercial realities.

28.3 Against the contention that a corporate guarantee supplies nothing and is merely a promise to pay in a future contingency, it is submitted that there is, in fact, both value addition and giving and taking. The subsidiary could not procure the loan without the guarantee and would otherwise have to park funds in bank guarantees or part with assets as collateral. The lender extends the loan on the strength of the creditworthiness and credibility of the holding company.

28.4 Against the contention based on the Circular dated 03.08.2022, it is submitted that the conditions of a contract coupled with consideration referred to therein are relevant only where consideration exists. For Schedule I transactions, consideration is dispensed with and only a contract to do an act need exist, which, under Section 126 of the Act of 1872, exists in every contract of guarantee. Read closely, the Circular reflects the correct position and favours the Revenue.

28.5 It is further submitted that ***Tata Sons*** *(Supra)* arose from an arbitral award against Tata Sons, which was settled and recorded in a

[58] (2022) 10 SCC 700

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court order, and the Revenue sought to tax it as an import of services, treating Docomo as having agreed to tolerate the breach and withdraw all enforcement actions. The Bombay High Court quashed the show cause notice, holding that there was no contract between the parties for that purpose and the settlement amount was not consideration therefor. The said decision turned on its own facts, whereas, in the present case, every Petitioner has admittedly contracted to pay the defaulted amount if its subsidiary fails to discharge its obligations.

29. In reply to Ground B, the learned ASG has made the following submissions:

29.1 Against the contention that the holding company is not in the business of guarantees, it is submitted that Section 2(17) inclusively covers any trade, commerce, manufacture, profession, vocation, adventure, wager or similar activity, whether or not for pecuniary benefit; any activity or transaction connected therewith, or incidental or ancillary thereto; and any activity or transaction in the nature thereof, irrespective of volume, frequency, continuity or regularity. It is his case that the definition being transaction-centric and indifferent to purpose, quantity and frequency, guarantees, even if not the main activity of the holding company, yielding no pecuniary benefit and not offered to others in the market, are incidental and ancillary to its trade and commerce, and hence constitute business.

29.2 Against the contention that a board resolution merely evidences corporate approval, it is submitted that the expression ‘in the course or furtherance of business’ in Entry 2 of Schedule I covers transactions in the course of business, even if they do not further it. He contended

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that the Petitioners admittedly convened board meetings and approved the guarantees, which shows that the same were in the course of business. In one Writ Petition, the contract of guarantee itself states that it is entered into for the benefit of the guarantor and its business, which is an admission that it is a business endeavour.

29.3 With respect to the reliance placed upon ***Aerocom Cushions*** *(Supra)*, it is contended that the said decision concerns the assignment of leasehold rights arising from a transfer of immovable property, and is irrelevant to whether a corporate guarantee is furnished in the course or furtherance of business.

29.4 It is further submitted that ***Centel Communications*** *(Supra)* does not deal with corporate guarantees and concerns the taxation of ESOPs provided by an employer to its employees, and that the Australian Ruling GSTR 2006/1 reflects a sovereign policy decision not to tax corporate guarantees, which has no application in interpreting the Act of 2017.

29.5 Against the contention that the Respondents have selectively relied upon the OECD Guidelines, it is submitted that the Act of 2017 does not define 'supply' with reference to the OECD Commentaries. It is a standalone statute, and a supply taxable thereunder remains uninfluenced by any conflicting material, including the said Commentaries.

30. In reply to Ground C, the learned ASG has made the following submissions:

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30.1 It is submitted that, though the guarantees were admittedly extended without consideration, the same is not fatal, since Section 7(1)(c) read with Entry 2 of Schedule I taxes related-person supplies even without consideration, Parliament having deliberately so provided as such transactions are not at arm's length. Without prejudice, Section 127 of the Act of 1872 treats anything done or any promise made for the benefit of the principal debtor as sufficient consideration for the guarantee.

30.2 Against the contention that the issue is covered by ***D.P. Jain*** *(Supra)*, it is argued that the said judgment traced its reasoning entirely to ***Edelweiss*** *(Supra)*, which, though concerning the same transaction, was rendered under the service tax regime, where consideration was ingrained in the definition of 'service' under Section 65B(44) of the Finance Act, 1994[59], and there was no equivalent of Section 7(1)(c). It is argued that ***D.P. Jain*** *(Supra)* does not discuss Section 7(1)(c) read with Schedule I and, having ignored a provision of law, is *per incuriam*, and the Bombay High Court erred in importing findings rendered under a regime which mandated consideration.

31. In reply to Ground D, the learned ASG has made the following submissions:

31.1 It is submitted that, no consideration being payable, clause (c) of Section 2(93) applies, and the recipient is the person to whom the service is rendered. The service is rendered only to the subsidiary, which alone gains from the guarantee, and is therefore the recipient.

[59] hereinafter referred to as 'Act of 1994'

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31.2 Against the contention that the subsidiary is not privy to the guarantee, it is submitted that Section 145 of the Act of 1872 implies, in every contract of guarantee, a promise by the principal debtor to indemnify the surety for whatever sum the surety has rightfully paid. Though not a party to the guarantee, the subsidiary is thus in an implied contract with the holding company and is the ultimate beneficiary to whom the service is rendered.

31.3 It is further argued that the recipient is to be identified by asking at whose instance the service was triggered. Lenders are unconcerned with who gives the guarantee and do not search the market for guarantors; it is the subsidiary which approaches the holding company and requests the guarantee. Moreover, as Entry 2 of Schedule I refers to a supply between related persons, and any reference to a person to whom a supply is made is a reference to the recipient under Section 2(93), hence, the subsidiary automatically qualifies as the recipient.

32. In reply to Ground E, the learned ASG has made the following submissions:

32.1 It is his case that, under Section 2(1) of the Act of 2017 read with Section 3 of the Act of 1882, an actionable claim is a claim to a debt, other than a secured debt, or to a beneficial interest in movable property not in the possession of the claimant. A guarantee cannot be a beneficial interest in movable property, there being no movable property at all, and is merely a promise to repay the creditor to the extent of the default of the subsidiary.

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32.2 It is further submitted that the loan may give rise to a debt with the subsidiary as the debtor, but the guarantor, who merely promises to repay on default, is not a debtor. The traditional meaning of 'debt' does not factor in the guarantor, and where the law intends otherwise, it says so expressly. Under Sections 3(8), 3(10), 3(11), 3(12), 5(5A) and 5(8) of the IBC, a corporate guarantor is treated as distinct from a debtor and is treated as a corporate debtor only because 'financial debt' expressly includes guarantee liability. The definition adopted in the Act of 2017 is drawn from the Act of 1882, and not the IBC, and *vis-à-vis* the guarantor there is no debt until the debtor defaults.

32.3 Against the reliance on Section 128 of the Act of 1872, it is submitted that the guarantor only discharges the liability of a third person on default, and the principal and primary liability is always that of the debtor. Section 128 presupposes two parties, namely, the debtor and the guarantor, and treating guarantors as debtors would render it otiose. Thus, there is no actionable claim, and Section 7(2)(a) read with Schedule III does not apply.

32.4 To the reliance placed on Article 366(8) of the Constitution, it is argued that Article 366 defines expressions 'in this Constitution, unless the context otherwise requires', and 'debt' thereunder cannot be imported into the Act of 1882. The inclusion of guarantees within 'debt' is explained by Articles 112(3)(c) and 202(3)(c), which require 'debt charges', including charges on guarantees issued by Governments, to be reflected in the annual financial statements of the Union and the States.

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33. In reply to Ground F, the learned ASG has made the following submissions:

33.1 Against the contention of excessive delegation, it is submitted that delegation is excessive only where the delegate acts on its own authority without tracing its power to the parent statute. However, in the present case the power stands traced to Sections 15(4), 15(5) and 164, as submitted in Paragraph Nos.24.1 to 24.4 hereinabove. Reliance is placed on ***All India Bank Officers' Association v Regional Manager, Central Bank of India & Ors.***[60], wherein the Supreme Court, following ***Municipal Corporation of Delhi v Birla Cotton, Spinning and Weaving Mills***[61] and ***Banarsi Das Bhanot v State of Madhya Pradesh***[62], held that leaving to the executive the details of taxation, such as the persons to be taxed and the rates, is not unconstitutional, where the Act delineates the policy and standards.

33.2 Against the contention that deeming the value at 1% is impermissible, it is submitted that Rule 28(2) does not deem one value for all guarantees, but adopts 1% per annum or the actual consideration, whichever is higher, so that a higher agreed consideration prevails. He argued that, whether value can be deemed is no longer *res integra*, in view of ***Ashok Leyland*** *(Supra)*, which, relying on ***State of Bombay v Pandurang Vinayak***[63] and ***East End Dwellings Co. Ltd. v Finsbury Borough Council***[64], held that a statutory fiction must be given full effect. The deliberations of the

[60] (2024) 9 SCC 664
[61] AIR 1968 SC 1232
[62] AIR 1958 SC 909
[63] (1953) 1 SCC 425
[64] [1951 2 All ER 587 (HL)

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GST Council show that the fiction was introduced to remove the ambiguity faced by field formations and to fix a reliable value.

33.3 As to the reliance on the bank rates of 0.5% to 3%, similar arguments as those recorded in Paragraph Nos.24.1, 25.2 and 25.3 hereinabove, were made and it was submitted that bank rates are no reliable basis for valuing related-party supplies. Though the GST Council noted the said range, it found the same not comparable and unreliable for valuing related-party supplies, and the Petitioners cannot rely on data which the Council rejected; since the Council instead adopted the 1% minimum fee already prescribed under the Safe Harbour Rules.

33.4 In answer to the query of this Court, and to the argument that the actual consideration may be below 1%, it had been argued that Section 15(1) presumes that transaction value cannot be the value between related parties, and that considering a lower actual consideration would defeat that mandate. Open market values for related-party guarantees could not be ascertained for want of data and comparables, and prescribing open market value would invite a challenge to every assessment. The learned ASG has also sought to distinguish ***A. Sanyasi Rao*** *(Supra)*, ***Wipro Ltd.*** *(Supra)* and ***Munjaal Manishbhai Bhatt*** *(Supra)*, inasmuch as they concern a related-party transaction or mandate the adoption of actual value therein; while Rule 28(2) allows the assessee to show actuals, actuals below 1% in a related-party transaction must be ignored under Section 15(1).

34. In reply to Ground G, the learned ASG has made the following submissions:

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34.1 To the challenge to the retrospective operation of IN-2024, it is submitted that Rule 28(2) is only a valuation mechanism, the transaction being taxable from 01.07.2017. As introduced on 26.10.2023, the Rule applied to all recipients, and IN-2024 restricted it, with effect from 26.10.2023, to recipients located in India, reflecting the intention of the GST Council that exports must not bear GST. The amendment being beneficial, the challenge fails.

34.2 As regards pre-GST guarantees and the period before 26.10.2023, the Respondents rely on their alternative submissions recorded in Paragraph Nos.26.2 to 26.4 and 26.6 hereinabove.

35. In reply to Ground H, the learned ASG has made the following submissions:

35.1 Against the plea of the Petitioners in W.P.(C) 214/2025, it is submitted that Section 13(2)(b) does not apply, as Section 31 does not assist in the present matters, and Section 13(2)(c) operates independently where clauses (a) and (b) do not apply.

35.2 Against the submission that the subsidiary does not reflect the guarantee in its books, it is argued that the same runs contrary to law, since Ind AS 24 mandates the disclosure of the guarantee and of the outstanding commitment in every reporting period, which binds the subsidiary irrespective of whether it chooses to comply.

35.3 Against the contentions that GST cannot be levied upfront for future years and that the guarantee is not a continuous supply, the Respondents rely on their alternative submissions recorded in Paragraph Nos.26.2, 26.4 and 26.5 hereinabove.

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36. In reply to Ground I, the learned ASG has made the following submissions:

36.1 It is submitted that, as held in ***Commissioner of Central Excise, Bolpur v Ratan Melting & Wire Industries***[65], circulars bind the authorities under the statute but not the Court, which must declare what the statute says, and a circular contrary to the statute has no existence in law.

36.2 It is further submitted that the Respondents rely on the impugned Circulars only in aid, having independently shown from the statute that the transaction is taxable. The impugned Circulars reflect the law, are consistent with the statute, and help field formations apply it without uncertainty; they are collateral to Rule 28(2) and its amendments, and not standalone circulars without an underlying provision. Therefore, the case law on circulars creating a levy or exceeding the statute is stated to be irrelevant.

37. In reply to the additional submissions of the respective Petitioners, the learned ASG has made the following submissions:

37.1 On the criticism of ***Torrent Power*** *(Supra)* by the Petitioners in W.P.(C) 2966/2024, and the reliance on ***D.P. Jain*** *(Supra)* by the Petitioners in W.P.(C) 214/2025, the Respondents rely on their replies under Grounds A, C and D hereinabove.

37.2 Against the contention that a guarantee or pledge is a 'security', it is submitted that, though 'services' excludes securities as defined under the Act of 1956, a guarantee is not a security thereunder, and an

[65] (2008) 13 SCC 1

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admitted contract of guarantee cannot be elevated to one. What is taxed is the act of agreeing to be a guarantor by executing a contract under Section 126 of the Act of 1872. A pledge, defined under Section 172 of the Act of 1872 as the bailment of goods as security for payment of a debt or performance of a promise, is an independent transaction with which the levy is unconcerned, and the supply arising on execution of the guarantee cannot be combined with a pledge merely because both are contained in the same contract.

37.3 Against the contention of the Petitioner claiming to have only pledged shares, it is submitted that its deed of corporate guarantee (Annexure E) is itself a contract of guarantee under Section 126 and, though Annexure M dated 20.03.2019 is titled 'agreement for pledge of shares', Recital E and Clause Nos.2.1.1 and 2.5.1 thereof show it to be a contract of guarantee, inasmuch as the eligibility of the borrower is conditioned on the Petitioner pledging its shares in the subsidiary, the pledge secures the obligations of the borrower, and the shares may be appropriated on default, satisfying both Sections 126 and 172 of the Act of 1872.

37.4 It is further submitted that a pledge may either secure one's own debt, taking the colour of a security, or secure the promise of a guarantor for the debt of another. Paragraph No.25 of ***Phoenix ARC*** *(Supra)* concerned the securing of one's own debt, and Paragraph Nos.32 and 33 of ***Maitreya Doshi*** *(Supra)* a borrower pledging shares for his own debt under a loan-cum-pledge agreement, whereas the pledge of the Petitioner secures the debt of a third party.

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37.5 As regards the extended period of limitation, it is contended that limitation is a mixed question of law and fact, no facts in that regard are pleaded, and the issue before this Court is purely one of law. Therefore, the same may be left to the adjudicating authority, who would appreciate the facts while deciding the show cause notices.

38. In light of the aforesaid, the learned ASG has prayed that the present batch of Writ Petitions be dismissed.

III. REJOINDER SUBMISSIONS ON BEHALF OF THE PETITIONERS

39. In rejoinder, learned senior counsel for the Petitioners in W.P.(C) 2966/2024 and W.P.(C) 13358/2025 have, in large part, reiterated the submissions already recorded hereinabove. To avoid repetition, only such submissions as were additionally urged in rejoinder are recorded hereinbelow.

Rejoinder submissions on behalf of the Petitioners in W.P.(C) 2966/2024

39.1 It is submitted that the Respondents have not addressed the structure of the power transmission sector, wherein projects are implemented through Project Owning Companies or Special Purpose Vehicles ('SPVs'), incorporated at the instance of the Government and thereafter acquired by the successful bidder. Such SPVs ordinarily have no independent financial standing to raise project finance, and the corporate guarantee of the parent is a necessity flowing from the

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regulatory framework itself, which, it is argued, reinforces the submission recorded in Paragraph No.10.1 hereinabove.

39.2 Referring to the response of the Revenue to a query of this Court, it is submitted that the reach of a charging provision is fixed by its text under Article 265 of the Constitution, and not by the revenue expectations of the Department.

39.3 In furtherance of the submissions recorded in Paragraph Nos.14.2, 14.3 and 14.6 hereinabove, reliance is additionally placed on ***Sanjeev Sharma v Union of India***[66] and on Paragraph Nos.105 to 108 of ***Torrent Power*** *(Supra)*, wherein, following ***Munjaal Manishbhai Bhatt*** *(Supra)* and ***Wipro Ltd.*** *(Supra)*, the expression 'whichever is higher' in Rule 28(2) was held to be violative of Articles 14 and 19(1)(g) of the Constitution. By way of illustration, it is pointed out that a guarantee for thirty years would carry a deemed value of 30% of the guaranteed amount. Reliance is also placed on ***Union of India v Bombay Tyre International Ltd.***[67]; ***CIT v Prem Bhai Parekh***[68]; and ***CIT v B.C. Srinivasa Setty***[69], to contend that the charging and computation provisions form one integrated code.

39.4 In response to the submissions recorded in Paragraph No.32.2 hereinabove, it is clarified that the plea that a guarantee liability is a 'debt' rests independently on Article 366(8) of the Constitution, the IBC having been referred to only as a supplementary aid.

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[66] W.P.(C) No. 5055/2018
[67] (1984) 1 SCC 467
[68] (1970) 1 SCC 784
[69] (1981) 2 SCC 460

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Rejoinder submissions on behalf of the Petitioner in W.P.(C) 13358/2025

39.5 In furtherance of the submission recorded in Paragraph No.9.2 hereinabove, it is submitted that Section 7(1)(c) refers to 'the activities specified in Schedule I', whereas Entry 2 refers to a 'supply of goods or services or both'. Section 3(1)(c) of the Model GST Law published in November 2016 employed the expression 'a supply specified in Schedule I', and the change in the enacted text must be presumed to be deliberate. Reliance is placed on ***Corporation of Calcutta v Liberty Cinema***[70] and ***Arthur Paul Benthall v CIT***[71].

39.6 Relying on ***Sanjeev Coke Manufacturing Co. v Bharat Coking Coal Ltd.***[72], it is urged that no one may speak for Parliament, and the Respondents cannot enlarge the charge by their own view of legislative intent. Where Parliament intended to deem a transaction to be a supply, it did so expressly, as in Section 7(1)(aa), inserted with retrospective effect from 01.07.2017, and no analogous provision exists for corporate guarantees. It is further contended that, having invoked transfer pricing principles to justify the value, the Respondents cannot object to the same principles being applied to determine the character of the transaction.

39.7 It is contended that clauses (b) and (c) of Section 2(17) take colour from clause (a), and clause (c) only relaxes the requirement of

[70] AIR 1965 SC 1107
[71] AIR 1956 SC 35
[72] (1983) 1 SCC 147

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volume, frequency, continuity or regularity, and cannot convert an activity lacking the character of business into one. Reliance is placed on ***Central Electricity Regulatory Commission v Directorate General of GST Intelligence***[73], to contend that an activity is not a taxable supply merely because it falls within the residuary definition of 'services'; and on ***Anuj Jain v Axis Bank Ltd.***[74], for the proposition that an activity in the ordinary course of business must form part of the usual flow of commercial dealings.

39.8 It is further submitted that Section 186 of the Companies Act, 2013[75] separately regulates guarantees given by companies, and Section 186(11)(a) excludes guarantees given by specified entities in the ordinary course of their business, which shows that furnishing guarantees is not the business of every holding company. The enquiry under Entry 2 must be with reference to the business of the guarantor, and the Respondents cannot treat the holding company and the subsidiary as one economic unit to establish furtherance of business, while treating them as separate persons to identify a supplier and a recipient.

39.9 Relying on ***Chief Commissioner of CGST v Safari Retreats Pvt. Ltd.***[76]; ***Ambuja Cements Ltd. v Chief Controlling Revenue Authority***[77]; and ***Ramnath & Co. v CIT***[78], it is submitted that where two views are reasonably possible, the one favouring the assessee

[73] W.P.(C) 10680/2024, decided by the Delhi High Court
[74] (2020) 8 SCC 401
[75] hereinafter referred to as 'Act of 2013'
[76] Civil Appeal No. 2948/2023, decided on 03.10.2024 by the Supreme Court
[77] Stamp Reference Nos. 1 to 7 of 2020
[78] (2021) 12 SCC 217

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must be adopted, that a levy cannot rest on presumption, and that undefined expressions, including 'services', must bear their commercial meaning.

39.10 It is contended that the rights of subrogation and indemnity under Sections 140 and 145 of the Act of 1872 arise only upon future contingencies. Relying on ***Rajasthan Chemists Association*** *(Supra)*, it is argued that a present levy must bear a nexus with the taxable event as it exists *in praesenti*, and rights which may arise *in futuro* cannot be used to characterise the furnishing of a guarantee as a service.

39.11 It is further contended that Section 3 of the Act of 1882 expressly includes a claim to an unsecured debt which is 'existent, accruing, conditional or contingent', and the fact that the liability of the guarantor arises only on default does not take it outside the ambit of an 'actionable claim'. Reliance is placed on ***Shanti Prasad Jain v Director of Enforcement***[79] and ***Kesoram Industries & Cotton Mills Ltd. v CWT***[80] on the meaning of contingent debts; on Paragraph No.52.2 of ***Gameskraft*** *(Supra)*; and on ***Ram Bahadur Thakur & Co. v Sabu Jain Ltd.***[81] and ***Mauritius Commercial Bank Ltd. v Sujana Universal Industries Ltd.***[82], which recognise guarantees as contingent liabilities. The observations in ***Torrent Power*** *(Supra)* on assignability, and on the distinction between a direct debt and a secondary liability, are argued to run contrary to the words 'any debt' in Section 3.

[79] 1962 SCC OnLine SC 167
[80] 1965 SCC OnLine SC 11
[81] 1979 SCC OnLine Del 114
[82] 2015 SCC OnLine Hyd 281

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39.12 It is also submitted that Rule 28(1) prescribes a sequential method of valuation, namely, open market value, followed by the value of supplies of like kind and quality, and thereafter Rules 30 and 31; by its non-obstante clause, Rule 28(2) bypasses that hierarchy and renders the other methods redundant for corporate guarantees, contrary to ***Wipro Ltd.*** *(Supra)*. Relying on Paragraph Nos.64, 67, 69, 114 and 122(B) of ***Torrent Power*** *(Supra)*, it is further submitted that, there being no specific machinery for valuing non-monetary corporate guarantees before 26.10.2023, the attempt of the Respondents to apply the 1% benchmark to the earlier period, on the footing that the Rule only standardised valuation, is contrary to those findings.

C. ANALYSIS AND FINDINGS:

40. Having heard the rival submissions advanced by learned counsel for the parties at length and upon perusal of the record, this Bench has identified the following five issues for determination:

a. Whether a corporate guarantee furnished by a holding or group company to a banking company or financial institution, for the borrowings of a related person and without consideration, constitutes a ‘supply’ of ‘services’, under Section 7(1)(c) read with Entry 2 of Schedule I of the Act of 2017 and if so, who is its recipient?

b. Whether such a corporate guarantee stands excluded from the levy either as an ‘actionable claim’ or as a ‘security’

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as per Section 7(2)(a) read with Entry 6 of Schedule III and Section 2(102) of the Act of 2017?

c. Whether the deemed valuation under Rule 28(2) of the Rules of 2017, as inserted by IN-2023 and amended by IN-2024, is *intra vires* the Act of 2017 and consistent with Articles 14, 19(1)(g), 246A and 265 of the Constitution?

d. When does the supply take place, and what follows therefrom for guarantees executed before 01.07.2017, guarantees executed between 01.07.2017 and 25.10.2023, and the retrospective operation of IN-2024?

e. Whether IC-2023 and IC-2024 are *ultra vires* Section 168 of the Act of 2017 or otherwise unsustainable?

41. At this stage, it is deemed appropriate to clarify that the invocation of the extended period of limitation under Section 74 of the Act of 2017, the plea relating to the pledge of shares, and such other questions as depend upon the facts of individual cases, are not being examined in the present judgment, for the reasons noted in Paragraph Nos.4 and 37.5 hereinabove. The same are left open for adjudication by the competent authorities in accordance with law.

Constitutional design of GST and the objectives behind its introduction

42. Before adverting to the issues so identified, it is deemed imperative by this Court to notice the constitutional design of GST

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and the objectives with which it came to be introduced. Several of the questions raised in the present batch, namely, the amplitude of the expression 'supply', the purpose underlying Schedule I and the justification for the valuation fiction, cannot be answered in isolation from that design.

43. Notably, GST came to be introduced by the Constitution (One Hundred and First Amendment) Act, 2016[83], which inserted Articles 246A and 279A, alongside Clauses (12A) and (26A) in Article 366 of the Constitution. Prior to the Amendment of 2016, the taxing fields stood divided by the nature of the taxable event; manufacture, sale and rendition of services were each taxed by a different authority, and the tax paid at one stage often became a cost at the next. The Statement of Objects and Reasons of the Constitution (One Hundred and Twenty-Second Amendment) Bill, 2014, which culminated in the Amendment of 2016, reveals the legislative intent behind its introduction, namely, to subsume a multiplicity of indirect taxes into a single levy on 'supply', to remove the cascading effect of tax on tax, and to create a common national market for goods and services. The objects and reasons thereto are reproduced hereunder for ready reference:

> **"Statement of Objects and Reasons**.— The Constitution is proposed to be amended to introduce the goods and services tax for conferring concurrent taxing powers on the Union as well as the States including Union territory with Legislature to make laws for levying goods and services tax on every transaction of supply of goods or services or both. The goods and services tax shall replace a number of indirect taxes being levied by the Union and the State Governments and is intended to remove cascading effect of taxes and provide for a common national market for goods and services. The proposed Central and State goods and services tax will be levied on all

[83] hereinafter referred to as 'Amendment of 2016'

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transactions involving supply of goods and services, except those which are kept out of the purview of the goods and services tax.

2. The proposed Bill, which seeks further to amend the Constitution, inter alia, provides for—

(a) subsuming of various Central indirect taxes and levies such as Central Excise Duty, Additional Excise Duties, Excise Duty levied under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, Service Tax, Additional Customs Duty commonly known as Countervailing Duty, Special Additional Duty of Customs, and Central Surcharges and Cesses so far as they relate to the supply of goods and services;

(b) subsuming of State Value Added Tax/Sales Tax, Entertainment Tax (other than the tax levied by the local bodies), Central Sales Tax (levied by the Centre and collected by the States), Octroi and Entry tax, Purchase Tax, Luxury tax, Taxes on lottery, betting and gambling; and State cesses and surcharges in so far as they relate to supply of goods and services;

(c) dispensing with the concept of 'declared goods of special importance' under the Constitution;

(d) levy of Integrated Goods and Services Tax on inter-State transactions of goods and services;

(e) levy of an additional tax on supply of goods, not exceeding one per cent in the course of inter-State trade or commerce to be collected by the Government of India for a period of two years, and assigned to the States from where the supply originates;

(f) conferring concurrent power upon Parliament and the State Legislatures to make laws governing goods and services tax;

(g) coverage of all goods and services, except alcoholic liquor for human consumption, for the levy of goods and services tax. In case of petroleum and petroleum products, it has been provided that these goods shall not be subject to the levy of Goods and Services Tax till a date notified on the recommendation of the Goods and Services Tax Council;

(h) compensation to the States for loss of revenue arising on account of implementation of the Goods and Services Tax for a period which may extend to five years;

(i) creation of Goods and Services Tax Council to examine issues relating to goods and services tax and make recommendations to the Union and the States on parameters like rates, exemption list and threshold limits. The Council shall function under the Chairmanship of the Union Finance Minister and will have the Union Minister of State in charge of Revenue or Finance as member, along with the Minister in-charge of Finance or Taxation or any other Minister

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> nominated by each State Government. It is further provided that every decision of the Council shall be taken by a majority of not less than three-fourths of the weighted votes of the members present and voting in accordance with the following principles:—
>
> (A) the vote of the Central Government shall have a weightage of one-third of the total votes cast, and
>
> (B) the votes of all the State Governments taken together shall have a weightage of two-thirds of the total votes cast in that meeting."

44. A conjoint reading of the aforesaid leads us to infer that three features of the design so introduced bear directly upon the present controversy. *Firstly*, the taxable event under GST is no longer sale, manufacture or the rendition of an enumerated service, but 'supply'. The Supreme Court in ***Mohit Minerals Pvt. Ltd.*** *(Supra)*, and thereafter in ***Gameskraft*** *(Supra)*, has described the said concept as one of wide amplitude. Correspondingly, 'services' under Article 366(26A) of the Constitution means anything other than goods, and Section 2(102) of the Act of 2017 excludes therefrom only money and securities.

45. *Secondly*, GST is a destination-based tax on consumption, collected in stages, with input tax credit ensuring that the tax is borne only on the value added at each stage. Meaning thereby, where the recipient of a supply is entitled to full credit, the tax charged on that supply is, in substance, revenue neutral. However, where the recipient is not so entitled, owing to its own outward supplies being exempt or non-taxable, the tax becomes a final cost, and the value which escapes tax at that stage escapes it altogether.

46. *Lastly*, since price is the measure of value under Section 15(1) of the Act of 2017, the design stands exposed where the parties are related and are in a position to fix the price or to dispense with it

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altogether. Entry 2 of Schedule I, and the exclusion of related-person transaction value from Section 15(1), answer that exposure. To put it succinctly, these are provisions designed to protect the value chain from erosion; they are not provisions which create a supply out of something which is not one.

47. In the opinion of this Court, two consequences follow from the aforestated, which inform the analysis hereinafter. *Firstly*, Entry 2 of Schedule I presupposes a supply and dispenses only with the requirement of consideration. On this aspect, there remains no real dispute, the Respondents having fairly accepted that Section 7(1A) read with Schedule II cannot independently establish a supply. *Secondly*, GST being a tax measured by value, a fiction which departs from value must find its justification in the protection of the credit chain, or in a genuine difficulty of valuation, and must yield where the value can otherwise be established; the administrative convenience of a uniform figure is not, by itself, sufficient.

In re: Issue a

48. At the very outset, this Court is in agreement with the submission of the Petitioners that a charging provision must be strictly construed, and no tax can be imposed by inference or intendment. However, strict construction does not mean a narrow construction of plain words. The benefit of doubt arises only where a real ambiguity survives after the ordinary tools of interpretation have been applied [Ref: ***Commissioner of Customs (Import), Mumbai v Dilip Kumar &***

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Co.[84]]. Applying the aforesaid standard, this Court proceeds to examine four questions, namely, whether anything is supplied, i.e., whether there exists a 'service'; who supplies it and to whom; whether it is supplied in the course or furtherance of business; and whether the absence of consideration is fatal to such levy.

49. A contract of guarantee under Section 126 of the Act of 1872 is a contract to perform the promise, or discharge the liability, of a third person in case of his default. In the group financing transactions forming the subject matter of the present batch, three distinct relationships exist side by side, namely, the loan, between the lender/financial institution and the subsidiary; the guarantee, between the holding company and the lender/financial institution; and the relationship between the holding company and the subsidiary, under which the holding company, at the instance or with the concurrence of the subsidiary, undertakes to bear the risk of the subsidiary's default.

50. Against this backdrop, the real question is not whether the guarantor/holding company promises something to the lender, which it plainly does, but whether, in doing so, it provides something to the subsidiary. In the opinion of this Court, what the guarantor/holding company provides is its own creditworthiness. It places its balance sheet behind the borrowings of the subsidiary and, from the very moment the guarantee is executed, assumes the risk of the subsidiary's default. The aforesaid is in consonance with the submission of the learned ASG that the lender extends the loan on the strength of the creditworthiness of the holding company, without which the subsidiary would have to park funds or furnish collateral.

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[84] (2018) 9 SCC 1

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51. Such assumption of risk is real and present, inasmuch as it consumes the guarantor's own capacity to borrow and to furnish further guarantees; it is an exposure for which the guarantor must provide; and it is precisely what enables the subsidiary to obtain a loan which it could not otherwise obtain, or to obtain it on better terms. Thus, something of value passes from the holding company/guarantor to the subsidiary, and that something is neither goods, nor money, nor securities. Therefore, it is a 'service' within the meaning of Section 2(102) of the Act of 2017.

52. The aforestated conclusion does not rest on inference alone and is fortified by four independent indicators. *Firstly*, the assumption of another's credit risk for a fee is a recognised commercial service. Banks charge commission for issuing guarantees; 'providing bank guarantee' was an enumerated taxable service under Section 65(12)(a) of the Act of 1994; and guarantee commission continues to be taxed under the Act of 2017 as a financial service. What distinguishes a corporate guarantee from a bank guarantee is the identity of the guarantor and the absence of a fee, and not the nature of the act. The absence of a fee is exactly what Entry 2 of Schedule I neutralises, whereas the identity of the guarantor does not alter what is done. To that extent, this Court finds merit in the submission of the Respondents that a corporate guarantee substitutes a traditional bank guarantee as collateral and is unable to accept the distinction sought to be drawn by the Petitioners between the two.

53. *Secondly*, various statutory provisions referred to hereinafter recognise a guarantee as an assumption of a substantive financial

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commitment. Section 186(2) of the Act of 2013 places guarantees, alongside loans and investments, within the limits of a company's permissible financial exposure. Section 5(8)(i) of the IBC expressly includes liability in respect of a guarantee within the ambit of a 'financial debt'. Similarly, the Explanation to Section 92B of the Act of 1961, and Section 163(1)(c) of the Income Tax Act, 2025, recognise guarantees as transactions pertaining to capital financing. Read together, these provisions reflect a consistent legislative understanding that the furnishing of a guarantee is not a mere formal assurance or an act devoid of economic substance; it entails the assumption of a legally enforceable financial obligation and, therefore, constitutes a commitment of value on the part of the guarantor.

54. *Thirdly*, Ind AS 109, which governs the recognition and measurement of financial instruments, defines a 'financial guarantee contract' as a contract that requires the issuer to make specified payments to reimburse the holder for a loss it incurs because a specified debtor fails to make payment when due in accordance with the original or modified terms of a debt instrument[85]. A corporate guarantee furnished by a holding company to a lender, for the borrowings of its subsidiary, squarely falls within the said definition, the holding company being the issuer, the lender the holder, and the subsidiary the specified debtor.

55. Paragraph No.5.1.1 of Ind AS 109 requires the issuer to measure such a contract, at initial recognition, at its fair value,

[85] Appendix A to Ind AS 109 (Financial Instruments), notified under the Companies (Indian Accounting Standards) Rules, 2015. Paragraph No.2.1(e) thereof brings financial guarantee contracts within the scope of Ind AS 109 insofar as the issuer is concerned

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whereas Paragraph No.4.2.1(c) requires it to be carried thereafter at the higher of the loss allowance and the amount initially recognised. Meaning thereby, the accounting standards do not regard an intra-group guarantee as valueless merely because no fee is charged. It is, however, pertinent to clarify that this Court does not derive the liability to tax from an accounting standard. It is trite law that the entries in the books of account, or the accounting treatment of a transaction, are not determinative of its character under a taxing statute [Ref: ***Kedarnath Jute Manufacturing Co. Ltd. v CIT***[86]]. The accounting treatment is noticed only as an indicator corroborating the conclusion already drawn from the statute, namely, that something of value passes from the guarantor to the subsidiary at the stage of execution itself.

56. *Lastly*, the Petitioners in W.P.(C) 2966/2024 themselves state that their SPVs have no independent financial standing to raise funds, and that the parent's guarantee is a necessity for the project. The aforestated, in the opinion of this Court, is the clearest description of a service rendered to the SPV; the SPV lacks creditworthiness, and the parent supplies it.

57. One of the principal contentions of the Petitioners is that the guarantee is furnished qua shareholder, to protect the holding company's investment, and thus qualifies as a shareholder activity. This Court is unable to accept that the motive with which an act is done alters its character and finds force in the submission of the learned ASG that the definition of 'business' under Section 2(17) is

[86] (1971) 3 SCC 252

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transaction-centric and indifferent to purpose. The levy of GST is attracted by reference to the nature and legal character of the transaction, and not merely by the subjective considerations that may have prompted the parties to enter into it. Indeed, transactions between a holding company and its subsidiary would, in the ordinary course, have some bearing on the protection or preservation of the holding company's investment. If the mere fact that a transaction is undertaken to protect such investment were sufficient to exclude it from the ambit of 'supply', Entry 2 of Schedule I would be substantially deprived of its intended operation in precisely the class of transactions for which it is most relevant. This is particularly so because a holding company and its subsidiary fall within the ambit of 'related persons' under Explanation (a) to Section 15 of the Act of 2017.

58. Moreover, while this Court agrees with the Respondents that the Act of 2017 is a standalone statute, not to be construed with reference to the OECD Commentaries, even otherwise, the reliance upon the OECD material does not come to the aid of the Petitioners. Paragraph No.7.9 of Chapter VII of the OECD Guidelines concerns activities which a parent performs for itself as an owner, such as its own governance, consolidated reporting or the raising of its own capital, from which the subsidiary benefits only incidentally. Chapter X of the same Guidelines, which deals specifically with financial guarantees, distinguishes the 'implicit support' that a subsidiary enjoys merely by being a member of the group, which is not a service, from an explicit guarantee which enhances the borrower's credit beyond that position, for which an independent party would expect to

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be paid. The guarantees in the present batch are explicit and legally enforceable undertakings. Therefore, read as a whole, the OECD material supports, rather than undermines, the conclusion reached hereinabove.

59. Additionally, even if a guarantee is regarded as quasi-capital, or as a transaction of capital financing, it does not on that account cease to be a 'service' under the Act of 2017, which excludes only goods, money and securities. The scheme of the Act of 2017 itself demonstrates that financing is not outside the fold of services. Lending is a service, which is precisely why services by way of extending deposits, loans or advances, in so far as the consideration is represented by way of interest or discount, had to be expressly exempted under Entry 27 of Notification No.12/2017-Central Tax (Rate) dated 28.06.2017. To put it simply, the legislative scheme does not treat financing transactions as falling outside 'services'; rather, it exempts specific financing services by name, and no such exemption exists for guarantees.

60. The submission recorded in Paragraph No.39.5 proceeds on a premise which this Court has accepted, in agreement with the Petitioners and as also conceded by the Respondents, namely, that Entry 2 requires a supply. The change in the enacted text, from 'a supply specified in Schedule I' to 'the activities specified in Schedule I', does not, however, add any further requirement. Schedule I is itself titled 'Activities to be treated as supply even if made without consideration', and the enacted text simply describes its entries as activities which are to be treated as supply notwithstanding the

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absence of consideration. The principle laid down in ***Liberty Cinema*** *(Supra)* and ***Arthur Paul Benthall*** *(Supra)*, that a change of words ordinarily signifies a change of meaning, is well settled; however, the change in the present case does not carry the consequence sought to be attributed to it.

61. Similarly, the reliance upon Section 7(1)(aa) of the Act of 2017 is misplaced. The Explanation thereto, as reproduced in Paragraph No.5 hereinabove, deems a person and its members or constituents to be two separate persons, and the supply of activities or transactions inter se to take place from one such person to another. In other words, a deeming provision was needed there to treat as two persons what would otherwise be regarded as one. No such deeming is required in the present case. A holding company and its subsidiary are distinct legal persons [Ref: ***Vodafone International Holdings B.V. v Union of India***[87]], and the Act of 2017 treats them as related persons under Explanation (a) to Section 15. Everything that a specific deeming provision would have supplied, namely, two separate persons and dispensation with consideration, already stands supplied by the Act of 2017. Therefore, the absence of a guarantee-specific deeming provision is of no consequence.

62. Insofar as Entry 5(e) of Schedule II is concerned, this Court is in agreement with the submission of the Petitioners, which stands accepted by the Respondents, that Schedule II only classifies a supply as one of goods or of services, and cannot independently determine taxability. It is pertinent to add that, once a supply exists and its

[87] (2012) 6 SCC 613

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subject is not goods, Section 2(102) itself makes it a supply of services, so that Entry 5(e) adds nothing to the outcome. Therefore, this Court does not rest its conclusion on Entry 5(e), nor on the reading of 'obligation' as a *vinculum juris* adopted in ***Torrent Power** (Supra)*. For the same reason, the Circular dated 03.08.2022 and ***Tata Sons** (Supra)*, which turn on whether an amount constitutes consideration for tolerating an act, do not require further examination.

63. The submission of the Petitioners recorded in Paragraph No.39.2 finds favour with this Court. The scope of a levy is fixed by Article 265 of the Constitution and the text of the statute, and no one may speak for Parliament. The conclusion reached by this Court rests on the text of Sections 2(102) and 7(1)(c) and Entry 2 of Schedule I, and not on any view of the Revenue as to what ought to be taxed.

64. Turning to the second question, namely, the identity of the recipient, Section 2(93)(c) of the Act of 2017 provides that, where no consideration is payable for a service, the recipient is 'the person to whom the service is rendered'. The definition looks to rendition, and not to privity of contract. The person to whom credit support is rendered is the subsidiary, and to that extent, this Court is in agreement with the submission of the learned ASG that it is its borrowing that is secured, its default that is underwritten, and its access to finance that is enabled. The lender is the promisee under the contract of guarantee, but the guarantee does not exist for the lender's benefit in the relevant sense, since, without it, the lender would simply have declined the loan or required other security. The Act of 1872 itself recognises the aforesaid, inasmuch as, under Section 127

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thereof, what supports the surety's promise is anything done for the benefit of the principal debtor. It is clarified that Section 127 is referred to only to identify the person for whose benefit the guarantee is given, and not to treat such benefit as 'consideration' under Section 2(31) of the Act of 2017. In any event, nothing turns on consideration, since Schedule I dispenses with it.

65. This Court agrees with the Petitioners that the rights of subrogation and indemnity under Sections 140 and 145 of the Act of 1872 arise only when the guarantee is invoked and the guarantor makes payment. Such rights, therefore, cannot form the basis of a supply which, if it exists, must exist at the time the guarantee is executed. Accordingly, this Court does not accept the reliance placed by the Respondents on Section 145 and does not rest the identification of the recipient on these provisions. To that extent, this Court respectfully differs from the reasoning in ***Torrent Power*** *(Supra)*. In the view of this Court, the supply is complete when the guarantor assumes the risk, which occurs at the time of execution itself. Thus, the requirement laid down in ***Rajasthan Chemists Association*** *(Supra)*, that a levy must bear a nexus with the taxable event as it exists *in praesenti*, stands satisfied.

66. The contention of the Petitioners that the transaction is a single tripartite arrangement incapable of vivisection also falls short of merit. Section 8 of the Act of 2017 deals with two or more supplies made by a taxable person to a recipient, which are naturally bundled. In the present case, the loan is supplied by the lender/financial institution and the guarantee by the holding company, and supplies by different

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suppliers cannot form a single composite supply. Therefore, recognising the guarantee as a distinct supply is not a vivisection of one transaction; it is the identification of the supply made by each person. The principle laid down in ***Levob Verzekeringen*** *(Supra)*, relied upon by the Petitioners, is accepted; however, the same only forbids the artificial splitting of what one supplier supplies to one customer, and does not, therefore, assist the Petitioners. The Australian Ruling GSTR 2006/1 reflects the treatment of financial supplies under the Australian statute and cannot control the identification of the recipient under Section 2(93)(c) of the Act of 2017.

67. Adverting to the third question, this Court accepts the reading of the Petitioners that clauses (b) and (c) of Section 2(17) of the Act of 2017 take colour from clause (a), and where the main activity is not business, an activity incidental thereto will not be business either. However, the said principle stands satisfied in the present case. The Petitioners are commercial enterprises, and their subsidiaries are the vehicles through which they carry on their own business. It is the Petitioners' own case that the guarantees were furnished to protect and advance their investment in the projects of their subsidiaries. Accordingly, an act done to secure finance for a project which the guarantor has bid for, acquired and stands to profit from, is an activity 'in connection with or incidental or ancillary to' its trade or commerce under Section 2(17)(b). The board resolutions approving the guarantees, and in one case the recital that the guarantee is executed for the guarantor's own benefit and business, further corroborate the aforesaid. To that extent, this Court is in agreement with the

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submission of the learned ASG that the guarantees are incidental and ancillary to the trade and commerce of the guarantor and are furnished in the course of business. The same principle underlies ***Central Electricity Regulatory Commission*** *(Supra)*, which concerned the fee of a statutory regulator whose main function was not business, and which, therefore, does not assist the Petitioners.

68. It is equally pertinent to note that Entry 2 employs the expression 'in the course or furtherance of business', and not 'in the ordinary course of business'. ***Anuj Jain*** *(Supra)* construed the latter expression under Section 43(3)(a) of the IBC, in the context of preferential transactions, where the narrower phrase was deliberately employed. However, the Act of 2017 does not import the element of ordinariness; on the contrary, as rightly submitted by the learned ASG, Section 2(17)(c) dispenses with volume, frequency, continuity or regularity.

69. Further, the reliance upon Section 186 of the Act of 2013 is also misplaced. Section 186 is a provision of corporate governance. It limits the financial exposure a company may take on, in order to protect its shareholders and creditors, and has no bearing on whether a guarantee is a supply for the purposes of GST. In any event, Section 186(11)(a) exempts from these limits not only banking, insurance and housing finance companies, but also companies engaged in providing infrastructural facilities, which, under Schedule VI to the Act of 2013, include the transmission of power and natural gas. Thus, rather than treating guarantees given by such companies as unrelated to their

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business, the Act of 2013 recognises them as part of the ordinary manner in which infrastructure is financed.

70. The submission of one of the Petitioners that the Respondents treat the two entities as one unit for one purpose, and as two separate persons for another, proceeds on a misreading of the enquiry. Whether a supply is made in the course or furtherance of business is to be tested at the level of the guarantor, i.e., whether the guarantor, in furnishing the guarantee, acts in connection with its own business. The fact that such business is carried on through subsidiaries does not make the two entities one person; it only explains why the guarantor furnishes the guarantee. Thus, the supplier and the recipient remain distinct persons throughout. Having said the aforestated, this Court does not rule out a case where the act of the guarantor bears no nexus with any business carried on by it. However, that would be a question of fact for the adjudicating authority and is not the case pleaded before this Court.

71. As regards the fourth question, under Section 65B(44) of the Act of 1994, a 'service' meant any activity carried out by a person for another for consideration. Thus, consideration was a part of the very definition of a service. Accordingly, ***Edelweiss*** *(Supra)*, wherein the Supreme Court declined to interfere with the view that a corporate guarantee given without consideration did not attract service tax, rightly turned on that definition. However, the Act of 2017 consciously departs from that position, inasmuch as Section 7(1)(c) read with Entry 2 of Schedule I treats a supply between related persons as a supply even without consideration. Therefore, the

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submission of the learned ASG that ***Edelweiss*** *(Supra)* does not govern the levy under the Act of 2017 finds favour with this Court. Consequently, the admitted absence of consideration, and the clauses in the Deeds of Guarantee prohibiting any fee or commission are not fatal to the levy, and bear only upon valuation, which is examined under Issue c hereinbelow.

72. In view of the aforestated, this Court is of the considered view that a corporate guarantee furnished by a holding or group company to a banking company or financial institution, for the borrowings of a related person, constitutes a supply of services under Section 7(1)(c) read with Entry 2 of Schedule I of the Act of 2017, even if no consideration is charged. The service consists in the assumption of the risk of the related person's default and the consequent extension of the guarantor's creditworthiness to it. The recipient of the said service is the related person on whose behalf the guarantee is furnished, under Section 2(93)(c) of the Act of 2017.

<u>In re: Issue b</u>

73. Section 7(2)(a) read with Entry 6 of Schedule III of the Act of 2017 provides that 'actionable claims, other than specified actionable claims' shall be treated neither as a supply of goods nor as a supply of services. This exclusion applies to the subject matter of the supply, i.e., where the thing supplied is itself an actionable claim, as in the case of its sale, assignment or transfer. Meaning thereby, the question is not whether an actionable claim arises somewhere in the transaction, but whether what the supplier supplies to the recipient is an actionable claim.

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74. Applying the aforesaid test, what the subsidiary receives from the holding company is credit support, and not a claim. The subsidiary acquires no right against the guarantor under the guarantee. On the contrary, if the guarantor makes payment, the subsidiary becomes its debtor, and not its creditor, a consequence which, as noted in Paragraph No.65 hereinabove, arises only upon payment and has no bearing on the supply made at execution. The claim, if any, arises in favour of the lender, who is not the recipient of the supply taxed under Entry 2 of Schedule I read with Rule 28(2).

75. Therefore, it is unnecessary for this Court to decide whether the right of the lender against the guarantor is a claim to a contingent debt under Section 3 of the Act of 1882. The textual argument of the Petitioners, that Section 3 expressly covers contingent debts, is not without force. Accordingly, this Court neither rests upon the submission of the Respondents that a guarantor can never be a debtor, nor upon the distinction between a direct debt and a secondary liability drawn in ***Torrent Power*** *(Supra)*. The authorities relied upon in support, namely, ***Shanti Prasad Jain*** *(Supra)*, ***Kesoram*** *(Supra)*, ***Ram Bahadur Thakur*** *(Supra)*, ***Mauritius Commercial Bank*** *(Supra)* and ***Laxmi Pat Surana*** *(Supra)*, as well as Article 366(8) of the Constitution and Sections 3(11) and 5(8)(i) of the IBC, all relate to the nature of the creditor's right against the guarantor. Even if these are read in favour of the Petitioners, they have no bearing on the supply made by the guarantor to the subsidiary.

76. Moreover, if the exclusion were applied in the manner urged by the Petitioners, it would equally apply to every bank guarantee, since

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the beneficiary of a bank guarantee also holds a contingent claim against the bank. However, the commission charged by banks for guarantees has consistently been treated as consideration for a taxable service, both under the Act of 1994 and under the Act of 2017, and the Petitioners have not pointed to any principled distinction. Therefore, a reading which would take every guarantee outside the levy cannot be correct.

77. Insofar as the plea of the Petitioners that a corporate guarantee is a 'security', excluded from 'services' under Section 2(102) of the Act of 2017 is concerned, it is noted that Section 2(101) adopts the definition under Section 2(h) of the Act of 1956. Though the said definition is inclusive, it is confined to marketable instruments and to rights or interests in securities. A guarantee is a 'security' only in the sense that it is collateral for a debt, and the two meanings cannot be treated as the same. To that extent, the submission of the learned ASG, that an admitted contract of guarantee cannot be elevated to a security under the Act of 1956, is well founded. In view of the aforestated, this Court is of the considered view that a corporate guarantee furnished for a related person is not excluded from the levy either as an actionable claim under Entry 6 of Schedule III, or as a security under Section 2(102) of the Act of 2017.

In re: Issue c

78. Section 9(1) of the Act of 2017 levies tax on the value determined under Section 15. Section 15(1) excludes the transaction value where the parties are related, while Sections 15(4) and 15(5) permit the value to be prescribed, and Section 164 confers the general

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rule-making power. Once the Rule is made on the recommendation of the GST Council, the precise source of power is immaterial, as held in Paragraph No.58.2 of ***Gameskraft*** *(Supra)*, reproduced in Paragraph No.24.4 hereinabove. The four components of a tax, as laid down in ***Govind Saran Ganga Saran*** *(Supra)* and ***Mineral Area Development Authority*** *(Supra)*, on which the Petitioners have relied, are found in the statute itself. Sections 7 and 9 provide for the taxable event; Section 9 identifies the person liable and the rate; and Section 15, along with the Rules made thereunder, provides the measure. Leaving the method of valuation to delegated legislation, within the policy laid down in Section 15, is a permissible delegation of detail. Therefore, this Court is in agreement with the submission of the learned ASG and the plea of excessive delegation stands rejected.

79. However, this Court is unable to accept the submission of the learned ASG that the wisdom of the GST Council must prevail, so as to place the Rule beyond scrutiny. The Supreme Court in ***Mohit Minerals*** *(Supra)* held that the recommendations of the GST Council are the product of collaborative federalism and carry persuasive value but are not binding on Parliament and the State Legislatures. Therefore, a recommendation, however unanimous, does not protect a Rule made upon it from the tests applicable to all subordinate legislation. To put it succinctly, the recommendation deserves deference on matters of fiscal policy but does not exclude judicial review on the ground of vires or arbitrariness.

80. It is trite law that a presumptive measure of value is not, by itself, objectionable in a taxing statute [Ref: ***Ashok Leyland*** *(Supra)*;

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Avinder Singh *(Supra)*]. The deliberations of the GST Council record a genuine difficulty in finding comparables for intra-group guarantees. Moreover, the Rules of 2017 already provide presumptive values for other services whose value is difficult to determine, such as money changing, air travel agency and life insurance under Rule 32. Therefore, the adoption of 1% from the Safe Harbour Rules, which reflect the Union's own considered view of an acceptable fee for such guarantees, is a rational starting point, and to that extent, the submission of the learned ASG merits acceptance.

81. The argument of the Petitioners that the Rule taxes the guaranteed amount itself and thereby falls outside Article 246A of the Constitution, cannot be accepted. The subject of the tax is the supply of the service, whereas the guaranteed amount is only the yardstick by which its value is measured. Such yardstick is clearly related to the risk assumed, which increases with the amount guaranteed. Thus, the measure adopted does not alter the nature of the tax [Ref: ***Bombay Tyre International*** *(Supra)*].

82. Therefore, the real question is whether the deemed value may operate as a fixed minimum, even where it is shown that the open market value is lower. In the opinion of this Court, it cannot, for four reasons stated hereinafter. *Firstly*, the agenda for the 52nd Meeting of the GST Council records that banks charge between 0.5% and 3% for guarantees, and sometimes nothing at all. Therefore, the Council was conscious of the fact that the true value of a guarantee could be lower than 1%, as rightly pointed out by the Petitioners.

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83. *Secondly*, the figure of 1% was taken from the Safe Harbour Rules. A safe harbour under Section 92CB of the Act of 1961 is optional, i.e., the assessee may either accept it for the sake of certainty or establish the arm's length price. The Respondents have taken a figure meant to be an option for the taxpayer and turned it into a compulsory minimum. Therefore, the source chosen does not support the compulsion imposed, and the submission of the Petitioners on this aspect is well founded.

84. *Thirdly*, sub-rule (2) of Rule 28, being a non obstante provision, overrides the methods of valuation under sub-rule (1), the first of which is the open market value. Resultantly, the deemed value of 1% applies even where the supplier can show that the open market value is lower. The difficulty in finding comparables, noted in Paragraph No.80 hereinabove, may justify fixing a default value; however, it does not justify refusing to accept the open market value where the same can be shown.

85. *Lastly*, the assumption that the open market value of an intra-group guarantee cannot be determined does not hold good in every case. The fair value recognised under Ind AS 109, transfer pricing benchmarks accepted in assessments, and pricing based on credit rating differentials, are all capable of establishing such value. Where the value can be so established, deeming a higher value would amount to taxing a value which does not exist. Therefore, this Court is in agreement with the submission of the Petitioners that a presumptive valuation made mandatory, even where the actual value is ascertainable, is arbitrary [Ref: ***Wipro Ltd.*** *(Supra)*; ***Munjaal***

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Manishbhai Bhatt *(Supra)*; ***Federation of Hotels & Restaurant Associations of India*** *(Supra)*].

86. Having said the aforestated, this Court is equally in agreement with the submission of the learned ASG that the consideration agreed between related persons cannot, by itself, displace the deemed value. Section 15(1) of the Act of 2017 does not accept the price agreed between related persons as the transaction value, since such price is not a reliable measure of value. The Rules of 2017 accept such price only where, as under the second proviso to Rule 28(1) and the proviso to Rule 28(2), the recipient is eligible for full input tax credit and the value is, in substance, revenue neutral, as discussed in the succeeding Paragraph No.89 of this judgment. It is at this juncture that this Court respectfully differs from the reading down in ***Torrent Power*** *(Supra)*, which permits the actual consideration to be adopted where it can be ascertained. Outside the situation covered by the said provisos, a reading down which adopts the price agreed within the group would reintroduce the very measure which Section 15(1) treats as unreliable. Thus, in our opinion, the correct basis of comparison is not the price agreed within the group, but the open market value, i.e., the value between unrelated persons, as defined in clause (a) of the Explanation to Rule 35 of the Rules of 2017, which applies to Chapter IV thereof.

87. It is a settled principle that efforts must be made to read down subordinate legislation, rather than striking it down, where this can be done without doing violence to its language [Ref: ***Calcutta Gujarati Education Society v Calcutta Municipal Corporation***[88]]. Applying

[88] (2003) 10 SCC 533

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the aforesaid principle, Rule 28(2) is read down as follows: the deemed value of 1% of the amount of the guarantee per annum shall yield to a lower open market value, where the supplier establishes such value on cogent and verifiable material. The burden lies on the supplier, and the proper officer is entitled to test the material. Thus, the deemed value is a rebuttable presumption, and not a fixed minimum. Read in this manner, the words '*notwithstanding anything contained in sub-rule (1)*' override Rule 28(1) only to the extent of a conflict between the two, i.e., only where the supplier does not establish a lower open market value.

88. The aforesaid reading keeps every legitimate object of the Rule intact. Certainty is preserved, since the deemed value applies by default unless displaced; erosion of value is prevented, since pricing within the group cannot displace it, save where the proviso to Rule 28(2) applies; and uniformity is maintained, since the same standard applies to all. What is removed is only the arbitrariness identified in Paragraph Nos.82 to 85 hereinabove. This reading also mitigates the concern arising from the illustration of a thirty-year guarantee referred to in Paragraph No.39.3, since the deemed value applies only where the supplier cannot establish the open market value for the tenure in question. The other concerns arising from long-term guarantees stand addressed in Paragraph Nos.97 to 100 hereinbelow.

89. The challenge of the Petitioners to the proviso to Rule 28(2), which deems the invoice value to be the value where the recipient is eligible for full input tax credit, must fail. The classification is founded on the design of GST noticed in Paragraph No.45

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hereinabove. Where full credit is available, the tax paid on the guarantee can be fully set off by the recipient and is, in substance, revenue neutral; therefore, the declared value is accepted. However, where full credit is not available, the value of the guarantee would otherwise escape tax altogether.

90. The same logic underlies the second proviso to Rule 28(1), which is not under challenge. That the deemed value becomes a cost for recipients whose outward supplies are exempt is a result of the exemption, and not of any discrimination, since tax legislation enjoys a wide latitude in classification [Ref: ***R.K. Garg v Union of India***[89]]. For the same reason, the separate treatment of corporate guarantees, challenged by the Petitioners, for which the GST Council recorded the lack of comparables, does not offend Article 14 of the Constitution. However, this Court is in agreement with the Petitioners that whether a recipient is in fact eligible for full credit is a question of fact and cannot be presumed merely because the parties are related.

91. In view of the aforestated, this Court is of the considered view that Rule 28(2) of the Rules of 2017 is *intra vires* Sections 15 and 164 of the Act of 2017 and is not beyond Article 246A or Article 265 of the Constitution. However, insofar as it makes the deemed value a fixed minimum which cannot be displaced, it is arbitrary and violative of Article 14 of the Constitution and is accordingly read down in terms of Paragraph No.87 hereinabove. The proviso to Rule 28(2) is valid. Having so held under Article 14, this Court does not find it necessary to examine the challenge under Article 19(1)(g) separately.

[89] (1981) 4 SCC 675

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In re: Issue d

92. The service, being the assumption of risk, is supplied when the guarantee is executed and delivered. The continuing obligation thereafter is only a consequence of the supply already made, and not a repetition of it. However, each renewal, extension of tenure or enhancement of the guaranteed amount is a fresh supply, the value of which is to be determined with reference to the period of renewal or extension, or the amount of enhancement, as the case may be, so that the same risk is not taxed twice. Invocation of the guarantee is merely the performance of the obligation already undertaken and is not a new supply. To that extent, this Court is in agreement with the submission of the Petitioners that a corporate guarantee is a one-time undertaking with a continuing obligation, and its continued subsistence does not give rise to a fresh supply.

93. Section 2(33) of the Act of 2017, as reproduced in Paragraph No.5 hereinabove, requires 'periodic payment obligations', which are absent in a gratuitous guarantee, as has been fairly accepted by the learned ASG on a literal reading. The argument that the deemed value under Rule 28(2) creates a deemed periodic payment obligation cannot be accepted. A legal fiction must be confined to the purpose for which it is created [Ref: ***Bengal Immunity Co. Ltd. v State of Bihar***[90]], and though it is to be carried to its logical end, it can only be so carried within that purpose [Ref: ***Ashok Leyland*** *(Supra)*]. The fiction under Rule 28(2) relates only to value and being created by a Rule framed under Section 15, it can neither alter a definition in the

[90] AIR 1955 SC 661

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Act, nor create an obligation to pay where none exists. Therefore, a corporate guarantee is not a continuous supply of services.

94. Insofar as the time of supply is concerned, Section 31(2) of the Act of 2017 read with Rule 47 of the Rules of 2017 requires a tax invoice to be issued, within the prescribed period, for every taxable supply of services, including a supply under Schedule I. If the invoice is issued in time, Section 13(2)(a) applies. If not, as rightly submitted by the Petitioners in W.P.(C) 214/2025, Section 13(2)(b) fixes the time of supply as the date of provision of the service, i.e., the date of execution of the guarantee. Section 13(2)(c) is a residuary provision, which applies only where neither clause (a) nor clause (b) applies, and the failure of a supplier to issue an invoice cannot shift the time of supply to the books of the recipient.

95. Further, the disclosure of a guarantee as a related-party commitment under Ind AS 24 does not amount to the recipient 'showing the receipt of services in his books of account'. Moreover, Section 13 only fixes the time of a supply which already exists and cannot convert one supply into a series of annual supplies. Since the time of supply can be determined under Section 13(2), Section 13(5) does not arise. Therefore, the alternative submissions of the Respondents to the contrary cannot be accepted. To the extent that Paragraph No.64 of ***Torrent Power*** *(Supra)* holds that the taxable event recurs every year by reference to Section 13(2)(c), this Court most respectfully differs; its own finding in Paragraph No.63 thereof that the levy attaches on the date of execution, in fact, supports the view taken by this Court.

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96. The expression 'per annum', and the clarification in IC-2024 that, for a guarantee exceeding one year, the value is to be computed for the number of years for which it is offered, are consistent with a single supply whose value is measured by reference to its tenure, just as an arm's length guarantee fee is ordinarily quoted as an annual rate. For a guarantee co-terminous with the loan facility, or one in which no tenure is stated, the tenure is that of the facility as it stands at the time of execution. Since the undertaking for the entire tenure is given at the stage of execution itself, the tax is to be computed at the time of supply for the entire tenure of the guarantee, and the payment of tax on a multi-year service at the time of supply is not unusual. To that extent, the contention of the Petitioners that the levy cannot be collected upfront cannot be accepted.

97. However, this Court is also unable to adopt the year-wise approach offered by the Respondents in the alternative, since it requires each year to be treated as a fresh supply, contrary to Sections 2(33) and 13 of the Act of 2017, and a concession on a question of law does not bind the Court. Nonetheless, the concern of disproportion is addressed in two ways, namely, by the reading down in Paragraph No.87 hereinabove, and by Section 34 of the Act of 2017. The supply, namely the assumption of risk, is complete on execution; its value, however, is measured by reference to the period for which the risk is undertaken. Where a guarantee is released or discharged before the expiry of the period for which it was offered, the risk is in fact borne for a shorter period, and the taxable value shown in the invoice is found to exceed the taxable value in respect of such supply, which is a case contemplated by Section 34(1) of the Act of 2017. In such a case,

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the supplier may reduce the same by issuing a credit note under Section 34, subject to the conditions and time limits prescribed therein. However, the position is different where the amount guaranteed is not fully disbursed, since the guarantor remains exposed to the entire amount committed for so long as the guarantee subsists.

98. Having said the aforestated, this Court is mindful of the financial burden that upfront payment of tax for the entire tenure may impose in cases involving long-term guarantees, as highlighted in Paragraph No.16.4 hereinabove. The learned ASG has himself acknowledged, in Paragraph No.26.3, that a year-wise approach would merely defer the tax without diluting the Rule.

99. While the tax liability must be computed upon execution of the guarantee for its entire tenure, its collection may be regulated separately. Section 148 of the Act of 2017 empowers the Government, on the recommendations of the GST Council, to prescribe special procedures for specified classes of registered persons, including for payment of tax, while Section 164 confers the general rule-making power. Accordingly, the Respondents may consider framing an appropriate Rule or issuing a notification under Section 148, with such consequential clarification under Section 168 as may be necessary, to permit collection of the tax so computed in annual instalments over the tenure of the guarantee.

100. Such a mechanism would regulate only the collection of tax, without altering the single supply made upon execution, its time of supply or its value. It would neither convert the supply into a continuous supply nor adopt the year-wise approach rejected

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hereinabove. It would also address the difficulty arising from premature release of a guarantee, which Section 34 can otherwise accommodate only within the prescribed time limits.

101. In the case of guarantees executed before 01.07.2017, the supply was complete before the Act of 2017 came into force, and the continued existence of the guarantee is not a fresh supply. Such guarantees do not attract tax under the Act of 2017, unless they are renewed, extended or enhanced on or after 01.07.2017. Whether any such renewal, extension or enhancement has taken place must be examined by the adjudicating authority for each deed, with reference to its date of execution and any subsequent amendment, renewal or novation. Therefore, this Court is in agreement with the submission of the Petitioners. The same also accords with the alternative submission of the Respondents that, if the supply arises only once, guarantees concluded before 01.07.2017 are not taxable. The other alternative submission of the Respondents, that the remaining years of such guarantees are taxable, fails, since this Court has not accepted that the taxable event recurs every year.

102. As regards guarantees executed between 01.07.2017 and 25.10.2023, in view of the findings rendered on Issue a, such guarantees were taxable supplies from 01.07.2017. However, Rule 28(2) does not apply to them, since the said Rule was introduced only with effect from 26.10.2023, and the Government has not exercised its power under Section 164(3) of the Act of 2017 to give it effect from an earlier date. The request of the Respondents to extend the Rule to the earlier period by 'harmonious construction' or on the ground that

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it is beneficial, must be declined. The Court cannot do what the delegate has not done, and a provision affecting substantive liability is presumed to be prospective [Ref: ***CIT v Vatika Township (P) Ltd.***[91]].

103. Equally, the present is not a case of failure of the machinery provisions, in the sense of ***B.C. Srinivasa Setty*** *(Supra)*, as contended by the Petitioners relying upon ***Torrent Power*** *(Supra)*. Rules 28, 30 and 31 of the Rules of 2017 were in force throughout, and a difficulty in valuation does not mean that there is no method of valuation. Therefore, the value for this period must be determined under the Rules then in force, on the basis of the material relating to the guarantee in question, and to that extent, this Court is in agreement with the submission of the Petitioners. Where the recipient was eligible for full input tax credit, the second proviso to Rule 28, now Rule 28(1), shall apply. However, Rule 31 cannot be used to apply the figure of 1% as a uniform measure for this period, as that would amount to applying Rule 28(2) retrospectively by indirect means. The value must rest on material specific to the guarantee in question, and not on a figure prescribed for the class of guarantees as a whole.

104. It follows from Paragraph Nos.92 to 95 hereinabove that a guarantee executed before 26.10.2023 does not attract Rule 28(2) merely because it continues to exist thereafter, unless it is renewed, extended or enhanced on or after that date. To that extent, this Court respectfully differs from ***Torrent Power*** *(Supra)*, which permits the levy from 26.10.2023 on the outstanding amount, since that conclusion rests on the annual recurrence of the taxable event, which

[91] (2015) 1 SCC 1

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this Court has not accepted. The view taken by this Court is also consistent with IC-2024 itself, which provides that guarantees issued or renewed before 26.10.2023 are to be valued under Rule 28 as it then stood.

105. IN-2024 made two changes with effect from 26.10.2023. *Firstly*, the words 'located in India' confine the Rule to domestic recipients, and as rightly submitted by the learned ASG, are beneficial. *Secondly*, the words 'per annum' are clarificatory, since the GST Council took the figure of 1% from the Safe Harbour Rules, where it is expressed as an annual rate on the amount guaranteed, and the amendment only makes explicit what was already implicit in the source of the Rule. The period of retrospective operation is less than nine months, and Section 164(3) of the Act of 2017 confers the power to make Rules with retrospective effect. Retrospective fiscal legislation is not unconstitutional for that reason alone; its validity is to be tested on the touchstone of reasonableness, having regard, *inter alia*, to the length of the retrospective period and the circumstances in which it is enacted [Ref: ***Rai Ramkrishna v State of Bihar***[92]; ***Assistant Commissioner of Urban Land Tax v Buckingham & Carnatic Co. Ltd.***[93]]. Judged by the aforesaid test, the retrospective period being less than nine months, the amendment being in part beneficial and in part clarificatory and having regard to the reading down in Paragraph No.87 hereinabove, the challenge of the Petitioners raised under Paragraph No.15.2 hereinabove fails, and the retrospective operation of IN-2024 is valid.

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[92] AIR 1963 SC 1667
[93] (1969) 2 SCC 55

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106. With effect from 26.10.2023, Rule 28(2) does not apply to recipients located outside India. For the period prior thereto, whether, and how, a guarantee furnished for such a recipient was taxable shall be determined by the adjudicating authority, taking into account the stand of the Respondents recorded in Paragraph No.26.6, namely, that the intention of the GST Council is that exports must not bear GST.

107. In view of the aforestated, this Court is of the considered view that a corporate guarantee is a single supply made on execution, and again on each renewal, extension or enhancement. It is not a continuous supply of services, and its time of supply is governed by Section 13(2)(a) or (b), and not by Section 13(2)(c) read with Ind AS 24. The tax is to be computed at the time of supply for the entire tenure of the guarantee, though it is open to the Respondents to provide for its collection in annual instalments, as observed in Paragraph Nos.98 to 100 hereinabove. Guarantees executed before 01.07.2017 are not taxable, unless they are renewed, extended or enhanced thereafter. Guarantees executed between 01.07.2017 and 25.10.2023 are taxable but are to be valued under the Rules then in force, without recourse to Rule 28(2) or to the figure of 1% as a uniform measure. Rule 28(2) applies only to guarantees executed, renewed, extended or enhanced on or after 26.10.2023, and IN-2024 is valid.

<u>In re: Issue e</u>

108. It is trite law that circulars issued under Section 168 of the Act of 2017 bind the officers of the department, but do not bind the assessee or the Court, and a circular contrary to the statute has no

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existence in law [Ref: ***Ratan Melting & Wire Industries*** *(Supra)*]. Further, a circular can neither create a levy nor widen the scope of a charge [Ref: ***Karvy Stock Broking*** *(Supra)*; ***Faridabad Iron & Steel Traders Association*** *(Supra)*]. These principles, urged by the Petitioners, are also accepted by the Respondents. In the present case, as rightly submitted by the learned ASG, the Respondents rely upon the Circulars only in aid of their case, and the findings rendered hereinabove rest on the Act of 2017 and the Rules of 2017 themselves.

109. Tested on the aforesaid touchstone, the Circulars, in substance, reflect the law as found by this Court. *Firstly*, the premise of IC-2023 that a corporate guarantee to a related person is a taxable supply is in line with the findings rendered on Issue a. *Secondly*, different treatment of personal guarantees given by directors is based on a regulatory restriction of general application on the payment of consideration to directors for such guarantees, which has a direct bearing on open market value. A clause against commission in a guarantee deed agreed within a group is not comparable to such a restriction. Therefore, the contention of the Petitioners that the distinction offends Article 14 of the Constitution cannot be accepted.

110. *Thirdly*, the clarification in IC-2024 that the value is to be computed on the amount guaranteed, irrespective of the amount disbursed, follows the text of the Rule, which refers to 'the amount of such guarantee offered'. The risk is assumed for the entire amount committed, and any case where the open market value is lower stands addressed by the reading down in preceeding Paragraph No.87.

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111. *Fourthly*, the clarifications on multi-year guarantees, and on the issue of a fresh guarantee or the renewal of an existing one upon the takeover of a loan, are consistent with a single supply on execution and with each renewal being a fresh supply. Any double taxation upon the takeover of a loan is addressed by Section 34 of the Act of 2017, as noted in Paragraph No.97 hereinabove. *Lastly*, the clarification that guarantees issued or renewed before 26.10.2023 are to be valued under Rule 28 as it then stood is in line with preceeding Paragraph Nos.102 to 104.

112. In view of the aforestated, this Court is of the considered view that IC-2023 and IC-2024 are not *ultra vires* Section 168 of the Act of 2017. However, the same shall be read and applied in conformity with the present judgment. Therefore, the said Circulars shall not be given effect insofar as they may be understood to prevent a supplier from establishing a lower open market value, or to treat the continued existence of a guarantee executed before 26.10.2023 as a fresh supply. In view of this conclusion, it is unnecessary to examine the submission based on ***Kusum Ingots*** *(Supra)* regarding the territorial effect of ***Torrent Power*** *(Supra)*.

JUDGMENTS RELIED UPON BY THE PARTIES

113. Before parting, this Court deems it appropriate to deal with the principal judgments relied upon by the parties, to the extent the same require to be distinguished in view of the conclusions reached hereinabove.

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114. With utmost respect, and in substantial agreement with the submission of the Respondents, this Court finds itself unable to concur with the view taken in ***D.P. Jain*** *(Supra)*, on three premises. However, this Court expresses no view on whether the said judgment is *per incuriam*. *Firstly*, the said judgment rests on ***Edelweiss*** *(Supra)*, which was rendered under a levy based on consideration, an entirely different regime. *Secondly*, the effect of Section 7(1)(c) read with Entry 2 of Schedule I, which dispenses with consideration between related persons, does not appear to have been examined therein. *Lastly*, ***D.P. Jain*** *(Supra)* declined to interfere with Rule 28(2); yet Rule 28(2) applies only where a guarantee for a related person is given free of charge or below its value, and a holding that such guarantees are not taxable leaves the Rule with nothing to operate upon.

115. As regards the plea of parity, the principle of consistency laid down in ***Indian Oil Corporation*** *(Supra)*, ***Birla Corporation*** *(Supra)* and ***Jayaswals Neco*** *(Supra)* governs the conduct of the Revenue in adjudication and appeal. However, it does not relieve this Court of its duty to declare the law on a question of vires, particularly when another High Court has taken a contrary view.

116. This Court is in agreement with ***Torrent Power*** *(Supra)* that a corporate guarantee for a related person is a supply of services even in the absence of consideration; that the subsidiary is its recipient; that Rule 28(2) is within the rule-making power; that the deemed value, insofar as it operates as a minimum even where the true value is lower, is arbitrary; that a guarantee is not a continuous supply; and that Rule 28(2) does not apply prior to 26.10.2023, *albeit*, in the view

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of this Court, because the Rule operates prospectively, and not because its application to that period offends Articles 14 and 19(1)(g) of the Constitution. However, for the reasons recorded hereinabove, and in partial agreement with the submissions of the Petitioners under Paragraph Nos.12.3, 18.1 and 39.11, this Court respectfully differs therefrom on five aspects.

117. *Firstly*, this Court does not rest the supply or the identification of the recipient on Sections 140 and 145 of the Act of 1872, on Section 127 as supplying consideration, or on Entry 5(e) of Schedule II. *Secondly*, this Court does not reject the plea of actionable claim on the basis of a distinction between a direct debt and a secondary liability. *Thirdly*, this Court permits the deemed value to be displaced only by the open market value, and not by the charge agreed between the related persons. *Fourthly*, this Court does not accept that the time of supply is governed by Section 13(2)(c) and recurs every year, or its consequence for guarantees executed before 26.10.2023. *Lastly*, to the extent ***Torrent Power*** *(Supra)* is understood to hold that no levy could arise before 26.10.2023 for want of a valuation mechanism, this Court has taken a different view.

118. Reliance placed upon ***Edelweiss*** *(Supra)* is also distinguishable, since it was rendered under Section 65B (44) of the Act of 1994, which made consideration a part of the very definition of 'service'. For the same reason, ***Sterlite Industries India Ltd.*** *(Supra)*, decided by the CESTAT under the service tax regime, does not govern the levy under the Act of 2017.

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119. ***Micro Ink*** *(Supra)* and ***Cadila Pharmaceuticals*** *(Supra)* dealt with whether a guarantee is an international transaction requiring an adjustment to income, which is a different question from whether a supply exists. Whereas, ***Centel Communications*** *(Supra)* dealt with whether warrants received by shareholders for guaranteeing the company's loans were received in connection with the performance of services under the Internal Revenue Code of the United States, which is again a different statutory question. The Australian Ruling GSTR 2006/1 and ***Levob Verzekeringen*** *(Supra)* have been dealt with in Paragraph No.66 hereinabove.

120. Similarly, ***Tata Sons*** *(Supra)* and ***Aerocom Cushions*** *(Supra)* dealt with a settlement amount under an arbitral award and the assignment of leasehold rights, respectively. Neither dealt with the assumption of another's credit risk, and neither has any bearing on the questions decided herein.

D. CONCLUSION:

121. In view of the aforestated, this Court is of the considered view that a corporate guarantee furnished by a holding/group company to a banking company or financial institution, for the borrowings of a related person, is a supply of services under Section 7(1)(c) read with Entry 2 of Schedule I of the Act of 2017, even where no consideration is charged. The service lies in the assumption of the risk of the related person's default, and the resulting extension of the guarantor's creditworthiness to it. The recipient of the said service is the related person/subsidiary on whose behalf the guarantee is furnished, under Section 2(93)(c) of the Act of 2017.

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122. Further, such a corporate guarantee is not excluded from the levy, either as an actionable claim under Entry 6 of Schedule III, or as a security under Section 2(102) of the Act of 2017.

123. Insofar as the valuation is concerned, Rule 28(2) of the Rules of 2017, as amended by IN-2024, is *intra vires* Sections 15 and 164 of the Act of 2017, and is not beyond Article 246A or Article 265 of the Constitution. However, insofar as it makes the deemed value of 1% per annum a fixed minimum which cannot be displaced, it is arbitrary and violative of Article 14 of the Constitution. Therefore, Rule 28(2) is read down in terms of Paragraph No.87 hereinabove.

124. Meaning thereby, the deemed value shall give way to a lower open market value, where the supplier establishes such value on cogent and verifiable material. However, the consideration agreed between the related persons, or the absence of any consideration, shall not by itself constitute such material. The proviso to Rule 28(2) is valid.

125. Moreover, the supply of a corporate guarantee takes place when it is executed, and again upon each renewal, extension of tenure or enhancement of the guaranteed amount, the value of which is to be determined with reference to the period of renewal or extension, or the amount of enhancement, as the case may be. It is not a continuous supply of services under Section 2(33) of the Act of 2017. Thus, its time of supply is governed by Section 13(2)(a) or (b), and not by Section 13(2)(c) read with Ind AS 24. Where a guarantee is released or discharged before the expiry of the period for which it was offered, the supplier may reduce the value attributable to the unexpired period

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by issuing a credit note under Section 34 of the Act of 2017, subject to the conditions and time limits prescribed therein. While the tax is to be computed on execution for the entire tenure of the guarantee, the Respondents will be at liberty to collect the same in annual instalments over such tenure.

126. As regards the period to which the levy extends, guarantees executed before 01.07.2017, which have not been renewed, extended or enhanced thereafter, are not liable to GST. Guarantees executed between 01.07.2017 and 25.10.2023 are liable to GST; however, they shall be valued under the Rules then in force, without recourse to Rule 28(2), and without applying the figure of 1% through Rule 31. Rule 28(2) applies only to guarantees executed, renewed, extended or enhanced on or after 26.10.2023, and does not apply to a guarantee executed earlier merely because it continues to exist thereafter. Accordingly, the retrospective operation of IN-2024 is valid.

127. *Lastly*, IC-2023 and IC-2024 are not *ultra vires* Section 168 of the Act of 2017. However, the same shall be read and applied in conformity with the present judgment. Therefore, the said Circulars shall not be given effect insofar as they may be understood to prevent a supplier from establishing a lower open market value, or to treat the continued existence of a guarantee executed before 26.10.2023 as a fresh supply.

128. Keeping in view the above position of law, as well as the facts and circumstances of the present case, the show cause notices, orders and demands impugned in the respective Writ Petitions are set aside, to the extent they proceed on a basis contrary to the findings recorded

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hereinabove. The proper officers shall determine the liability afresh, if any, in accordance with the present judgment, after giving the Petitioners an adequate opportunity of hearing.

129. At this stage, it is deemed appropriate to clarify that the following questions are left open: the invocation of the extended period of limitation under Section 74 of the Act of 2017; the plea relating to the pledge of shares; the taxability of guarantees furnished for recipients located outside India for the period before 26.10.2023; the eligibility of the recipient to full input tax credit; the establishment of open market value; and the dates of execution, renewal, extension or enhancement of each guarantee. These shall be decided by the competent authorities on the facts of each case, in accordance with law.

130. Insofar as W.P.(C) 15738/2024 and W.P.(C) 12955/2025 are concerned, the issues raised therein, to the extent they relate to the furnishing of a corporate guarantee, shall stand disposed of in terms of the findings and observations made hereinabove. However, for the purpose of adjudication of the additional issues raised in the aforesaid Petitions, as referred to in Paragraph No.4 hereinabove, the said Petitions be listed before the roster bench on 09.12.2026, subject to the orders of Hon'ble the Chief Justice.

131. Accordingly, the present Writ Petitions are partly allowed in the above terms, save and except W.P.(C) 15738/2024 and W.P.(C) 12955/2025, which shall stand disposed of to the extent indicated in Paragraph No.130 hereinabove. Pending applications, if any, in the Writ Petitions also stands disposed of.

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132. Notably, nothing stated hereinabove shall be construed as an expression of opinion on the merits of the individual show cause notices or proceedings, which shall be decided by the competent authorities on their own facts, in accordance with law and in light of the findings recorded in the present judgment.

ANIL KSHETARPAL, J.

BHARAT PARASHAR, J.

NOVEMBER 17, 2026
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