CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 60477 of 2019

[Arising out of Order-in-Appeal No. 147/ST/CGST-APPEAL-GURUGRAM/SG/2018 dated 28.09.2018 passed by the Commissioner(Appeals) of Central Goods and Service Tax, Gurgaon-I]

Vipul Infracon Pvt Ltd ......**Appellant**
1st Floor, Vipul Tech Square,
Golf Course Road, Sikanderpur,
Gurgaon, Haryana-122009

VERSUS

Commissioner of Central Goods and Service Tax, Gurgaon-I ......**Respondent**
Plot No. 36-37, Sector-32,
Gurugram- Haryana-122001

APPEARANCE:

Ms. Krati Singh and Shri Jai Ahuja, Advocates for the Appellant

Shri G. D. Bansal, Authorized Representatives for the Appellant

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60386/2026

DATE OF HEARING: 29.05.2026
DATE OF DECISION: 29.05.2026

P. ANJANI KUMAR :

The appellants are registered for providing valuable taxable services such as renting of immovable property and management maintenance services or repair etc. During the audit of the appellants' records, the department observed that the appellants have provided corporate guarantee in favor of their associated enterprises M/s Vipul Limited. Three Show Cause notices dated 01.09.2015, 08.04.2016 and 01.06.2017 were issued proposing levy of service tax of Rs. 2,25,96,441/- during the period 2009-10 to 2015-16, proposals made in all the SCN's were confirmed by the Order in Original dated 28.03.2018. On an appeal filed by the appellants, the Impugned Order dated 28.09.2018 was passed by Commissioner (Appeals) remanding the matter to the Adjudicating authority for quantification of the duty.

2. Ms. Krati Singh, Learned Counsel for the appellant, submits that the issue is no longer *res integra* having been held in a number of decisions that the transaction of providing corporate guarantee is not exigible to service tax under banking and other financial services. She also submits that as the said corporate guarantee has been provided without any consideration, the same is not exigible for the period after 01.07.2012. Also, she relies on:

- M/s G 4 S Cash Solutions (India) Pvt Ltd, 2025 (11) TMI 1277- CESTAT Chandigarh
- CCE vs Jindal Stainless Steel, 2023 (6) TMI 1197-CESTAT Chandigarh
- M/s India Yamaha Motor Pvt Ltd, 2024 (5) TMI 1060- CESTAT New Delhi
- Edelweiss Financial Services Ltd., (2023) 5 Centax 57 (Tri.- Bombay)
- Sowar Pvt Ltd, 2023 (5) TMI 193- CESTAT New Delhi
- Sterlite Industries India Ltd. 2019 (2) TMI 1249- CESTAT Chennai
- M/s Huawei Telecommunication India Co. Pvt. Ltd., 2025 (5) TMI 155- CESTAT Chandigarh
- M/s DLF Projects Ltd. 2020 (6) TMI 418- CESTAT Chandigarh
- M/s DLF Home Developers Ltd., 2023 (10) TMI 1089- CESTAT, Chandigarh
- M/s DLF Cybercity Developers Ltd., 2019 (28) GSTL 478 (Tri.- Chan.)

- M/s Air Liquide North India Pvt Ltd., 2024 (5) TMI 327- CESTAT New Delhi
- M/s India Infrastructure & Logistics Pvt Ltd., 2024 (9) TMI 462- CESTAT New Delhi
- M/s Omaxe Chandigarh Extension Developers Pvt Ltd., 2024 (9) TMI 1494- CESTAT New Delhi

3. Learned Counsel further submits that the department has wrongly invoked the provisions for valuation; it is not correct on the part of the department to calculate the service tax at the arbitrary rate of 3.5 percent on the amount of corporate guarantee. W.e.f. 01.07.2012, as defined under Section 65B (44), consideration is required to be established for the transaction, so as to be covered under the ambit of taxable service. She relies on HUAWEI Telecommunication India Pvt Ltd, 2025 (5) TMI 155-CESTAT Chandigarh. She further submits that the extended period cannot be invoked in the Show Cause Notice dated 01.09.2015 as there is no suppression etc. with the intent to evade payment of duty; all the facts were in the knowledge of the department; the Show Cause Notices were issued on the basis of an audit report. As extended period is not invokable, the question of interest and penalty does not arise. She relies on:

- M/s Huawei Telecommunication India Co. Pvt. Ltd., 2025 (5) TMI 155- CESTAT Chandigarh
- M/s DLF Cybercity Developers Ltd., 2026 (2) TMI 238 (CESTAT- Chandigarh)
- M/s Bharij Fabricators, 2025 (11) TMI 1550- CESTAT Chandigarh
- M/s British Airways PLC India Branch, 2025 (8) TMI 172, CESTAT Chandigarh

4. Shri G.D. Bansal, Learned Authorized Representative for the Revenue reiterates the findings of the Impugned Order.

5. Heard both sides and perused the records of the case. We find that this issue is no longer *res integra* having been decided by the Hon'ble Supreme court in the case of Edelweiss (supra). We find that Hon'ble apex court held that:

> 8. The criticality of 'consideration' for determination of service, as defined in section 65B(44) of Finance Act, 1994, for the disputed period after introduction of 'negative list' regime of taxation has been rightly construed by the adjudicating authority. Any activity must, for the purpose of taxability under Finance Act, 1994, not only, in relation to another, reveal a 'provider', but also the flow of 'consideration' for rendering of the service. In the absence of any of these two elements, taxability under section 66B of Finance Act, 1994 will not arise. It is clear that there is no consideration insofar as 'corporate guarantee' issued by respondent on behalf of their subsidiary companies is concerned.
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> 9. The reliance placed by Learned Authorized Representative on the 'non-monetary benefits' which may, if at all, be of relevance for determination of assessable value under section 67 of Finance Act, 1994 does not extend to ascertainment of 'service' as defined in section 65B(44) of Finance Act, 1994, 'Consideration' is the recompense for the 'contractual undertaking that authorizes levy while 'assessable value' is a determination for computing the measure of the levy and the latter must follow the former.

6. We further find that this Bench held in the case of G 4 S Cash Solutions India Pvt Ltd as follows:

6. We find that Delhi Bench of the Tribunal held, in the case of M/s Sowar Pvt Ltd (supra) that:

> 7. The analysis of the definition of BOFS along with its taxability helps us to conclude that this definition is comprehensive one instead of it being the inclusive one. It also clarifies that under service of BOFS only such persons can be made liable to service tax who can be classified in the category of being called a Banking/ non-banking Company, Financial Institutions, any other body corporate or a commercial concern. Above all, the definition carves out the list of category of the persons who would be excisable to tax under the category. Also, the services provided by such persons which alone would be excisable to such taxes have been comprehensively and specifically listed out as is apparent from the use of words "namely"/"means" in the said definition under section 65 (12) of the Finance Act. The present appellant do not under any of such categories/ lists, as there is no denial to the fact that appellant is not in busine financing, it is neither a banking nor a non-banking financial institute, nor it is any other body corporate or commercial concern which is into the business of extending financial supports. This fact is sufficient to hold that appellant cannot be covered under the category of such persons who would be excisable to tax under the category of BOFS)
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> 8. We further observe that any activity cannot be called as service until there is an element of 'consideration'... Now the definition of service in Section 65 B (44) of Finance Act, 1944 becomes relevant reads as follows:
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> > Service means 'any activity carried out by a person for another for consideration and includes declared service but not includes the services listed in the negative list under section 66B of the Act'.

> 9. Reverting to the facts of the present case, we observe that the Show Cause Notice itself recites that the appellant has given the corporate guarantee on behalf of their group companies but has not charged any commission or interest or fees for providing the said corporate guarantee. Same is also apparent from the letter given by the Syndicate Bank from where was issued the impugned corporate guarantee that the loanee company has undertaken that no commission is paid by them to their corporate guarantor. Thus, it becomes clear that there is no element of consideration involved in the present case applying the definition f service, as mentioned above, to these facts in the present appeal. We hold that question of the activity extending corporate guarantee by the appellant to its associate companies cannot be called as service terms of above provision in section 65 B (44) of the Act.

7. In view of the above, we find that the issue is no longer *res integra*. In the instant case, we further find that the impugned order does not quantify the demand. Learned Commissioner (Appeals) held that the appellants are liable to pay service tax on the corporate guarantee provided by them and their associate enterprise. Learned Commissioner (Appeals) proceeds to remand the case to the adjudicating authority for quantification of the demand. As per the records it is found that the revenue could not identify any consideration so as to levy the service tax on the same. Therefore, no purpose would have been solved by remanding the case to the lower authority as the Show Cause notices proposes to levy the service tax on the commission paid to the bankers. We are of the considered opinion that this cannot be held to be

consideration received by the appellants for providing corporate guarantee. With all these reasons, we hold that the Impugned Order is not sustainable and is liable to be set aside. We do so and allow the appeal.

(Operative part of the order pronounced in the open court)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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