

IMPORTANT GST UPDATES



Issued in case of Commissioner of CGST & Central Excise vs M/S Edelweiss Financial Services Ltd
by Hon'ble Supreme Court | Order No: 5258/2023 | 17-03-2023

Ruling

The Hon'ble Supreme Court has ruled that no service tax would be levied on corporate guarantees provided by a parent company to its subsidiaries as there is no consideration involved.

Observations & Findings

The assessee M/s Edelweiss Financial Services Ltd provides corporate guarantees to banks and financial institutions lending to subsidiary and related companies. The Revenue department has alleged that they have provided "banking or financial service" citing that corporate guarantee is very similar to a bank guarantee and can be termed as a "service" under section 65B(44) of the Finance Act. Consequently, they have raised a demand of over Rs. 97 crores along with interest and penalties for the "service" provided by the assessee internationally and domestically.

The Commissioner dropped the proceedings holding that there is no consideration and valuation rules cannot be resorted to and hence, bank charges for bank guarantee cannot be deemed consideration. The Revenue filed appeal before CESTAT, Mumbai. The CESTAT dismissed the appeal filed by the department. The Revenue then filed appeal before the Hon'ble Supreme Court. It was argued that similar matter in the case of DLF has been admitted.

However, the Hon'ble Supreme Court dismissed the appeal filed by the department. 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. Hence the appeal of Revenue is dismissed.