

V.B.GAIKWAD & ASSOCIATES

328, 'E' Ward, D/10, Royal Plaza, Dabholkar Corner, Kolhapur-416 001.

[VERY IMPORTANT/VERY URGENT]

17.07.2024.

To,

All,

Sir,

Sub:- GST – Valuation of service of providing corporate guarantee to banking/financial institutions on behalf of related person – Retrospective amendment to Rule 28(2) of the CGST Rules, 2017 – Circular dt.11.07.2024 – Reg....

We vide our Circular dt.01.11.2023 had made you aware of the fact that, the Government has inserted a new sub-Rule (2) in Rule 28 of the CGST Rules, 2017 w.e.f.26.10.2023 for the purpose of valuation of the service of providing corporate guarantee to the banking/financial institution on behalf of related person.

- [2] The said new Rule 28(2) created confusion among the Trade and Industry and hence to clarify the said confusion the Government vide its Notification No.12/2024-CT, dt.10.07.2024 has retrospectively amended the said sub-Rule (2) of Rule 28 of the CGST Rules, 2017 and has also issued a Circular No.225/18/2024-GST, dt.11.07.2024 clarifying the various issues related to the valuation of service of corporate guarantee.

Copy of the amended Rule 28 of CGST Rules, 2017 along with copy of Circular dt.11.07.2024 is enclosed herewith for your ready reference.

- [3] After carefully considering the said amended Rule 28 and the clarifications issued vide Circular dt.11.07.2024 we herewith would like to draw your kind attention towards the important facts that, -

- i) The Government is of the opinion that, the transactions of corporate guarantee services between the related persons were liable to GST right from 01.07.2017 and hence on such transactions taken place during the period from 01.07.2017 till 25.10.2023, the GST is payable and the valuation of the said service has to be made as per Rule 28(1) of the CGST Rules, 2017 and the same cannot be made as per Rule 28(2) of the CGST Rules, 2017.

[Note:- Thus, now the GST department will start issuing show cause notices for recovery of GST on such corporate guarantee transactions between related persons taken place during the period from 01.07.2017 till

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25.10.2023 and hence if you have done any such transactions during the above said period, you either has to do the valuation of the said service as per Rule 28(1) and has to pay GST along with interest thereon or otherwise you will have to fight out the said show cause notice.

Please note that, if you have received any show cause notice demanding GST on the corporate guarantee transaction taken place during the period from 01.07.2017 till 25.10.2023, by doing valuation thereof as per Rule 28(2) of the CGST Rules, 2017, the said demands will become unsustainable.

Please also note that, if you have not issued any invoice in favour of the recipient and have not received any consideration for such corporate guarantee service from the recipient and if the recipient is eligible for the full ITC of the GST charged/to be paid by you, then the value of the said service can be treated as Nil in terms of second proviso to Rule 28(1) and hence department cannot demand any GST on the said service by doing valuation of the said service as per Rule 28(1) of the CGST Rules, 2017 and hence also the said demands will be unsustainable.]

- ii) For the corporate guarantee transactions between related persons taken place w.e.f.26.10.2023, the valuation has to be done strictly as per Rule 28(2) of the CGST Rules, 2017 (i.e.1% of the amount of guarantee offered or the actual consideration received, whichever is higher).

However, where the recipient of corporate guarantee service is eligible for the full ITC of GST charged by the provider, the value declared by provider in its invoice, will be deemed to be the value of supply of the said service. [Kindly refer proviso to Rule 28(2) of the CGST Rules, 2017.]

However, the benefit of the said proviso will not be available in the transactions where the recipient of the corporate guarantee service is not eligible for the full ITC of GST to be charged by the provider.

[Note:- If you have provided any such service to related person on or after 26.10.2023 and if the said related person is eligible for the full ITC of the GST to be charged by you in the invoice, then you need not have to do the valuation on the basis of 1% of the amount of guarantee offered or the actual consideration whichever is higher and whatever value charged by you in the invoice will be accepted as correct value of the said service.

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Hence, strictly speaking in case where your recipient is eligible for full ITC, if you declare the value of the said service as Nil in the invoice or if you don't issue any invoice for the said service, the department cannot demand any GST from you since the value of the said service has to be accepted as Nil in terms of proviso to Rule 28(2). However, we caution you that, the department might not accept the said practice and will try to demand GST on the said transaction and you will have to fight out the said demand at least upto the Tribunal level and hence if you don't want to enter into a long legal battle with the department, it is better to decide a value as per Rule 28(2) (i.e. 1% of the amount of guarantee offered or the actual consideration whichever is higher) or to decide a fair value (as per your own calculations) of the said corporate guarantee service and to pay GST thereon and to ask the recipient to take the ITC of the said GST.

Further, if the recipient is not eligible for the full ITC, then, you don't have any other option than to do the valuation of such service strictly on the basis of formula of 1% of the amount of guarantee offered or the actual consideration whichever is higher and to pay the GST on the said value since in that scenario the protection under proviso to Rule 28(2) will not be available to you and you will not be eligible to do the valuation of the said service as per your own understanding.]

- iii) The amount of loan actually disbursed against the corporate guarantee will be irrelevant and the amount of guarantee offered will only be considerable while doing the valuation of the corporate guarantee service on the basis of 1% of the amount of guarantee offered or the actual consideration whichever is higher.

[For example –A company has provided corporate guarantee of Rs.10 Crores for the Cash Credit Facility of Rs.10 Crores of its subsidiary company for 1 year. The subsidiary company has used the Cash Credit Facility of Rs.7 Crores only and has not used the remaining Cash Credit Facility of Rs.3 Crores. The company providing the corporate guarantee is not receiving any consideration from its subsidiary company for providing the corporate guarantee for its Cash Credit Facility. In such transaction the company providing corporate guarantee will be liable to pay GST of Rs.1,80,000/- on the value of Rs.10,00,000/- (i.e.1% of 10 Crores).]

- iv) Where the corporate guarantee is provided for the tenure of one year and is being renewed for the subsequent years, then in such transactions, the provider will have to pay GST every year.

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[For example – A company has provided a corporate guarantee of Rs.10 Crores for the Cash Credit Facility of Rs.10 Crores of its subsidiary company for F.Y.2023-24 and has renewed the said corporate guarantee for F.Y.2024-25. The company providing the corporate guarantee is not receiving any consideration from its subsidiary company for providing the corporate guarantee for its Cash Credit Facility. In such transaction the company providing corporate guarantee will be liable to pay GST of Rs.1,80,000/- on the value of Rs.10,00,000/- (i.e.1% of 10 Crores) for F.Y.2023-24 and will also be liable to pay GST of Rs.1,80,000/- on the value of Rs.10,00,000/- (i.e.1% of 10 Crores) for the F.Y.2024-25 and if the said corporate guarantee is to be renewed for the F.Y.2025-26, the company will be liable to pay GST of Rs.1,80,000/- on the value of Rs.10,00,000/- (i.e.1% of 10 Crores) for the F.Y.2025-26 also.]

- v) Where the corporate guarantee is provided for the tenure of more than one year, then in such transaction, the provider will have to do the valuation of the said corporate guarantee by considering the number of years for which the said corporate guarantee is effective and will have to pay GST on the value in the year of providing the said guarantee.

[For example –A company has provided corporate guarantee of Rs.10 Crores on behalf of its subsidiary company in the F.Y.2023-24 and the tenure of the said corporate guarantee is 5 years.

The company providing the corporate guarantee is not receiving any consideration from its subsidiary company for providing the corporate guarantee for the said loan.

In such transaction the company providing the corporate guarantee will be liable to pay GST of Rs.9,00,000/- on the value of Rs.50,00,000/- (i.e.1% of 50 Crores) in the F.Y.2023-24 itself. Once the said GST is paid there will be no need to pay any GST for the subsequent 4 years and the recipient company will be eligible for the ITC of the said GST immediately and he need not have to claim proportionate ITC per year.]

- [4] Accordingly, we herewith request you to kindly take note of the above said important legal development and to kindly implement the same at your end.
- [5] We hope we have clarified the matter. However, still if you have any doubts on the issue, we request you to come for personal discussion with all documents to our office.

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Thanking you,

Yours faithfully,
Sd/-
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Rule 28 of the CGST Rules, 2017 – Value of supply of goods or services or both between distinct or related persons, other than through an agent-

- (1) The value of the supply of goods or services or both between distinct persons as specified in sub-section (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall-
- (a) be the open market value of such supply;
 - (b) if the open market value is not available, be the value of supply of goods or services of like kind and quality;
 - (c) if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order:

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

Provided further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services.

- (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.

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Circular No. 225/19/2024-GST

F. No. CBIC-20001/4/2024 - GST

Government of India

Ministry of Finance

(Department of Revenue)

Central Board of Indirect Taxes and Customs

GST Policy Wing

New Delhi, Dated the 11th July, 2024

To,

The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/
Commissioners of Central Tax (All)

The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Clarification on various issues pertaining to taxability and valuation of supply of services of providing corporate guarantee between related persons.

1.1 As per the recommendations of the GST Council, sub-rule (2) was inserted in [Rule 28 of Central Goods and Services Tax Rules, 2017](#) (hereinafter referred to as the "CGST Rules") vide [Notification No. 52/2023-Central Tax dated 26th October, 2023](#) to provide for a specific clause for valuation of supply of services of providing corporate guarantee to any banking company or financial institution by an entity on behalf of a related person. Besides, [Circular No. 204/16/2023-GST dated 27th October, 2023](#) was also issued as per the recommendations of the GST Council, to provide clarity regarding the applicability of the said sub-rule. Subsequently, based on the recommendations of the GST Council, [sub-rule \(2\) of Rule 28 of CGST Rules](#) has been amended retrospectively with effect from 26.10.2023 vide [notification No. 12/2024 dated 10th July 2024](#).

1.2 In this regard, various representations have been received from trade and industry, seeking clarifications on various issues pertaining to the taxability and valuation of the supply of services of providing corporate guarantee between related persons as per the said rule.

2. Therefore, in order to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by [section 168 \(1\)](#) of the [Central Goods and Services Tax Act, 2017](#) (hereinafter referred to as "CGST Act"), hereby clarifies the issues as under:

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S. No.	Issue	Clarification
1	Whether sub-rule (2) of rule 28 of CGST Rules will apply to the corporate guarantees issued prior to insertion of the said sub-rule on 26th October 2023? Also, where intra-group corporate guarantees have been issued before 26th October 2023, which are still in force today, would they be liable to pay GST on “1% of the amount of such guarantee offered” on such guarantees?	<p>It is to be clarified that the supply of service of providing corporate guarantee to any banking company or financial institution by a supplier to a related recipient, on behalf of the said recipient, was taxable even before the insertion of sub-rule (2) in rule 28 of CGST Rules with effect from 26th October 2023. Rule 28(2) of CGST Rules is only for determination of the value of the taxable supply of providing corporate guarantee to any banking company or financial institution by a supplier to a related recipient, on behalf of the said recipient and not regarding the taxability of the said supply itself. Prior to the insertion of the said sub-rule, i.e., before 26th October 2023, the valuation of service of providing corporate guarantee to any banking company or financial institution by a supplier to a related recipient, on behalf of the said recipient, was to be done as per the provisions of Rule 28 of CGST Rules, as it existed then.</p> <p>Therefore, in respect of supply of services of providing corporate guarantee between related persons, in respect of corporate guarantee issued or renewed before 26th October 2023, the valuation of the said supply is to be done in accordance with Rule 28, as it existed during that time. However, if the corporate guarantee is issued or renewed on or after 26th October 2023, then the valuation of the said supply will be required to be done as per Rule 28(2) of CGST Rules.</p>
2	In cases where the corporate guarantee is provided for a particular amount, whereas the loan is only partly availed or not availed at all by the recipient, what will be the value of	The activity of supply of the service of providing a corporate guarantee is not linked with the actual disbursement of the loan. The service that is provided by the guarantor to the guarantee is that of taking on the risk of

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	supply of corporate guarantee. Also, whether the recipient would be eligible to avail full ITC (Input Tax Credit) even before total loan is disbursed?	default. Therefore, it is clarified that the value of supply of the service of providing a corporate guarantee will be calculated based on the amount guaranteed and will not be based on the amount of loan actually disbursed to the recipient of the corporate guarantee. Further, it is also clarified that the recipient of the service of providing corporate guarantee shall be eligible to avail the ITC, subject to other conditions specified in the Act and the Rules made thereunder, irrespective of when the loan is actually disbursed to the recipient, and irrespective of the amount of loan actually disbursed.
3	In the case of takeover of existing loans, since there is merely an assignment of an already issued corporate guarantee, whether GST would be applicable again?	In the service of providing corporate guarantee to any banking company or financial institution by a supplier to a related recipient, on behalf of the said recipient, the supplier of the service is the corporate entity providing the corporate guarantee and the recipient is the related entity for whom the corporate guarantee is provided by the said supplier. Therefore, if the loan issued by the banking company/ financial institution is taken over by another banking company/ financial institution, the said activity of taking over of the loan does not fall under the service of providing corporate guarantee to any banking company or financial institution by a supplier to a recipient. Therefore, it is clarified that in such cases, there will be no impact on GST, unless there is issuance of fresh corporate guarantee or there is a renewal of the existing corporate guarantee. However, if the takeover of the loan is followed/ accompanied by issuance of fresh corporate guarantee, then GST would be payable on the same.
4	Where corporate guarantee is	In cases where corporate guarantee is being

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	<p>provided by more than one entity / co-guarantor, what is the amount on which GST is payable by each co-guarantor?</p>	<p>provided by multiple related entities, the value of such services of providing corporate guarantee shall be the sum of the actual consideration paid/ payable to co-guarantors, if the said amount of total consideration is higher than one per cent of the amount of such guarantee offered. In cases where the sum of the actual consideration is less than one per cent of the amount of such guarantee offered, then GST shall be payable by each co-guarantor proportionately on one per cent of the amount guaranteed by them.</p> <p>For instance, if there are two co-guarantors, A and B, who jointly provide a corporate guarantee to a banking/ financial institution on behalf a related recipient C for Rs. 1 crore, then A and B shall each pay GST on 0.5% of the amount guaranteed.</p> <p>However, if in the above case of A and B providing corporate guarantee jointly to a banking/ financial institution on behalf a related recipient C for Rs 1 crore, A provides guarantee for 60% of the guarantee amount and B provides guarantee for the remaining 40% of the guaranteed amount, then GST shall be payable by A and B proportionately i.e., 0.6% and 0.4% of the amount guaranteed. This is to say that A shall pay GST on 1% of the amount guaranteed by A, i.e., 1% on Rs. 60 lakhs and B shall pay GST on 1% of the amount guaranteed by B, i.e., 1% on Rs. 40 lakhs.</p>
5	<p>Where intra-group corporate guarantee is issued, whether GST may be paid by the recipient under reverse charge, as in the absence of actual invoice and payment, the recipient entity may not be able to claim input tax credit of tax paid by the domestic guarantor?</p>	<p>It is clarified that in cases where domestic corporates issue intra-group guarantees, GST is to be paid under forward charge mechanism, and invoice is to be issued by the supplier of the service of providing corporate guarantee to the related recipient under Section 31 of CGST Act, 2017 read along with the relevant rules.</p>

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		However, in cases where such guarantee is provided by the foreign/ overseas entity for a related entity located in India, then GST would be payable under reverse charge mechanism, by the recipient of service, i.e., the related entity located in India.
6	Whether the discharge of tax liability on corporate guarantee @ 1% of such guarantee offered is to be done one time or on yearly basis or on monthly basis and when issued for a fixed term of say, five years or ten years as per tenure of the loan?	<p>Rule 28(2) of CGST Rules has been amended retrospectively with effect from 26th October 2023, vide notification No. 12/2024 -CT dated 10.07.2024.</p> <p>Therefore, it is clarified that the value of supply of the service of providing corporate guarantee to a banking company or a financial institution on behalf of a related recipient shall be one per cent of the amount guaranteed per annum or the actual consideration, whichever is higher.</p> <p>Accordingly, the value of supply of the service of providing corporate guarantee to a banking company or a financial institution on behalf of a related recipient for a particular number of years shall be one per cent of the amount of such guarantee offered multiplied by the number of years for which the said guarantee is offered or the actual consideration whichever is higher.</p> <p>In addition to the above, in cases where the corporate guarantee is provided for a period less than a year, say 6 months (half a year), then in those cases as well, the valuation may be done on proportionate basis for the said period, i.e., in this case, the value of the said supply of services may be taken as half of one per cent of the amount of such guarantee offered ($6/12 * \text{one per cent}$), or the actual consideration, whichever is higher.</p> <p>To illustrate the same, if a corporate guarantee is issued for a period of say five years, then the value of such guarantee is to be calculated at one per cent per year of the</p>

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		<p>amount of such guarantee offered, or the actual consideration, whichever is higher, i.e., the value of such corporate guarantee provided would be 5% of the amount guaranteed or the actual consideration, whichever is higher. Therefore, GST would be payable on such amount at the time of issuance of such corporate guarantee, i.e., 5% of the amount guaranteed or the actual consideration, whichever is higher.</p> <p>However, if a corporate guarantee is issued, say for a period of one year and is renewed five times, for a period of one year each, then tax would be payable on one per cent of the amount of such guarantee offered, or the actual consideration, whichever is higher, on the issue of such corporate guarantee in the first year as well as on every renewal in subsequent years.</p>
7	Whether the benefit of second proviso to sub-rule (1), which states that value declared in invoice is deemed to be the open market value in cases where full input tax credit is available to the recipient of services, is not applicable in cases falling under sub-rule (2)?	<p>Proviso has been inserted in sub-rule (2) of Rule 28 of CGST Rules, retrospectively with effect from 26th October 2023 vide notification No. 12/2024 -CT dated 10.07.2024, similar to that provided in the second proviso to sub-rule (1) of Rule 28 of CGST Rules, to provide the benefit in cases involving supply of service of corporate guarantees provided between related persons.</p> <p>Accordingly, it is clarified that in cases involving the supply of service of corporate guarantees provided between related persons, where full input tax credit is available to the recipient of services, the value declared in the invoice shall be deemed to be the value of supply of the said service.</p>
8	Whether the valuation in terms of Rule 28(2) of CGST Rules will apply to the export of the service of providing corporate guarantee between related	<p>As per the amendment done in sub-rule (2) of rule 28 of CGST Rules retrospectively w.e.f. 26th October 2023 vide notification No. 12/2024 -CT dated 10.07.2024, the</p>

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persons?	provisions of the said sub-rule will not apply in cases where the recipient of the services of providing corporate guarantee between related persons is located outside India. Accordingly, the provisions of the said sub-rule shall not apply to the export of the services of providing corporate guarantee between related persons.
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3. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

4. Difficulties, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Principal Commissioner (GST)