



RAJASTHAN AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX, KAR BHAWAN, AMBEDKAR CIRCLE,
NEAR RAJASTHAN HIGHCOURT
JAIPUR – 302005 (RAJASTHAN)



ADVANCE RULING NO. RAJ/AAR/2024-25/10

Mahipal Singh Additional Commissioner	:	Member (Central Tax)
Mahesh Kumar Gowla Additional Commissioner	:	Member (State Tax)
Name and address of the applicant	:	M/s GREEN INFRA WIND FARM ASSETS LIMITED, Account no. 09, Survey no. 66/1, Maanpura Kala Village, Tehsil-Arnod, Pratapgarh-312619, Rajasthan
GSTIN of the applicant	:	08AAECG4080H1ZM
Clause(s) of Section 97(2) of CGST/SGST Act, 2017, under which the question(s) raised	:	(c)determination of time and value of supply of goods or services or both (e)determination of the liability to pay tax on any goods or services or both
Date of Personal Hearing	:	30.04.2024
Present for the applicant	:	Adv. Narendra Singhvi, Adv. Shrishti Agarwal and Mr. Bhuvnesh Shah
Date of Ruling	:	28.06.2024

Note 1: Under Section 100 of the CGST/SGST Act, 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling, constituted under Section 99 of CGST/SGST Act, 2017, within a period of 30 days from the date of service of this order.

Note 2: At the outset, we would like to make it clear that the provisions of both the CGST Act and the SGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the SGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / SGST Act would be mentioned as being under the "GST Act".

The issue raised by M/s GREEN INFRA WIND FARM ASSETS LIMITED, Account no. 09, Survey no. 66/1, Maanpura Kala Village, Tehsil-Arnod, Pratapgarh-312619, Rajasthan (hereinafter "*the applicant*") is fit to pronounce advance ruling as it falls under the ambit of the Section 97(2)(a) given as under:

- (c)determination of time and value of supply of goods or services or both
- (e)determination of the liability to pay tax on any goods or services or both

A. SUBMISSION OF THE APPLICANT(in brief):-

1. The Applicant is a company incorporated under the Companies Act, 1956 and existing under the Companies Act, 2013, which is involved in the business of development and

operation of renewable power projects and allied activities. The Applicant is having operational capacity of 45 MW in wind energy in the state of Rajasthan. The generated electricity from plants is sold to the State Electricity Board as per the Power Purchase Agreements (PPA).

2. As a part of the shareholder activity, the overseas group companies provide corporate guarantee to banks and financial institutions in respect of loans taken by Applicant. The foreign group company does not charge any consideration from the Applicant for providing corporate guarantee.
3. The aforesaid corporate guarantee received by the Applicant remains in effect till the final settlement date of the loan contract between the Applicant and the bank/financial institution. In other words, there is no requirement of any periodic renewal of the said guarantee; rather, it is valid for a specified period of time, i.e. from the effective date of the Deed of Guarantee and the final settlement date. Sample copies of the Deeds of Guarantee entered into by the foreign group companies and the loan agreements entered into by the Applicant and the banks/financial institutions are attached herewith as Appendix-1.
4. Recently, vide Notification No. 52/2023 – Central Tax dated 26.10.2023, Rule 28 of the CGST Rules was amended and sub-rule (2) of the said Rule was inserted to provide that the value of supply in case of supply of service of corporate guarantee between related parties would be 1% of the amount of guarantee or the consideration paid, whichever is higher. In the present case, it is reiterated that no consideration has been paid by the applicant to the guarantors.
5. In view of the above, the present application is filed to ascertain whether GST under reverse charge mechanism on issuance of corporate guarantee is payable one-time or on periodical basis.
6. Additionally, without prejudice to the above, if the GST under reverse charge mechanism has to be paid on periodical basis, whether value of 1% as provided in Rule 28(2) of the CGST Rules should be divided equally amongst the years in which the guarantee is in force (i.e., the guarantee period) or whether GST under reverse charge mechanism is to be paid considering 1% as value in each year during the period in which the guarantee given is in force. For instance, if the amount guaranteed by the Applicant is Rs. 5,00,000/- and the said guarantee is valid for a period of 5 years, then the question is whether the GST under reverse charge mechanism has to be paid once on the value of 1% of Rs. 5,00,000/- or if payable every year, then 1% of 100,000/- per year (i.e., Rs. 5,00,000 divided by 5, i.e., the number of years the guarantee is valid for).
7. Further, without prejudice to the above, the Applicant also wishes to seek the Advance Ruling in respect of the fact that if GST is to be paid on periodical basis, whether GST under reverse charge mechanism is payable on 1% of total value of loan in first year, and on 1% of only remaining outstanding value of loan at beginning of each subsequent year. For instance, if the amount guaranteed by the Applicant is Rs. 5,00,000/- and the said

guarantee is valid for a period of 5 years, then the question is whether the GST has to be paid as follows:

Sr. No.	Year	Amount of Loan Remaining at the beginning of the year	GST to be paid on the value of
1.	First Year	Rs. 5,00,000/-	Rs. 5,000/-
2.	Second Year	Rs. 4,00,000/-	Rs. 4,000/-
3.	Third Year	Rs. 3,00,000/-	Rs. 3,000/-
4.	Fourth Year	Rs. 2,00,000/-	Rs. 2,000/-
5.	Fifth Year	Rs. 1,00,000/-	Rs. 1,000/-

B. INTERPRETATION AND UNDERSTANDING OF APPLICANT ON QUESTION RAISED (in brief)

1. The corporate guarantee received by the Applicant from foreign group companies in respect of loan obtained by the Applicant from a bank/financial institution is a one-time guarantee and not a continuing guarantee and hence, the same is not a continuous supply of service in terms of Section 2(33) of the CGST Act.

2. In order to analyse the present issue, reference is made to Section 129 of the Indian Contracts Act, 1872 which states that a guarantee which extends to a series of transactions, is called a "continuing guarantee". The relevant portion of the said Section along with relevant illustrations is reproduced hereunder for the sake of reference:

129. "Continuing guarantee".—A guarantee which extends to a series of transactions, is called a "continuing guarantee".(a) A, in consideration that B will employ C in collecting the rent of B's zamindari, promises B to be responsible, to the amount of 5,000 rupees, for the due collection and payment by C of those rents. This is a continuing guarantee.

(b) A guarantees payment to B, a tea-dealer, to the amount of £100, for any tea he may from time to time supply to C. B supplies C with tea to above the value of £100, and C pays B for it. Afterwards, B supplies C with tea to the value of £200. C fails to pay. The guarantee given by A was a continuing guarantee, and he is accordingly liable to B to the extent of £100.

(c) A guarantees payment to B of the price of five sacks of flour to be delivered by B to C and to be paid for in a month. B delivers five sacks to C. C pays for them. Afterwards B delivers four sacks to C, which C does not pay for. The guarantee given by A was not a continuing guarantee, and accordingly he is not liable for the price of the four sacks.

3. From the aforesaid provision and the illustrations, it is clear that to determine whether a guarantee is a continuing guarantee or not, it is relevant that there should be a "series of transactions". To understand the phrase "series of transactions", reliance is placed on the judgement of the Hon'ble Allahabad High Court in the case of **Hasan Ali v. Waliullah AIR 1930 All 730** wherein the Court observed that where the guarantee is given for a single transaction,

it would not be considered a continuing guarantee. In this case, a lease deed was executed between the lessor and lessee for a term of five years. Further, the lease rental was payable on an annual basis in two equal installments. The Court held that the transaction was a single transaction, and the nature of such guarantee was held not to be a continuing guarantee. The relevant portion of the said judgement is reproduced hereunder:

"9. In the circumstances of the case the guarantee given by the defendant-appellant did not extend to a series of transactions. The grant of lease by Syed Nabiullah to Murtaza Husain for a period of five years in consideration of the payment of a certain sum of money as rent was a single transaction. Equally, the guarantee was one transaction ensuring the due performance of the lessee during the continuance of the lease. The successive payments of rent upon each installment falling due cannot be treated as successive transactions and the guarantee with reference to the same cannot be held to be "a continuing guarantee" under Section 129, Contract Act. The above view is supported in principle by the decision of this Court in In re, Gopal Singh v. Bhawani Prasad [1888] 10 All. 531 in which it was held that assuming that the guarantee sought to be construed was a continuing guarantee within the meaning of Section 131, Contract Act, still having regard to the object for which the two guarantees were given it must be concluded that the parties intended in the one case that the lessor should be guaranteed for all rent which might become due during the currency of the lease....

12. The lease was granted once for all for a definite period of five years. The stipulations for the several payments stipulated for were definite engagements constituting one transaction. The guarantee was given by the defendant-appellant for the due fulfillment of these engagements stipulated in the lease during the whole term of its continuance. It would be unduly straining the language of Section 129 to call it a continuing guarantee.

13. We are therefore of opinion that the view taken by the lower appellate Court was justified. We accordingly dismiss this appeal with costs including in this Court fees on the higher scale.

4. In view of the above, it is submitted that where a guarantee is extended for a single transaction, it would amount to a one-time guarantee and not a continuous guarantee. Hence, it is submitted that where a guarantee is received by the Applicant from its foreign group companies regarding repayment of the loan availed by the Applicant within a specified period, it would amount to a one-time guarantee.

5. Further, it is submitted that under GST regime, the definition of "continuous supply of services" is given under Section 2(33) of the CGST Act. The said Section defines the expression "continuous supply of services" as 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 notification, specify. The relevant portion of the said Section is reproduced hereunder for the sake of ready reference:

(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 notification, specify;

6.1 In the present case, it is submitted that the corporate guarantee received by the Applicant would be extended across the period of the loan (which may last for several years) until it is repaid by the Applicant to the bank/financial institution. Such a transaction of providing corporate guarantee by the foreign group company for repayment of term loan will qualify to be one time supply of corporate guarantee since there is no renewal of the subject guarantee on an annual basis/periodical basis, but the guarantee provided once at the time of execution of deed of guarantee continues over a period of time.

6.2 Herein, it is pertinent to refer to an example of a hire purchase transaction, wherein the consumer buys the goods and makes a down payment, while the remaining balance is paid in instalments. Even in this situation, the "supply" happens once only, i.e., at the time of entering into the agreement, but the consideration is received over a period of time. Similarly, even in the present case, "supply" of corporate guarantee happens once when the Deed of Guarantee is entered into by the foreign group company, however, the obligation of guarantor (i.e., the foreign group company) continues till the guarantee period. Therefore, it is submitted that merely because the guarantee continues for a certain period of time, the same cannot constitute a continuous supply; rather, it will constitute a single event of supply.

6.3 Additionally, it is submitted that guarantee is required for giving security to lender for loan to a borrower. The Deed of Guarantee is entered into between the guarantor and the lender at the time of providing the loan to the borrower. The default in the payment by the borrower may or may not happen at any point of time during the period when the loan is outstanding. Therefore, it is submitted that while guarantee is a one-time transaction between the guarantor, lender and the borrower but it continues for a specified period of time. Therefore, it is not a continuous supply since the said supply is not provided on a continuous or recurrent basis, rather the said supply is provided only once when the guarantor enters into the contract with the lender.

6.4 Additionally, since no actual payment is made by the Applicant to the guarantors for extending corporate guarantees to them, the condition of periodic payments as envisaged under Section 2(33) of the CGST Act is not satisfied in the present case. Therefore, it is submitted that providing corporate guarantee is not a continuous supply as envisaged under the provisions of Section 2(33) of CGST Act.

6.5 Further, it is submitted that the date of execution of the deed of guarantee would be deemed to be the date of provision of corporate guarantee as per amended provision of Rule 28(2) of the CGST Rules and deemed value @ 1% of such guarantee offered is considered to be

deemed consideration from the date of the said amendment, where there is no consideration for such guarantee. It is submitted that the contract for providing corporate guarantee will come into force as and when a contract is entered into between the guarantor (i.e., the foreign group company) and the bank/financial institution. Further, it is submitted that the supply of guarantee would be completed as and when the guarantor entered into the contract of guarantee and made the promise to indemnify the bank in the event of default by the Applicant in timely repayment of loans.

6.6 Hence, in the present case, it is submitted that the supply of corporate guarantee as received by the Applicant is not a continuous supply of service since it is not provided continuously or on recurrent basis over a period of time rather it can be said that the supply would be one time supply when the guarantor entered into the guarantee contract with the bank/financial institution.

6.7 In this regard, reliance is placed on the decision of Hon'ble Mumbai Tribunal in the case of **Bajaj Allianz General Insurance Company Ltd vs. CCE, Pune 2009 (13) S.T.R. 259 (Tri. - Mumbai)** wherein the Hon'ble Tribunal in the context of insurance service held that the date of issuance of insurance policy would be the taxable event for levy of service tax. The Tribunal rejected the contention of the Department that the underlying supply of insurance service is a continuing one. This decision has been upheld by the Hon'ble Supreme Court in 2022 (64) G.S.T.L. 513 (S.C.). The relevant portion of the said judgement is reproduced below:

"15. It can be noticed from the above re-produced provision of the Insurance Act that the insurer's risk was covered only, after the premium payable is received by insurance company or a guarantee that it will be paid. This would indicate that the insurer is expected to render the services on the day when the premium is received by him. It is also to be noted that the insurance business is covered by the provisions of Insurance Act and, hence, the appellants herein has to issue policy in consonance with the provisions of Insurance Act. Appellant cannot assure the coverage of risk of an insurer, unless the premium payment is received in advance. In other words, the services rendered by the appellants as a general insurance company will take place on the date when appellant receives the insurance premium on the policy...."

6.8 Reliance is placed on the decision given in the case of **Modi-Mundipharma Pvt. Ltd. v. CCE, Meerut, 2009 TIOL 968 (T)** wherein the Hon'ble Tribunal held that there was no continuous providing of information and/or know-how; the know-how was received in 1990, prior to introduction of "intellectual property" service as a taxable service. Though royalties in the form of deferred payments were remitted subsequent to introduction of the taxable service, in installments, the taxable service cannot be considered to have been provided after introduction of the provision. The relevant portion of the said judgement is reproduced below:

"6. We have carefully considered the submissions from both sides. We also perused the agreement and the show cause notice. In the show cause notice it is alleged that the appellant was granted exclusive right to manufacture, use and sell within the territory, the preparation utilizing the know how and

*scientific and technical information and the teachings of the patents on payment of royalty. It is also alleged in the show cause notice that the appellant was receiving know-how during the disputed period. However, from the agreement it is noticed that there is no evidence of continuous providing of information, know-how in relation to the manufacture. Further, it is not disputed that the appellant was manufacturing and selling products in the brand names, Pyricontin, Diacontin, Fecontin, Metocontin, Morcontin, Nitrocontin, &Unicontin which are claimed to be registered brand names of the appellant company. In other words, they are not using the brand name of Mundipharma A.G. Switzerland. **Receipt of know-how appears to be a one time affair. There is no evidence that their know-how is supplemented by Mundipharma A.G. Switzerland. Therefore, we are in agreement with the submissions on behalf of the appellant that royalty payment in the form of deferred payment for know-how received in 1990. Whether payment for such services rendered is made in one lump sum or made in installments or based on quantum of sales by the appellant on an annual basis is not relevant to consider as to when the services were actually rendered. From the available evidences on record, we accept the submission of the learned Sr. Advocate that the services were rendered in 1990 and for the said services payments were being made periodically as provided in the agreement.***

6.9 Further, reliance is also placed on the FAQs issued by the CBIC on Banking, Insurance and Stock-Brokers Sector wherein time of supply of life insurance service has been discussed. The said FAQ has clarified that for a new policy, the time of supply would be the time of issuance of the policy. Further, in respect of renewal of the policy, the FAQ has clarified that the time of supply would be the time of issuance of renewal notice for insurance premium. The relevant FAQ is reproduced below:

"70. What would be the time of supply of life insurance services?

Insurance policies are contracts for indemnifying any loss suffered by the policyholder. The policyholder is required to pay a premium at the time of inception of the policy. Renewal premiums are required to be paid on periodical basis during the tenure of the policy. For renewal of the policies the policyholders are allowed grace period ranging from 15 days to 30 days in accordance with the IRDA (Protection of Policyholders' Interests) Regulation, 2002. The time of supply of life insurance services to the policy holders would be as under: -

(a) New Policy – At the time of issuance of the policy;

(b) Renewal of Policy – The time of issuance of renewal notice for insurance premium;

(c) Other charges including ULIP charges – At the time of levy or recovery of the charges from the policyholder."

6.10 In view of the above decisions and FAQ's, it is submitted that the time of supply of providing corporate guarantee shall be the date of issuance of corporate guarantee and that the same is not a continuous supply as there is no renewal of the said guarantee.

6.11 In view of the above, it is submitted that as the guarantor enters into the contract once for providing guarantee with the banks/financial institution and there is no renewal of the said guarantee, therefore, the rendering of corporate guarantee is not a continuous supply.

6.12 Additionally, without prejudice to the above, it is submitted that Rule 28(2) has not specified the methodology of how GST under reverse charge mechanism would be paid if GST is to be paid periodically. Rather, it has just stated that the "value of supply" of providing corporate guarantee "shall be deemed to be one per cent of the amount of such guarantee offered.....". From the wordings of the said Rule, it can be observed that the intention of the Legislature is to ensure that the value of the supply is no more than one percent of the guarantee offered. In the present case, if GST is paid on a periodic basis over the course of time when the deed of guarantee is in force, the total "value of supply" on which GST under reverse charge mechanism would be payable would be significantly higher than 1% of the guaranteed value, unless GST under reverse charge mechanism is paid cumulatively only on 1% of the value of supply over the period of the guarantee.

6.13 Therefore, it is submitted that the "value of supply" in terms of Rule 28(2) of the CGST Rules cannot be greater than 1% of the amount of guarantee involved as per the Deed of Guarantee. Further, it is pertinent to note that paying GST under reverse charge mechanism on a periodical basis wherein the "value of supply" is more than 1% of the amount of guarantee would be highly exorbitant and against the intent of Rule 28(2) of the CGST Rules. Therefore, it is submitted that GST under reverse charge mechanism should be payable on a one-time basis and not on a periodical basis.

7. Without prejudice to the above, if GST is held by your good-self to be payable on periodical basis i.e. yearly then value of loan for which guarantee is given needs to be divided equally amongst the relevant years of guarantee and GST under reverse charge mechanism is to be paid considering 1% of such divided value for each year in terms of Rule 28(2) of CGST Rules.

7.1 For determining the "value of supply" of a transaction between related persons regarding provision of corporate guarantee, it is relevant to refer to Rule 28(2) of the CGST Rules. The provision provides that the value of supply of services by a supplier to a recipient who is a related person, 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, or the actual consideration, whichever is higher. The relevant portion of the said Rule is reproduced below:

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, 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, or the actual consideration, whichever is higher.

7.2 In the present case, there is no consideration paid by the Applicant to the foreign group companies. Hence, the deemed "value of supply" of providing corporate guarantee would be the one percent of the guarantee offered.

7.3 Further, as submitted above, it is reiterated that providing corporate guarantee is not a continuous supply of service. Therefore, the "value of supply" on which GST under reverse charge mechanism is leviable should be 1% of the guaranteed amount as given in the Deed of Guarantee and should be levied at the time of issuance of such corporate guarantee.

7.4 However, if GST under reverse charge mechanism has to be paid on a periodic basis, then it is submitted that value of loan for which guarantee is given needs to be divided equally amongst the relevant years of guarantee and GST under reverse charge mechanism is to be paid considering 1% of such divided value each year in terms of Rule 28(2) of CGST Rules.

7.5 In this regard, it is reiterated that the "value of supply" in terms of Rule 28(2) of the CGST Rules cannot be greater than 1% of the amount of guarantee involved as per the Deed of Guarantee. Therefore, paying GST under reverse charge mechanism on a periodical basis wherein the "value of supply" is more than 1% of the amount of guarantee would be highly exorbitant and against the principles of judicial discipline as well as being against the intent of Rule 28(2) of the CGST Rules

7.6 Hence, it is humbly submitted that even if GST under reverse charge mechanism is to be paid on periodical basis, GST under reverse charge mechanism should not be payable on 1% of total value of loan in first year, and on 1% of remaining outstanding value of loan at beginning of each subsequent year in terms of Rule 28(2) of the CGST Rules since the same would cumulatively result in the value of supply being more than 1% of the guaranteed amount and hence, the same would be contrary to Rule 28(2) of the CGST Rules; rather, GST under reverse charge mechanism should be payable on the value of loan for which guarantee is given, which should be divided equally amongst the relevant years of guarantee and GST under reverse charge mechanism should be paid considering 1% of such divided value each year in terms of Rule 28(2) of CGST Rules.

Conclusion:

In view of the above submission, in the present case:

8.1 Corporate guarantee provided by the foreign group company in respect of loan taken by the Applicant, from a bank/financial institution is a one-time guarantee and hence, the same is not a continuous supply in terms of Section 2(33) of the CGST Act. In view of the same, GST under reverse charge mechanism would be payable only once, when the foreign group company enters into the contract for providing corporate guarantee with the banks/financial institution since there is no renewal of the said guarantee in terms of Rule 28(2) of the CGST Rules.

8.2 Without prejudice to above, even if GST under reverse charge mechanism has to be paid on a periodic basis, value of loan for which guarantee is given needs to be divided equally

amongst the relevant years of guarantee and GST under reverse charge mechanism is to be paid considering 1% of such divided value each year in terms of Rule 28(2) of CGST Rules.

8.3 Without prejudice to above, even if GST under reverse charge mechanism has to be paid on a periodic basis, GST under reverse charge mechanism is payable on 1% of total value of loan in first year, and on 1% of only remaining outstanding value of loan at beginning of each subsequent year in terms of Rule 28(2) of the CGST Rules.

C. QUESTIONS ON WHICH THE ADVANCE RULING IS SOUGHT: -

Q1. Whether GST under reverse charge mechanism on issuance of corporate guarantee is payable one-time or on periodical basis, considering that the guarantee has been issued only once and is valid for specified period of time without requirement of any periodical renewal in terms of Rule 28(2) of the CGST Rules

Q2. Without prejudice to the above, if GST under reverse charge mechanism is to be paid on periodical basis, then to ascertain the value of supply:

- a) whether value of loan for which guarantee is given needs to be divided equally amongst the relevant years of guarantee and GST under reverse charge mechanism is to be paid considering 1% of such divided value each year in terms of Rule 28(2) of CGST Rules, or
- b) whether GST under reverse charge mechanism is payable on 1% of total value of loan in first year, and on 1% of only remaining outstanding value of loan at beginning of each subsequent year in terms of Rule 28(2) of the CGST Rules?

D. PERSONAL HEARING: -

In the matter, personal hearing was granted to the applicant on 30.04.2024. Adv. Narendra Singhvi, Adv. Shrishti Agarwal and Mr. Bhuvnesh Shah Authorized Representative appeared for personal hearing. They reiterated the submission already made by them.

E. COMMENTS OF THE JURISDICTIONAL OFFICER: -

Comments received from the Deputy Commissioner State Tax Circle- Pratapgarh, Zone Bhilwara vide Sr.No. DC/PBH/2024/002 dated-15.04.2024 are as under: -

DEPARTMENTAL VIEW

9.1 A Corporate Guarantee is a guarantee, in which a corporate, agrees to be responsible for the financial obligations of, or the performance of contractual obligations by the principal debtor to the creditor, in the event the principal debtor fails to discharge his obligation to the creditor. These transactions usually include intra-group corporate guarantees amongst related parties in a group entity. Rule 28(2) inserted by Notification No. 52/2023 - Central Tax dated 26.10.2023 and Circular No. 204/16/2023-GST dated 27.10.2023 cover the case of corporate guarantee provided by a company to a bank /financial institution for providing credit facilities to another company where both the companies are related. It specifically covers the cases of provision of corporate guarantee by a holding company to a bank / financial institution for securing credit facilities for its subsidiary company.

9.2 CBIC vide Circular No. 34/8/2018-GST dated 01.03.2018 had clarified that services provided by Central or State Government to any business entity including PSUs by way of guaranteeing the loan taken from financial institutions against consideration shall be taxable.

However, an exemption was later provided in respect of such services supplied by Central /State/UT Government to their undertakings or PSUs vide S. No. 34A of Notification No. 12/2017 - Central Tax (Rate) dated 28.06.2017. Thus, by the corollary, it is construed that only aforementioned services by way of guaranteeing the loans taken by such undertakings or PSUs from banking companies and financial institutions is exempt and all other services of similar nature would be taxable. As per section 7(1)(c) read with Para 2 of Schedule I to the CGST Act, 2017, any services between related persons or distinct persons in the course or furtherance of business qualifies as a 'supply' leviable to GST even in the absence of consideration. Consequently, it is ample clear that the provision of corporate guarantee by a parent or holding company as a taxable supply even when there is no consideration for the same.

9.3 Section 140 of the Indian Contract Act, 1872 provides for the right of subrogation, which states that once the guarantor has paid off the debt of the principal debtor, he steps into the shoes of the creditor and is possessed of all the rights that a creditor has against the principal debtor. Section 126 of the Indian Contract Act, 1872 defines a "contract of guarantee" as 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". Section 127 provides that 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. On an analysis of Section 126 and Section 127 of the Indian Contract Act, it is evident that any act done or promise made for the benefit of the principal debtor (for instance, to provide a loan to the principal debtor) performed by the creditor (a bank or a financial institution), acts as sufficient consideration to the surety (guarantor) for providing the guarantee to the creditor. Section 127 makes it clear beyond doubt that consideration to guarantor (surety) for providing the guarantee to the creditor, flows from the creditor (promisor) by way of accepting to advance loan to the borrower /principal debtor (promisee) who otherwise would not be eligible for the loan. Consideration to guarantor (surety) does not flow from the principal debtor in any manner. Schedule I provides that absence of consideration flowing between related persons will not come in the way of incidence of tax. In a contract of guarantee, consideration DOES NOT flow between related persons (Surety and creditor are not related persons).

9.4 Where there is no actual consideration involved and GST is being paid on notional valuation basis, once the guarantee deed is executed by the guarantor, the activity of provision of guarantee is crystalized. It is only the operation of the guarantee that is continuous over a period. Thus, provision of corporate guarantee cannot be construed to be a continuous supply of service within the meaning of Section 2(33) of the CGST Act, 2017. The point of transfer of service is the point at which the surety binds himself to the creditor. The entire scheme of point of taxation (or) time of supply provisions under the GST law rests on the pillar that the supplier must discharge tax liability when the recipient avails the benefit of the services rendered. Inseparability is an exclusive service characteristic that renders it essentially impossible to divorce the supply or production of service from its consumption. Services, being intangible in nature cannot be stored prior to their consumption. Consumption of service implies obtaining the benefit from the service. In almost all cases, it is based on the guarantee of the surety that the loan is sanctioned to the principal debtor i.e., the principal debtor obtains the benefit of having the loan sanctioned (or obtaining loan at reduced interest rates) from the creditor, solely based on the guarantee provided by the surety. The same can be evidentially proven

considering the credit characteristics of the principal debtor. Thus, the benefit of the guarantee accrues to the principal debtor at the time of execution of the contract of guarantee by the surety with the creditor. Accordingly, the date of accrual of the benefit of the guarantee to the principal debtor and the date of execution of the contract of guarantee by the surety with the creditor would always be the same. Consequently, in such corporate guarantee arrangements, the date of execution of the contract of guarantee would be the date of provision of service and as a result the time of supply would be the date of execution of the contract of guarantee.

Corporate Guarantee by Foreign Holding Company to Indian Subsidiary Company: -

10. Where the guarantee is given by the one entity located outside India for a borrowing by related entity in India, the transaction will qualify as 'import of services' under GST. In case of import of services, Notification No. 10/2017- Integrated Tax (Rate) requires the person located in taxable territory to discharge tax liability on the same on reverse charge basis. If the subsidiary entities in India were not discharging GST under reverse charge on such guarantees till 26.10.2023, it would be essential to revisit the position and compute the value in terms of rule 28(1) and discharge GST under reverse charge. For all transactions post 26.10.2023, valuation would be as per rule 28(2) and tax liability would have to be discharged on reverse charge basis. In case of import of services of corporate guarantee, time of supply would differ from the previous propositions discussed since tax is to be discharged on reverse charge basis. 2nd proviso to Section 13(3) provides that in case of supply by associated enterprises, where the supplier of service is located outside India, the time of supply shall be the date of entry in the books of account of the recipient of supply or the date of payment, whichever is earlier. Where there is no consideration involved, the time of supply would be the date of entry in the books of account of the recipient (Indian subsidiary). If the guarantor executes the contract of guarantee without consideration, in the GST regime prior to 26.10.2023, for the benefit of a related party, GST would be payable on the basis of the valuation mechanisms as per Rule 28(1) at the time of execution of the contract. Where such contract is for the benefit of a third party (without consideration), GST would be payable on the basis of valuation mechanism as prescribed by Rule 27 at the time of execution of the contract. If the guarantor executes the contract of guarantee without consideration, for the benefit of a related party in the GST regime post 26.10.2023, GST would be payable on the basis of valuation mechanism introduced by Rule 28(2) i.e., 1% of guarantee amount at the time of execution of the contract. Where such contract is for the benefit of a third party (without consideration), GST would be payable on the basis of valuation mechanism as prescribed by Rule 27 at the time of execution of the contract.

Comments: -

Question 2.1 This advance ruling is sought to ascertain whether GST under reverse charge mechanism on issuance of corporate guarantee is payable one-time or on periodical basis, considering that the guarantee has been issued only once and is valid for specified period of time without requirement of any periodical renewal in terms of Rule 28(2) of the CGST Rules.

Comments: - In corporate guarantee arrangements, in case of import of services of corporate guarantee from foreign entity to Indian entity, time of supply as per 2nd proviso to Section 13(3) provides that in case of supply by associated enterprises, where the supplier of service is located outside India, the time of supply shall be the date of entry in the books of account of the recipient of supply or the date of payment, whichever is earlier. Where there is no

consideration involved, the time of supply would be the date of entry in the books of account of the recipient (Indian subsidiary). The GST liability is to be paid by recipient of service on onetime basis at the time of supply.

Question 2.2 Without prejudice to the above, this advance ruling is also sought to ascertain if GST under reverse charge mechanism is to be paid on periodical basis, then to ascertain the "value of supply":

- i) whether value of loan for which guarantee is given needs to be divided equally amongst the relevant years of guarantee and GST under reverse charge mechanism is to be paid considering 1% of such divided deemed value each year in terms of Rule 28(2) of CGST Rules, or
- ii) whether GST under reverse charge mechanism is payable on 1% of deemed total value of loan in first year, and on 100 of only remaining outstanding value of loan at beginning of each subsequent year in terms of Rule 28(2) of the CGST Rules?

Comments: -The main issue raised in this question is settled by the comments given to Question 2.1 that GST under reverse charge mechanism on issuance of corporate guarantee is payable one-time.

With regard to valuation it is construed that: -

(a) If the guarantor executes the contract of guarantee without consideration, in the GST regime prior to 26.10.2023, for the benefit of a related party, GST would be payable on the basis of the valuation mechanisms as per Rule 28(1) of RGST/CGST rules 2017 at the time of execution of the contract.

(b) GST under reverse charge mechanism is payable on 1% of deemed total value of loan after guarantees executed after 26-10-2023 as per rule 28(2) of RGST/CGST rules 2017 on one time basis at the time of execution of the contract, if the guarantor executes the contract of guarantee without consideration, for the benefit of a related party in the GST regime post 26.10.2023.

F. FINDINGS, ANALYSIS & CONCLUSION:

1) We have carefully examined the statement of facts, supporting documents filed by the applicant along with the application, oral and written submissions made at the time of hearing and the comments of the Jurisdictional Tax Authority. We have also considered the issues involved, on which advance ruling is sought by the applicant, and relevant facts.

2) The Applicant is a company incorporated under the Companies Act, 1956 and existing under the Companies Act, 2013, which is involved in the business of development and operation of renewable power projects and allied activities. The Applicant is having operational capacity of 45 MW in wind energy in the state of Rajasthan. The generated electricity from plants is sold to the State Electricity Board as per the Power Purchase Agreements (PPA).

3) As a part of the shareholder activity, the overseas group companies provide corporate guarantee to banks and financial institutions in respect of loans taken by Applicant. The foreign group company does not charge any consideration from the Applicant for providing corporate guarantee.

- 4) The questions on which Advance Ruling is sought by the Applicant are as under-
- (i) Whether GST under reverse charge mechanism on issuance of corporate guarantee is payable one-time or on periodical basis, considering that the guarantee has been issued only once and is valid for specified period of time without requirement of any periodical renewal in terms of Rule 28(2) of the CGST Rules
 - (ii) Without prejudice to the above, if GST under reverse charge mechanism is to be paid on periodical basis, then to ascertain the value of supply:
 - a) whether value of loan for which guarantee is given needs to be divided equally amongst the relevant years of guarantee and GST under reverse charge mechanism is to be paid considering 1% of such divided value each year in terms of Rule 28(2) of CGST Rules, or
 - b) whether GST under reverse charge mechanism is payable on 1% of total value of loan in first year, and on 1% of only remaining outstanding value of loan at beginning of each subsequent year in terms of Rule 28(2) of the CGST Rules?

5) With regard to question No.4(i) above, we find that in the instant case, the Corporate Guarantee is received by the Applicant i.e. subsidiary company from Foreign Group Companies in respect of loan taken from banks and financial institution for which Foreign Company does not charge any consideration from the Applicant leading to the conclusion that it is import of service received by the Applicant. Therefore, in order to identify the time of supply, it essential to discuss the provisions of Section 13(3) of CGST Act,2017 which are as under-

In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earlier of the following dates, namely:-

(a) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or

(b) the date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:

Provided that where it is not possible to determine the time of supply under clause (a) or clause (b), the time of supply shall be the date of entry in the books of account of the recipient of supply:

Provided further that in case of supply by associated enterprises, where the supplier of service is located outside India, the time of supply shall be the date of entry in the books of account of the recipient of supply or the date of payment, whichever is earlier.

6) Since in the instant case, as no consideration has been charged by the Associated Enterprises from the Applicant and where the supplier of service is located outside India, the time of supply shall be the date of entry in the books of account of the recipient of supply i.e.

Indian subsidiary and the GST liability is to be paid by the Applicant at one time basis at the time of supply.

7) The next question raised by the Applicant is if the GST under RCM is to be paid on periodical basis, then in order to determine the value of supply, whether the value of loan is to be divided equally amongst the relevant years of guarantee and GST is to be paid considering 1% of such divided deemed value each year or 1% of only remaining outstanding value of loan at the beginning of each subsequent year in term of Rule 28(2) of the CGST Rules 2017.

8) In this context, we find it pertinent to mention here that as it has already explained above that GST is required to be paid at one time for Import of Service, there is no question of payment of GST periodically.

9) With regard to value of Supply, we observe that

(a) If the guarantor executes the contract of guarantee without consideration, in the GST regime prior to 26.10.2023, for the benefit of a related party, GST would be payable on the basis of the valuation mechanisms as per Rule 28(1) of RGST/CGST rules 2017 at the time of execution of the contract.

(b) GST under reverse charge mechanism is payable on 1% of deemed total value of loan after guarantees executed after 26-10-2023 as per rule 28(2) of RGST/CGST rules 2017 on one time basis at the time of execution of the contract, if the guarantor executes the contract of guarantee without consideration, for the benefit of a related party in the GST regime post 26.10.2023.

In view of the above discussion, we rule as under: -

RULING

Q1. Whether GST under reverse charge mechanism on issuance of corporate guarantee is payable one-time or on periodical basis, considering that the guarantee has been issued only once and is valid for specified period of time without requirement of any periodical renewal in terms of Rule 28(2) of the CGST Rules?

Ans 1. GST under RCM is required to be paid at one time and not periodically considering that the guarantee has been issued only once and is valid for specified period of time without requirement of any periodical renewal in terms of Rule 28(2) of the CGST Rules

Q2. Without prejudice to the above, if GST under reverse charge mechanism is to be paid on periodical basis, then to ascertain the value of supply:

a) whether value of loan for which guarantee is given needs to be divided equally amongst the relevant years of guarantee and GST under reverse charge mechanism is to be paid considering 1% of such divided value each year in terms of Rule 28(2) of CGST Rules, or

b) whether GST under reverse charge mechanism is payable on 1% of total value of loan in first year, and on 1% of only remaining outstanding value of loan at beginning of each subsequent year in terms of Rule 28(2) of the CGST Rules?

Ans.2 As it has already been explained in Answer No.1 that GST is required to paid at one time and not periodically and the value of Supply shall be-

(a) If the guarantor executes the contract of guarantee without consideration, in the GST regime prior to 26.10.2023, for the benefit of a related party, GST would be payable on the basis of the valuation mechanisms as per Rule 28(1) of RGST/CGST rules 2017 at the time of execution of the contract.

(b) GST under reverse charge mechanism is payable on 1% of deemed total value of loan after guarantees executed after 26-10-2023 as per rule 28(2) of RGST/CGST rules 2017 on one time basis at the time of execution of the contract, if the guarantor executes the contract of guarantee without consideration, for the benefit of a related party in the GST regime post 26.10.2023.

MS
28/06/2024

(Mahipal Singh)
MEMBER
CENTRAL TAX



WKG
28/06/2024

(Mahesh Kumar Gowla)
MEMBER
STATE TAX

F. No. AAR/SF/2024-25/77-82

Date: 02/07/2024

SPEED POST

M/s GREEN INFRA WIND FARM ASSETS LIMITED
Account no. 09, Survey no. 66/1, Maanpura Kala Village,
Tehsil-Arnod, Pratapgarh-312619, Rajasthan

Copy to: -

1. The Chief Commissioner, CGST and Central Excise (Jaipur Zone), NCRB, Statue Circle, Jaipur, Rajasthan-302005
2. The Chief Commissioner, State Tax, KarBhawan, Bhawani Singh Road, Ambedkar Circle, C-Scheme, Jaipur-302005.
3. The Commissioner, CGST and Central Excise Commissionerate, UDAIPUR, Rajasthan.
4. Deputy commissioner State Tax Circle- Pratapgarh, Zone Bhilwara Divisional KarBhawan
5. Assistant Commissioner, CGST Division-G, Chittorgarh, Rajasthan

O/C