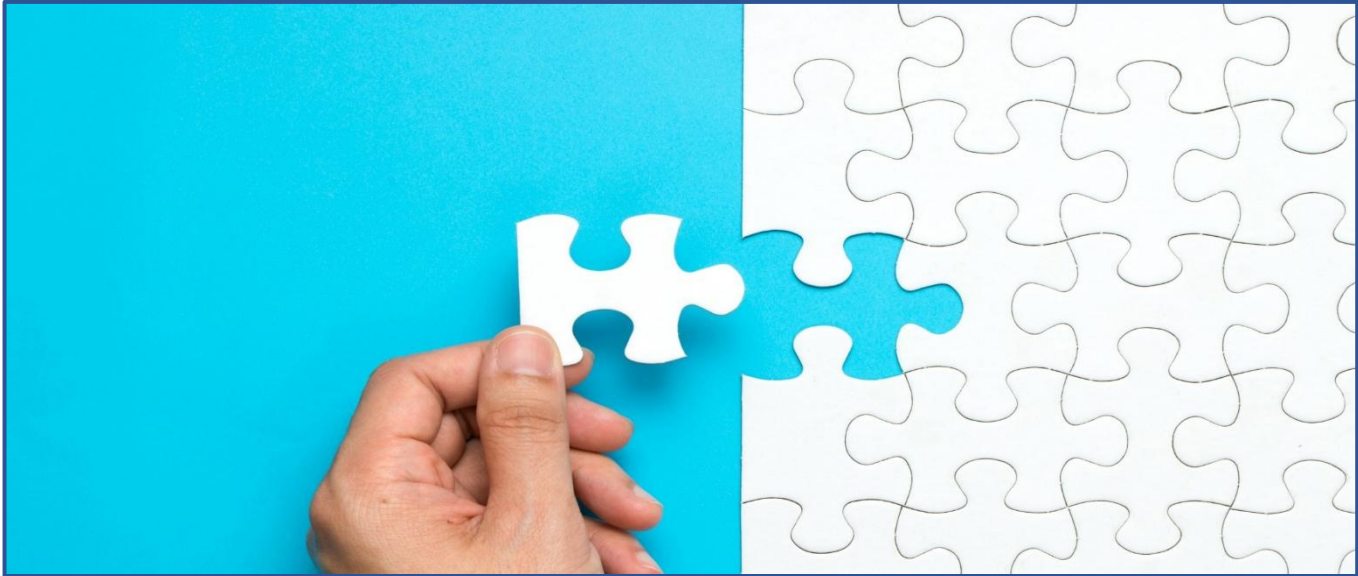


# NEWS ALERT

11 September 2026



## **Corporate guarantees held as taxable under the GST law; however retrospective taxation and mandatory higher deemed valuation fail constitutional scrutiny**

- Torrent Power Ltd v. Union of India and Ors<sup>1</sup>

The taxpayer had furnished corporate guarantees in favour of banks and financial institutions to facilitate loans and credit facilities for its subsidiary companies. The taxpayer had not charged any commission or fees for such corporate guarantee.

Relying on Rule 28(2) of the CGST Rules, 2017, the GST Authorities sought to levy GST retrospectively by deeming the value of such corporate guarantee at 1% of the guaranteed amount.

The taxpayer challenged the taxability of the corporate guarantee and the constitutional validity of Rule 28 before the Gujarat High Court ('HC'). The key observations of the HC are given below.

### 1. Whether a Corporate guarantee constitutes a taxable supply

The taxpayer contended that a corporate guarantee was merely a contingent obligation and not a supply under Section 7 of the CGST Act. Since no consideration was charged and no independent service was provided to the subsidiary, the transaction could not be taxed merely because it was undertaken between related persons.

The HC held that furnishing a corporate guarantee created a legally enforceable obligation and provided a direct economic benefit to the subsidiary. Accordingly, it

<sup>1</sup> R/SPECIAL CIVIL APPLICATION NO. 12175 of 2024 and others

constituted a taxable supply under Section 7 of the CGST Act. Further, the corporate guarantee represented an undertaking to discharge the subsidiary's liability which squarely fell within Entry 5(e) of Schedule II of the CGST Act, classifying it as supply of services.

## 2. Whether a Corporate Guarantee is in the course or furtherance of Business

The taxpayer submitted that it was not in the business of providing guarantees and that issuance of guarantees was merely a shareholder or investment protection activity intended to safeguard investments in subsidiaries. The HC affirmed the contentions of the Revenue and held that the activity of corporate guarantee was ancillary and incidental to its commercial operations. Supporting a subsidiary's borrowing requirements directly affected the parent's business interests and therefore satisfied the statutory business test.

## 3. Whether VAT jurisprudence applies to the GST regime

The taxpayer argued that the guarantee was furnished to the lender bank and therefore any benefit accrued to the bank and not the subsidiary. Consequently, the subsidiary could not be regarded as a recipient under Section 2(93).

The HC agreeing with the Revenue held that the supply ultimately benefited the subsidiary. Since the guarantee facilitated financing for the subsidiary's business activities, the subsidiary qualified as the recipient of the service under Section 2(93).

## 4. Corporate Guarantee as an Actionable claim

The taxpayer contended that a corporate guarantee created a contingent debt and therefore, amounted to an actionable claim, which is not subject to GST as per Schedule III of the CGST Act.

The HC distinguished a corporate guarantee from an actionable claim on the basis that an actionable claim represents a direct, primary right to claim a payment or a debt. On the other hand, the HC observed that a corporate guarantee stems out of a secondary, contingent liability emanating from a tripartite agreement that triggers on account of a default by the principal debtor. The HC further observed that a corporate guarantee is a specific, non-transferable financial assurance provided to a lender. Thus, the HC ruled that although a corporate guarantee is contingent in nature, it does not strictly fall under an actionable claim. Consequently, it was not an actionable claim and remained outside the exclusion provided by Schedule III.

## 5. Validity of Rule 28(2) and Section 15(4)

The taxpayer challenged Rule 28(2) and Section 15(4), contending that a valuation provision could not create a taxable event. The taxpayer argued that Rule 28(2) effectively treated every corporate guarantee as taxable and therefore traveled beyond the statute. The taxpayer further argued that mandatory 1% valuation was arbitrary and disconnected from commercial reality. Adopting valuation of 1% of guarantee amount even in cases where the commission amount is significantly lower was unreasonable and unconstitutional.

The HC upheld the constitutional validity of Rule 28(2), Section 15(4) and the deemed valuation of 1% of such Guarantee value. However, it found the expression 'whichever is higher' arbitrary, compelling the taxpayer to adopt valuation of 1% even where the actual consideration was lower. The HC therefore, read down the phrase 'whichever is higher' as violative of the Constitution. Therefore, in cases where actual consideration is charged by the supplier, deeming valuation at 1% shall not apply. However, the authorities may continue to apply the deeming valuation of 1% where no commission is charged for such service.

#### 6. Retrospective Application of Rule 28(2)

The taxpayer argued that since Rule 28(2) was introduced only from 26 October 2023, it could not be applied to guarantees executed before such date and such application imposed a fresh tax burden on past transactions.

The HC agreed to the argument put forth by the taxpayer and held that GST could not be imposed for periods prior to 26 October 2023 since such levy would be harsh and unfair. However, where guarantees continued beyond 26 October 2023, GST could be levied prospectively from that date onwards.

Accordingly, HC sustained the levy of GST on corporate guarantees. However, the HC protected the taxpayer against arbitrary valuation and retrospective taxation of such transactions.

***JMP Insights*** - *The ruling provides significant relief to taxpayers by reading down the expression 'whichever is higher' in Rule 28(2), holding that taxpayers cannot be compelled to adopt a deemed value of 1% of the guaranteed amount where the actual guarantee commission is lower.*

*A significant takeaway is HC's expansive interpretation of the expression 'in the course or furtherance of business'. The HC considered the support provided by a parent entity to its subsidiary as a business activity, since it advances the commercial interests of the group. This reasoning could potentially influence the GST treatment of other intra-group support arrangements where one entity provides economic benefits to another without charging consideration.*

*The judgment also clarifies that the subsidiary is the recipient of the service, as the subsidiary is the ultimate beneficiary of the enhanced borrowing capacity and credit support.*

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Should you wish to discuss any of the above issues in detail or understand the applicability to your specific situation, please feel free to reach out to us on [coe@jmpadvisors.in](mailto:coe@jmpadvisors.in).

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