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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 2966/2024

**STERLITE POWER TRANSMISSION LIMITED
& ORS.**

..... Petitioners

Through: Mr. Balbir Singh, Senior Advocate
with Mr. Kumar Visalaksh, Mr. Udit
Jain & Mr. Ajitesh Dayal Singh,
Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Asheesh Jain, CGSC with Mr.
Gaurav Kumar, Ms. Ria Khanna with
Mr. Aakash Meena, GP for R-1.
Mr. Atul Tripathi, Senior Standing
Counsel CBIC with Mr. V. K. Attri,
Advocate for R-2, 3 & 4.

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

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28.02.2024

CM APPL. 12197/2024 (Exemption)

Allowed, subject to all just exceptions.

Application stands disposed of.

W.P.(C) 2966/2024 & CM APPL. 12196/2024

1. Petitioner seeks a declaration that the activity of the holding company providing a Corporate Guarantee to a subsidiary is not in the nature of supply of services taxable under Section 9 of the *Central Goods & Service Tax Act, 2017*.

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2. Petitioner also *inter alia*, impugns Circular dated 27.10.2023, whereby a clarification has been issued by the Central Board of Indirect Taxes & Customs pertaining to taxability of Personal Guarantee and Corporate Guarantee in GST.

3. Learned Senior Counsel for the petitioner submits that in the case of group company, the CESTAT Chennai in the case titled *M/s Sterlite Industries India Ltd vs Commissioner of GST & Central Excise 2019 (2) TMI 1249* had held that the provision of only a Corporate Guarantee to an associate company is like an in-house guarantee and does not amount to providing any services.

4. Learned Senior Counsel further refers to the order dated 17.03.2023 of the Supreme Court in Civil Appeal (Diary No). 5258/2023 titled *Commissioner of CGST & Central Excise Vs. M/s. Edelweiss Financial Services Ltd* to contend that issuance of Corporate Guarantee to a group company without consideration would not fall within banking and other financial services and was thus held to be non-taxable service.

5. Learned counsel submits that by Notification dated 26.10.2023, Rule 28 of the Central Goods & Service Tax Act, 2017 has been amended. However, by the impugned Circular dated 27.10.2023 without amending the rule or the statute, the provision of Corporate Guarantee to associate has been made taxable and the value has been provided as 1% of the guarantee.



6. Learned counsel submits that the summons have been received under Section 70 of the CGST Act, 2017, requiring the petitioner to provide all information with regard to Corporate Guarantees provided till date. He submits that in response thereto, the Officers of the petitioner have already appeared and provided the requisite information.

7. Learned Senior Counsel further submits that the provision of Corporate Guarantee is in the nature of a contingent contract which is not enforceable till the guarantee is enforced by the entity to which the guarantee is provided. He further submits that the value of enforcement is not dependent on the value of the guarantee and it is only where the guarantee is enforced that the issue of service may arise, if at all and as such fixing a value at 1% of the Corporate Guarantee provided would put onerous burden on the entity providing the Corporate Guarantee.

8. Issue notice.

9. Notice accepted by the learned counsel appearing for the respondent, who prays time to file counter affidavit.

10. Let the same be filed within six weeks. Rejoinder within four weeks thereafter.

11. In the meantime, it is directed that no coercive action shall be taken against the petitioner in case a final assessment order is passed or a demand is created.

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12. List on 08.07.2024.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

FEBRUARY 28, 2024

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