

No. CCT/26-4/2023-24/G/2559

ANNEXURE

Subject: Clarification on issues pertaining to
 taxability of personal guarantee and
 corporate guarantee in GST-regarding.

Circular No. 204/16/2023-GST

F. No. 20/06/22/2023-GST-CBEC

Ref.: Circular No. 204/16/2023-GST dated 27th October,
 2023 issued under the Central Goods and
 Services Tax Act, 2017 by the GST Policy Wing,
 Central Board of Indirect Taxes and Customs,
 Department of Revenue, Ministry of Finance,
 Government of India, New Delhi.

Government of India
 Ministry of Finance
 Department of Revenue
 Central Board of Indirect Taxes and Customs
 GST Policy Wing
 New Delhi, Dated the 27th October, 2023.

To,

Circular

(No. 13/2023-24-GST)

The GST Policy Wing, Central Board of Indirect
 Taxes and Customs, Department of Revenue,
 Ministry of Finance, Government of India, New Delhi
 has issued the above referred Circular.

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 issues pertaining to
 taxability of personal guarantee and
 corporate guarantee in GST-regarding.

For the uniformity in implementation and in
 exercise of the powers conferred under Section 168
 of the Goa Goods and Services Tax Act, 2017 (Goa
 Act 4 of 2017) it is hereby directed that the Said
 Circular issued by the GST Policy Wing, Central
 Board of Indirect Taxes and Customs, Department
 of Revenue, Ministry of Finance, Government of
 India shall be applicable, *mutatis mutandis*, in
 implementation of the Goa Goods and Services Tax
 Act, 2017 (Goa Act 4 of 2017). A copy of the above
 referred Circular is attached herewith as Annexure.

Representations have been received from the
 trade and field formations seeking clarification on
 certain issues with respect to taxability of activity
 of providing personal bank guarantee by Directors
 to banks for securing credit facilities for the
 company. Similarly, clarifications are being sought
 with respect to taxability and valuation of the
 activity of providing corporate guarantee by a
 related person to banks/financial institutions for
 another related person, as well as by a holding
 company in order to secure credit facilities for its
 subsidiary company.

Difficulty, if any, in implementation of this
 Circular may please be brought to the notice of the
 undersigned.

2. 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:

Given under the seal of this Office.

Vishant S. N. Gaunekar, Commissioner of State
 Taxes, Goa.

Panaji, 30th October, 2023.

Sr. No.	Issue	Clarification
1	2	3
1.	Whether the activity of providing personal guarantee by the Director of a company to the bank/financial institutions for sanctioning of credit facilities to the said company without any consideration will be treated as a supply of service or not and whether the same will attract GST or not	As per Explanation (a) to Section 15 of CGST Act, the director and the company are to be treated as related persons. As per Clause (c) of sub-section (1) of Section 7 of the CGST Act, 2017, read with S. No. 2 of Schedule I of CGST Act, supply of goods or services or both between related persons, when made in the course or furtherance of business, shall be treated as supply even if made without consideration. Accordingly, the activity of providing personal guarantee by the Director to the banks/financial institutions for securing credit facilities for their companies is to be treated as a supply of service, even when made without consideration.

1	2	3
		Rule 28 of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as “CGST Rules”) prescribes the method for determining the value of the supply of goods or services or both between related parties, other than where the supply is made through an agent. In terms of Rule 28 of CGST Rules, the taxable value of such supply of service shall be the open market value of such supply. RBI has provided guidelines for obtaining personal guarantee of promoters, directors and other managerial personnel of the borrowing concerns vide Para 2.2.9 of its Circular No. RBI/2021-22/121 dated 9th November, 2021, which is reproduced below: <i>“2.2.9 Guidelines relating to obtaining of personal guarantees of promoters, directors, other managerial personnel, and shareholders of borrowing concerns.</i> <i>Banks should take personal guarantees of promoters, directors, other managerial personnel or major shareholders for the credit facilities granted to corporates, public or private, only when absolutely warranted after a careful examination of the circumstances of the case and not as a matter of course. In order to identify the circumstances under which the guarantee may or may not be considered necessary, banks should be guided by the following broad considerations:</i> <i>.....</i> <i>C. Worth of the guarantors, payment of guarantee commission, etc.</i> <i>Where personal guarantees of directors are warranted, they should bear reasonable proportion to the estimated worth of the person. The system of obtaining guarantees should not be used by the directors and other managerial personnel as a source of income from the company. Banks should obtain an undertaking from the borrowing company as well as the guarantors that no consideration whether by way of commission, brokerage fees or any other form, would be paid by the former or received by the latter, directly or indirectly. This requirement should be incorporated in the bank’s terms and conditions for sanctioning of credit limits. During the periodic inspections, the bank’s inspectors should verify that this stipulation has been complied with. There may, however, be exceptional cases where payment of remuneration. may be permitted e.g. where assisted concerns are not doing well and the existing guarantors are no longer connected with the management but continuance of their</i>

1	2	3
		<i>guarantees is considered essential because the new management's guarantee is either not available or is found inadequate.</i> " Accordingly, as per mandate provided by RBI in terms of Para 2.2.9 (C) of RBI's Circular No. RBI/ /2021-22/121 dated 9th November, 2021, no consideration by way of commission, brokerage fees or any other form, can be paid to the director by the company, directly or indirectly, in lieu of providing personal guarantee to the bank for borrowing credit limits. As such, when no consideration can be paid for the said transaction by the company to the director in any form, directly or indirectly, as per RBI mandate, there is no question of such supply/transaction having any openmarket value. Accordingly, the open market value of the said transaction/supply may be treated as zero and therefore, taxable value of such supply may be treated as zero. In such a scenario, no tax is payable on such supply of service by the director to the company. There may, however, be cases where the director, who had provided the guarantee, is no longer connected with the management but continuance of his guarantee is considered essential because the new management's guarantee is either not available or is found inadequate, or there may be other exceptional cases where the promoters, existing directors, other managerial personnel, and shareholders of borrowing concerns are paid remuneration/ /consideration in any manner, directly or indirectly. In all these cases, the taxable value of such supply of service shall be the remuneration/ /consideration provided to such a person/ /guarantor by the company, directly or indirectly. Where the corporate guarantee is provided by a company to the bank/financial institutions for providing credit facilities to the other company, where both the companies are related, the activity is to be treated as a supply of service between related parties as per provisions of Schedule I of CGST Act, even when made without any consideration.
2.	Whether the activity of providing corporate guarantee by a person on behalf of another related person, or by the holding company for sanction of credit facilities to its subsidiary company, to the bank/financial institutions, even when made without any consideration will be treated as a taxable supply of service or not, and if taxable, what would be the valuation of such supply of services	

1	2	3
		Similarly, where the corporate guarantee is provided by a holding company, for its subsidiary company, those two entities also fall under the category of 'related persons'. Hence the activity of providing corporate guarantee by a holding company to the bank/financial institutions for securing credit facilities for its subsidiary company, even when made without any consideration, is also to be treated as a supply of service by holding company to the subsidiary company, being a related person, as per provisions of Schedule I of CGST Act. In respect of such supply of services by a person to another related person or by a holding company to a subsidiary company, in form of providing corporate guarantee on their behalf to a bank/financial institution, the taxable value will be determined as per Rule 28 of CGST Rules. Considering different practices being followed by the field formations and taxpayers in determining such taxable value, in order to provide uniformity in practices and ease of implementation, sub-rule (2) has been inserted in Rule 28 of CGST Rules vide Notification No. 52/2023 dated 26-10-2023, for determining the taxable value of such supply of services between related persons in respect of providing corporate guarantee. Accordingly, consequent to insertion of the said sub-rule in Rule 28 of CGST Rules, in all such cases of supply of services by a related person to another person, or by a holding company to a subsidiary company, in the form of providing corporate guarantee on their behalf to a bank/financial institution, the taxable value of such supply of services, will henceforth be determined as per the provisions of the sub-rule (2) of Rule 28 of CGST Rules, irrespective of whether full ITC is available to the recipient of services or not. It is clarified that the sub-rule (2) of Rule 28 shall not apply in respect of the activity of providing personal guarantee by the Director to the banks/financial institutions for securing credit facilities for their companies and the same shall be valued in the manner provided in S. No. (1) above.

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.

Sd/- (Sanjay Mangal), Principal Commissioner (GST).

www.goaprintingpress.gov.in

Published and Printed by the Director, Printing & Stationery,
 Government Printing Press,
 Mahatma Gandhi Road, Panaji-Goa 403 001.

PRICE—Rs. 10.00