CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 61785 of 2018

[Arising out of Order-in-Appeal No. 111/ST/CGST-APPEAL-GURUGRAM/SG/2018-19 dated 30.08.2018 passed by the Commissioner (Appeals), CGST-Gurugram]

M/s Enkay (India) Rubber Co Pvt Ltd **……Appellant**
1st Milestone, Basai Road,
Gurugram 122001, Haryana

VERSUS

Commissioner of Central Excise, Goods and Service Tax, Gurugram-I **……Respondent**
Plot No. 36-37, Sector 32,
Gurugram 122001, Haryana

APPEARANCE:

Mr. B.L. Yadav, Consultant for the Appellant

Mr. Kanish Saini, Authorized Representative for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 61468/2025

DATE OF HEARING: 01.10.2025
DATE OF DECISION: 07.10.2025

S. S. GARG:

The present appeal is directed against impugned order dated 30.08.2018 passed by the Commissioner (Appeals), CGST-Gurugram, whereby the learned Commissioner (Appeals) has rejected the appeal of the appellant and upheld the Order-in-Original.

2. Briefly stated facts of the present case are that the appellant is registered with the Service Tax department. During the course of audit of the records of the appellant for the FY 2012-13 to 2014-15, it was noticed that the appellant had given Corporate Guarantee to M/s Kotak Mahindra Bank Limited and M/s HDFC Bank Limited for credit/overdraft facility sanctioned to their associated enterprises i.e. M/s Enkay HWS India Pvt Ltd and M/s Enkay Brand Distribution Pvt Ltd, but had not paid applicable service tax. On these allegations, a show cause notice dated 14.09.2016 was issued to the appellant proposing to demand service tax amounting to Rs.3,31,145/- on account of 'Banking and Other Financial Services' for Corporate Guarantee given by the appellant to various banks/financial institutions on behalf of their fellow subsidiary companies for their loan/overdraft facility, along with interest and penalty. After following the due process, the Assistant Commissioner, vide the Order-in-Original dated 19.03.2018, confirmed the said demand along with interest and penalty. Being aggrieved by the said Order-in-Original, the appellant filed appeal before the Commissioner (Appeals), who has rejected their appeal and upheld the Order-in-Original. Hence, the present appeal.

3. Heard both the parties and perused the material on record.

4. The learned Consultant for the appellant submits that the impugned order is not sustainable in law as the same has been passed by ignoring the precedent decisions on the identical issue.

4.1 He further submits that the impugned order is not sustainable in law because the appellant has only provided Corporate Guarantee with no consideration for its associated enterprises. He further submits that the service tax is leviable on value of the service and when there is no value of the service, no service tax is payable, therefore, the activity of providing corporate guarantee without consideration is not taxable service and no amount of service tax is payable.

4.2 He further refers to the definition of service as provided in Section 65(44) of the Finance Act and also refers to Section 67 of the Finance Act which deals with the consideration for rendering the services.

4.3 He further submits that the issue involved in the instant case is no more *res integra* and has been decided in the following cases:

- **CCE & CGST vs. M/s Edelweiss Financial Services Ltd – 2023 (4) TMI 170 - SC**
- **Huawei Telecommunication India Co Pvt Ltd vs. CCE & ST, Rohtak/Gurgaon-I – 2025 (5) TMI 155- CESTAT Chandigarh**
- **Principal Commissioner of Central Tax, New Delhi vs. M/s Sindhu Trade Linkers – 2023 (11) TMI 890 – CESTAT New Delhi**

4.4 He further submits that if an activity is not for consideration, it is no service and service tax is not leviable on it. In this regard, he relies on the decision of the Tribunal in the case of **Sri Chaitanya Educational Committee vs. CCE & ST, Guntur – 2016 (41) STR 241 (Tri. Bang.)** wherein the Tribunal has held that service provided

free without consideration, it does not attract any service tax liability. He also relies on the decision of the Tribunal in the case of **Infrastructure Leasing and Financial Services Ltd vs. CST, Mumbai-I – 2015 (37) STR 487 (Tri. Mumbai)** wherein it has been held that non-banking financial institution issuing corporate guarantees to various corporate entities to secure their advance and for issuing such guarantees is not a banking company and service tax is payable only on the issuance of bank guarantee issued by the bank, and that admittedly, the guarantees issued by the applicant does not have any party as a bank.

5. On the other hand, the learned Authorized Representative for the Revenue reiterates the findings of the impugned order.

6. After considering the submissions made by both the parties and perusal of the material on record as well as decisions relied upon by the appellant, we find that the only issue involved in the present case is whether the Corporate Guarantee given by the appellant for its associated enterprises without consideration is subject to service tax or not.

7. We find that this issue is no longer *res integra* and has been decided by the Hon'ble Apex Court as well as by various benches of the Tribunal.

7.1 In the case of **M/s Huawei Telecommunication India Co Pvt Ltd** (supra) this Tribunal has held as under:

> "**25.** Coming to the issue, at question No. (iv) as at Para 19 above, as to whether the appellants were required to

pay service tax of Rs 10,69,70,856/- plus Rs 3,96,38,520/- along with interest and penalty on the reverse charge mechanism, on the Banking and other Financial Services, for the Corporate Guarantee given by the Overseas Associate Enterprises to Banks, during the period 2010-11 to 2014-15, on behalf of appellant, we find the adjudicating authority finds that the term banking and other financial services in Section 65(12) encompasses various services including bank guarantee; Function of bank guarantee is akin to corporate guarantee; the activity/transaction involves benefits to Huawei and in the absence of this activity/transaction; it would have incurred certain costs. He submits that the Adjudicating authority incorrectly relies on the Safe Harbour Rules for determining the value of consideration as 2% of the guaranteed amount

25.1. Learned Counsel for the appellants submits that the issue is no longer res integra; there is neither a service nor any consideration involved in cases where corporate guarantee is provided by the associated enterprises to the banks for working capital related loans required by the Assessee; Hon'ble Tribunal in a series of judgments held that no Service Tax under the category of banking and other financial services can be demanded on Corporate Guarantee provided by Associated Enterprise. We find that Tribunal in the case of DLF Home Developers Ltd [2023 SCC Online CESTAT 962] held that:

> **6.** Coming to the second issue, we find that the Department has not adduced any evidence to the effect that the appellants have received any consideration in providing bank guarantees. This Bench in the case of appellants group company have decided the issue vide Final Order No.60890/2019 dated 21.10.2019 in their favour. The Bench observed that:
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> > *"**4.** It is an admitted fact that the appellant has not received any consideration from either from the financial institutions or from their associates for providing corporate guarantee, in that circumstances, no service tax is payable by the appellant. Moreover, the demand raised in the show cause notices are on the basis of assumption and presumption presuming that their associates have*

received the loan facilities from the financial institution at lower rate, therefore, the differential amount of interest is consideration, but there is no such evidence produced by the revenue on that behalf. In that circumstances, we hold that the appellant is not liable to pay any service tax on corporate guarantee provided by the appellant to various banks/financial institutions on behalf of their holding company/associate enterprises for their loan or over draft facility under Banking and Financial Institutions after or before 01.07.2012.

5. *In view of this, we set-aside the impugned order qua demand of service tax on corporate guarantee provided by the appellant. We further take note of the fact that for the charges leviable on account of prime location charges etc., the appellant has already paid service tax along with interest before issuance of the show cause notice. Therefore, we hold that in terms of Section 73(3) of the act, the proceedings were not required to be initiated against the appellant, therefore, penalty imposed on the appellant is set aside. Accordingly, the impugned order is set aside, the appeal is allowed with consequential relief.*

7. The Co-ordinate Bench, Mumbai in the case of Commissioner of CGST Vs Edelweiss Financial Services Ltd. (Final Order No. A/85986/2022 dated 16.02.2022) held that:

*"**8.** The criticality of „consideration" for determination of service, as defined in section 65B(44) of Finance Act, 1994, for the disputed period after introduction of "negative list" regime of taxation has been rightly construed by the adjudicating authority. Any activity must, for the purpose of taxability under Finance Act, 1994, not only, in relation to another, reveal a "provider", but also the flow of "consideration" for rendering of the service. In the absence of any of these two elements, taxability under section 66B of Finance Act, 1994 will not arise. It is clear that there is no*

> *consideration insofar as „corporate guarantee" issued by respondent on behalf of their subsidiary companies is concerned."*
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> **25.2.** We find that the ratio of the above case was followed in Jindal Stainless Steel; Sterlite Industries India Ltd. and Sowar Pvt Ltd (all supra) holding that Extending Corporate Guarantee is not a taxable service. We also find that there is no provision under the Finance Act, 1944 to impose any notional value on services. In view of the same, we find that the issue is decided in favour of the appellants."

7.2. In the case of **Principal Commissioner of Central Tax vs. M/s Sindhu Trade Linkers** (supra), New Delhi bench of the Tribunal, after following the judgment of Hon'ble Supreme Court in Commr of CE & CGST vs. M/s Edelweiss Financial Services Ltd (supra), has held that the act of providing corporate guarantees for the subsidiary units for grant of loan from financial institution without any consideration is not chargeable to service tax.

8. By following the ratios of the above cited decisions, we are of the considered opinion that the impugned order is not sustainable in law, therefore, we set aside the same by allowing the appeal of the appellant with consequential relief, if any, as per law.

(Order pronounced in the open court on 07.10.2025)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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