

Prize money received from horse-race clubs not liable to GST

The Hon'ble AAAR, Maharashtra in ***Re: Vijay Baburao Shirke [Order No. MAH/AAAR/RS-SK/23/2020-21 dated June 4, 2020]*** set aside AAR order to hold that receipt of prize money from horse-race clubs (in the event horse wins the race) would not be subject to GST.

Facts:

M/s. Vijay Baburao Shirke ("**Respondent**") is a proprietorship firm and owns horses and is engaged in participation of horse races organized by the Royal Western India Turf Club ("**RWITC**") located in Mumbai/Pune and also by the other race clubs in India.

The RWITC conducts horse races at Mumbai & Pune as per the schedule prescribed in its yearly prospectus and invites race horse owners to participate in the race. The prospectus contains certain terms and conditions, which are applicable to all the race horse owners, who intend to participate in the race. One of the conditions is that the willing race horse owners, who intend to participate in the race, has to pay Entry Fees to RWITC. Apart from this, there are also certain conditions, viz. certificates in respect of the health of the participating horses from the regulatory or health authorities, which need to be satisfied for participating in the race. The Entry Fees are paid by the horse owners in order to get their horses participate in the race. The RWITC charged and paid service tax on the Entry Fees recovered from the horse owners and sponsorship amount. The prize money/stakes, to be given to the Owners/Trainers/Jockeys, is as per the designated percentage in the yearly prospectus, which is pooled from the Entry Fees and the sponsored amounts received by the RWITC from the sponsors. Once the race is completed and the result is declared, the prize money/stakes is credited to the account of Owners/Trainers/Jockeys.

Respondent has been paying GST on the prize money received in such competitions w.e.f. from July 1, 2017. He has also availed Input Tax Credit ("**ITC**") of the GST paid on various charges incurred by him in relation to the training of the horses or the entry fee paid by

him to RWITC. He was of the view that it is an output service. However, certain competitors were not paying GST and to avoid dispute with the GST authorities in future, Respondent made an advance ruling application dated April 23, 2019 before the Maharashtra Authority for Advance Ruling, on the issue of whether receipt of prize money from horse race conducting entities, in the event where the horse owned by the Respondent wins the race, would amount to 'supply' under Section 7 of the Central Goods and Service Tax Act, 2017 ("**CGST Act**") or not and consequently, liable to GST or not. The AAR, vide their order no. GST-ARA-12/2019-20/B-106 dated October 4, 2019, held that prize money received in horse races was covered under 'supply' under Section 7 of CGST Act, and accordingly would be subject to GST at rate of 18 % (CGST @ 9% + SGST @ 9%).

Issue:

- Whether the impugned advance ruling, being allegedly obtained by the Respondent by suppressing the material facts regarding the investigation initiated against him by the Directorate General of Goods and Service Tax Intelligence, Pune Zonal Unit on the same issues as those raised in the subject advance ruling application, is sustainable in terms of proviso to Section 98(2) read with Section 104 of the CGST Act or not?
- Whether prize money received from the horse racing clubs for winning the horse race competition is a taxable supply or not.
- Whether the Respondent would be eligible to avail ITC in respect of the expenses incurred on the entry fee paid to the horse racing clubs, training charges paid to the trainers, amount paid to the jockeys, etc.

Held:

The Hon'ble AAAR, Maharashtra in ***Order No. MAH/AAAR/RS-SK/23/2020-21 dated June 4, 2020*** held as under:

- The investigation proceedings were initiated under the Service Tax and not under the CGST Act. Therefore, Section 98(2) of the CGST Act is not attracted as there was no proceeding pending under the provisions of the CGST Act.
- By applying the definition of “Supply” to the facts and circumstances of the case at hand, it is observed that no service has been provided by the Respondent to the racing clubs for the prize money/ stakes received from such clubs, as it is not in dispute that not all horse owners, who agree to provide their horses to such race organising clubs, get this consideration in the form of the said prize money/stake from such clubs. Only those horse owners receive these considerations whose horses win the races organized by such clubs. Thus, there is no direct nexus between the activities carried out by the horse owners, viz. by providing thoroughbred horses to race clubs for organising horse race events, and the prize money received by such horse owners. The Respondent has himself contended in their submissions that for the occurrence of any taxable event, there must be direct and immediate link between the supply made and the consideration received. However, direct and immediate link between the supply and consideration is absolutely absent in the present situation. As such, it would not be construed as taxable supply /events.
- The Respondent had contended that it provides service to RWITC and that the contract is a conditional contract and therefore there is supply.. But not every contract becomes taxable under the CGST law. Every supply is a contract but not every contract is a supply. In order to levy tax under the CGST Act there should be supply of goods/services and there should be consideration. As discussed above there is no service provided in the present case and therefore the argument of the Respondent is not acceptable.
- Since there is no taxable supply by the Respondent in the present arrangement, there is no question of availment of ITC as per the provisions of Section 17(2) of the CGST

Act. ITC is restricted to the portion of taxable supplies only. Therefore, in the present case, the Respondent will not be eligible to avail ITC in respect of any input supply including the entry fee, the training charges paid to the horse trainers and the charges paid to the jockeys, etc.

- Therefore, prize money/ stakes will not be subject to GST in the absence of any supply and the Respondent is also not entitled to avail any ITC in accordance with the provisions of Section 17(2) of the CGST Act.

Our comment:

The above judgment having persuasive value in similar kind of situations wherein prize money won at various competitions including played through apps like Cricketbuzz apps, Dream11, MPL etc. as no services are provided by the player to the owner of the app for receiving consideration in the form of prize money by the player. Further, only those players receive the prize money who wins the game. Thus, there is no direct link between the supply and consideration therefore, GST may not be charged on the prize money.

Relevant provisions:

Section 7(1)(a) of the CGST Act

“7. Scope of supply

(1) For the purposes of this Act, the expression “supply” includes—

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;”

Section 17(2) of the CGST Act

“(2) where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero- rated supplies under this act or the Integrated Goods and Services Tax Act and partly for effecting exempted supplies

under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero rated supplies.”

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