

GST-ADVANCE RULINGS

CA. C. B. Thakar, CA. Madhav Kalani

Case: Mr. VIJAY BABURAO SHIRKE [2020-10-TMI -48] (MAHARASHTRA AAAR)

The assessee is a proprietorship firm, owns horses and is engaged in participation of horse races organized by the Royal Western India Turf Club (RWITC). They sought advance ruling as to whether GST is leviable on the prize money received on winning the horse race and the AAR held in affirmative holding that the activity is supply, liable to GST @ 18%.

The department aggrieved by the fact that assessee suppressed the fact of pending investigation before DGCEI under service tax regime for non-eligibility of Cenvat credit and payment of service tax u/s 73A as said activity was not a “service”, preferred present appeal to consider the AAR above as void ab initio in view of section 98(2) read with section 104 of CGST Act.

The applicant respondent argued the case both on sustainability of present appeal and also on merits.

The AAAR held as under:

- The contention that appeal is unsustainable is not acceptable since it is in powers of both the authorities, i.e. Advance Ruling Authority as well as Appellate Authority to declare the ruling to be void ab-initio u/s 104 of the Act. However, we have also seen that the investigation proceedings were initiated under the Service Tax and not under the CGST Act. Therefore, Section 98(2) is not attracted as there was no proceeding pending under the provisions of the CGST Act.
- As regards winning of horse race and receipt of prize money, it is stated that said transaction cannot be regarded as “SUPPLY” as there is no direct nexus between the activities carried out by the horse owners, viz. by providing thorough breed horses to race clubs for organising horse race events, and the prize money received by such horse owners. The AR order is accordingly set aside.