

Prize money received on horse races-not a taxable supply

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Summary of Maharashtra AAAR rulings of *Vijay Baburao Shirke, In re¹* - Prize money received from horse-race clubs upon winning is not subject to GST, MH AAAR *set aside* AAR ruling

(A) Brief Background:

- ◆ M/s Vijay Baburao Shirke ('Individual'), owns horses and is engaged in participation of horse races organised by Royal Western India Turf Club ('RWITC') and other race clubs.
- ◆ Willing horse owners are required to pay entry fee for participation in races organised by RWITC and the winner horses receives prize money/stake from the clubs.
- ◆ The Individual considered the prize money to be 'consideration' received for a 'taxable supply' under section 7 of Central Goods and Services Tax Act, 2017 ('CGST Act') and therefore issued taxable invoices to RWITC and collected GST from them.
- ◆ The GST was duly paid (partly cash or against input tax credits) on such prize money w.e.f 1-7-2017.
- ◆ The Individual availed input tax credits ('ITC') on services related to training and upkeep of the horse, entry fee etc.
- ◆ Other race horse owners were of the opinion that GST is not payable on such prize money and hence the Individual opted to seek an Advance ruling from Advance Ruling Authorities of Maharashtra to obtain affirmation in the said issue.

(B) AAR, Maharashtra:

- ◆ Maharashtra Authority for Advance Ruling *vide* their order ('AAR') dated 4-10-2019² held that ,"**prize money received in horse races was covered under 'supply' under section 7 of CGST Act, 2017 and accordingly would be subject to GST at the rate of 18%.**"
- ◆ Subsequently, an appeal was filed by the AAR authorities('the appellant-department') with the Appellate Authority for Advance Ruling ('AAAR') seeking to quash the AAR.
- ◆ The appellant-department was of the view that the Individual sought the AAR by suppressing material facts. Further, the Individual failed to disclose their intent to obtain AAR to the Directorate General of Goods and services Intelligence ('DGGI') who were then conducting a Service Tax investigation against the Individual for the said matter.
- ◆ The Appellant Department believed that both the Government Department (*i.e.* DGGI and AAR authorities) were kept under dark and hence the AAR should be held as void-ab-initio under section 98 and 104 of CGST Act, 2017.

(C) Key grounds of appeal:

Key grounds of the appeal filed by the Appellant-department and corresponding response of Individual is produced as below-

<i>Sr No</i>	<i>Key Contentions</i>	<i>Appellant-Department</i>	<i>Individual</i>
1	AAR is void-ab-initio	AAR should be treated as void-ab-initio since material facts about ongoing service tax investigation were not disclosed to the AAR authorities of Maharashtra. Thus, as per section 98 the AAR to be treated as void.	<p>Section 104 of CGST Act empowers the authority who has passed an advance ruling to suo-moto recall their order, if at any stage it is found that the same has been obtained by means of fraud, suppression of material facts or misrepresentation of facts.</p> <p>Hence, this cannot be a ground of appeal as the immediate remedy would have been Appellant-department themselves declaring their AAR as void. There was no need to file an appeal.</p>
2	Appeal is time barred	<p>The department filed a delayed appeal application and requested for condonation of delay on the grounds that it took them sufficient time to decide on whether to file an appeal or not.</p> <p>Further, due to the nuances to the newly rolled out GST law, there has been delay in filing this appeal.</p>	<p>Every person (including a Government department) is required to comply with the laws of limitation.</p> <p>Further, 3 years is long time for department to get accustomed with GST provisions.</p> <p>Thus, the Appellant-department has failed in showing 'sufficient causes' for condonation of delay. It has not complied with Proviso of section 100(2).</p>
3	Material facts were not disclosed during obtaining AAR	The ongoing Service tax investigation by DGGI should have been communicated to the Appellate authorities of Maharashtra.	<p>The ongoing investigation pertained to Service tax and thus there was no legal liability on the Individual to communicate.</p> <p>The AAR ruling is binding on only GST authorities not on service tax</p>

authorities; hence the AAR would have given no relief for the ongoing Service tax investigation.

Further, the outcome of AAR could not have been predicted before application. It could have been either positive or negative.

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| 4 | Other horse owners and race clubs | Around 95-96% race horse owners and clubs in other parts of India are not considering prize money as a taxable supply under GST provisions. | Appeal cannot be filed on the grounds that other industry players have a contradictory Interpretation of law. |
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(D) Verdict of AAAR

(I) Whether delay for filing late appeal could be condoned

- ◆ **What can be done by Advance ruling authority (under Section 104) is of-course well within the power of Appellate authority being superior to advance ruling authority. Hence the contention by Individual is not tenable.**
- ◆ **Investigation proceedings were initiated under Service tax and not under CGST Act, therefore 98(2) of CGST Act is not attracted.**

(II) Whether prize money to be considered as 'taxable supply'

- ◆ **Getting the opportunity to participate in the race against entry fee payable is a supply of service by race conducting entity to aspiring race horse owners.**
- ◆ **Participation in the races and winning the race are two separate events/transactions.**
- ◆ **If running of the horses is said to be a service and receipt of the price as consideration then it should have been received by all the horse owners who have run their horses in the race. Surely, it cannot be a case that a service is provided by all, but consideration is received by only few ones**
- ◆ **There is no direct nexus between the activities carried by the horse owners, viz providing thoroughbred horses to race clubs and the prize money received by such horse owners.**
- ◆ **Every supply is a contract but not every contract is a supply.**
- ◆ **Since there is no taxable supply, there is no question of availing ITC in relation to entry fee, training of horses etc, based on section 17(2) of CGST ACT.**

(E) Our comments

- ◆ One of the crucial aspect which was overlooked by the Appellate authorities, while condoning delay, was that the facts in relation to answering the moot question (*i.e.* whether prize money is a taxable supply) were available to the Advance Ruling Authority at the time of initial application itself. No new documents, information was provided to them from the DGGI investigation authorities. Mere difference of opinion on the same transaction cannot be a ground to appeal.
- ◆ Learning lesson for all assesses that Government departments are no more mutually exclusive. Information passes on from one department to another. Thus, assesses should be careful in submitting contrary opinions to various department as it may backfire on them.
- ◆ As seen the current trend of Advance ruling authorities giving a revenue favourable ruling, the given AAAR seems to be a rare exception; finally supporting substance over form.
- ◆ However, it is worthwhile to mention that AAR ruling hardly fails to disappoint the applicants. Holding true in this case as well wherein the Individual who wished to get a revenue favourable ruling in order to avail their ITC, was yet again disappointed with AAAR treating prize money as a non-taxable supply and correspondingly disallowing any credits.

(E) Statutory provisions

- ◆ Section 7 (1) For the purposes of this Act, the expression "supply" includes 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.
- ◆ Proviso to Section 98- Provided that the Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act.
- ◆ Section 104. (1) Where the Authority or the Appellate Authority finds that advance ruling pronounced by it under sub-section (4) of section 98 or under sub-section (1) of section 101 has been obtained by the applicant or the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the applicant or the appellant as if such advance ruling had never been made:
- ◆ Section 100. (1) The concerned officer, the jurisdictional officer or an applicant aggrieved by any advance ruling pronounced under sub-section (4) of section 98, may appeal to the Appellate Authority.(2) Every appeal under this section shall be filed within a period of thirty days from the date on which the ruling sought to be appealed against is communicated to the concerned officer, the jurisdictional officer and the applicant: Provided that the Appellate Authority may, if it is satisfied that the appellant was prevented by a **sufficient cause** from presenting the appeal

within the said period of thirty days, allow it to be presented within a further period not exceeding thirty days.

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1. [\[2020\]_120 taxmann.com 103 \(AAAR-MAHARASHTRA\)](#)
 2. *Vijay Baburao Shirke, In re* [\[2019\]_110 taxmann.com 181/76 GST 814\(AAR – Mah.\)](#)