THE MAHARASHTRA APPELLATE AUTHORITY FOR ADVANCE RULING FOR GOODS AND SERVICES TAX

(Constituted under Section 99 of the Maharashtra Goods and Services Tax Act, 2017)

ORDER NO. MAH/AAAR/RS-SK/23/2020-21 **Date-** 04.06.2020

BEFORE THE BENCH OF

(1) Shri Rakesh Kumar Sharma, MEMBER

(2) Shri Sanjeev Kumar, MEMBER

GSTIN Number	27ACMPS4462Q1ZM
Legal Name of Respondent	M/s. Vijay Baburao Shirke.
Registered Address	72-76, Industrial Estate, Mundhwa, Pune, Maharashtra – 411036.
Jurisdictional Officer/ AppellantP	State Tax Officer, PUN-VAT-C-118, Pune.
Details of the Appeal	Appeal No. MAH/GST-AAAR-/23/2019-20 dated 17.12.2019 against Advance Ruling No. GST-ARA-12/2019-20/B-107 dtd. 04.10.2019

PROCEEDINGS

(Under Section 101 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the MGST Act.

The present appeal has been filed under Section 100 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act"] by **State Tax Officer, PUN-VAT-C-118, Pune** (herein after referred to as the "Appellant") against the Advance Ruling No. GST-ARA-12/2019-20/B-106 dated 18.10.2019.

BRIEF FACTS OF THE CASE

1. M/s. Vijay Baburao Shirke (herein after referred to as the "Respondent") is a proprietorship firm with GSTIN number 27ACMPS4462Q1ZM and registered address at 72-76, Industrial Estate, Mundhwa, Pune, Maharashtra - 411036. He inter-alia 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.

2. 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.

3. Mr. Vijay B. Shirke has been paying GST on the prize money received in such competitions w.e.f. from 01.07.2017. 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 M/s. 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, Mr. Vijay Baburao Shirke made an advance ruling application

dated 23.04.2019 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 applicant wins the race, would amount to 'supply' under section 7 of the Central Goods and Service Tax Act, 2017 or not and consequently, liable to GST or not. The AAR, vide their order dated 04.10.2019, 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 rate of 18 % (CGST @ 9% + SGST @ 9%).

4. Aggrieved by the said Order of the AAR, the present Appeal is being filed under Section 100 of the CGST Act, 2017, with the Appellate Authority for Advance Ruling, seeking to quash the aforesaid Advance Ruling Order holding it void *ab-initio* in terms of Section 101 as well as Section 104 of the CGST Act, 2017.

MISC. APPLICATION FOR CONDONATION OF DELAY IN FILING THE APPEAL

5. The Appellant has filed the aforesaid appeal with an application for the condonation of delay in filing the present appeal against the impugned Order No. GST-ARA-12/2019-20/B-106 dated 04.10.2019, passed by the Ld. Maharashtra Authority for Advance Ruling, which had been received by the Department on 18.10.2019.

6. The Appellant, inter-alia, submitted that in pursuance to an oral enquiry made from the concerned officer of The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, it appeared that the separate application for COD in respect of the Revenue ought to be filed.

7. They, further, submitted that the crucial facts of this case were brought to the notice of the Appellant by the Additional Director, DGGI, Pune Zonal Unit vide letter dated 28.11.2019. It took considerable amount of time to come to the conclusion that an appeal is required to be filed against the impugned advance ruling order. Also, due to the nuances to the newly rolled out GST law, there has been a delay in filing this appeal.

8. The Appellant, therefore, prayed that based upon the totality of the circumstances mentioned above, this Hon'ble Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, may consider the prayer of the applicant in granting the condonation for delay in filing the present appeal amounting to **only 30 days** for the

justice and equity. They further submitted that on the other hand, if condonation of the above said delay was denied, it would seriously undermine the cause of justice, resulting into miscarriage of justice for the Appellant.

GROUNDS OF APPEAL

9. The Appellant submitted that It was brought to the notice of the Appellant by the officers of the Directorate General of Goods and Service Tax Intelligence (DGGI), Pune Zonal Unit (PZU), Pune vide its letter F.No.DGGI/PZU/INT/Gr.D/542/2019 dated 28.11.2019 that the advance ruling Applicant, viz. Mr. Vijay B. Shirke appeared to have suppressed certain vital facts in the application made before the AAR about the investigation, that had been initiated by the DGGI PZU against Mr. Vijay Baburao Shirke. It was also conveyed vide the above said letter that Mr. Vijay Baburao Shirke had also not disclosed the facts before the officers of DGGI, PZU that he had filed an application with the Maharashtra AAR and therefore, the Advance Ruling, thus obtained by keeping the AAR in dark, appears to be not legal and proper, and therefore, the same is required to be appealed against requesting the Appellate Authority for Advance Ruling that the impugned advance ruling order be declared void *ab- initio*.

10. The Appellant further contended that the Hon'ble members of the AAR had not considered certain facts of the case, hence the subject order issued by the AAR appears to be not proper.

11. The Appellant, further, contended that the DGGI, being the apex intelligence organization working under the Central Board of Indirect Taxes & Customs, Department of Revenue, Ministry of Finance, is entrusted with detection and investigation of cases of Evasion of GST & it has got jurisdiction all over India; that the investigations of DGGI was initiated on 21.12.2018 i.e. much before the date of advance ruling application filed by Mr. Vijay B. Shirke on 23.04.2019 before the AAR, which can be seen from references given in the letter dated 07.05.2019 & 18.10.2019 of Mr. Vijay B Shirke; that the investigations were, *inter-alia,* pertaining to the issue that Mr. Vijay B. Shirke has charged and collected service tax/GST on prize money/stakes from the Royal Western India Turf Club (in short RWITC), located at

Mumbai and Pune for winning or getting place of his horse in horse race ; that the prize money/stakes is not a consideration for provision/supply of any service, therefore, the amount, collected as service tax/GST, should have been deposited to the credit of the Central Government as provided under Section 73A(2) of the Finance Act, 1994 as well as Section 76 of CGST Act, 2017, however, he had discharged the service tax/GST liability partly by cash and partly by utilizing CENVAT credit/ITC; that he had availed CENVAT credit/ITC of the service tax/GST levied on the charges paid to the horse trainers and as well as the Entry Fees paid to the RWITC for allowing his horses to participate in the race; that the services provided by the trainers by way of training given to his horses, and services provided by RWITC by way of allowing his horses to participate in race do not qualify as "input services", as the said services are not used for the provision/supply of any taxable services; that Mr. V. S. Hasolkar, Vice President, Finance and Accounts of Shirke Group of Companies, was authorized to represent Mr. Vijay B. Shirke, who was examined under Section 83 of Finance Act 1994 read with Section 174 of the CGST Act, 2017 and his statement was recorded on 25.06.2019 and 03.07.2019; that Shri Hasolkar in his statement dated 03.07.2019, *inter-alia,* stated that the prize money/stakes, earned by way of winning or getting place in a race is not a consideration for provision of any service, hence, he agreed to reverse/pay the CENVAT/ITC availed on services received by them which were not used for providing any output services, and that he would provide the details of such payments on or before 31.07.2019. Later, Mr. Vijay B. Shirke vide letter dated 20.09.2019 forwarded the opinion of Ld. Counsel Mr. Rohan Shah, obtained by RWITC wherein Mr. Vijay B. Shirke claimed that Input Tax Credit claimed by him cannot be denied, however under said opinion it was held that the essential criteria for qualifying as 'service' or a 'supply' were not being met, hence there can be no levy of Service Tax or GST on the prize money

12. It was revealed during investigation that very few horse owners had charged and recovered service tax on the prize money/stakes from RWITC Mumbai & Pune on monthly/quarterly basis by issuing invoices/bills; that the remaining 95-96% of horse owners have not considered the amount of prize money/stakes received by them as consideration for any taxable service, and hence they have neither charged nor paid

service tax on the said amount; that, it was also confirmed from other race clubs located all over India, viz. Kolkata, Hyderabad, Madras, Bangalore, Mysore, that winning of horse race is not a service, hence, they have not availed CENVAT credit on prize money/stakes, as this is not a consideration for providing any services.

13. The Appellant, further, submitted as under: -

(i) that in the instant case, the owner's participation in the race is based on its own *Suo-moto* decision; that it is not a result of a mutual pre-agreement or a pre-concert between the participants and the RWITC;

(ii) that the owners participate in the race to fulfill its own desire, and not to fulfill any obligation towards the RWITC, the race organizer and thus, the participation of owners is not an activity carried out by a person at the behest of or for another person;

(iii) that the prize money/stakes is given only to those owners, whose horse either wins or gets a place in the race, and therefore, the prize money/stakes received by the horse owners would not be construed as 'consideration' for participation in the race, as had it been the case, it would have been given to all the participating horse owners. However, that is not the case here. Therefore, in the present arrangement, there is no *quid pro quo* because the prize money/stakes are not being given for the participation in the race, but for the winning or getting a place in the race.

(iv) that receiving prize money/stakes is a consequence of chance, skill and circumstance, therefore, there is no certainty in this regard and hence, the prize money/stakes would not be treated as 'consideration' against the owners' participation in the race.

14. The Appellant further submitted that in view of the above submissions and contentions, it is clear that the participation of the owners in horse race is not a service rendered to RWITC and the prize money/stakes is not a 'consideration' paid to the owners by RWITC for provision of any services; that, this activity does not fall under clause (a) of Section 7(1) CGST Act, 2017, as the essential ingredients of supply is missing in the activity undertaken by the Respondent by way of making his horse participate in the race as the Respondent is not getting any consideration against this

very activity, i.e. participation in the horse race events. Hence, the Appellant submitted that the activity undertaken by the Respondent would not be considered as 'Supply' under the CGST Act, 2017.

15. The Appellant, further, contended that the Respondent had suppressed before the AAR the very fact that an enquiry / proceedings had been initiated against him on this issue by DGGI, PZU, which was in contravention of provisions made under Section 98 of CGST Act of 2017 wherein it is clearly mentioned 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 provisions of this act"*.

16. It has further been submitted that the taxpayers are required to declare before Authority of Advance Ruling, in Para 17 of form GST ARA-01 that whether question raised in the application is already pending or decided in any proceedings in the applicant's case under any provisions of the Act. It is also submitted that the case has been booked against the taxpayer on this issue on 05.01.2019, i.e., well before the filing of the advance ruling application by the Respondent. Based on this fact, the Appellant further argued that the application filed by the applicant/Respondent was not maintainable as per the provisions of Section 98 of the CGST Act, as proceedings had already been initiated against the Applicant-Respondent much before the filing of the subject advance ruling application; that had it been known to the Authority for advance Ruling, then Advance Ruling Authority would have come to the conclusion that the applicant's application is liable for rejection as per proviso to Section 98(2) of the CGST Act, treating the same being non-maintainable. Thus, it was contended by the Appellant that the present Advance Ruling has been obtained by way of suppressing the material facts from the Advance Ruling Authority.

17. It was further submitted by the Appellant that though, the assessee had filed advance ruling application on 23.04.2019 before the Maharashtra Authority for Advance Ruling, he had not disclosed this fact to the officers of Directorate General of GST Intelligence (DGGI), Pune Zonal Unit (PZU), Pune, neither in any of his correspondences made with the DGGI PZU officials, nor in the statement made by his authorised representative, with an intention to prevent the investigation officer to bring the facts of this case to the knowledge of Hon'ble member of AAR at the time of hearing of the

case through nodal officer. Because of this act of suppression by the Applicant-Respondent, the facts related to the initiation of the enquiry/investigation against the Applicant-Respondent in the same issue as that raised by the Applicant-Respondent in his advance ruling application filed before AAR, could not be brought to the knowledge of the AAR.

18. The Appellant cited the case of Gurdeep Singh Sachar (CPIL stamp No.22 of 2019), wherein the Hon'ble Bombay High Court observed as under:

'In the instant case, admittedly, there is no dispute that the amounts pooled in the escrow account is an 'actionable claim', as the same is to be distributed amongst the winning participating members as per the outcome of a game. But, as held hereinabove since the activities of the respondent No.3 do not amount to lottery, betting and gambling, the said actionable claim would fall under Entry 6 of the Schedule III under Section 7 (2) of CGST Act. Therefore, this activity or transaction pertaining to such actionable claim can neither be considered as supply of goods nor supply of services, and is thus clearly exempted from levy of any GST.

..... The scope of definition of 'consideration' extends only in relation to "the supply of goods or services or both". Since, the said activity or transaction relating to the actionable claim qua the amounts of participants pooled in escrow arrangement, for which only acknowledgement is given, is neither supply of goods nor supply of services, the same is clearly out of the purview of the expression 'consideration'.

19. Since the CGST Act itself do not allow the imposition of Tax on such 'actionable claim' in relation to the Online Fantasy Sports Gaming of the respondent No.3, it being other than lottery, betting and gambling, the said Rule 31 A (3) of CGST Rules 2018 cannot be read in such a manner so as to override the parent CGST Act.

20. Further, supply includes all forms of supply made 'for' a consideration. Thus, it appears that to qualify as "supply", two separate conditions should be satisfied cumulatively i.e. there should be a "supply" and it should be for a 'consideration'. Given this, liability to pay GST would arise only where the payment received will be linked to a supply. In the case of race, the award is received for an achievement carried out independently. The payment of prize money is to recognize the achievement. it cannot be construed

as consideration towards a "supply". Therefore, GST liability, will not arise on the same.

21. The Appellant further relied upon the Education Guide in Service Tax (pre-GST era), which had provided clarification about activity for consideration as under:

"2.3 Activity for consideration

Thus, an award received in consideration for contribution over a life time or even a singular achievement carried out independently or without reciprocity to the amount to be received will not comprise an activity for consideration.

Consideration itself pre-supposes a certain level of reciprocity. Thus, grant of pocket money, a gift or reward (which has not been given in terms of reciprocity), amount paid as alimony for divorce would be examples in this category. "

22. In view of the above submissions and contentions put forth by the Appellant/Department, it was prayed that the impugned Advance Ruling order being not just, legal, and proper be set aside and the same may be declared void *ab initio*.

Respondent's (M/s. Vijay B. Shirke) submission dt.09.03.2020

23. At the outset, the respondent submits that the impugned order, in so far as it is in favor of the respondent, is correct in law and hence, needs to be upheld. The Honorable Advance Ruling Authority ('ARA') has passed a detailed and cogent order. The said order does not suffer from any infirmity or illegality. Therefore, the present appeal, being devoid of any merit, is liable to be rejected.

The Present Appeal is time barred

24. The appellant-department has filed the present appeal along with application of condonation of delay for seeking condonation of thirty (30) days in filing the present appeal. The reason stated by the appellant-department for the said delay was that the crucial facts of this case were brought to the notice of the appellant-department by the Deputy Director, DGGI, Pune Zonal Unit vide letter dated 28.11.2019 and accordingly, the department has taken considerable time to decide whether the appeal is required to be filed or not. The appellant-department further stated that due

to the nuances to the newly rolled out GST law also caused a delay in filing the present appeal.

25. The respondent submits that the above reasoning of the appellant-department is vague and absurd for the reasons stated infra.

26. ***First***, Section 100 of the CGST Act, 2017 speaks about the filing of appeal to Appellate Authority formed under section 99 of the CGST, 2017.

> ***"99. Appellate Authority for Advance Ruling -***
>
> *Subject to the provisions of this Chapter, for the purposes of this Act, the Appellate Authority for Advance Ruling constituted under the provisions of a State Goods and Services Tax Act or a Union Territory Goods and Services Tax Act shall be deemed to be the Appellate Authority in respect of that State or Union territory.*
>
> ***1oo. Appeal to Appellate Authority-***
>
> 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.*
> 3) *Every appeal under this section shall be in such form, accompanied by such fee and verified in such manner as may be prescribed".*

27. On perusal of the above provisions, it is clear that an appeal against the advance ruling pronounced under section 98 of the Act shall lie before the appellate authority. The same should be filed within a period of thirty (30) days from the date of communication of the same to the concerned officer, jurisdictional officer and the applicant as the case may be. If the appellant has not filed the appeal within the said period of thirty (30) days, then on furnishing the 'sufficient cause' which has prevented

him to file the appeal within the said prescribed period, allows the same to be filed within a further period of thirty (30) days.

28. From the above, it is clear that sufficient cause needs to be shown to the court in order to persuade the court to exercise their judicial discretion. Liberal construction of the expression 'sufficient cause' is intended to advance substantial justice which itself presupposes no negligence or inaction on the part of the appellant department, to whom want of bona fide is imputable. There can be instances where the Court should condone the delay; equally there would be cases where the Court must exercise its discretion against the applicant for want of any of these ingredients or where it does not reflect 'sufficient cause' as understood in law. The expression 'sufficient cause' implies the presence of legal and adequate reasons. The words 'sufficient' means adequate enough, as much as may be necessary to answer the purpose intended. It embraces no more than that which provides a plentitude which, when done, suffices to accomplish the purpose intended in the light of existing circumstances and when viewed from the reasonable standard of practical and cautious men. The sufficient cause should be such as it would persuade the Court, in exercise of its judicial discretion, to treat the delay as an excusable one. These provisions give the Courts enough power and discretion to apply a law in a meaningful manner, while assuring that the purpose of enacting such a law does not stand frustrated. The party should show that besides acting bona fide, it had taken all possible steps within its power and control and had approached the Court without any unnecessary delay. The test is whether or not a cause is sufficient to see whether it could have been avoided by the party by the exercise of due care and attention.

29. Delay is just one of the ingredients which have to be considered by the Court. In addition to this, the Court must also take into account the conduct of the parties, bona fide reasons for condonation of delay and whether such delay could easily be avoided by the appellant acting with normal care and caution. The statutory provisions mandate that applications for condonation of delay and applications belatedly filed beyond the prescribed period of limitation for bringing the legal representatives on record should be rejected unless sufficient cause is shown for condonation of delay. It

is the requirement of law that these applications cannot be allowed as a matter of right and even in a routine manner.

30. As regards the merits of the application in hand, except for a vague averment that the considerable amount of time has been taken to conclude or arrive at a decision that there is a need to file an appeal, there is no other justifiable reason stated in the one-page application. The application does not contain correct and true facts. Thus, want of bona fides is imputable to the appellant. There is no reason or sufficient cause shown as to what steps were taken during this period and why immediate steps were not taken by the appellant. The cumulative effect of all these circumstances is that the appellant-department has miserably failed in showing any 'sufficient cause' for condonation of delay.

31. ***Second***, it is well settled that law of limitation undoubtedly binds everybody including the government. The respondent relied upon the decision of the apex court in the case of **Office of the Chief Post Master General vs. Living Media India Pvt. Ltd., 2012 (277) ELT 289** wherein it is held that the claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The relevant para is extracted hereunder:

*"**12.** It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern*

technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

***13**. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay".*

32. ***Third***, the Goods and Services Tax has been introduced with effect from 01.07.2017. Now, we are standing in the year 2019 and still the department is learning the nuances of the newly rolled out GST law as stated in their application of condonation of delay. Such statements by the appellant-department are merely an eye wash. This clearly shows the appellant department lackadaisical and lethargic attitude towards the adherence of the laws even in the matters of their own interest. Such conduct should not be allowed to be precipitated and must be met with severe consequences.

33. Fourth, even otherwise, the reason stated for the delay that they were communicating with the DGCEI is also hard to believe. There is no explanation as to how and why DGCEI got involved in the present ruling. DGCEI is an investigating authority. It is not known as to how and why DGCEI is to communicate with the Authority for Advance Ruling or the department. It is also not known as to how and why DGCEI is interested in pursuing and directing the department to file an appeal. This is judicial intervention and must be taken note of by this Hon'ble Appellate Authority. The same cannot be ground or reason to condone the present delay. The very reason itself shows that the

department was satisfied with the ruling and never intended to file any appeal. Thus, the present appeal is a motivated one. It lacks bonafide and hence, must be dismissed.

The Present Appeal is not Maintainable

34. At Para A of the present appeal, the appellant-department contends that the respondent has suppressed certain vital facts in the application made before the ARA about the investigations that had been initiated by the DGGI against Vijay Baburao Shirke. The appellant has stated that the Authority for Advance Ruling has not considered certain facts while passing the order in favour of the respondents.

35. At Para L of the present appeal, the appellant department has contended that the respondent has suppressed the very fact that an investigation/proceeding was pending against them by not stating/mentioning the source from which they have received advise for treating prize money as a service/supply.

36. It is pertinent to look into Section 104 of the act which reads as under:

"104. Advance ruling too be void in certain circumstances —

(1)Where the Authority or the Appellate Authority finds that advance ruling pronounced by it under sub-section (4) of section 98 or under subsection (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:

Provided that no order shall be passed under this sub-section unless an opportunity of being heard has been given to the applicant or the appellant. Explanation. —The period beginning with the date of such advance ruling and ending with the date of order under this subsection shall be excluded while computing the period specified in subsections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74. (2) A copy of the order made under sub-section (1) shall be sent to the applicant, the concerned officer and the jurisdictional officer".

37. On plain perusal of the above section, it can be seen that this provision empowers the respective authorities viz. Authority for Advance Ruling who passed the order on the application for advance ruling and Appellate Authority who passes an appellate order on such ruling wherein the an advance ruling has been challenged by way of appeal, to *suo moto* recall the orders passed, 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.

38. In other words, the said provision is self-contained. If the applicant in the application is guilty of fraud, suppression of material facts or misrepresentation of facts, the authority for Advance ruling can recall its own order. The same cannot be a ground of appeal. If the appellant was of the view that the ruling has been obtained by fraud, suppression of material facts or misrepresentation of facts, the Authority for Advance ruling could have itself recalled the said order, if the said facts were brought to its notice. The same cannot be a ground of appeal or ground of challenge in the appeal before the Appellate Authority. Hence, the present appeal is totally misconceived and mis-directed. The appeal cannot be maintained on such a ground.

39. If such appeals are allowed to be entertained on a ground that the applicant is guilty of fraud, suppression of material facts or misrepresentation of facts, then the provisions of section 104 would become redundant or otiose. There would be no meaning of section 104 as every such point can be raised in appeal. Such an interpretation would be absurd and hence, needs to be avoided.

40. The legislature is a perfect legislative body. It is presumed to know all the laws when it enacts any particular legislation. In **Union of India V/s Hansoli Devi reported at (2002) 7 SCC 273** the Hon'ble Supreme Court has observed that the legislature never waste's it words or say anything in vain and a construction which attributes redundancy to legislation will not be accepted except for compelling reasons.

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42. In **Sultana Begum v/s Premchand Jain reported at (1997) 1 SCC 373, at page 381,** the Hon'ble Apex Court has held as under:

".....

15. On a conspectus of the case law indicated above, the following principles are clearly discernible:

1) It is the duty of the courts to avoid a head-on clash between two sections of the Act and to construe the provisions which appear to be in conflict with each other in such a manner as to harmonize them.

2) The provisions of one section of a statute cannot be used to defeat the other provisions unless the court, in spite of its efforts, finds it impossible to effect reconciliation between them.

3) It has to be borne in mind by all the courts all the time that when there are two conflicting provisions in an Act, which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both. This is the essence of the rule of "harmonious construction".

4) The courts have also to keep in mind that an interpretation which reduces one of the provisions as a "dead letter" or "useless lumber" is not harmonious construction.

5) To harmonise is not to destroy any statutory provision or to render it otiose"

(underlining supplied)

43. Similarly, in **CIT V/s Hindustan Bulk Carriers** reported at (2003) 3 SCC 57, at page 73, the Hon'ble Supreme Court has held as under:

"14. A construction which reduces the statute to a futility has to be avoided. A statute or any enacting provision therein must be so construed as to make it effective and operative on the principle expressed in the maxim ut res magis valeat quam pereat i.e. a liberal construction should be put upon written instruments, so as to uphold them, if possible, and carry into effect the intention of the parties. [See Broom's Legal Maxims (10th Edn.), p. 361, Craies on Statutes (7th Edn.), p. 95 and Maxwell on Statutes (11th Edn.), p. 221.]

.....

16.The courts will have to reject that construction which will defeat the plain intention of the legislature even though there may be some in exactitude in the language used. (See Salmon v. Duncombe AC at p. 634, Curtis v. Stovin 8 referred to in S. Teja Singh case)."

44. Thus, it is evident that section 100 of the Act has to be read together and in light of section 104 of the Act. It is well settled that every clause of the statute should be construed with reference to the context and other clauses of the Act, so as, as far as possible to make a consistent enactment of the whole of the statute. A bare mechanical interpretation of words and application of a legislative intent is devoid of concept and purpose will reduce the most of the remedial and beneficent legislation to futility. To be literal in meaning is to see the skin and miss the soul. Words, phrases and rules occurring in a statute are to be read together and not in an isolated manner. The legislation never intends to give one from one hand and take away from other hand. Hence, the present appeal is not maintainable and deserves to be dismissed, in *limine.*

45. There is yet another reason which supports the above submission of the respondent. The above provision section 104 would be applicable only in case where the applicant (assessee) is the appellant. The appellate authority would pass an order on the appeal of the appellant (assessee). Such an order can be recalled if the appellant (assessee) is guilty of fraud, suppression of material facts or misrepresentation of facts. It cannot be gainsaid that the revenue would be guilty of fraud, suppression of material facts or misrepresentation of facts.

46. If the DGGI was so convincing, they could have convinced the Authority for Advance ruling to recall its order and hold that the same is void, by moving an appropriate application before it, in terms of section 104 of the Act ibid. Having failed to do so, the present appeal is a back door entry. It should not be permitted to be entertained.

47. Hence, the present appeal is liable to be dismissed at the threshold.

Without prejudice, the respondent submits that there is no proceedings pending against the respondent and hence, proviso to section 98(2) is not applicable.

48. At Para B of the present appeal, the appellant-department contends that investigation was initiated by the DGGI against the respondents on 21.12.2018 on the same issue. The same was initiated much before the application was filed before the Authority for Advance Ruling on 23.04.2019. Hence, it is alleged that the respondent was interested in getting an advance ruling to escape the clutches of investigation by DGGI.

49. At Para Q & R of the department-appeal, the appellant-department has contended that taxpayers upon filing of an application before Authority for Advance Ruling is required to declare that an investigation/proceeding is pending against them on the same issue. Having not declared the same, as per the appeal, the application of the respondent is not maintainable.

50. ***First***, there is no evidence produced on record that the respondent intended to get an advance ruling in their favour. The application for advance ruling was filed solely for the purpose of clarifying the taxability of the transaction under the GST regime.

51. ***Second,*** assuming whilst denying, the respondent was unaware of the ruling being in their "favour". The appellant-department by raising the above contentions has cast illegal and unsubstantiated aspirations against the Authority itself. Had the outcome of the application been against the applicant, would the appellant department, at the behest of the DGGI, make such allegations. Assuming the ruling would have held that the activity does not amount to a "supply", would the Department still be aggrieved? Would such an appeal be filed? The present appeal is gross abuse of the process of law.

52. Third, in any case, the investigation being conducted by the DGGI officials relates to reversal of cenvat credit during the service tax regime. There is no investigation and/or enquiry pending during the GST regime. Hence, there is no relevance of the said inquiry in so far as the present ruling is concerned. The respondent has not suppressed any fact, which is material in deciding the said ruling, from the Authority for Advance ruling. Hence, the present appeal is liable to be rejected.

53. At Para K of the department appeal, the appellant-department has alleged that the respondent even after being aware of the investigation conducted against him by DGGI, Pune, chose to file the application before Authority for Advance Ruling, Maharashtra. Hence, the respondent has suppressed the very fact that an enquiry or a proceeding was initiated against them under section 98(2) of the CGST Act, 2017.

54. The respondent submits that the above contention of the appellant-department is without any logic, basis and reasoning. It is wholly perverse. It is mala fide. It is far from truth.

55. At the outset, the respondent wishes to submit that the proceedings/enquiry initiated against the respondent relates to the erstwhile service tax regime. Vide letter dated 08.04.2019 (Annexure 5), DGGI, Pune stated that recovery of service tax from clubs on the prize money won in horse races is not permissible in as much as the participation in horse races is not a 'service'. Accordingly, no cenvat credit can be taken on the inputs in as much as the participation in horse races is an outward activity for the clubs and not for the owners. Accordingly, the respondent was asked to reverse the cenvat credit of service tax paid on inputs as per the provisions of section 73A(2) of the Finance Act, 1994. Relevant extract of the same is reproduced as under for reference:

"It is learnt that from 01.07.2012 you have charged/recovered service tax from RWITC, Mumbai/Pune on the prize money/stakes, given for winning or getting a place in horse race. It is also learnt that you have availed cenvat credit on various input services viz. "Entry Fess" paid to the clubs, maintenance charge paid to the trainers etc. and utilized the same for payment of service tax.

7. Since, the activity of participation of race horses owners in a horse race is not a service, so the services received by you cannot be input services for you and as such the cenvat credit availed by you is not admissible.

8. In this regard, following legal provisions may be referred-

i. As per section 65B(44) of the Finance Act, 1994- "Service" means any activity carried out by a person for another for consideration, and includes a declared service."

56. Vide letter dated 21.12.2018, the respondent was called upon to submit relevant documents/information in support of the pending investigation under service tax. Relevant extract of the same is reproduced as under for reference:

In this regard, you are hereby requested to submit the following data/documents

i. *Month wise/year wise details of stakes/prizes money received from all the race clubs, conducting horse races in India, whether service tax charged or not charged, for the period from July 2012 to June 2017 in the format given below.*

ii. *Month wise / year wise details of service tax paid during the period from July 2012 to June 2017 along with copies of ST-3 returns filed.*

iii. *Form 26-AS statement in respect of TDS deducted for the period 2012-13 to 2017-18*

iv. *Details of CENVAT credit availed on input services during the period 2012-13 to 2017-18*

v. *Balance sheet / profit & loss account for FY2012-13 to 2017-18*

57. On perusal of the above, it can be well understood that the investigation/enquiry initiated against the respondent was for the erstwhile service tax regime. The enquiry does not relate to GST, Hence, the department cannot be a bar to proceed with the present proceedings. The previous enquiry bears no relevance to the present application. The present application was filed on 23.04.2019 to understand the applicability of GST to the present transaction. Hence, the department cannot place reliance on proceedings/enquiry conducted regarding the service tax to negate the applicability of GST on the present transaction. There was no proceeding or enquiry pending under the GST law on the date of filing the application. Hence, the Revenue is completely misdirected in alleging that the applicant has suppressed any fact from the authority. This is nothing but false.

58. If such a contention were to be accepted as correct, then no assessee who has been issued a show cause notice or has any proceedings pending against him under the service tax regime would be able to apply for an advance ruling under GST law. This is nothing but absurd. The provisions of Advance ruling are incorporated only with intent to avoid litigation. However, the appellant revenue seems be doing exactly the opposite.

59. Even otherwise, the ruling by the Ld. Authority for Advance Ruling would be applicable under the GST regime. The same need not be binding on the department for the service tax regime. The department is free to take any opinion or view under the service tax regime. The respondent had clearly stated in his letter dated 18.10.2019 while bringing the Ruling to the notice of the DGGI, that the Ruling was under the GST Act and since the definition of service is identical in the GST Act as well as Service Tax Act, the Ruling will be equally applicable to Service Tax However, the was not bound in any way to make the GST ruling applicable to the Finance Act, 1994 The Department seems to be proceeding on a tangent.

60. *Dehors* this, the respondent wishes to submit that the department refers to letter F.No. DGGI/PZU/int/Gr.D/542/2019 dated 28.11.2019 written by the DGGI to the appellant. It is not understood as to how and why the DGGI is directing the department to file the present appeal. In fact, the DGGI has drafted the present appeal on behalf of the Appellant. What interest has the DGGI got in the present appeal? It is apparent that the Appellant (Original Respondent) was of the same view as the Respondent (Original Appellant) is, that the earning of prize money is a taxable service. The present appeal is motivated and lacks bona fide. Hence, on this count alone, the present appeal is liable to be rejected.

61. At Para B of the present appeal, the appellant-department relies upon the statement of one Mr. V.S Hasolkar, Vice-President, Finance & Accounts recorded by the department on 25.06.2019 and 03.07.2019 under section 83 of the Finance Act, 1994 read with section 174 of the CGST Act, 2017. As per the appeal, Mr. V.S Hasolkar has stated that the prize money received by way of winning in the horse races is not a consideration for provision of any service. Accordingly, he agreed to reverse the cenvat credit/input tax credit.

62. At Para j of the present appeal, the appellant-department relies upon the statement of one Mr. V.S Hasolkar, Vice-President, Finance & Accounts, wherein he has stated that the respondent has not received prize money/stakes for all the horses that have participated in the race. The stakes received by the respondent cannot be treated as consideration for provision of service. The activity of participation in horse race is not a service as the element of consideration is absent. The respondent is not providing

any output supply. Hence, any services received in this regard cannot be treated as inputs for claiming input tax credit. Accordingly, according to the appellant, he has admitted to reverse the CENVAT Credit/input tax credit.

63. The statement made by Shri V. S. Hasolkar is only an opinion or his interpretation of the Finance Act, 1994. If Shri Hasolkar had stated that service tax is chargeable on prize money, would the DGGI have accepted his statement as Law? Opinion from expert consultants who are far more knowledgeable in matters of interpretation, were presented to the DGGI by the same Shri Hasolkar, which stated the prize money was liable to service tax. Why was this opinion not accepted by DGGI?. How did Shri Hasolkar give a contrary opinion in his statement when he was fully aware of the consultant's opinion? In the same opinion, High Court and Supreme Court judgments have been quoted which state that when output tax has been paid and accepted, even if such tax was not payable, then input tax credit need not be reversed. Mr. Hasolkar was fully aware of these judgments. Why would he then say in this statement that the input tax needs to be reversed and he is agreeable to do so? Serious consideration needs to be given to this issue. The DGGI refuses to consider Court judgments quoted in the same opinions, but is pointing out to certain opinions of the consultants which are convenient to them. In any case all these matters are opinions (except quoted Court judgments) & relate to service tax and have no bearing on the Advance Ruling given under the GST Act.

64. In ***BasudevGarg vs. Commissioner of Customs - 2013 (294) ELT 353 (Del.),*** the Division Bench of the Delhi High Court has held that the statement against the assessee cannot be used without giving them opportunity of cross-examination. A statement needs to be tested on oath before being led in as evidence. In absence of the same, such statement cannot be relied upon.

65. To similar effect is judgment of the Hon'ble Punjab and Harayana High Court in the case of ***Jindal Drugs Private Limited v/s Union of India 2016 (340) ELT 67 (P&H).***

66. ***Fourth***, without prejudice, reliance placed on the above statement is wholly irrelevant and out of context. The said statement does not, in any manner, prove that the proceedings were pending against the "applicant" (respondent). There is no legal or statutory bar against making an application for advance ruling if there is no proceeding

pending against the assessee-applicant. The said ruling would be binding on the applicant (respondent in the instant case) and not on Shri. V.S Hasolkar.

67. The connection sought to be drawn by the DGGI is nothing short of a show cause notice investigation. The DGGI is free to undertake any such investigation, in law. However, with greatest respect, it cannot be a ground of appeal. There is no merit in such a contention. Hence, the present appeal is liable to be rejected.

68. At Para D of the present appeal, the appellant-department has stated that RWITC conducts horse races at Mumbai and Pune. Such horse races are conducted as per their yearly prospectus. They invite horse race owners to participate in the race. The prospectus contains the terms and conditions, out of which one such term is payment of entry fee for those horse owners who participates in the horse races. The prize money earned in such races is given to the owners/jockeys/trainers as provided in the yearly prospectus. The prize money is pooled from the entry fees pooled from the horse owners and from the sponsored amounts received by RWITC from its sponsors. Once the results are declared, the amount is credited to the account of the owners and a certain percentage to the jockeys/trainers.

69. At Para E of the present appeal, the appellant-department has contended that not all horse owners are treating the prize money received as consideration for a supply/service. Only few owners have charged and recovered service tax on prize money/stakes from RWITC Mumbai and Pune on monthly/quarterly basis by issuing invoices/bills. As per the appeal, 95-96% of the horse owners have not considered the amount of prize money/stakes as consideration for taxable supplies. Hence, they have neither charged nor paid service tax on the said amount. It is also contended that race clubs in Kolkata, Hyderabad, Madras, Bangalore and Mysore are also not paying service tax on such prize money won by race horse owners.

70. The respondent submits that the above grounds taken by the appellant-department are absurd and incongruous. What is being done by other horse owners is not a basis to decide the present appeal. The present appeal needs to be decided on the facts of the present case. The Appellant seems to suggest that since 90-95% have not considered the amount of stakes received by them as a taxable service, the interpretation of a tax law should be based on the percentage of how many are paying

such tax. It would seem from these arguments that if a majority of persons do not pay a tax, the interpretation of the law would be that such tax is not payable. The interpretation of a tax law would thus be dependent on how many assessees pay it, and if majority do not, then it is not payable.

71. The ground taken by the appellant-department that the prize money is distributed from the pool of entry fee is also incorrect. There is no basis for such assumption. This incorrect statement is not supported by any evidence. In fact, the prize money is not a consequence of redistribution of betting money or sponsorship money or entry fee. Horse racing is not conducted in the same manner as lottery is conducted, where the total money pooled in is distributed to the winners. It is only in case of betting on horse racing, where the pool of money collected from the betting itself is redistributed. The prize money paid to the owner of the horse is independent of the pool of money collected by way of entry fee, betting on the race or sponsorship fee. It is not related to or connected to or dependent upon the bets. in fact, prize money is advertised in the Prospectus itself in a majority of the races and IS in no way related to the betting on that particular race.

72. Even assuming whilst denying, as contended by the appellant-department, there is no basis for the appellant to submit that the respondent should follow what their competitors are doing. If such be the case, then there is no need to constitute authorities like Advance Ruling Authority to seek for rulings where the assessee is in doubt. The entire chapter XVII would be rendered futile and redundant.

73. Thus, the respondent submits that they have not suppressed any fact from the authority for advance ruling. In fact, the appellant-department is trying to mislead this Honorable Appellate Authority by drawing attention to issues which are totally alien to the case at hand. Instead of discharging the burden cast upon them, the appellant-department is making toothless and irrelevant allegations.

Submissions on merits

The question raised by the respondent is covered under section 97 of the CGST Act, 2017

74. At Para L of the department appeal, the appellant-department have reproduced section 97 of the CGST Act, 2017 to contend that the question raised by the respondent in

their application is not covered under the said provision of law. As per the appeal, the respondent has asked a question pertaining to the payment of GST on prize money won by the competitors. The same is not covered under the provisions under section 97(2) of the CGST Act, 2017.

75. ***First,*** the question raised by the respondent squarely falls under clause (d) and (e) of section 9,' of the C CST Act, 2017. Relevant extract of the same is reproduced as under for reference -

"97. (1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and manner and accompanied by such tee as may be prescribed, stating the question on which the advance ruling is sought.

(2) The question on which the advance ruling is sought under this Act, shall be in respect of, --

a) classification of any goods or services or both;

b) applicability of a notification issued under the provisions of this Act;

c) determination of time and value of supply of goods or services or both;

d) admissibility of input tax credit of tax paid or deemed to have been paid;

e) determination of the liability to pay tax on any goods or services or both;

f) whether applicant is required to be registered;

g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term"

76. The respondent has raised questions regarding the taxability of prize money won in horse races and the admissibility of input tax credit taken claimed on such a transaction. The same is covered under the provisions provided under section 97(2) of the CGST Act, 2017. It appears that the present appeal has been filed without even reading the application filed by the Respondent. No such ground was taken by the respondent that the competitors are not paying GST in the application filed by the applicant. That is a finding recorded by the Authority for Advance ruling. The same cannot be a ground of appeal.

77. ***Second,*** the respondent has not raised any questions regarding payment of GST on prize money by other competitors. The same is evident from the question raised in the application filed before the authority on 23.04.2019. It is only the department who has raised the issue of 90-95% horse owners not paying service tax on prize money won in horse races. Neither was such a question raised in the application nor was any submissions made during the preliminary hearing conducted before the authority by the respondent.

78. In View of the above, the department appeal is liable to be rejected.

Prize money received in horse races is against a supply under section 7 of the CGST Act, 2017

79. At Para E of the department appeal, the appellant-department have stated that the respondent has obtained advice/opinion from Rohan Shah, Advocate, wherein he was suggested that there is no element of 'service' or 'supply' in the activity of participation in horse races.

80. At Para F of the department appeal, the appellant-department have reproduced section 65B (44) of the Finance Act,1994 to suggest that there was no service being provided by the respondent for which they have received consideration in the form of prize money/stakes.

81. At Para G of the department appeal, the appellant-department has contended that the owner's participation in the horse race was based on Suo-moto decision. It was not a result of pre-agreement or a pre-concert between the participants and RWITC. There was no obligation on the horse owner towards RWITC. The participation of owners is not an activity carried out by a person on behest of or for the other. The prize money is given to only that horse owner who wins the race. There are several owners who do not win the race and no prize money is given to them. There is no quid pro quo. Prize money is not won for participation in the horse race. There is no certainty of winning the prize money for horse races.

82. At Para H of the department appeal, the appellant-department has contended that there is no service rendered to RWITC and the prize money is not a consideration paid to the owners by RWITC for provision of any services. The Suo-moto participation of

horse owner in a race is not a activity as per section 65B (44) of the Finance Act, 1994 and hence service tax is not payable. Accordingly, as per the appeal, the activity does not fall under clause (a) of section 2(17) of the CGST Act, 2017 in as much as the ingredients of supply are not being satisfied.

83. At Para M of the department appeal, the appellant-department has contended that the respondent has not provided any services by way of making his horse participate in the race in as much as he has not provided any specialized or trained horse/s to the club. Also, the department has contended that the jockey/trainers are not eligible to receive any prize money in as much as they are not providing any service to the clubs.

84. The respondent submits that the contentions raised by the appellant-department are incorrect in law as in facts.

85. At the outset, it is submitted that an advice given by an Advocate is subject matter of an opinion. It is purely advisory in nature and not binding on any one. ***Second,*** from the said opinion is it not clear what facts were placed before the Advocate in order to enable such an opinion. It is trite law that one change in fact can change the entire opinion. ***Third,*** in any case, the department has wrongly interpreted the opinion given by the Advocate. The opinion received from the Advocate states that in an instance where the tax department collects and retains tax, it does on the basis that the transaction is a 'service' or is a 'supply'. Accordingly, the same is liable to tax. The department cannot approbate and reprobate at the same time. The view taken at the point of collection of tax cannot be forsaken at the stage of extending the credit. It is clear that the opinion nowhere suggested that the respondents are not eligible to take Cenvat credit/input tax credit of the tax paid on inputs. Hence, as such, no reliance can be placed on such an opinion. The Respondent had also submitted an opinion of another Tax Consultant which states that service tax is applicable on the prize money. It clear that the Appellant wishes to consider only those opinions, which confirm with their own view, while disregarding those which are unsuitable to the Appellant. In any case, these are mere opinions/ interpretation of various consultants, none of which have the force of law.

86. The respondent submits that the contention of the department that the respondent has not provided any service in as much as they are not providing specialized/trained

horses. The respondent provides specialized bred and trained horses to the clubs for participation in the races. The same is condition in the prospectus for participation in the race. The respondent places reliance on the prospectus.

87. Chapter III of the Central Goods and Service Tax Act, 2017 ("CGST Act") provides for levy and collection of GST. Section 7 of the CGST Act provides for the scope of supply. it is, inter alia, provided that "supply" includes:

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

b) import of services for a consideration whether or not in the course or furtherance of business;

c)the activities specified in Schedule I, made or agreed to be made without a consideration; and

d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II".

88. Section 9 is the charging section. It provides for levy of tax called the CGST on all intra-state supplies of goods or services or both and at such rates, as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

89. Section 2(101) of CGST Act, 2017 defines "Service" as:

"anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged"

90. On perusal of the above, it can be well understood that an activity/transaction can be classified as supply only if it is made for a consideration in the course of furtherance of business.

91. ***First,*** in the instant case, there is a 'direct and immediate link' between the supply made and the consideration received. The applicant has made supply of its horse/s in different competitions organized by race clubs for which it has received consideration in the form of prize. Prize money received by the applicant is the consideration for

entering into an agreement of supply of horses with the race organizer. There is a direct link between the supply made and consideration received by the querist.

92. The test of 'direct and immediate link' draws authority from several rulings of the Court of Justice of the European Union (OEU), wherein the Court has held that for levy of VAT can be made only when there is a 'direct and immediate' link. Reliance is placed on **BLC Group Plc Vs. Commissioner of Customs and Excise (Case-C-4/94)** and **Abbey National Plc Vs. Commissioner of Customs & Excise (C-408 /98)**, wherein the court held that there should be a direct and immediate link with the taxable economic supply. As in the instant case, there is a direct link between the supply made and consideration received the same would be a taxable supply.

93. The respondent submits that the prospectus of RWITC for 2019-20 provides for every detail regarding the horse races. Similar prospectuses are issued every year to the horse owners.

94. On perusal of the prospectus, one can infer that the same is a conditional contract. On plain perusal of the same, it becomes that the same lays down the terms and conditions of the contract i.e. participation in the race. It lays down what would be the role and scope of the supplier of the horse (supplier of service) and the role and scope of RWITC (recipient of service). It clearly provides for the consideration clause as well. Hence, it would be naive to suggest that there is no contract of service between the respondent and RWITC. The prospectus offers the horse owners an opportunity to participate in the races conducted each year. Several horse owners participate in the horse races organized by RWITC every year. The horse owners pay participation fees. The horse owners are rewarded with prize money only upon winning or upon attaining the position 2nd, 3rd, 4th, 5th, or 6th as stated in the prospectus. Thus, the contract between the parties is conditional in as much as it is dependent upon the success of a horse owner in the race.

95. In the instant case, RWITC has issued prospectus to the horse owners. The contract contains the general terms and conditions along with the guidelines for participation in the race. The prizes are to be distributed in the manner provided for in the prospectus. Hence, the prospectus is binding upon the parties. It is a valid contract. Reliance is placed on **Kanchan Vora and Bepin Voravs. West Bengal Housing Board**

reported at **MANU/WB/0724/1989**, wherein it was held that a brochure providing for manner of allotment of flats is a valid contract.

96. In the instant case, the respondent has accepted the offer in the prospectus from RWITC by way of participation in the race. Through acceptance of the conditions in the prospectus, the respondent has concluded a contract for provision of service/supply by way of participation in the race for which they are receiving consideration in the form of prize money.

97. It is a well settled position that GST is a contract-based levy. Consideration must flow pursuant to the contract. In other words, any and every sum received and/or earned by the service receiver can be subjected to GST, only if the said sum represents the consideration for provision of the taxable service. There must be a live and direct nexus between the provision of the taxable service and the consideration must flow pursuant to provision of such taxable service, under a contract of service.

98. In view of the above, it can be concluded that there is a supply in lieu of which the respondent has received consideration. Hence, there is a supply as per section 7 of the CGST Act, 2017. Accordingly, GST is leviable on the same.

99. **Second,** as it happens in most races, the race organizer might award a number of prizes to the horses producing the best performance. Such a situation gives rise to a taxable transaction. The prize received by the horse owner constitutes consideration for the outstanding performance of the horse in the race, which has enriched the event by making it more interesting and valuable. The horse owner, by supplying his horses for the race, enables the organizer to arrange an event which the public may attend, and lay bets on the outcome of each race and which media undertakings may broadcast and which may be of interest to advertisers and sponsors. The race organizer would not be able to organize and market his event without a certain number of horses participating and, clearly, the greater the skills of the horses, the greater the commercial value of the event. Therefore, it cannot be disputed that both the race organizer and the horse owner receive a direct and individual benefit from the transaction. Accordingly, there is a direct link between the outstanding performance of a horse in a race (supply) and the payment of the prize (consideration). In fact, without the horse, there is no race. Without the horse, there is no event. Without the

horse, there is nothing. The horse is the essence and substance of the entire transaction. Thus, it would be impossible to suggest that there is no supply in terms of section 7 of the CGST Act, 2017. Accordingly, the applicant would be liable to pay GST on the said transaction. Hence, the present appeal is liable to be rejected.

100. **Third,** the contention of the appellant department that the participation in the race is the choice of the owner. There is no pre-agreement with RWITC. This is clearly incorrect. The choice to participate in the race is of the respondent. However, the club (RWITC) allows the respondent to participate in the said race. There is an obligation on part of the respondent to make his horse available for the race. It is here that there is an agreement between the said parties. Let us explain with the aid of a simple illustration. When a buyer enters a shopping mall, he enters on his own choice. However, when we intend to buy any goods, there is an agreement to sell between the buyer and the shop owner. Once the said is concluded, there is a contract of sale. This is fundamental and basic concept of contract law, which, obviously, the appellant department seems to be unaware of.

101. ***Fourth***, the reproduction of section 65B (44) of the Finance Act, 1994 bears no relevance in the instant case in as much as the respondent have filed an application before Authority of Advance Ruling, Maharashtra for clarity on the subject issue under GST and not service tax. Hence, reliance on erstwhile laws bears no relevance.

102. ***Fifth***, the department is unable to decide on the taxability of prize money won in horse races. The same is evident from the recent practices of the department, wherein it has issued letters to several horse owners, calling upon them to pay service tax/GST on prize money won in horse races. While on one hand, the department has denied to accept the ruling of AAR, Maharashtra on the taxability of prize money won in horse races, on the other hand the department is issuing letters to different horse owners for payment of GST/service tax. The respondent is unable to comprehend as to how the department can take contrary stands on the same issue. The department has to decide as to whether prize money is taxable or not taxable. The department cannot blow hot and cold at the same time.

103. The department contention that the jockey/trainers are not eligible to receive the prize money from the club in as much as they do not provide any supply is incorrect.

The jockeys are imperative to the horse races as they are the ones responsible for handling the horses during the races. It is for this act that they receive consideration in the form of prize money. Similarly, the trainers are required to train the horses for the races and the prize money is the consideration that they receive for such a supply. There is a consideration for each participating member i.e. the owner, the jockey and the trainer. All three are making independent supplies to the club.

104. At Para J of the department appeal, the appellant-department has contended that the respondent has not reversed the cenvat credit and has instead sought an advance ruling dated 23.04.2019. This submission is totally beyond the present proceedings. There is no ruling delivered by the Authority on the said issue. Hence, the said ground of appeal is beyond the scope of the proceedings.

105. At Para M of the department appeal, the appellant-department has contended that the respondent has not provided any service by making the horse participate in the horse races. The respondent does not receive prize money in each and every horse race that he participates in. Therefore, such prize money is not a consideration for any supply.

106. At Para N of the department appeal, the appellant-department has reproduced section 2(17) to suggest that the activity of the respondent is not covered under the definition of business under CGST Act, 2017.

107. At Para O of the department appeal, the appellant-department has reproduced section 7 of the CGST Act, 2017 to suggest that the prize money won in horse races by the respondent is an actionable claim.

108. The above submission of the appellant Revenue is without any legal basis. The uncertainty of winning of the prize money cannot be a ground to suggest that is not a consideration for the supply. It is a consideration for running. It is, in fact, the sole intention with which the owners participate in the race. Without participating in the race, it is not possible for anyone to win the race. Hence, the prize money can be awarded to only participating and winning horses. The fact that the said consideration is paid only to some and not to all others cannot be a ground to suggest that it is not a consideration for participating in the race. Therefore, it would be a fallacy to suggest that there is no consideration. There is no certainty of receipt of consideration for

supply of services and goods. There are bad debts. However, it cannot be gain said that there is no consideration. Hence, being bereft of any merit, the present appeal is liable to be rejected.

109. At Para P of the departmental appeal, the appellant-department has contended that prize money received is nothing but actionable claim as there is no quid pro quo. Prize money is not received for participation. It is a consequence of chance, skill and circumstances. There is no certainty. There is no merit in this submission.

110. Actionable claim has been defined under section 2(1) of the Central Goods and Services Tax Act, 2017. It has been provided that it shall have the same meaning as assigned to it in section 3 of the Transfer of Property Act, 1882. Section 3 of the Transfer of Property Act defines the said term as under:

'Actionable claim' means a claim to any debt, other than a debt secured by mortgage of immoveable property or by hypothecation or pledge of moveable property, or to any beneficial interest in moveable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent.

111. Based on the above definition, it can be seen that to qualify as an actionable claim, the following key features need to be present:

- A claim to debt, or
- A beneficial interest in moveable property not in the possession, either actual or constructive.
- The debt or beneficial interest may be existent, accruing, conditional or contingent.

112. However, in the instant case, there is no claim to debt. The club does not owe anything to the participants other than the prize money. There is no existing debt. Apart from this, there is no beneficial interest in any moveable property. Hence, there is no question of any actionable claim arising in the instant case.

113. In the instant case, there is certainty. If a horse wins, the club has to award the prize money as advertised in its prospectus. There is no way that the club can refuse to make the said payment. Thus, the prize money is certain. In other words, it is a conditional contract. However, it would be erroneous to suggest that there is no contract. Let us

explain with a simple illustration. Assuming a lawyer agrees to argue a case, and his fees is dependent upon success in the matter, (assuming the same is not barred by any other law), can it be suggested that the lawyer has not provided any service. The answer to this question is clearly in the negative. Hence, the appeal filed by the Revenue is devoid of any merit.

114. At Para S & T of the department appeal, the appellant-department has cited the decision in the case of Gurdeep Singh Sachar (CPIL Stamp no.22 of 2019) passed by the Hon'ble Bombay High Court to suggest that no tax is payable on actionable claims related to online fantasy sport gaming. Reliance placed on the said decision by the appellant Revenue is totally misplaced and out of context. The facts of the case are different with that of the present case. Unlike the facts of the cited case, where the money from the escrow account is distributed to the owners, the prize money is not redistributed from the pool of entry fee or from the bets that the public may place on the outcome of a particular race. The prize money is a guaranteed amount which the club pays to the winning or placed horses as stated in the prospectus. This amount has nothing to do with the entry fees recovered or the betting money that may take place on the outcome of the race. These amounts are a part of the income of the club, but in no way affect the prize money guaranteed by the club. Hence, no reliance can be placed on the same.

115. First, the facts of the cited case and the instant case are totally different. The facts of the cited case are totally distinguishable from the facts of the present case. In the cited case, the facts were that that the players can create different virtual teams for playing fantasy games. Admittedly, for understanding and getting know-how of the game, option to play for free is also available on the website. The fantasy games are such that after some time people tend to pay with their hard-earned money, instead of playing for free. The fantasy games are nothing but means to lure people to spend their money for quick earning by taking a chance, and most of them end up losing their money in the process, which is thus gambling/betting/wagering, being different forms of "gambling". A fantasy game of this nature is merely a game of chance or luck, which is totally dependent upon the luck of a player on a particular day. Upon entering in various contests and putting bet money in them, the player receives a tax invoice in

which tax is being charged only on the amount received and retained by the organizer towards platform fee say, and not on the entire money which is put a stake by the player. For the balance, only "acknowledgement" is given. Admittedly, this "acknowledgement" amount collected from each player is pooled in as Escrow Account and their contribution ultimately gets distributed amongst the players themselves as prize money immediately upon conclusion of game, as a result of which, some players get more than their contribution, and some lose money. According to the petitioner in that case, since these activities are nothing but 'gambling' or 'betting' even if this acknowledgement amount is separately kept in an Escrow account and not retained by the organizer, GST would be payable even on this amount. However, since GST is not being paid on this "acknowledgement" amount by the organizer and since the activities such as those being conducted by the organizer, are nothing but 'betting' or 'gambling'. Admittedly, the facts of the present case are totally different. The issue whether RWITC is liable to pay GST on its earnings received from the bets is not involved in the instant case. The issue whether participation / entry fee is liable to GST or not is not involved in the instant case. The issue is whether the consideration received by the owner of the horse, is liable to GST in the hands of the participant or not. Hence, the said ruling would be of no assistance to the case of the Revenue.

116. The Appellant seems to be confused between "participating in the race" and "betting on such race". Betting in a race could be a game of chance or luck. However, the outcome of a race is entirely different from owner's horses participating in a race and winning prize money. Without participating, no one can win. This is trite. Betting on the outcome of a race and owners owning horses and participating in a race are two entirely different activities. The club conducts races in which the owner's horses participate. They get prize money based on their performance. The public may bet on the outcome of these races. The owner of the horse has nothing to do with the activity of betting. However, this aspect of the matter seems to have been lost sight of by the Revenue.

117. In **Vikas Sales Corporation Vs. Commissioner of Commercial Taxes AIR 1996 SC 2082,** the question before the Hon'ble Supreme Court was whether the transfer of "import license" called REP License by the holders thereof to another person

constitute a sale of "goods" or not. In the said case, the Supreme Court after referring to decision in the case of *H. Anraj v/s Government of Tamil Nadu (1985) Suppl (3) SCR 342*, held that the said licenses are goods and hence, the States have power to levy sales tax on transfer of the same. In the cited case, the Supreme Court considered the expression "property" and held that the said term embraces everything which is or may be the subject of ownership, whether a legal ownership, or whether beneficial, or a private ownership.

118. However, the validity of the aforesaid judgment came up for consideration before the Full Bench of the Supreme Court in the case of ***Yasha Overseas V/s Commissioner of Sales Tax 2008 (8) SCC 681.*** The question before the Full Bench was whether the decision in the case of Vikas Sales Corporation (Supra) has been impliedly overruled by the Constitution Bench Judgment in the case of ***Sunrise Associates V/s Government of Delhi AIR 2006 SC 1908*** in as much as H. Anraj (Supra) has been overruled by the said decision in the case of Sunrise Associates. However, the Full Bench held that REP license cannot be compared with a lottery ticket and the decision in the case of Vikas Sales Corporation was held to be valid and holding the field.

119. In Sunrise Associates supra, the Court held that lottery tickets were actionable claims and thus, not goods. In that case, the Supreme Court explaining the concept of goods vis-å-vis actionable claims, held that on purchase of a lottery ticket one merely gets a claim to a conditional interest in the prize money that is not in the purchasers' possession. However, in the instant case, the said principle would apply to guests (punters) betting on the said race and not on owners whose horses participate in a race and are awarded prize money.

120. At U of the department appeal, the appellant-department has cited the decision in Bai Mumbai Trust-2019-TIOL-2158-HC-MUMCßT, wherein the Bombay High Court has held that to be a supply under section 7 of the CGST Act, 2017 there must be a contemplated consideration. The reliance placed on this judgment is wholly out of context. The facts of the cited case are totally different and distinguishable from the facts of the present case. In the cited case, the issue before the Hon'ble High Court was whether fees received by court receiver appointed by the court could be subject to GST or not. The court replied in the negative and held that a court receiver is an

employee of the High Court and hence, fell within Serial No.2 of Schedule III of the CGST Act. Further, the court held that there would be no GST on royalty as it may be in the nature of potential award for damages or mesne profits. The facts of the present case are totally different and distinguishable.

121. At Para W of the departmental appeal, the appellant-department has reproduced Para 2.3 of CBEC Education Guide to suggest that no service tax was payable on an award received as consideration for contribution over a life time or even a singular achievement carried out independently or without reciprocity to the amount received as consideration.

122. The reliance placed on the said clarification is, yet again, out of context and misplaced. An award is not something which we work for. It is a recognition of the work carried out and contribution to the particular field or profession or organization. A life time achievement award cannot be compared with the money earned after a valiant effort of running to win the said money. Illustratively, an actor does not receive an award as a consideration for his supply/services to the production house/director. The director/production house pays a separate amount to an actor for his services. Hence, an award cannot be equated with the prize money won in horse races. There is direct nexus between the participation, intention, running, winning and the money earned in such a race. Therefore, it would be incorrect to suggest that the said money is not a consideration for participation and winning in the race.

123. In any case, the said Education Guide would be applicable to matters relating to service tax and not GST. Under the Finance Act, 1994, there was no definition of the term 'consideration' and hence, such clarification was needed and resorted to. However, under the GST regime, section 2(31) of the Act clearly defines the term "consideration" as under:

"Consideration" in relation to the supply of goods or services or both includes:

a) Any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient of the service or by any other person but shall not include any subsidy given by the Central Government or State Government;

b) *The monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient of the service or by any other person but shall not include any subsidy given by the Central Government or State Government; Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply*

124. On plain perusal of the above definition, it would become clear that any payment made in respect of or in relation to or in response to supply of services would be treated as consideration. The definition is very wide. The term 'includes' makes it expansive. Hence, it would be incorrect to suggest that the said prize money is not a consideration for any supply.

The respondent is not liable to reverse the input tax credit

125. As per the department appeal, the amount of input tax credit availed by the respondent should be reversed in as much as there is no output supply being made by the respondent.

126. The applicant submits that input tax credit availed on GST paid on prize money need not be reversed.

127. ***First***, even if it is held that no GST is applicable on the transaction in question, the applicant has erred in favor of the Revenue / Department by depositing the same to the credit of the Government. Thus, there is no loss to the exchequer. In such situation, there should not be any demand for reversal of input tax credit.

128. ***Second***, once GST has been accepted by the department treating the transaction in question as a taxable supply, then, thereafter, the department cannot turn around and argue to the contrary seeking to recover input tax credit. In CCE vs. Ajinkya Enterprises reported at 2013 (294) ELT 203 (Bom), the appellant considered their activity to be one of manufacture and accordingly, paid central excise duty by utilizing cenvat credit. The department contended that the appellant's activity did not amount to

manufacture and therefore, the cenvat credit taken by the appellant should be recovered with interest and penalties thereof. The matter travelled up to the Hon'ble Bombay High Court which held that when an assessee makes payment of duty with a bona fide intention, CENVAT credit availed need not be reversed.

129. A view similar to the above was recently endorsed by the Hon'ble CESTAT Mumbai in the case of **Vista Packaging vs. CCE reported at 2018-TIOL-2610CESTAT-MUM**, wherein, the Tribunal held that once the duty on the final products has been accepted by the department, CENVAT credit availed need not be reversed even if the activity does not amount to manufacture.

Personal Hearing

130. A Personal Hearing in the matter was conducted on 12.03.2020, which was attended by Shri Swati Ravindra Shinde, State Tax Officer, from the appellant side, and by Shri Bharat Raichandani, Advocate, from the respondent side. The representatives of both the Appellant as well as the Respondent reiterated their written submissions.

Discussions and Findings

131. On perusal of the entire case records including facts of the case and various submissions and contentions made in this regard, the first moot issue, before us, is as to whether the impugned advance ruling, being allegedly obtained by the Respondent by suppressing the material facts regarding the investigation initiated against him by the DGGI, PZU 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, 2017, or not. Consequently, if the impugned advance ruling stands the test of sustainability after being subjected to the aforesaid provisions, the second moot issue would be as to whether the prize money / stakes, received by the Applicant-Respondent from the horse racing clubs, for winning the race organised by such horse racing clubs, would be subjected to levy of GST under the provisions of the GST Act.

132. Now, we set out to examine the first moot issue, i.e., whether the impugned advance ruling order is sustainable in terms of the provisions laid out under proviso to section 98 (2) read with section 104 of the CGST Act, 2017 under the facts and circumstances of the case at hand. As per the Appellant- Department, the Respondent has suppressed

the material facts regarding the investigation proceedings initiated against him by the DGGI, PZU on the very issues which were raised by the Applicant- Respondent in the subject advance ruling application filed by him before AAR, hence the advance ruling obtained by the Applicant- Respondent is liable to be declared void ab- initio in terms of the provision of section 104 (1) of the CGST Act, 2017. Now, let us examine the merits in the aforesaid allegations made by the Appellant- Department in light of the provisions of section 104 of the CGST Act, 2017, which is being reproduced herein under:

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 :*

Provided that no order shall be passed under this sub-section unless an opportunity of being heard has been given to the applicant or the appellant.

In the above provision, there is mention of both the authorities, i.e. Advance Ruling Authority as well as Appellate Authority. What can be done by the Advance ruling authority is of course well within the powers of the Appellate Authority as an authority superior to the Advance Ruling Authority. Hence, in view of the above discussions, the contention made by the Applicant-Respondent in this regard is not tenable. 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.

133. Now, we would like to discuss the merits of the impugned advance ruling order, wherein the AAR has held that the prize money received by the Applicant- Respondent from the horse racing clubs for winning the horse race competition is a consideration for letting his horses participate in the horse racing, which would be subject to GST. In

other words, activities carried out by the horse owners by way of the participation in the horse races, organised by the horse racing clubs against the consideration in the form of the prize money/stakes received by them, was held to be supply in terms of section 7 (1) (a) of the CGST Act, 2017.

134. Now, we set out to examine the aforesaid issue in terms of the definition of "Supply", as laid out in section 7 of the CGST Act, 2017. The relevant portion of section 7 ibid. is being reproduced herein under:

7(1) supply" includes:

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

(b) import of services for a consideration whether or not in the course or furtherance of business;

© the activities specified in Schedule I, made or agreed to be made without a consideration; and

135. Thus, on plain reading of the above provisions, "Supply" as envisaged under section 7 (1)(a) of the CGST Act, 2017, should essentially and invariably have the following ingredients:

(i)There should be a supply of goods or services or both;

(ii)It should be for a consideration;

(iii) It should be in the course or furtherance of business.

136. By applying the above definition of "Supply" to the facts and circumstances of the case at hand, it is observed that no service has been provided by the Applicant- 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 Applicant-Respondent has himself contended in their submissions as reproduced

herein above that for the occurrence of any taxable event, there must be direct and immediate link between the supply made and the consideration received. He has also cited few judicial pronouncements to strengthen his arguments. However, as discussed above, in the present facts and circumstances, this clause of 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. Participation of the race horses in the races and winning by such race races are two separate events/transactions. It is clear from the issue that in the first transaction, i.e. getting the opportunity to participate in such races organised by the horse racing clubs against the entry fee payable by the horse race owners to such clubs *is a supply of service by the race conducting entity to such aspiring race horse owners*. However, we fail to see any element of service *when the applicant's horses win the race and get the prize.* It is the contention of the applicant-respondent that when the horse owner supplies his horses for participation in the race, he enables the organizer to arrange an event which the public may attend, which media undertakings may broadcast and which may be of interest to the advertisers and sponsors. The applicant-respondent has contended that both the race organizer and the horse owner receive a direct and individual benefit from the transaction. In the above issue, it is agreed that holding and organizing is a service given by the club to the horse owners for which the horse owner pays the entry fees. But we fail to see what kind of service is given by the horse owner to the race club when he participates in the race. And if the same is to held as a service then, even the rest of the horses which are not winners should get consideration for enabling the club to hold a race which is surely not the case in the instant issue. Surely, it cannot be a case that service'' is provided by all and consideration is received by only a few ones. Also, the prize, which is given by the Club on winning, is argued to be a consideration by the applicant-respondent. But as observed by us earlier if the running of the horses is held to be a service and if the receipt of the prize is a consideration then it should have been received by all the horse owners who have run their horses in the race. Secondly, if it is service then why the horse owners pay an entry fee for providing that service? It is therefore difficult to accept the contention of the applicant and the ruling

of the AAR that the horse owners have supplied a service to the club by providing their horses in the race.

137. The applicant- respondent had contended that they provide service to the Club and that the contract is a conditional contract and therefore there is supply. The applicant-respondent has argued there may be a conditional contract here and we might assume that for the moment. 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/ service and there should be consideration. We have already delineated in detail as to how there is no service provided in the present case and therefore the argument of the appellant is not acceptable.

138. Now, we proceed to decide the second question asked by the Applicant- Respondent as to whether they 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. As regards this question, it is stated that since there is no taxable supply by the Applicant Respondent in the present arrangement, there is no question of availment of ICT as per the provisions of section 17 (2) of the CGST Act, 2017, which is being reproduced herein under:

"(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 creditshall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero rated supplies."

139. Thus, from the above quoted provisions, it is abundantly clear that input tax credit is restricted to the portion of taxable supplies only. Therefore, in the present case, the Applicant- 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.

Thus, in view of the above extensive discussions, we pass the following order:

ORDER

We, hereby, set aside the advance ruling issued by AAR, and hold that prize money/ stakes will not be subject to GST in the absence of any supply, as discussed above. Accordingly, the Applicant- Respondent is also not entitled to avail any ITC in accordance with the provisions of section 17 (2) of the CGST Act, 2017.

(Sanjeev Kumar)
Member

(Rakesh Kumar Sharma)
Member

Copy to- 1. The Appellant

2. The Respondent

3. The AAR, Maharashtra

4. The Pr. Chief Commissioner, CGST and C.Ex., Mumbai Zone

5. The Commissioner of State Tax, Maharashtra

6. The Web Manager, WWW.GSTCOUNCIL.GOV.IN

7. Office copy