

Horse race clubs liable to pay GST only on commission and not entire bet amount – Rule 31A(3) of CGST Rules ultra vires : The Hon'ble Karnataka High Court

Fact of the Case

Bangalore turf club ltd. ("the Petitioner") is carrying the business of a race club. The Petitioner particularly conducts horse racing and facilities betting by the punters. The punter places the bet either through totalisator run by the Petitioner or a bookmaker licensed by the Petitioner. If the horse backed by the punter wins, the winning punter is required to surrender the receipt and receive the winning amount from the losing punter. Commission is being taken by the Petitioner for holding the entire amount.

In pre-GST regime the Petitioner was treated as service providers under Chapter-V of the Finance Act, 1994 and Service Tax was levied on the Petitioner's commission alone. After the GST regime, an amendment was brought into Rule 31A of the CGST Act by the insertion of sub-rule (3) to Rule 31A of the CGST Rules. The amendment made GST leviable on the whole amount of bet that gets into the totalisator.

Issues:

- Whether Rule 31A(3) of the CGST Rules is ultra virus the CGST Act?
- Whether the Petitioner is liable to pay GST on the commission or on the total amount collected in the totalisator?

Decision of the Case

The Hon'ble Karnataka HC in WP No. 11168/2018 and WP No. 11167/2018 decided on June 02, 2021 held as under:

- Opined that betting is neither in the course of business nor in furtherance of business of the Petitioner for the purposes of the CGST Act as the Petitioner hold the amount received in the totalisator for a brief period in its fiduciary capacity for which it receives consideration in form of commission and once the race is over the money is distributed to the winners of the stake. Thus, the entire money held by totalisator cannot be construed as consideration in terms of Section 2(31) of the CGST Act.
- Observed that Rule 31A(3) of the CGST Rules/ KGST Rules completely wipes out the distinction between the bookmakers and a totalisator by making the Petitioner liable to pay tax on 100% of the bet value. It is the bookmakers who indulge in betting and receive consideration irrespective of the result. In contrast, the Petitioner provides totalisator service and receives commission for providing such service. Therefore, there is no supply of goods/bets by the Petitioner under the CGST Act.
- Noted that, Rule 31A(3) of the CGST Rules/ KGST Rules make the Petitioner a 'supplier' of bets but the Petitioner is not the supplier of bets and therefore, cannot be held liable to pay tax under the CGST Act. The service or supply that the Petitioner do is only of totalisator component. The Petitioner dose not supply bets to the punters.
- Held that GST cannot be levied on the entire bet amount received in the as it would take away the principle that tax can only be levied on consideration received under the CGST Act. The Court compared it to stock broker or a travel agent; both of whom are liable to pay GST only on the income i.e., the commission that they earn and not on all the monies that pass through them.
- Stated that, Rule 31A(3) of the CGST Rules/ KGST Rules does not conform to the provisions of the CGST Act and thus are ultra virus the enabling CGST Act and liable to be stuck down.
- Held that, the Petitioner is liable for payment of GST on the commission received for the services rendered through the totalisator and not on the total amount collected in the totalisator.