Tax alert: Supreme Court upholds GST levy on online gaming platforms, on full face value of stake amounts

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A division bench of the Supreme Court of India has delivered a landmark judgment that has effectively brought a long-running tax controversy involving real-money gaming industry to a close. The Court held that organized online gaming activities involving monetary stakes on uncertain outcomes, including fantasy sports and casino, constituted betting and gambling for GST purposes. Consequently, such activities are liable to GST on the full face value of stake amounts.

In a nutshell

Organised gaming activities including fantasy sports and casino, involving pooled stakes, give rise to actionable claim supplies exigible to GST under the statutory framework governing betting and gambling transactions.

The character of betting and gambling does not depend upon whether the underlying activity is a game of skill or game of chance, but upon the existence of stakes placed upon uncertain future contingencies.

The provisions regarding levy of GST in respect of actionable claims arising from betting and gambling are constitutionally valid.

Valuation rules in respect of betting and gambling, online gaming and casino i.e., Rule 31A, Rule 31B and Rule 31C of CGST Rules constitutes valid machinery provisions as they merely provide operational clarity.

The 2023 amendments that introduced a detailed statutory framework governing online gaming, online money gaming and specified actionable claims within the GST regime, held to be clarificatory in nature and would have retrospective application as prescribed.

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Background:

- The present case[1] arose from multiple show cause notices issued by GST authorities to online gaming companies alleging short payment of GST. The Department contended that the companies had misclassified their activities as supply of services (taxing only platform fee i.e., gross gaming revenue (GGR)) instead of treating themselves as suppliers of actionable claims (goods) in the nature of betting and gambling, thereby avoiding GST on the full stake value.
- The principal dispute related to online real-money games (such as rummy, poker, fantasy sports etc.) where players deposit money, participate in games, and compete for a pooled prize. The gaming operators retained a fixed platform fee/commission (GGR), while the remaining amount formed the prize pool distributed to winners.
- The gaming companies argued that they merely provided a technological platform facilitating skill-based games between players and did not participate in betting or gambling. They contended that GST should apply only on the platform fee and challenged the constitutional validity of taxability and valuation provisions under GST Law related to betting, gambling and online gaming.
- In contrast, the Revenue argued that once players stake money on uncertain outcomes irrespective of whether the activity is of chance or skill, it constitutes betting and gambling, and the operators are supplying actionable claims (chance to win). Accordingly, GST should be levied on the entire stake amount (gross value of bets) and not merely on commission.
- The matter also involved challenges to retrospective tax demands for earlier periods (2017 onwards), along with broader questions on classification (goods vs services), valuation, constitutional validity, and nature of the 2023 amendments (that introduced a detailed statutory framework governing online gaming, online money gaming and specified actionable claims within the GST regime). The matter gained significance due to conflicting judicial precedents. The Karnataka High Court in the Gameskraft case[2] held that games of skill whether played with stakes or without stakes did not constitute betting or gambling, Other courts, including the Bombay High Court[3] in matters relating to fantasy sports, had recognized such activities as games of skill in the regulatory context. The divergent views across jurisdictions created legal uncertainty, ultimately necessitating authoritative determination by the Supreme Court.

Supreme Court Judgement:

- After rejecting the challenge to constitutional validity of the GST framework applicable to online gaming, fantasy sports and casino transactions, the Supreme Court upheld the levy of GST on full value of bets/stakes paid as ‘supply of actionable claims’.
- The Supreme Court held as follows:
  - Online gaming including fantasy sports, and casino transactions involving stakes fall within “betting and gambling” for GST purposes, irrespective of whether the underlying game is one of skill or chance. The Court held that the presence of stakes on uncertain outcomes is determinative for taxation.
  - The online gaming companies are not mere intermediaries facilitating transactions inter se between participants but constitute suppliers of such actionable claims.
  - The concept of ‘supply’ is not confined merely to transfer of pre-existing actionable claims but extends to organised betting and gambling arrangements within which actionable claim interests arises.

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[1] Directorate General of GST Intelligence (HQS) & Ors. v. Gameskraft Technologies Pvt. Ltd. (SLP (C) Nos. 19366-19369 of 2023).
[2] *M/s Gameskraft Technologies Private Limited v. Directorate General of Goods and Services Tax Intelligence & Ors.* (Writ Petition No. 19570 of 2022)
[3] Gurdeep Singh Sachar v. Union of India & Ors (SLP (Crl.) D. No. 43346 of 2019., Avinash Mehrotra v. State of Rajasthan (SLP Diary no. 18478 of 2020), Varun Gumber v. Union Territory of Chandigarh (SLP (C) Diary No. 27511 of 2017)

– It upheld the constitutional validity of inclusion of ‘actionable claims’ within the ambit of “goods” under GST framework and its consequent GST levy.
– The amount appropriated for participation constitutes the price actually paid/ payable and represents consideration for the supply arising within the organised betting and gambling framework. There exists no statutory basis for deduction of winnings, prize pools or payout amounts while determining taxable value.
– Once a taxable supply of goods exists and a corresponding rate is prescribed, the levy cannot fail merely because no separate HSN classification exists for actionable claims.
– The Court upheld the validity of Rule 31A, 31B and 31C which values actionable claims in betting, gambling, online gaming, casino at full face value of the bet as they merely make explicit what was always implicit in the statutory framework.
– The 2023 amendments are held to be clarificatory and would have retrospective application as prescribed, as they refine and operationalize the already existing statutory framework governing such taxable supplies.
– In respect of casino transactions, recourse to valuation rules and adoption of best judgment methodologies under pre-amendment framework was held permissible under the governance of Rule 31C which provides the valuation mechanism in case of casino transactions.

Comments

The Supreme Court’s judgment marks a turning point for the real-money gaming industry by crystallizing substantial retrospective tax liabilities for the historical period. By classifying online gaming activities involving monetary stakes as betting and gambling for GST purposes, the Court has effectively validated the imposition of 28% GST on the full value of player deposits, significantly increasing the sector’s tax exposure. This interpretation materially narrows the viability of traditional real-money gaming models, particularly those reliant on deposit-based participation and prize pools.

While the regulatory environment has become more stringent, the sector may continue to evolve by gradually exploring adjacent, lower-risk segments such as esports, casual gaming, non-staking skill formats, and subscription or ad-supported models.

From a direct tax perspective, taxability of online gaming companies would depend on their activities/operations carried out by them. Such gaming platform companies may want to evaluate implications of any additional GST payments depending on the revenue structure/business model of such companies. Further, taxability on winnings from online gaming is governed under section 194/402 of the Income-tax Act, 2025.