

EY Tax Alert

SC holds GST is leviable on supply of actionable claim in online gaming, fantasy sports and casinos, retrospectively from July 2017

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Executive summary

This Tax Alert summarizes a recent ruling of the Supreme Court (SC)¹ addressing the GST implications on online gaming, fantasy sports and casino transactions, including constitutional validity of levy on actionable claims and the valuation mechanism prescribed under the Central Goods and Services Tax Act, 2017 (CGST Act) and the Rules framed thereunder.

The key observations of the SC are:

- Betting and gambling constitute a composite expression referring to staking money on uncertain outcomes, and such characterization is independent of whether the underlying activity involves skill or chance. Accordingly, online gaming, fantasy sports and similar formats involving pooled stakes fall within the ambit of betting and gambling for GST purposes.
- The inclusion of actionable claims within the definition of 'goods' under the GST framework is valid, and GST is leviable on the supply of actionable claims arising from betting and gambling.
- Rule 31A of Central Goods and Services Tax Rules, 2017 (CGST Rules) is a valid machinery provision, and valuation based on the entire amount paid or staked is permissible, not confined to the platform fee or commission alone. The amendments introduced in 2023, including insertion of Rules 31B and 31C, are clarificatory in nature and operate retrospectively to the extent they explain the existing legal position.
- The entire amount paid or deposited by players for participation constitutes the taxable value in online gaming, fantasy sports and casino transactions, without any deduction for payouts or winnings.

Basis above, SC set aside the ruling of the Karnataka High Court² and directed pending notices, adjudication proceedings and consequential demands to be decided in accordance with the above principles.

¹ TS-391-SC-2026-GST

² 2023-TIOL-531-HC-KAR-GST

Background

- The present matter arises from a batch of appeals, writ petitions and transferred cases involving multiple stakeholders in the online gaming, casino and betting industry, which were heard together by the Supreme Court (SC) due to the commonality of issues.
- The proceedings originated from various show cause notices issued by the tax authorities under Section 74 of the Central Goods and Services Tax Act, 2017 (CGST Act) alleging short-payment or non-payment of goods and services tax (GST) on online gaming, betting, gambling and casino transactions.
- In several cases, the Revenue alleged that taxpayers had wrongly classified their activities as supply of services and discharged GST only on the platform fee or commission, instead of paying tax on the entire amount staked by players.
- The taxpayers, on the other hand, contended that they merely provided online platforms facilitating games (such as rummy, poker and fantasy sports) and did not themselves engage in betting or gambling activities.
- Multiple taxpayers approached various High Courts (HCs) challenging the validity of these show cause notices, as well as the constitutional validity of certain provisions of the CGST Act and the Central Goods and Services Tax Rules, 2017 (CGST Rules), including Rule 31A relating to valuation of betting and gambling transactions.
- In a key development, Karnataka HC³ had quashed certain show cause notices issued to online gaming companies, holding that such activities could not be treated as betting and gambling so as to attract GST on the entire stakes.
- Subsequently, amendments were made in the CGST Act as well as the Integrated Goods and Services Tax Act, 2017 (IGST Act) w.e.f. 1 October 2023 regarding taxability of supplies made in casinos, horse racing and online gaming.
- Further, Rule 31B and 31C were also inserted in CGST Rules, to provide for value of supply in case of online gaming and casinos.
- Consequently, various writ petitions were filed before the SC challenging the levy of GST on online gaming and related activities, including challenges to the constitutional validity of taxing actionable claims and the valuation mechanism prescribed under the CGST Rules.
- The matters also included challenges from casino operators and other gaming entities against substantial GST demands raised on the basis of the gross amount of bets or stakes, rather than revenue earned by such operators.

SC's Ruling

Betting and Gambling

- 'Betting' and 'gambling' constitute a composite and interchangeable expression referring to the staking of money or money's worth upon uncertain outcomes. The determinative factor is the staking, not the nature of the underlying activity.⁴
- The 'skill vs. chance' distinction becomes relevant only where a statute expressly protects skill games regardless of the involvement of stakes. In the absence of such statutory protection, staking upon uncertain outcomes retains the character of betting and gambling.
- There is a distinction between a genuine 'entry fee' (paid merely to secure participation in a skill-based competition, with no link to the uncertain outcome) and a 'stake' (paid in connection with the uncertain outcome and the prize pool). In online gaming and fantasy sports, amounts paid are stakes, not mere access fees.
- Online gaming, fantasy sports and analogous gaming formats involving pooled stakes constitute betting and gambling under the GST framework, irrespective of the technological medium.

Constitutional validity of the GST levy on actionable claims

- The levy on actionable claims arising from betting and gambling is within the competence of Parliament under the GST framework, since GST is a tax on "supply of goods or services or both", and actionable claims have been expressly included within the definition of "goods".
- The expression "goods" under Article 366(12) is inclusive in nature and is not confined to tangible property. Actionable claims, though intangible, can validly be treated as goods for the purposes of taxation.
- There exists no constitutional prohibition on taxing actionable claims, and the legislative choice to include only lottery, betting and gambling actionable claims within the taxable net, while excluding others, is based on a reasonable classification having a rational nexus to the object sought to be achieved.
- Article 246A confers wide powers on Parliament and State Legislatures to enact GST laws, and such power is not limited by pre-GST distinctions between goods and services or by earlier interpretations under sales tax or service tax regimes.
- The contention that betting and gambling constitute only "activities" and not "goods" is misconceived, as the tax is not on the activity *per se* but on the supply of actionable claims arising from such activities.
- The inclusion of actionable claims in the definition

³ 2023-TIOL-531-HC-KAR-GST

⁴ TS-392-SC-2026-GST

of goods under Section 2(52) of the CGST Act does not violate Articles 14 or 19(1)(g), as the classification adopted is neither arbitrary nor unreasonable.

- The absence of a specific tariff heading or HSN classification for actionable claims does not invalidate the levy, since classification is procedural in nature and cannot determine the existence of a taxable supply.

Validity of Rule 31A

- Rule 31A is a machinery provision intended to operationalize valuation and does not create a new levy independent of the charging provisions contained in the CGST Act.
- The Rule is traceable to the statutory framework of Sections 15(4), 15(5) and Section 164, which confer adequate rule-making power to prescribe methods for determining the value of supply where the transaction value cannot be determined in the ordinary course.
- The prescription of valuation as 100% of the face value of the bet or amount paid is a permissible legislative choice and does not amount to expanding the taxable base beyond what is contemplated under the Act.
- The interpretation that Rule 31A(3) is confined only to horse racing is unacceptable, as the use of the expression “betting and gambling or horse racing” indicates distinct and independent categories, all of which are covered within the ambit of the Rule.
- The expression “chance to win” refers to the contingent beneficial interest created in favour of participants and is not restricted to games of chance alone; it extends to all betting and gambling transactions involving stakes.
- The Rule does not violate Section 15(1), since transaction value in such transactions cannot be determined in the conventional sense, and therefore a notional or deeming valuation mechanism is both necessary and valid.
- The delegated legislation embodied in Rule 31A is within the limits of the parent statute and does not suffer from excess delegation, arbitrariness or inconsistency with the Act.

2023 Amendment - Prospective or Retrospective?

- The amendments introduced in 2023 to the CGST Act and Rules are in the nature of clarificatory and declaratory provisions, intended to remove ambiguities and bring uniformity in the taxation of online gaming, casinos and similar activities.
- Such amendments do not create a new levy but clarify the existing legal position that actionable claims arising from betting and gambling were always intended to be within the GST framework.
- The insertion of Rules 31B and 31C and related notifications provides greater precision in valuation and compliance but does not alter the underlying taxable nature of such transactions.

- The statutory scheme, even prior to the amendment, already contemplated taxation of actionable claims in the nature of betting and gambling, and the amendments serve only to streamline their application in the context of evolving digital business models.
- The amendments therefore have retrospective effect in so far as they clarify the law, although the procedural and operational mechanisms introduced may apply prospectively from the notified dates.

Value of supply

Online Gaming

- Participation in online gaming involves payment of an amount by the player to obtain a chance to win, and such payment constitutes consideration for the supply of an actionable claim.
- The taxable value is the entire amount paid or deposited by the player for participation, and not merely the platform fee or commission retained by the operator.
- The contention that the prize pool is a deposit held in trust is untenable, since payment of the full stake is a condition precedent for participation and for acquiring the contingent beneficial interest.
- The operator cannot be regarded as a mere intermediary, as the platform structures the transaction, facilitates pooling of stakes and supplies the actionable claim to participants.
- The taxable event arises at the stage when the player pays or commits the amount for participation, irrespective of the ultimate outcome or distribution of winnings.

Fantasy Sports

- Participation in fantasy sports contests likewise involves pooling of stakes and creation of a contingent beneficial interest in the prize pool, which constitutes an actionable claim.
- The distinction between games of skill and chance does not alter valuation, since the amount paid for participation in such contests represents consideration for the supply of a chance to win.
- The entire entry amount paid by the player constitutes taxable value, as it is paid in respect of and for the inducement of participation in the contest.
- Distribution of winnings or prize payouts does not reduce the taxable value, since no statutory deduction is permissible from the consideration received for supply.

Casinos

- In casino transactions, the amount paid by players for purchase of chips or tokens represents the consideration for participating in betting and gambling activities.
- The taxable value cannot be confined to Gross Gaming Revenue (GGR), as GST is not levied on net revenue but on the total amount paid for participation in the supply of actionable claims.

- The argument that chips are merely facilitatory instruments is immaterial, since the payment made for acquiring such chips reflects the value of the underlying betting transaction.
- Reuse or recycling of chips across multiple rounds does not affect valuation, as the initial amount paid or committed represents the consideration for the supply.
- The valuation mechanism prescribed under the Rules validly captures the total consideration without permitting deduction of winnings or payouts.

Conclusion

- The judgment of the Karnataka HC (*supra*) quashing impugned show cause was set aside.
- Pending notices, adjudication proceedings and consequential demands relating to online gaming, fantasy sports and casino transactions are to be decided in accordance with Rules 31B and 31C and the principles in the judgment.
- All connected writ petitions and transferred cases were dismissed subject to the above observations; interim orders were vacated.

Comments

- a. The Apex Court ruling suggests a significant development as it settles the long-standing controversy on taxability of stakes vs platform fee, effectively endorsing the Revenue's position.
- b. Judgement departs from earlier industry reliance on the "game of skill" related jurisprudence and aligns taxability with the concept of staking on uncertain outcomes.
- c. Taxpayers may need to reassess historical positions, provisioning, and ongoing litigation strategy, particularly in light of retrospective implications and the expanded valuation base confirmed by the SC.
- d. The Court's characterization of the provisions amended in 2023 as clarificatory and retrospective, may need to be analysed for the possible applicability of such finding to other similar amendments in the law aimed at reinforcing legislative intent or overturning adverse precedents.
- e. SC has not examined the appropriateness of invoking Section 74 in the present cases, that may leave scope for taxpayers to contest such notices on the grounds of bona fide interpretational disputes.
- f. It remains to be seen whether the matter will be referred to a larger bench.

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