

From Skill to Stakes

Apex Court recharacterizes Online Gaming under the expanded GST gambling framework

LEGISLATIVE HISTORY

The taxability of Online Money Gaming ('OMG') was a subject of significant litigation and was dependent on whether the activities qualify as 'games of skill' or 'betting and gambling'. This distinction was determinative of both the applicable GST rate and valuation mechanism – i.e., whether GST would apply at 28% on the entire stake value or would be restricted to only 18% on the platform fees.

Pursuant to the recommendations of the 50th GST Council Meeting, the following amendments were introduced effective 1 October 2023 ('2023 amendments'):

- The distinction between 'game of skill' and 'game of chance' was removed and the definition of '**specified actionable claim**' was inserted under section 2(102A) of the Central Goods and Services Tax Act, 2017 ('CGST Act') to cover betting, casinos, gambling, horse racing, lottery and OMG.
- Entry 6 of Schedule III to CGST Act was amended to specifically exclude '**specified actionable claims**' from the purview of '**actionable claims**', which were neither treated as supply of goods nor as supply of services.
- Section 2(80B) of CGST Act was inserted to define OMG to *inter alia* involve payment/deposit of money with an expectation of monetary winnings, irrespective of whether it is a game of skill or a game of chance or both.
- Rules 31B and 31C of the Central Goods and Services Tax Rules, 2017 ('CGST Rules') were inserted to prescribe valuation based on the gross amount deposited for OMG and Casino, respectively.
- Supply of '**specified actionable claims**' made liable to GST @28% (40% effective 22 September 2025).

BACKGROUND

- M/s. Gameskraft Technologies Pvt. Ltd. ('Taxpayer') operates an online gaming platform ('platform') enabling users to compete against each other. The players select games based on stake levels to match similarly placed participants and the Taxpayer provides infrastructure and collects a platform fee with GST @18%.
 - Pursuant to investigations by Directorate General of Goods and Services Tax Intelligence ('tax authorities'), the Taxpayer received a show cause notice ('SCN') alleging that it is involved in facilitating '**betting and gambling**' amounting to supply of '**actionable claims**' on which GST is not discharged. Consequently, GST @28% was sought to be levied on the entire amount staked by the users.
 - Taxpayer filed a Writ Petition challenging the validity of the SCN before Karnataka High Court. The main issue was whether offline/online games such as Rummy which are predominantly based on skill and not on chance, when played with or without stakes result in '**betting or gambling**' as per Entry 6 of Schedule III to the CGST Act.
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HIGH COURT ORDER¹ ('KHC Order')

The Karnataka High Court ruled in the Taxpayer's favour and quashed the SCN by *inter alia* holding that:

- Game of chance played with stakes is '**gambling**', whereas the game of skill played with or without stakes is not '**gambling**'. The distinction between a '**game of skill**' and a '**game of chance**' must be determined by applying the '**predominance test**'. Rummy is a game where skill predominates over chance and hence, qualifies as a '**game of skill**'.
- '**Lottery, betting and gambling**' as per Entry 6 of Schedule III to the CGST Act should be construed *nomen juris* to **exclude games of skill**.
- '**Games of skill**' falls outside the scope of the term 'supply' under Section 7(2) read with Schedule III of the CGST Act.
- Rummy (whether played online or physically) is substantially and preponderantly a '**game of skill**' and not a '**game of chance**'. Hence, the said game, whether played with or without stakes would not amount to '**gambling**', consequently, it would be covered under Entry 6 of Schedule III to CGST Act.

SUPREME COURT ORDER² ('SC Order')

The validity of the KHC Order was challenged by tax authorities before the Supreme Court (SC). The SC, while hearing this matter, also heard the connected matters concerning the jurisdiction of the State Government to impose a ban on OMG. By way of a separate order in *Junglee Games India Pvt. Ltd. ('Junglee Games Ruling')*³, the SC upheld the power of the State Government to regulate/ prohibit betting and gambling.

Relying on *Junglee Games Ruling*, the SC upheld the validity of SCN issued by the tax authorities. The key disputed questions and the findings of the SC, in brief, are tabulated hereunder:

Sl. No.	Issue	Ratio
1.	Playing of game of skill for stakes - whether it is betting and gambling?	<ul style="list-style-type: none"> ▪ There is an element of uncertainty in every game, whether of skill or of chance. Once money or money's worth is risked upon an uncertain outcome, the activity acquires the character of betting and gambling. ▪ In <i>Junglee Games Ruling</i>, the Supreme Court observed that <ul style="list-style-type: none"> - Both 'betting' and 'gambling' constitute a composite and interchangeable expressions. The determinative factor is staking of money upon uncertain outcomes irrespective of whether the underlying activity involves skill, chance or a combination of both. - The distinction between games of skill and games of chance becomes relevant only where the statute expressly protects games of skill. ▪ Where online games, including games predominantly involving skill, are played for stakes, the activity attracts the essential characteristics of 'betting and gambling'.
2.	Constitutional validity of the levy of GST	<ul style="list-style-type: none"> ▪ GST is levied on the supply of 'actionable claims' arising from betting and gambling and not on the activity of betting and gambling per se. The levy of GST is constitutionally valid, traceable to Article 246A. ▪ 'Actionable claims' are transferable, assignable, capable of valuation and commercial dealing and possess characteristics of 'goods'. The inclusion of 'actionable claims' in the definition 'goods' under section 2(52) and the consequent levy of GST under section 9(1) of the CGST Act does not transgress the constitutional scheme. ▪ The term 'supply' under section 7 of the CGST Act must receive a purposive and expansive interpretation. ▪ The levy of GST is supported by sections 7, 9 and 15 read with Schedule III of the CGST Act, satisfying Article 265 of Constitution. ▪ Having upheld the validity of the levy of GST, Rules 31A, 31B, 31C of CGST Rules cannot be independently invalidated.
3.	Actionable claim in betting and gambling	<ul style="list-style-type: none"> ▪ An actionable claim arises when a beneficial interest in movable property comes into existence, whether existing, accruing, conditional or contingent. ▪ Staking money upon an uncertain event creates a contingent beneficial interest capable of maturing into an enforceable claim. Every such beneficial interest constitutes an 'actionable claim' irrespective of origin. ▪ GST arises on 'supply' under section 7 and not merely upon classification in Schedule II of the CGST Act. The subsequent maturation, discharge or extinguishment does not detract from taxability.

¹ Gameskraft Technologies Pvt. Ltd. and Ors. Vs. Directorate General of Goods and Services Tax Intelligence, New Delhi and Ors. [2023 (5) TMI 926 - Karnataka High Court]

² DGGI and Ors. Vs. Gameskraft Technologies Pvt. Ltd. and Ors. [SLP (C) Nos. 19366-19369 of 2023]

³ State of Tamil Nadu and Ors. Vs. Junglee Games India Pvt. Ltd. and Ors. [2026 INSC 594]

Sl. No.	Issue	Ratio
4.	Value of supply, classification and rate of GST	<ul style="list-style-type: none"> ▪ The Gross Gaming Revenue principle effectively amounts to netting off business expenses and payouts against receipts for the purpose of arriving at tax liability. Such an exercise may be relevant in income tax jurisprudence where profits and gains are subjected to tax. GST, however, is not a tax on profits. The value of supply under Section 15 of the CGST Act is not confined merely to the residual earnings retained after adjustment of payouts or losses. ▪ Section 15 of the CGST Act does not confine 'consideration' only to final price. Any payment bearing direct nexus with the supply and forming an integral part of commercial arrangement may legitimately constitute consideration. ▪ In betting and gambling transactions, the participation is conditional upon payment of stake amounts. Hence, such payment cannot be disconnected from valuation mechanism. ▪ The stake amounts constitute the price actually paid or payable and represent consideration for the supply arising within the organised betting and gambling framework. Without such payment, the participant neither enters the arrangement nor acquires the actionable claim. Supply cannot arise independent of the stake amount and hence, it legitimately enters section 15(1) of CGST Act. ▪ The payment of stakes is neither collateral nor incidental but constitutes the very basis and bears a direct and inseparable nexus. Merely because valuation takes into account the entire stake amount, it does not alter the nature of the levy and continues to remain as a levy on the taxable supply. ▪ Generally, the stake amounts committed towards participation in gameplay cannot be characterised either as amounts held under a mere entrustment arrangement or as freely refundable deposits under <i>proviso</i> to section 2(31) of CGST Act. However, if the amount retains character of a refundable deposit which is not irrevocably appropriated the <i>proviso</i> to section 2(31) may operate. Once appropriated, the taxable supply involving 'actionable claim' crystallizes and assumes the character of 'consideration'. ▪ If the underlying supply involves 'actionable claims' arising out of 'betting and gambling', sections 2(52) and 7 of CGST Act apply and the supply falls within the purview of 'goods'. Notification no:11/2017-CT dated 28 June 2017 dealing with GST rate on services cannot govern such transactions as the subordinate classification <i>vide</i> notification cannot override the parent statute⁴. Thus, 'actionable claims' are included within the scope of 'goods' and covered in Entry 6 of Schedule III to the CGST Act. The absence of specific HSN cannot invalidate the levy of GST. ▪ In view of the above, the levy, value of supply and rate are fully traceable under the GST law.
5.	Constitutional validity of rule 31A of CGST Rules	<ul style="list-style-type: none"> ▪ Rule 31A merely operationalises the statutory mechanism of valuation contemplated under Section 15 of the CGST Act. It is a machinery provision to ensure certainty, uniformity and consistency in valuation and to avoid divergent industry practices. ▪ Merely because a different method of valuation or a narrower taxable measure may be possible, it does not render the Rule unconstitutional. A higher tax incidence or harsh operation does not by itself invalidate the Rule once the levy and valuation framework bears nexus with the taxable event. Rule 31A of the CGST Rules bears direct nexus with organised betting and gambling transactions and is not violative of Article 14 of the Constitution. ▪ Section 15(1) of the CGST Act accommodates valuation based on entire stake value and Rule 31A was introduced '<i>ex abundanti cautela</i>' to clarify the statutory position. It merely provides machinery for valuation of 'actionable claims' and falls within the scope of delegated legislation. A conjoint reading of sections 15(4), 15(5), 164 and 2(87) of the CGST Act shows a common requirement of the GST Council recommendation and Rule 31A(3) was enacted pursuant to the recommendations made in the 25th GST Council Meeting. ▪ Rule 31A(3) clarifies that the taxable value is the entire amount staked and not merely the retained commission, operating harmoniously with Section 15 of the CGST Act. The expression 'betting, gambling or horse racing in a race club' uses the disjunctive 'or' clearly separating distinct categories. It prescribes the value of supply being 100% of the face value of the bet for betting and gambling and 100% of amount paid to the totalizator for horse racing. Such prescription cannot be held as arbitrary merely because an alternate methodology is possible. Hence, the challenge to its validity fails. ▪ Rule 31A is valid under Section 164 as it effectuates the valuation mechanism and may operate retrospectively within the prescribed limits. The said rule cannot be assailed on retrospective operation.

⁴ Editor's Note: Ratio laid down in Union of India and Ors. Vs. VKC Footsteps India Pvt. Ltd. [2021 (52) GSTL 513 (SC)] is not considered by the SC

Sl. No.	Issue	Ratio
6.	Constitutional validity of rule 31B and 31C of CGST Rules	<ul style="list-style-type: none"> Rules 31B and 31C refine and standardise valuation considering commercial and technological structure of online gaming and casinos. They are special machinery provisions under Sections 15(5) and 164 of the CGST Act, maintaining a clear and rational nexus with taxable supply and are not violative of Article 14 of the Constitution. The 2023 amendments neither create a fresh levy nor introduce a new taxable event; the taxability already existed. They provide statutory specificity, are clarificatory, remove doubts and may legitimately receive retrospective operation. Hence, the challenge to the validity of Rules 31B and 31B of CGST Rules fail.
7.	Value of supply for OMG (including fantasy sports)	<ul style="list-style-type: none"> OMG involves supply of actionable claim since it <i>inter alia</i> satisfies the criteria of a claim to a beneficial interest in movable property. The pooled stake fund constitutes a movable property and the participants acquire contingent beneficial interests with a chance to win, subject to platform restrictions and controls. The organised platform structure creates legally cognizable proprietary interests. Online gaming companies act as suppliers, as the entire transaction originates, operates and culminates through platform, without which no 'actionable claim' interest could arise. Dismissal of SLP⁵ without a speaking order neither attracts the doctrine of merger nor constitutes a binding declaration of law. Even if participants deploy sporting knowledge, statistical analysis, strategic assessment and predictive skill, the essential character is not altered when money or money's worth is staked upon uncertain future outcomes with expectation of contingent monetary gain; the amounts contributed constitute pooled stake amounts for contingent prize structures. Having earlier contended existence of 'actionable claims' under the service tax regime, the supplier cannot deny it under the GST regime. Thus, stake amount constitutes 'consideration' for supply of 'actionable claim', leviable under sections 2(31) and 15(1) of the CGST Act and Rule 31B of the CGST Rules.
8.	Value of supply for casino services	<ul style="list-style-type: none"> Casinos supply 'actionable claim' and the contention that no supply arises merely because transactions are conducted through chips or tokens cannot be accepted as the chips are merely medium for placing bets. The taxable event arises when a player stakes money upon uncertain outcomes in betting and gambling activities. The recourse to Rule 31 and the best judgment method is permissible. However, the valuation must be re-examined in light of retrospective operation of Rule 31C of CGST Rules. Where the taxpayer fails to maintain reliable records, the tax authorities are justified in resorting to Rule 31 and best judgment methodologies for valuation and reconstruction of taxable value.

Having laid down the aforesaid principles and also affirming the validity of the provisions assailed by the High Court, the Supreme Court noted that all factual objections concerning correctness of computation, quantification, assumptions adopted by the tax authority and evidentiary issues are left open to be urged before the adjudicating authority, which shall consider them independently and uninfluenced by observations on factual computation made by the Supreme Court in this ruling. Accordingly, all pending SCNs, adjudication proceedings and consequential demands relating to online gaming, fantasy sports and casino transactions shall be considered and decided as per Rules 31B and 31C of the CGST Rules and the principles laid down in this ruling.

⁵ Gurdeep Singh Sachar Vs. Union of India [SLP (Crl.) Diary No. 43346 of 2019], Avinash Mehrotra Vs. State of Rajasthan [SLP Diary No. 18478 of 2020] and Varun Gumber Vs. Union Territory of Chandigarh [SLP (C) Diary No. 27511 of 2017]

BDO INDIA COMMENTS

The Supreme Court ruling undoubtedly marks a significant shift in the GST treatment of OMG, fantasy sports and casino transactions by rejecting the predominance test and affirming that the **staking of money upon uncertain outcomes** is the determinative factor. While this provides a uniform legal position across gaming formats involving stakes, it also effectively collapses the long-recognised distinction between 'games of skill' and 'games of chance'.

Although the Court reiterates that GST is levied on the **supply of 'actionable claims' and not on the activity *per se*** and upholds the inclusion of 'actionable claims' within the definition of 'goods', this expansive interpretation may be viewed as expanding the statutory framework to cover activities that were historically treated differently. The characterisation of such claims as **transferable, assignable and commercially valuable proprietary interests** strengthens the tax base but may invite further debate on the conceptual alignment between betting constructs and traditional notions of goods.

The Court's finding that **stake amounts constitute consideration**, forming a direct and inseparable nexus with the supply and the endorsement of valuation on the **entire stake value** under Section 15 read with Rules 31A, 31B and 31C, substantially increases the tax burden on the industry. While these rules are upheld as valid machinery provisions introduced *ex abundanti cautela*, their practical application may still give rise to complexities, especially in cases involving multi-layered platform structures and varied payment flows.

A more contentious aspect of the ruling lies in its conclusion that the **2023 amendments are merely clarificatory** and therefore capable of retrospective application. This position, while legally reasoned, is likely to create **significant interpretational and practical challenges**, particularly for past transactions undertaken under a different understanding of law. Retrospective validation of valuation mechanisms may lead to hardships around re-computation, reassessment and potential penal exposure, thereby increasing litigation rather than reducing it.

From an industry standpoint, while the ruling brings a degree of certainty in principle by recognising gaming platforms as **suppliers of 'actionable claims'**, the retrospective dimension introduces an element of unpredictability. Businesses may now face difficulties in reconciling historical positions with the newly affirmed framework, leading to compliance burdens and interpretational ambiguities.

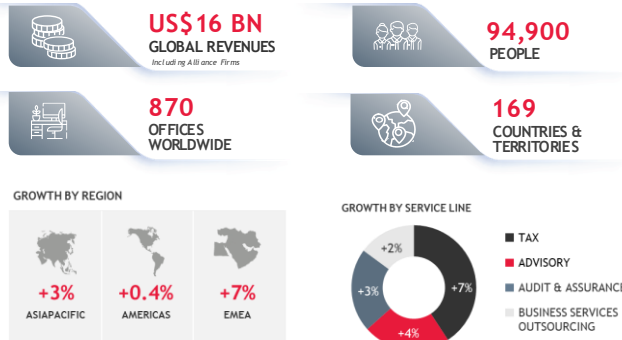
Overall, while the judgment aims to establish uniformity and clarity, its retrospective reach and expansive interpretation may inadvertently open the door to fresh disputes, compliance challenges and significant financial burden.

[Source - DGGI and Ors. Vs. Gameskraft Technologies Pvt. Ltd. [2026 INSC 595]]

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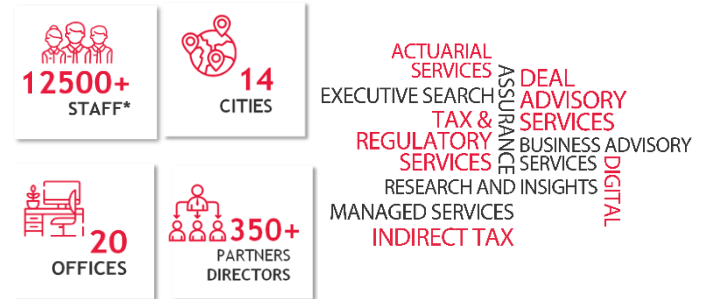
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