

NEWS ALERT

11 June 2026



Supreme Court upholds GST on online gaming; taxable as actionable claims on the entire stake money

- Directorate General of Goods and Services Tax Intelligence (HQS) & Ors. vs Gameskraft Technologies Private Limited and others.¹

The taxpayer, along with other online gaming companies, operated digital platforms that allowed users to participate in online games by depositing money into a prize pool. The taxpayer retained a portion of the amount collected in the pool as platform fees. The taxpayer treated its activity as a supply of services and charged GST on the platform fees.

Subsequently, the Directorate General of Goods and Services Tax Intelligence issued show cause notices demanding GST on the basis that the activities constituted betting and gambling involving actionable claims.

Karnataka High Court ruled in favour of the taxpayer holding the online games to be games of skill and therefore GST was payable only on the platform fees. Similar position was adopted by various High Courts in case of other taxpayers.

Aggrieved by the decisions of the HCs, an appeal was filed before the Supreme Court ('SC').

Analysis of the Supreme Court

The SC examined the scope and operation of the GST regime, the taxability of actionable claims arising from betting and gambling, the legislative competence of such levy and the validity of statutory and delegated provisions governing valuation.

i. Game of Skill vs Chance

The taxpayer relied on the judicial precedents, which recognised games of skill separately from gambling and betting. Therefore, the taxpayer argued that these activities were not subject to GST. The SC rejected this argument, holding that once money or money's worth is risked on an uncertain outcome, the transaction acquires the character of betting and gambling.

¹ CIVIL APPEAL NO(S). 8241 – 8244 OF 2026

Relying upon the principles laid down in *State of Tamil Nadu & other vs Jungle Games India Private Limited*² and others by the same bench, SC held that even games predominantly involving skill may assume the character of betting and gambling when played for stakes.

ii. Constitutional validity of GST levy

The taxpayers challenged the constitutional validity of the GST levy on online gaming transactions on the ground that such levy travels beyond the scope of the Constitution, particularly in light of Articles 246A and 366(12A). They contended that actionable claims cannot be treated as 'goods' merely by statutory inclusion under the GST framework, especially since they were historically excluded from the definition of goods under pre-GST commercial laws. The taxpayers further argued that, under the constitutional scheme, 'services' are defined residually to mean anything other than goods, and therefore, if actionable claims are not constitutionally recognised as goods, they could at best fall within the category of services. On this basis, it was contended that Parliament could not, by legislative fiction, bring actionable claims within the definition of 'goods' for the purpose of imposing GST. The SC observed that the Constitution conferred wide legislative power to both Parliament and State to levy GST on supply of goods or services and concluded that the GST framework operated within the scope of the Constitution.

The SC observed that the definition of 'goods' as per Article 366(12) of the Constitution would not operate as a restriction confining the concept of goods only to tangible commodities.

The SC held that the definition of goods under the Constitution was inclusive and therefore capable of encompassing contingent property. Relying on the past rulings in case of *Sunrise Associates*³ and *Skill Lotto Solutions*⁴, the SC reaffirmed that consideration of actionable claims as 'goods' under the GST framework was consistent with the constitutional provisions.

iii. Existence of an Actionable claim

The taxpayer strongly argued that an online gaming transaction would not give rise to an actionable claim since an actionable claim, as defined under the Transfer of Property Act, 1882, would require a legally enforceable right to beneficial interest in the prize pool.

The SC concluded that the GST framework brings specified actionable claims, which include actionable claims arising from betting and gambling within its fold. It was held that once such actionable claims are treated as 'goods' under the CGST Act, their supply becomes taxable. The SC further held that an actionable claim arises in online gaming transactions because the player acquires a contingent beneficial interest in the prize pool.

The SC also clarified that the unenforceability of wagering contracts under the Contract Act, 1872 does not negate the existence of an actionable claim for GST purposes.

² TS 392 SC 2026

³ (2006) 5 SCC 603

⁴ (2021) 15 SCC 667

iv. Role of a platform operator

The taxpayer argued that it was merely a platform operator providing a technological interface for players to participate and compete among themselves. The prize pool belonged to players and was held only in a custodial capacity by the platform. Therefore, the taxpayer should be classified as a service provider or intermediary, levying GST only on the platform fee charged to the participants.

The SC rejected the contention that the taxpayer was a mere platform operator or intermediary. It observed that the taxpayer designed the games, controlled participation, collected and managed funds and determined the manner of distribution of winnings. Accordingly, the SC held that the taxpayer was not merely supplying platform services but was facilitating a stake-based arrangement that constituted an actionable claim in the nature of betting and gambling.

v. Consideration and Valuation

The taxpayer argued that GST should be levied only on the transaction value i.e. the platform fees received for the supply. The taxpayer further argued that taxing the entire betting amount (Gross Bet Value) would lead to taxation of money that is not in the nature of income, which is contrary to GST principles.

The SC rejected this argument and held that the entire amount staked by the players constitutes consideration for the supply. The SC reasoned that when a player deposits money to participate in a game, the payment is made in respect of the opportunity to play and win, which is the actual supply. The later redistribution of a portion of the money as winnings does not alter the character of the initial transaction.

vi. Validity of Rule 31A and applicability of amendments

The taxpayer challenged the validity of Rule 31A as ultra vires the GST framework for taxing the entire betting amount instead of only the platform fees actually earned by the taxpayer. The taxpayer further argued that Rule 31A governed valuation for traditional forms of betting and gambling and never intended to apply to online gaming. With regard to the amendments in 2023 introducing valuation rules for online gaming and casinos, the taxpayer argued that these provisions indicated a new legislative framework to be effective prospectively and therefore should not apply to online gaming.

The SC upheld the validity of Rule 31A, holding that it is a valid machinery provision for determining the value of supply in cases of betting and gambling. It also clarified that Rule 31A is not limited to traditional betting scenarios, but applies to all forms of betting and gambling, including online gaming involving stakes. The SC further held that the amendments implemented in 2023 were clarificatory in nature and merely explained the existing legal position.

The SC upheld GST on betting, gambling, online gaming, fantasy sports and casino transactions, holding that stake-based participation in uncertain outcomes amounts to taxable actionable claims. It also upheld the applicability of the valuation rules and dismissed the constitutional challenges.

JMP Insights - *The Supreme Court's ruling materially expands the GST liability in the taxation of online gaming in India, decisively moving the industry away from a service-based framework (tax on platform fee) to a goods-based framework involving actionable claims (tax on full stake value). This transition fundamentally alters the tax base and significantly increases the tax exposure of gaming operators.*

A key takeaway from the judgment is the SC's substance-over-form approach in characterizing the true nature of the transaction. Despite the industry's long-standing characterization of itself as a platform service provider, the SC looked beyond contractual labels and focused on the stake-driven economic arrangement, which constitutes an actionable claim in the nature of betting and gambling. This reasoning may possibly have far-reaching implications beyond gaming, particularly for digital platforms that rely on facilitation-based business models. Another critical aspect is the SC's view that the skill-versus-chance distinction does not prevent GST from applying where money is staked on uncertain outcomes.

While this distinction remains relevant in regulatory and penal contexts, the judgment clarifies that once monetary stakes are involved in uncertain outcomes, the activity may fall within betting/gambling for GST, irrespective of the skill element. This may create practical complexity, as regulatory treatment and GST treatment may now diverge depending on the presence of stakes.

From a valuation perspective, the SC's endorsement of taxing the full stake value substantially increases the tax base and the compliance burden for operators. This approach raises concerns regarding economic efficiency and proportionality, as it taxes amounts that do not accrue to the operator as income. This may increase effective tax costs and may affect profitability, pricing models and industry viability.

By treating the 2023 amendments as clarificatory, the judgment exposes businesses to substantial retrospective tax demands and ongoing litigation risk.

Should you wish to discuss any of the above issues in detail or understand the applicability to your specific situation, please feel free to reach out to us on coe@jmpadvisors.in.

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