2026 INSC 595

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL / CRIMINAL APPELLATE JURISDICTION
AND
ORIGINAL JURISDICTION

CIVIL APPEAL NO(S). 8241 – 8244 OF 2026
[ARISING OUT OF SLP (C) NOS. 19366 – 19369 OF 2023]

DIRECTORATE GENERAL OF GOODS AND SERVICES TAX INTELLIGENCE (HQS) & ORS. … APPELLANT(S)

VERSUS

GAMESKRAFT TECHNOLOGIES PRIVATE LIMITED AND ORS. … RESPONDENT(S)

WITH

CIVIL APPEAL NO. 8240 OF 2026
[ARISING OUT OF SLP (C) NO. 12201 OF 2024]

WITH

CRIMINAL APPEAL NO. 2933 OF 2026
[ARISING OUT OF SLP (CRL) NO. 2213 OF 2020]

Signature Not Verified
Digitally signed by CHANDRESH
Date: 2026.09.07 18:34:26 IST
Reason:

WITH

WRIT PETITION (CIVIL) NO. 1374 OF 2023

WITH

WRIT PETITION (CIVIL) NO. 1384 OF 2023

WITH

TRANSFERRED CASE (CIVIL) NO. 24 OF 2024

WITH

TRANSFERRED CASE (CIVIL) NO. 25 OF 2024

WITH

TRANSFERRED CASE (CIVIL) NO. 26 OF 2024

WITH

TRANSFERRED CASE (CIVIL) NO. 27 OF 2024

WITH

TRANSFERRED CASE (CIVIL) NO. 29 OF 2024

WITH

TRANSFERRED CASE (CIVIL) NO. 30 OF 2024

WITH

TRANSFERRED CASE (CIVIL) NO. 31 OF 2024

WITH

TRANSFERRED CASE (CIVIL) NO. 32 OF 2024

WITH

TRANSFERRED CASE (CIVIL) NO. 33 OF 2024

WITH

TRANSFERRED CASE (CIVIL) NO. 34 OF 2024

WITH

TRANSFERRED CASE (CIVIL) NO. 35 OF 2024

WITH

TRANSFERRED CASE (CIVIL) NO. 36 OF 2024

WITH

TRANSFERRED CASE (CIVIL) NO. 39 OF 2024

WITH

TRANSFERRED CASE (CIVIL) NO. 40 OF 2024

WITH

TRANSFERRED CASE (CIVIL) NO. 41 OF 2024

WITH

TRANSFERRED CASE (CIVIL) NO. 42 OF 2024

WITH

TRANSFERRED CASE (CIVIL) NO. 43 OF 2024

WITH

TRANSFERRED CASE (CIVIL) NO. 44 OF 2024

WITH

TRANSFERRED CASE (CIVIL) NO. 45 OF 2024

WITH

TRANSFERRED CASE (CIVIL) NO. 46 OF 2024

WITH

TRANSFERRED CASE (CIVIL) NO. 47 OF 2024

WITH

TRANSFERRED CASE (CIVIL) NO. 48 OF 2024

WITH

TRANSFERRED CASE (CIVIL) NO. 49 OF 2024

WITH

TRANSFERRED CASE (CIVIL) NO. 51 OF 2024

WITH

TRANSFERRED CASE (CIVIL) NO. 52 OF 2024

WITH

TRANSFERRED CASE (CIVIL) NO. 53 OF 2024

WITH

TRANSFERRED CASE (CIVIL) NO. 54 OF 2024

WITH

WRIT PETITION (CIVIL) NO. 268 OF 2024

WITH

WRIT PETITION (CIVIL) NO. 300 OF 2024

WITH

WRIT PETITION (CIVIL) NO. 350 OF 2024

WITH

WRIT PETITION (CIVIL) NO. 378 OF 2024

WITH

WRIT PETITION (CIVIL) NO. 429 OF 2024

WITH

WRIT PETITION (CIVIL) NO. 447 OF 2024

WITH

WRIT PETITION (CIVIL) NO. 456 OF 2024

WITH

WRIT PETITION (CIVIL) NO. 541 OF 2024

WITH

WRIT PETITION (CIVIL) NO. 545 OF 2024

WITH

WRIT PETITION (CIVIL) NO. 568 OF 2024

WITH

WRIT PETITION (CIVIL) NO. 605 OF 2024

WITH

WRIT PETITION (CIVIL) NO. 646 OF 2024

WITH

WRIT PETITION (CIVIL) NO. 720 OF 2024

WITH

WRIT PETITION (CIVIL) NO. 858 OF 2024

WITH

WRIT PETITION (CIVIL) NO. 50 OF 2025

WITH

WRIT PETITION (CIVIL) NO. 51 OF 2025

WITH

WRIT PETITION (CIVIL) NO. 52 OF 2025

WITH

WRIT PETITION (CIVIL) NO. 217 OF 2025

WITH

WRIT PETITION (CIVIL) NO. 258 OF 2025

WITH

WRIT PETITION (CIVIL) NO. 406 OF 2025

WITH

WRIT PETITION (CIVIL) NO. 412 OF 2025

WITH

WRIT PETITION (CIVIL) NO. 467 OF 2025

WITH

WRIT PETITION (CIVIL) NO. 673 OF 2025

WITH

WRIT PETITION (CIVIL) NO. 692 OF 2025

WITH

WRIT PETITION (CIVIL) NO. 732 OF 2025

WITH

WRIT PETITION (CIVIL) NO. 880 OF 2025

WITH

WRIT PETITION (CIVIL) NO. 923 OF 2025

WITH

WRIT PETITION (CIVIL) NO. 1032 OF 2025

WITH

WRIT PETITION (CIVIL) NO. 1098 OF 2025

WITH

WRIT PETITION (CIVIL) NO. 1171 OF 2025

WITH

WRIT PETITION (CIVIL) NO. 1251 OF 2025

WITH

WRIT PETITION (CIVIL) NO. 265 OF 2026

J U D G M E N T

R. MAHADEVAN, J.

1. Leave granted in respect of SLP (C) Nos. 19366 – 19369 of 2023, SLP (C) No. 12201 of 2024 and SLP (Crl.) No. 2213 of 2020. For ease of reference and clarity of adjudication, this judgment is arranged under the following heads:

S.NO.		HEADS	PAGE NO.
I		PREFACE	13
II		FACTUAL BACKGROUND AND RELIEFS SOUGHT	15
III		CONTENTIONS OF THE PARTIES • SUBMISSIONS • REPLY SUBMISSIONS	27
IV		ANALYSIS AND FINDINGS	230
	A	ISSUES FOR CONSIDERATION	232
	B	BETTING AND GAMBLING	235
	C	CONSTITUTIONAL VALIDITY OF THE IMPUGNED LEVY IN THE CONTEXT OF BETTING AND GAMBLING	261
	D	GST FRAMEWORK GOVERNING BETTING AND GAMBLING TRANSACTIONS • STATUTORY SCHEME UNDER THE GST ACT • ACTIONABLE CLAIMS ARISING FROM BETTING AND GAMBLING TRANSACTIONS AND THE NATURE OF SUPPLY • CONSIDERATION, VALUATION AND MEASURE OF LEVY • CHARACTERISATION OF ONLINE GAMING TRANSACTIONS : SUPPLY OF GOODS OR SERVICES • RATE OF TAX AND VALIDITY OF NOTIFICATIONS	285

	E	VALIDITY OF RULE 31A • VALIDITY OF RULE 31A WITHIN THE STATUTORY FRAMEWORK OF SECTION 15 • STATUTORY FRAMEWORK GOVERNING DELEGATED LEGISLATION • GST COUNCIL RECOMMENDATIONS SUPPORTING RULE 31A • SCOPE AND AMBIT OF SECTION 15 (4) • INDEPENDENT RULE-MAKING POWER UNDER SECTION 164 • EFFECT OF ABSENCE OF NOTIFICATION UNDER SECTION 15 (5) • APPLICABILITY OF RULE 31A(3) BEYOND HORSE RACING TRANSACTIONS • MEANING OF "CHANCE TO WIN"	324
	F	2023 AMENDMENT – PROSPECTIVE OR RETROSPECTIVE?	342
	G	VALUATION OF SUPPLY IN ONLINE GAMING, FANTASY SPORTS AND CASINO TRANSACTIONS UNDER THE GST FRAMEWORK • ONLINE GAMING • FANTASY SPORTS • CASINOS	356
V		CONCLUSION	404
VI		RESULT	413

2. Having regard to the commonality of issues involved, which are interlinked and intertwined, all the matters were heard analogously and are being disposed of by this common judgment.

I. PREFACE

3. Few questions in fiscal jurisprudence have generated as much constitutional significance as whether activities traditionally understood in one legal context undergo a transformation in their legal characterization when mediated through technology-driven commercial structures. From traditional forms of wagering and gaming to contemporary digital platforms facilitating online participation across jurisdictions, courts have repeatedly been called upon to delineate the boundaries between skill and chance, commerce and speculation, regulation and prohibition. The advent of online gaming has brought these questions into renewed focus, requiring established legal principles to be applied within an evolving technological landscape.

3.1. The present batch of matters brings that longstanding debate into the framework of the Goods and Services Tax[1] regime and the rapidly expanding online gaming ecosystem. The proceedings witnessed extensive submissions by learned Additional Solicitor General of India, learned Senior Counsel, and

[1] For short, "GST"

learned counsel appearing for the parties addressing a wide spectrum of constitutional, statutory and jurisprudential issues. What initially arose as challenges to individual show cause notices has ultimately assumed the dimensions of a nationwide constitutional controversy involving transferred cases, writ petitions and special leave petitions raising common questions of law.

3.2. At the core of the dispute lies the question of legal characterization. The Court is called upon to determine whether activities conducted on online gaming platforms, casinos, betting platforms and allied establishments constitute taxable supplies of actionable claims arising from betting and gambling arrangements. The controversy concerns the constitutional limits of legislative and delegated fiscal powers, the scope and operation of the GST framework, and the manner in which traditional legal doctrines are to be applied to technology-driven commercial activities.

3.3. The issues assume considerable significance not merely because of the substantial revenue implications involved, but also because their resolution bears directly upon a rapidly growing digital industry operating across State boundaries and engaging millions of participants. The questions presented require an examination of the meaning and scope of actionable claims, betting and gambling under Indian law, the ambit of "supply" under the GST framework, the distinction between games of skill and games of chance, the constitutional validity of the

impugned legislative measures, and the permissible contours of taxation under the GST regime.

3.4. The Court's task, therefore, is not confined to determining the incidence of tax. It is to ascertain the true legal nature of the activities sought to be taxed and to examine whether the legislative and regulatory framework governing such taxation conforms to constitutional and statutory requirements.

II. FACTUAL BACKGROUND AND RELIEFS SOUGHT

With the aforesaid preface, it is apposite to first delineate the factual background of the matters before us and the reliefs claimed by the parties therein.

4. *Civil Appeal Nos. 8241 – 8244 of 2026*

[Directorate General of Goods & Services Tax Intelligence (HQS) & Others v. Gameskraft Technologies Private Limited and Others]

The present appeals, at the instance of the Revenue, arise out of a common judgment and order dated 11.05.2023 passed by the High Court of Judicature of Karnataka at Bengaluru in Writ Petition Nos. 19570 of 2022, 19561 of 2022, 20119 of 2022 and 20120 of 2022, whereby the High Court allowed the writ petitions and quashed the show cause notices dated 23.09.2022 issued by the Directorate General of GST Intelligence under Section 74(1) of the Central Goods

and Services Tax Act, 2017[2]. The said notices proposed recovery of allegedly short-paid or unpaid GST, together with interest and penalty, on the premise that the assessees had deliberately evaded substantial tax liability in respect of supplies relating to betting by misclassifying such supplies as services instead of actionable claims.

5. *Civil Appeal No. 8240 of 2024*

[P Z Skill Games (OPC) Private Limited v. State of Maharashtra]

The appellant is engaged in the business of developing software, computer games, virtual reality games, and sports-based games, and also acts as a service provider. It sought to launch an online skill-based gaming platform and, for that purpose, applied to the respondent for the requisite permission. As no decision was taken on its application, the appellant filed Writ Petition No. 13138 of 2023 seeking a direction to grant a licence. By judgment dated 04.01.2024, the High Court of Bombay disposed of the writ petition by directing the appellant to pursue its remedies before the State Government or avail appropriate alternative remedies. Despite the same, no action was taken by the respondent authorities on the appellant's application. Aggrieved by the inaction, the appellant has approached this Court by way of the present appeal.

[2] For short, "CGST Act, 2017"

6. *Criminal Appeal No. 2933 of 2026*

[State of Maharashtra and Others v. Gurdeep Singh Sachar and Others]

Respondent No. 1 had filed Criminal Public Interest Litigation Stamp No. 22 of 2019, seeking initiation of criminal proceedings against Respondent No. 3, Dream 11 Fantasy Private Limited, alleging that it was conducting illegal betting / gambling under the guise of online fantasy sports and evading GST in violation of the CGST Act, 2017 and Rule 31A of the Central Goods and Services Tax Rules, 2017[3]. By judgment dated 30.04.2019, the High Court of Bombay dismissed the PIL by observing that success in Dream 11 fantasy sports contests, depends predominantly on skill, involving user's knowledge, judgment and attention, and is not dependent on chance or the outcome of any particular real-world match. It was thus concluded that the activity constitutes a game of skill, not gambling, rendering the allegations untenable. Aggrieved thereby, the appellants (original Respondent Nos. 2, 4 and 5 in the PIL) have preferred the present appeal.

7. *W.P (C) No. 1374 of 2023*

[E-Gaming Federation and another v. Union of India and others]

Petitioner No. 1 is a federation of stakeholders in the online gaming industry. Petitioner No. 2 operates an online platform offering games of skill such as

[3] For short, "CGST Rules, 2017"

rummy and fantasy sports. According to the petitioners, prior to 01.10.2023, the petitioners classified their activity as services (SAC 998439) and paid GST @ 18% on the platform fee alone, treating it as the sole consideration. The prize pool was not taxed as it did not accrue to the platform. Pursuant to the CGST (Amendment) Act, 2023, actionable claims relating to online gaming were brought within the tax net, and Rule 31B prescribed valuation based on total player deposits. The petitioners have since complied with the amended regime. However, a show cause notice dated 29.09.2023 was issued for the period 01.07.2017 to 31.03.2022 alleging misclassification, treating the activity as "betting and gambling" (actionable claims / goods), and demanding GST on the entire stakes instead of platform fee. Aggrieved thereby, the petitioners have invoked the jurisdiction of this Court under Article 32 of the Constitution of India, seeking the following reliefs:

(i) To declare Section 9(1) read with Section 2(52) of the CGST Act, 2017 insofar as it imposes tax on actionable claims, as unconstitutional, being beyond the legislative competence of Parliament.

(ii) To declare Rule 31A of the CGST Rules, 2017 as unconstitutional, being beyond the legislative competence of Parliament, ultra vires the CGST Act, 2017 and violative of Articles 14 and 19(1)(g) of the Constitution of India.

(iii) To quash the show cause notice dated 29.09.2023 issued to Petitioner No. 2.

8. ***W.P (C) No. 1384 of 2023***

[Play Games 24 x 7 Private Limited and Others v. Union of India and Others]

Petitioner No. 1 is engaged in providing platforms for games of skill through web and mobile-based technologies, including rummy and fantasy sports relating to cricket, football, and other sports. Petitioner Nos. 2 to 4 are its employees. A show cause notice dated 27.09.2023 was issued to Petitioner No. 1 for the period 25.01.2018 to 31.03.2023 alleging that it is a supplier of actionable claims in the nature of betting and gambling, and is therefore liable to GST accordingly. Aggrieved thereby, the petitioners have invoked the jurisdiction of this Court under Article 32 of the Constitution of India, seeking reliefs identical to those sought in W.P.(C) No. 1374 of 2023.

9. ***W.P. (C) No. 268 of 2024***

[M/s. Baazi Networks Private Limited & Others v. Union of India and Others]

Petitioner No. 1 operates an online platform offering skill-based poker games with monetary stakes. Petitioner No. 1 did not register under the service tax regime for the period 2014-15 to 2016-17. Upon investigation by

Respondent No. 3, it discharged the entire service tax liability along with interest and penalty. Despite the same, a show cause notice dated 30.09.2023 was issued demanding GST, interest and penalty. Personal penalties were also imposed on Petitioner Nos. 2 to 6 (Directors). Aggrieved, the petitioners have preferred this writ petition, seeking *inter alia*:

(i) quashing of the show cause notice dated 30.09.2023 issued by Respondent No. 3;

(ii) striking down of Section 15(5) of the CGST Act, 2017 as unconstitutional and violative of Articles 246A and 366(12) of the Constitution of India and Section 15(1) of the CGST Act, 2017;

(iii) striking down of Rule 31A(3) of the CGST Rules, 2017 as ultra vires Sections 2(31), 7, 9 and 15 of the CGST Act, 2017;

(iv) restraining the respondent authorities from taking any coercive action against the petitioners; and

(v) restricting the concerned Respondent from adjudicating the show cause notice pending final disposal of this writ petition.

10. ***W.P. (C) No. 50 of 2025***

[Golden Peace Infrastructure Pvt. Ltd. and another v. Assistant State Tax Officer, Goa and another]

Petitioner No. 1 is a licensed casino operator in Goa. On 06.08.2024, the respondents issued a show cause-cum-demand notice under Section 74 of the

CGST Act, 2017 and corresponding SGST Act, to the petitioners demanding a sum of Rs. 38,55,62,100/- of which a sum of Rs. 17,73,88,698/- was for alleged short / non-payment of GST. Aggrieved, the petitioners have preferred this writ petition seeking the following reliefs:

(i) quashing of the show cause notice dated 06.08.2024 issued by Respondent No. 1 to Petitioner No. 1;

(ii) striking down of Section 15(5) of the CGST Act, 2017 as unconstitutional and violative of Articles 246A and 366(12) of the Constitution of India and Section 15(1) of the CGST, 2017;

(iii) striking down of Rule 31A(3) of the CGST Rules, 2017 as ultra vires Sections 2(31), 7, 9 and 15 of the CGST Act, 2017;

(iv) restricting Respondent No. 1 from taking any coercive action against the petitioners; and

(v) restricting respondent authorities from adjudicating the show cause notice pending disposal of this writ petition.

11. Similar writ petitions, namely, ***WP (C) Nos. 300 of 2024, 350 of 2024, 378 of 2024, 429 of 2024, 447 of 2024, 456 of 2024, 541 of 2024, 646 of 2024, 720 of 2024, 858 of 2024, 51 of 2025, 52 of 2025, 217 of 2025, 258 of 2025, 406 of 2025, 412 of 2025, 467 of 2025, 673 of 2025, 692 of 2025, 732 of 2025, 880 of 2025, 923 of 2025, 1032 of 2025, 1098 of 2025, 1171 of 2025, 1251 of 2025, and 265 of 2026*** have also been filed challenging the show cause notices issued by

the respondent authorities and assailing the constitutional validity of certain provisions of the CGST Act, 2017 and the Rules framed thereunder.

12. ***W.P. (C) Nos. 545 of 2024, 568 of 2024, and 605 of 2024*** have been filed under Article 32 of the Constitution of India challenging the orders passed by the respondent authorities confirming the differential GST liability, together with applicable interest and penalty for the relevant tax periods, and also questioning the constitutional validity of certain provisions of the CGST Act, 2017 and the CGST Rules, 2017.

TRANSFERRED CASES

13. Pursuant to the order of this Court dated 05.04.2024 passed in Transfer Petition (Civil) Nos. 755 – 781 of 2024 titled *Union of India and others v. Deltatech Gaming Limited and others*, the following cases stood transferred from various High Courts to this Court:

S. No.	Original Case No.	High Court	Present Case No.
1	Writ Petition (A) No. 26373/2023	Calcutta	Transferred Case (C) No. 41 of 2024
2	Writ Petition (C) No. 33 / 2022-23	Sikkim at Gangtok	Transferred Case (C) No. 53 of 2024

3	R/Special Civil Application No. 19243 / 2023	Gujarat at Ahmedabad	Transferred Case (C) No. 24 of 2024
4	Writ Petition (C) No. 1100 / 2023	Rajasthan at Jaipur	Transferred Case (C) No. 44 of 2024
5	Writ Petition No. 25942 / 2023	Karnataka at Bangalore	Transferred Case (C) No. 39 of 2024
6	Writ Petition (L) No. 31946 / 2023	Bombay	Transferred Case (C) No. 26 of 2024
7	R/Special Civil Application No. 19183 / 2023	Gujarat at Ahmedabad	Transferred Case (C) No. 25 of 2024
8	DB Writ Petition (C) No. 19667 of 2023	Rajasthan at Jaipur	Transferred Case (C) No. 43 of 2024
9	DB Writ Petition (C) No. 19968 of 2023	Rajasthan at Jaipur	Transferred Case (C) No. 42 of 2024
10	Writ Petition (L) No. 31216 of 2023	Bombay	Transferred Case (C) No. 29 of 2024
11	Writ Petition No. 28802 of 2023	Madhya Pradesh at Jabalpur	Transferred Case (C) No. 36 of 2024
12	CWP No. 28011 of 2023	Punjab & Haryana at Chandigarh	Transferred Case (C) No. 45 of 2024

13	Writ Petition (C) No. 69 of 2024	Dehi	Transferred Case (C) No. 54 of 2024
14	CWP No. 29071 of 2023	Punjab & Haryana at Chandigarh	Transferred Case (C) No. 46 of 2024
15	CWP No. 28242 of 2023	Punjab & Haryana at Chandigarh	Transferred Case (C) No. 48 of 2024
16	Civil Misc. Writ Petition No. 1453 of 2023	Uttar Pradesh at Allahabad	Transferred Case (C) No. 27 of 2024
17	CWP No. 1232 of 2024	Punjab & Haryana at Chandigarh	Transferred Case (C) No. 47 of 2024
18	CWP No. 651 of 2024	Punjab & Haryana at Chandigarh	Transferred Case (C) No. 49 of 2024
19	Writ Petition No. 805 of 2023	Bombay at Goa	Transferred Case (C) No. 30 of 2024
20	Writ Petition No. 49 of 2023	Sikkim at Gangtok	Transferred Case (C) No. 51 of 2024
21	Writ Petition No. 41 of 2023	Sikkim at Gangtok	Transferred Case (C) No. 52 of 2024
22	Writ Petition No. 715 of 2023	Bombay at Goa	Transferred Case (C) No. 31 of 2024

23	Writ Petition No. 804 of 2023	Bombay at Goa	Transferred Case (C) No. 32 of 2024
24	Writ Petition No. 717 of 2023	Bombay at Goa	Transferred Case (C) No. 33 of 2024
25	Writ Petition No. 806 of 2023	Bombay at Goa	Transferred Case (C) No. 34 of 2024
26	Writ Petition No. 716 of 2023	Bombay at Goa	Transferred Case (C) No. 35 of 2024
27	Writ Petition No. 1345 of 2023	Calcutta	Transferred Case (C) No. 40 of 2024

13.1. A detailed reference to each of the prayers in the Transferred Cases would unnecessarily burden the present judgment. It is, therefore, considered appropriate to consolidate and set out the prayers in a structured manner as follows:

(i) To declare Section 9(1) read with Section 2(52) of the CGST Act, 2017 / SGST Acts, insofar as they impose tax on actionable claims as unconstitutional and beyond the legislative competence of Parliament;

(ii) To declare Section 15(5) of the CGST Act, 2017 as ultra vires Articles 246A and 366(12) of the Constitution of India and Sections 15(1) and 15(2) of the CGST Act to the extent relied upon in the impugned show cause notice(s);

(iii) To declare Rule 31A(3) of the CGST Rules, 2017 as unconstitutional, violative of Articles 14, 19(1)(g), 246A and 265 of the Constitution of India and ultra vires the CGST Act, 2017;

(iv) To declare Rule 31A(3) of the SGST Rules, 2017 as unconstitutional, violative of Articles 14, 19(1)(g), 246A and 265 of the Constitution of India and ultra vires the respective SGST Acts;

(v) To declare Rule 31A of the CGST Rules, 2017 as ultra vires the Constitution of India and strike down the same or, in the alternative, to read it down appropriately;

(vi) To quash Circular No. 27/01/2018-GST dated 04.01.2018 issued by concerned respondent as ultra vires, illegal and unsustainable;

(vii) To declare the Service Rate Notification as ultra vires the CGST Act, 2017 and consequently, void ab initio and non est;

(viii) To declare Entry 34(v) of Notification No. 11 / 2017 - Central Tax (Rate) dated 28.07.2017 as ultra vires the CGST Act and consequently void ab initio and non est;

(ix) To quash Serial No. 2 of Circular No. 354 /107 /2017 - TRU dated 04.01.2018 issued by the respondent authorities and the relevant FAQ clarification dated 06.09.2017 extracted in the show cause notice(s);

(x) To declare paragraph (D)(ii) [Serial No. 229] of Notification No. 6/2018 – Central Tax (Rate) dated 25.01.2018, amending Notification No. 1/2017 – Central Tax (Rate) dated 28.06.2017, and the corresponding

notifications issued under the SGST Acts as ultra vires the CGST Act and the SGST Acts and consequently, void ab initio and non est;

(xi) To declare the levy of GST under the CGST Act, 2017 and the corresponding SGST Acts on betting and gambling as ultra vires the Constitution of India;

(xii) To set aside the show cause notice(s) issued by the respondent authorities;

(xiii) To declare that Petitioner(s) are liable to pay GST only on the commission retained / set apart and not on the total value of bets as contemplated under Rule 31A(3) of the CGST Rules, 2017 and the SGST Rules, 2017;

(xiv) To restrain the respondents from placing reliance on Rule 31A(3) while conducting any assessment of the petitioner(s); and

(xv) To restrain the respondents from proceeding against the petitioner(s) or taking any coercive steps pursuant to the impugned show cause notice(s).

III. CONTENTIONS OF THE PARTIES

14. Several learned Senior Counsel, learned counsel and learned Additional Solicitor General of India appearing for the respective parties addressed detailed submissions touching upon various constitutional, statutory and fiscal aspects of

the controversy. While all submissions have been duly considered, only the broad contours of the rival contentions are recorded hereunder to avoid unnecessary repetition.

SUBMISSIONS

15. ***Mr. N. Venkataraman,*** learned Additional Solicitor General of India appearing for the Revenue[4] in Civil Appeal Nos. 8241 – 8244 of 2026, at the outset, submitted that gambling necessarily arises whenever stakes are involved, irrespective of whether the underlying game is one of skill or one of chance. While a game of skill *per se* may not amount to gambling, the introduction of stakes transforms the activity into gambling. Equally, a game of chance involving consideration or competition fee would also constitute gambling. The learned ASG contended that the nature of the underlying game does not alter the character of the betting transaction itself. Thus, even if the underlying game remains a game of skill, the act of staking money upon its uncertain outcome constitutes gambling.

15.1. It was further submitted by the learned ASG that statutory protections granted by certain States exempting games of skill played for stakes from penal consequences, do not detract from their essential character as gambling. Such

[4] For short, "ASG"

exemptions merely shield participants from prosecution; they do not alter the intrinsic nature of the activity. The existence of such carve-outs itself demonstrates that games of skill played with stakes would otherwise fall within the ambit of gambling. Consequently, a game of skill played with stakes does not cease to be gambling merely because certain State enactments exclude it from penal prohibition.

15.2. The learned ASG further contended that whether the underlying game is one of skill or one of chance, the participant ultimately wagers upon an uncertain outcome over which he has no absolute control. Reliance was placed on Section 30 of the Indian Contract Act 1872, which employs the expression "any game" while dealing with wagering agreements and does not distinguish between games of skill and games of chance. It was therefore argued that the independent act of betting or gambling remains one of chance irrespective of the nature of the underlying game. A wager on a game of skill and a wager on a game of chance are both characterised by uncertainty and the prospect of gain or loss. According to learned ASG, it is therefore erroneous to treat betting on games of kill as something other than gambling merely because the underlying game requires skill.

15.3. It was also submitted by the learned ASG that the GST enactments employ the expression "betting and gambling" and not "betting on gambling". The long-settled jurisprudence treating wagering, betting, and gambling as cognate

expressions cannot be diluted by introducing a distinction between betting on games of skill and betting on games of chance.

15.4. The learned ASG submitted that the expression "gaming" in its ordinary meaning, includes playing any game, whether of skill or chance, for stakes; where gaming is statutorily defined, the statutory definition governs; the decisive element constituting betting and gambling is the existence of stakes and not the nature of the underlying game; statutory protection for games of skill merely exempts such activities from criminal sanction and does not alter their character as gambling; such protection, where available, extends only to participants and not to side-bettors; and statutory immunity cannot be elevated into a proposition that staking on games of skill does not amount to gambling at all.

15.5. The learned ASG further submitted that the decisions of various High Courts recognising certain games such as Rummy as games of skill arose in the context of penal statutes enacted by the States under Entry 34 of List II of the Seventh Schedule to the Constitution. Those decisions neither considered the pan-India character of online gaming involving inter-State and cross-border participation nor examined the competence of Parliament to regulate and tax such transactions under the GST regime. According to learned ASG, the Department is not concerned with whether Rummy is a game of skill or a game of chance. The relevant consideration is that when any game, including a game of skill, is

played with stakes, the operator supplies an actionable claim in the form of a chance to win, thereby attracting GST.

15.6. Thus, the learned ASG contended that the respondents are suppliers of actionable claims and service providers facilitating betting and gambling transactions. Once a game of skill is played with stakes, the activity falls outside Entry 6 of Schedule III of the CGST Act, 2017 and becomes taxable under the CGST regime. Reliance was placed on Rule 31A of the CGST Rules, 2017 to contend that taxable value is the full face value of the bet and not merely the platform fee or commission retained by the operators.

15.7. Proceeding further, the learned ASG submitted that wagering, betting, and gambling essentially comprise three elements, namely, staking of money, uncertainty of outcome, and the prospect of receiving a return greater than the amount staked. Applying these ingredients to the game of rummy as conducted on the assessees' platform, the learned ASG submitted that players stake upon an uncertain outcome with the expectation of winning. Thus, even before the commencement of the game, money is staked upon a future uncertain event, thereby satisfying all the elements of wagering and gambling and that, gambling and side-betting share a common feature inasmuch as both depend upon uncertain outcomes. It was submitted that throughout the entire process the assessees exercise complete control and thereby facilitate the gaming activity.

15.8. Learned ASG concluded the first part of his arguments by stating the following Sutras:

I. There is no gambling if no stakes are involved, irrespective of whether the underlying game is a game of skill or game of chance as far as GST laws are concerned, since consideration is an essential ingredient for levy;

II. There is gambling, once stakes are involved, irrespective of whether the underlying game is a game of skill or game of chance;

III. A game of chance involving even a competition fee is gambling;

IV. A game of skill is per se not gambling;

V. A game of skill, when played with stakes, makes it gambling;

VI. A game of skill played with stakes, though gambling, does not re-characterize the underlying game from game of skill into game of chance;

VII. Protection by some of the states on games of skill played with stake from penalty and prosecution is proof that the same is nothing but gambling. such an express carve-out exempting and protecting gambling on games of skill from penal consequences is called for only because it is otherwise "gambling". Games of skill played with stakes will not seize to be gambling merely because of a protection given from penal consequences;

VIII. May it be a game of skill or a game of chance, playing for stakes makes it gambling as the outcome is not in the control of the betters and gamblers in both forms of games;

IX. The independent act of betting and gambling is only a chance and remains a chance irrespective of the fact as to whether the underlying game is a game of skill or game of chance. A chance on a game of chance and a chance on a game of skill will only remain a chance in both cases, and therefore, it is inappropriate to identify the chance of betting and gambling on a game of skill as not a chance but a skill, when the preponderance of uncertainty is the same in any form of game involving betting and gambling;

X. When time tested jurisprudence has benchmarked betting and gambling, as similar expressions, the new evolution that only betting on gambling makes it gambling, has no basis. The GST laws have not used the expression betting on gambling. it has used the expression betting and gambling.

15.9. In the context of actionable claims arising out of betting and gambling, the learned ASG first addressed the question whether the players on the platform possess a claim to a beneficial interest in movable property. By way of illustration, it was submitted that where four players each stake Rs. 10, the eventual winner would receive Rs. 36, after deduction of Rs. 4 by the platform towards commission. At the point when the stakes are placed, the winner of the game is yet to be determined. Consequently, each player who has staked money upon the uncertain outcome of the game possesses an equal and conditional

interest in the winning amount of Rs. 36. Since money is movable property, the winning pool likewise constitutes movable property. Thus, every player is vested with a conditional right to claim the winning amount upon success in the game, thereby satisfying the first ingredient of Section 3 of the Transfer of Property Act, 1882 i.e., the existence of a claim to a beneficial interest in movable property.

15.10. The learned ASG thereafter addressed the second requirement, namely that such beneficial interest must not be in the actual or constructive possession of the claimant. It was submitted that the player merely decides the amount to be staked, whereas the pool amount is generated and controlled entirely by the online gaming companies depending upon the number of participants at a given table. The platform and the underlying algorithm select and assign the players to a particular table. Until a player succeeds in the game, no enforceable claim to the winning amount arises. Therefore, at every stage, whether at the time of signing up on the platform, depositing money into the wallet, staking the amount, or participating in the game, the player neither possesses nor exercises control over the winning amount. Such control arises only upon winning the game. In other words, the player lacks the ability to alter or determine the legal status of the winning pool. Further, the learned ASG referred extensively to the terms and conditions governing the gaming platform and contended that the online gaming companies exercise pervasive control over the entire transaction. The companies

prescribe the manner in which stake amounts are to be deposited, regulate how such amounts are to be utilized, determine the conditions governing withdrawals, specify the manner in which winnings are distributed, and regulate refunds. According to the learned ASG, the platforms remain at the centre of the entire transaction by providing the platform, hosting the game, regulating gameplay in accordance with rules framed by them, declaring winners, and distributing winnings. Therefore, both actual and legal control over the stake and winning amounts remain entirely with the gaming companies, thereby satisfying the second requirement of an actionable claim.

15.11. The learned ASG next dealt with the third requirement, namely, whether the claim would be maintainable before a civil court. Reliance was placed upon the decision in ***Sunrise Associates v. Government of NCT of Delhi and others***[5] wherein this Court held that a lottery ticket constitutes an actionable claim and that lottery transactions amount to betting and gambling. According to learned ASG, the ratio of ***Sunrise Associates*** *(supra)* squarely applies to the present case and binds the assessees, as it conclusively recognises betting and gambling as giving rise to actionable claims.

[5] (2006) 5 SCC 603

15.12. The learned ASG further submitted that the contract relevant for GST purposes is the contract between the online gaming company and the player. Such contract is not a wagering contract within the meaning of Section 30 of the Indian Contract Act. Reliance was placed on the decisions in ***Carlill v. Carbolic Smoke Ball Company***[6]**,** ***Attorney General v. Luncheon Sports Club***[7]**,** ***Tote Investors Ltd. and Smoker***[8] and ***Firm of Pratapchand Nopaji v. Firm of Kotrike Venkata Setty & Sons and others***[9]**,** to contend that the online gaming company neither wins nor loses depending upon the outcome of the game, and in the absence of such mutuality, no wagering contract can arise between the platform and the player. Consequently, the contract between the player and the platform is not hit by Section 30 of the Contract Act.

15.13. The learned ASG submitted that the gaming companies attempt to overcome this difficulty by contending that the wagering agreement exists inter se among the players, while the platform merely acts as a custodian of the stake amounts. He submitted that this contention needs to be rejected because payment of stake amounts to the platform does not constitute entrustment. In a true case of entrustment, a fiduciary relationship is established whereby the person entrusting

---

[6] [1892] EWCA Civ 1
[7] (1929) AC 400
[8] (1967) 3 A.E.R. 242
[9] (1975) 2 SCC 208

the amount retains control over the entrusted property. In the present case, however, the player loses effective control over the deposited amount.

15.14. Placing reliance upon several authorities and commentaries, the learned ASG submitted that the relationship between the players and the online gaming companies is one that of principal and agent. However, unlike a genuine entrustment where the principal retains authority to reclaim the entrusted amount at will, the players in the present case lose control over the deposited amounts immediately upon deposit. This absence of control demonstrates that the transaction cannot be characterised as an entrustment.

15.15. Referring to the Terms and Conditions of Gameskraft, the learned ASG submitted that (i) a player intending to participate in games involving stakes must first open an RC Account, and all deposited sums are credited into the "Deposit Segment" of the account. Even at this stage, the player loses the unfettered right to withdraw the deposited amount. (ii) Winnings are credited only to the "Withdrawable Segment" of the RC Account, and only such winnings constitute the "withdrawable balance". (iii) Unless the amounts in the Deposit Segment are converted into winnings and credited into the Withdrawable Segment, they cannot be withdrawn. (iv) Consequently, even before commencement of the game, the player loses control over the deposited amount which negates any

theory of entrustment. (v) Clauses 7.11 and 7.13 of the Terms and Conditions further stipulate that withdrawal requests will be processed only if the minimum withdrawal amount of INR 100 is satisfied.

15.16. According to the learned ASG, the moment money is deposited into the RC Account, the player effectively loses dominion over the amount. Even assuming such deposits amount to entrustment, Section 30 of the Contract Act would apply only if the inter se transactions among the players constitute wagering agreements. However, the absence of wagering does not imply absence of betting and gambling, since wagering is merely a species within the broader genus of betting and gambling.

15.17. The learned ASG further submitted that a wager constitutes a distinct legal category requiring two opposing parties or sets of parties and gain by one party corresponding directly to loss by the other upon an uncertain event entirely beyond the parties' control. A wager, therefore, is characterised by complete uncertainty and pure chance. According to learned ASG, the present activity constitutes betting and gambling rather than a wager because one of the essential attributes of a wager, namely, complete absence of participant control over the outcome, is lacking. Players retain some degree of agency in determining the result. Consequently, Section 30 of the Contract Act, which specifically concerns

"agreements by way of wager", has no application. However, the absence of a wagering agreement does not detract from the fact that the activity remains one of betting and gambling.

15.18. The learned ASG pointed out that Section 30 requires both an agreement and an agreement "by way of wager". In the present case, there exists neither any inter se agreement among the players nor any mutuality between them. Even assuming *arguendo* that an inter se wagering agreement exists among the players and is rendered void under Section 30, the collateral agreement between the player and the gaming platform remains valid and enforceable. Consequently, a winning player may lawfully institute proceedings against the platform to recover winnings.

15.19. In support of this proposition, reliance was placed upon the decisions in ***Firm of Pratapchand Nopaji v. Firm of Kotrike Venkata Setty & Son*** (supra) ***and Yash Raj Films Private Limited v. Afreen Fatima Zaidi and another***[10]**,** wherein, it was held that collateral agreements facilitating transactions which are void but not prohibited remain enforceable unless tainted by illegality under Section 23 of the Contract Act.

[10] (2024) 10 SCC 515

15.20. The learned ASG also submitted that the essential requirements of contract formation, offer, acceptance, and mutual promises, are absent between the players themselves. The players neither know each other nor possess the ability to choose their opponents, as the platform algorithm matches players solely on the basis of stake amounts. Therefore, there exists no inter se agreement between the players capable of constituting a wagering contract. Though this Court in ***State of Andhra Pradesh v. K. Satyanarayana and others***[11] recognised rummy as a game of skill, the online format employed by the assessees fundamentally alters the character of the game because the algorithm disregards comparative skill levels and merely matches participants on the basis of stakes.

15.21. Referring to Articles 366(12A) and 366(29A) of the Constitution, the learned ASG submitted that the earlier decisions in ***H. Anraj v. Government of Tamil Nadu***[12] ***and Sunrise Associates*** (supra) arose in the context of the Sales Tax regime, wherein it was held that transfer of title constituted the taxable event. Under the GST regime, however, the taxable event is "supply". Section 7 of the CGST Act employs the expressions "includes", "all forms of supply", and "such as", each of which has received expansive judicial interpretation. Relying upon the decision in ***Union of India v. Mohit Minerals Pvt. Ltd.***[13], the learned ASG

[11] 1967 INSC 269
[12] (1986) 1 SCC 414
[13] (2022) 10 SCC 700

submitted that Section 7 defines "supply" in broad and inclusive terms and cannot be restricted merely to transfers recognised under traditional concepts of sale.

15.22. According to the learned ASG, the online gaming companies create actionable claims in favour of the players for the first time by enabling them to stake money upon uncertain outcomes to acquire conditional rights to win. Such creation itself amounts to a "supply" under Section 7. The Revenue clarified that it is not contending that actionable claims are transferred from the gaming companies to the players; rather, actionable claims are created by the gaming companies in favour of the players. The learned ASG further contended that the discussions in ***Anraj*** (supra) and ***Sunrise Associates*** (supra) regarding grants arose only because the Sales Tax regime depended upon transfer of title. Under GST, however, transfer is not the *sine qua non*. Supply itself constitutes the taxable event. Accordingly, both creation and transfer of actionable claims attract GST liability.

15.23. The learned ASG also submitted that restrictions imposed by the platform's terms and conditions upon assignment or transfer of rights do not alter the legal character of the rights themselves. Such restrictions merely amount to voluntary waivers by the players and do not negate the inherent assignability of the rights constituting actionable claims.

15.24. The learned ASG further submitted that though Parliament may independently possess legislative competence to tax betting and gambling under Entry 97 of List I, such question is irrelevant in the present case. What is being taxed is not betting and gambling as such, but the supply of actionable claims arising therefrom. The tax therefore remains a GST levy upon supply and not a direct tax upon betting and gambling.

15.25. It was submitted that under the statutory scheme, GST liability falls upon the "supplier" who qualifies as the "taxable person" under Sections 2(105), 2(107), 7, 9 and 22 of the CGST Act. The gaming companies are undeniably the suppliers because they invite players onto the platform, structure the mechanism of staking, conduct the games, regulate gameplay, collect stakes, and distribute winnings. Without the gaming companies, no supply of actionable claims could possibly occur. Consequently, the gaming companies qualify as "suppliers" and therefore constitute "taxable persons" liable to discharge GST.

15.26. The learned ASG drew our attention to the Terms of Service governing the relationship between the platform and the players and submitted that the agreement is not merely one for provision of services but constitutes an arrangement for supply of actionable claims together with platform-facilitated games designed and controlled entirely by the platform operators. It was submitted that by the time a player is assigned to a table, the stake amount has already been deposited with the gaming company and the corresponding supply

of actionable claim is complete. The taxable event occurs at the point when the player is given the opportunity to participate in betting and gambling through the platform. Consequently, the players cannot be regarded as suppliers inter se.

15.27. The learned ASG finally addressed Section 9(5) of the CGST Act and submitted that the provision applies only where the electronic commerce operator merely facilitates supplies between independent suppliers and recipients. The gaming companies are not mere intermediaries like Swiggy or Zomato. In food delivery transactions, the restaurant remains the actual supplier while the platform merely facilitates the supply. In contrast, in the present case, there exists no independent supply between players. The gaming companies themselves are the suppliers of actionable claims and receive the entire consideration. Consequently, Section 9(5) has no application and the online gaming companies themselves are liable as taxable persons under Section 9(1) of the CGST Act, 2017.

15.28. The learned ASG submitted that actionable claims arising from betting and gambling constitute "goods" within the meaning of Section 2(52) of the CGST Act and their supply is taxable under Section 9(1) read with Section 7 of the Act. Parliament has prescribed the charging provision and the maximum rate of tax, while the actual rate is notified by the Central Government on the recommendations of the GST Council.

15.29. It was contended that during the period from 01.07.2017 to 24.01.2018, actionable claims in betting and gambling were taxable at 18% under the

residuary Entry No. 453 of Notification No. 1/2017-Central Tax (Rate), and from 25.01.2018 onwards at 28% under Entry No. 229 inserted by Notification No. 6/2018-Central Tax (Rate). According to the learned ASG, the absence of a specific tariff or HSN classification is immaterial to the validity of the levy, as HSN classification serves only a procedural purpose and cannot determine the existence of a taxable supply. Reliance was placed on analogous lottery entries and departmental circulars clarifying the use of the expression "any chapter" where no specific tariff classification exists.

15.30. Learned ASG further submitted that the impugned transactions cannot be treated as supplies of services. Notifications relating to classification of services, including entries concerning online gaming and gambling services, operate only where a platform merely facilitates access to games or betting activities. Once the platform supplies actionable claims in the form of an opportunity to win upon payment of a stake amount, the transaction assumes the character of a supply of goods. The expression "chance to win", according to the learned ASG, refers to the opportunity supplied to the player and not to the distinction between games of skill and games of chance. Consequently, service classifications cannot override the statutory scheme which expressly treats actionable claims as goods.

15.31. On valuation, the learned ASG contended that the entire stake amount paid by the player constitutes "consideration" within the meaning of Section 2(31) and, therefore, forms the "transaction value" under Section 15(1).

Participation in the game is impossible without payment of the full stake amount and such payment is made in respect of, in response to, and for the inducement of the supply. It was argued that winnings payable to successful players cannot be deducted from the taxable value, there being no statutory exclusion analogous to Section 15(3). Reliance was placed on ***Skill Lotto Solutions Pvt. Ltd. v. Union of India and others***[14] to contend that deductions from transaction value are permissible only where expressly authorized by statute. The attempt of the assessees to restrict the taxable value to the platform fee or commission was therefore described as artificial and contrary to the scheme of the Act.

15.32. Defending Rule 31A(3), the learned ASG submitted that the Rule is traceable to Sections 15(4), 15(5) and 164 of the CGST Act, 2017 and was introduced pursuant to recommendations of the GST Council. Rule 31A merely clarifies and reiterates the valuation already contemplated under Section 15(1) by prescribing one hundred per cent of the face value of the bet as the value of supply. Reliance was placed upon the deliberations of the 25th GST Council Meeting and the recommendations of the Fitment Committee to contend that both the rate and valuation provisions were intended to apply to all forms of betting and gambling, including online gaming, and not merely to horse racing. It was argued that the language of Rule 31A(3), particularly the use of the disjunctive

[14] (2021) 15 SCC 667

expression "or", clearly demonstrates that betting, gambling and horse racing constitute distinct categories covered by the Rule.

15.33. The learned ASG further submitted that doctrines such as the *Quistclose Trust* principle have no application to the present transactions, as players do not retain dominion or control over the staked amounts. It was also contended that the legality or illegality of the underlying activity is irrelevant for purposes of taxation. Once there is a supply of actionable claims in the nature of betting and gambling, GST is attracted irrespective of the regulatory status of the activity.

15.34. On the above grounds, it was contended that GST was rightly levied at 18% for the period from 01.08.2017 to 24.01.2018 and at 28% thereafter, and that the High Court erred in quashing the show cause notices. The learned ASG accordingly prayed that the impugned judgment be set aside and the appeals be allowed.

16. ***Dr. Abhishek Manu Singhvi,*** learned Senior Counsel appearing for Respondent No.1 in Civil Appeal Nos. 8241 – 8244 of 2026 submitted that the Department issued a show cause notice demanding a sum of Rs.2,09,89,31,31,501/- (inclusive of interest and penalty) on the premise that the game of rummy played with stakes constitutes an activity of a "gambling" nature and that the online platform operated by Respondent No. 1 facilitated "betting and gambling". The High Court, by the impugned judgment, quashed the show

cause notice and that the present appeals had been preferred by the Department assailing the said judgment.

16.1. Learned Senior Counsel traced the evolution of taxation upon online gaming activities and divided the relevant period into four distinct stages viz., (i)Prior to 2017, service tax at the rate of 14% was levied only upon the commission earned by the respondent; (ii) After the introduction of GST in 2017, GST at the rate of 18% continued to be levied only upon the commission component, without any change in methodology; (iii) During the period 2017-2022, however, GST at the rate of 28% came to be levied on the entire face value or gross amount staked, despite there being no alteration either in the governing law or in the nature of the activity itself. According to learned senior counsel, this change was introduced solely with a view to augmenting tax collection and increase revenue; and (iv) in September 2023, Rule 31B came to be introduced. Thus, learned Senior Counsel submitted that the issue under consideration has already been decided by this Court in ***K.R. Lakshmanan v. State of Tamil Nadu and another***[15] in favour of the respondents and that all statutes only prohibit betting and gambling on games of chance, and if rummy or any other skill-based game should be regarded as gambling when money is involved, it can only be done so by amending the legislation, which will undoubtedly overturn the position that has been established for 75 years.

[15] 1996 (2) SCC 226

16.2. Learned Senior Counsel further submitted that the entire case of the Revenue collapses in view of the admission made by the learned ASG that rummy is a game of skill. Proceeding on the assumption *arguendo*, that the expressions "gambling", "betting", "wagering" and "gaming" may be treated as synonymous, he submitted that the essential and unifying characteristic of all such activities is the predominance of chance. Such activities form a mutually exclusive category, distinct from activities in which skill constitutes the predominant element. The mere involvement of money or stakes in the latter category cannot alter their genus or transform them into gambling activities. While a minimal element of chance may exist in the game of rummy, the predominant element remains skill.

16.3. Learned Senior Counsel further contended that the expressions "betting and gambling", "gaming", "games of skill" and "games of chance" are *nomen juris*, in light of the decisions of the Constitution Bench in ***State of Bombay v. R.M.D. Chamarbaugwala***[16] ***(hereinafter referred to as RMDC-I) and R.M.D. Chamarbaugwala and another v. Union of India and another***[17] ***(hereinafter referred to as RMDC-II)*** and the three-Judge Bench decision in ***K.R. Lakshmanan*** (supra). This Court has consistently construed the expression "betting and gambling" as synonymous with activities involving games of chance. Conversely, a game involving a substantial degree of skill falls outside the ambit of "betting and gambling" and they always constitute a distinct

[16] 1957 SCR 870
[17] 1957 SCR 930

category. Hence, "betting and gambling" can only mean betting on a game of chance and not betting on a game of skill. The learned Senior Counsel submitted that the Revenue seeks to artificially expand the concept of gambling merely for the purpose of imposing tax liability. However, a foundational requirement for levy of such tax is the existence of "betting" or "gambling", and if rummy does not fall within that category, the levy itself necessarily fails.

16.4. Learned Senior Counsel assailed the reasoning advanced by the learned ASG and submitted that the character of an activity does not change merely because money is involved. Whether a player wins or loses depends upon the skill exercised by the player, and the mere existence of stakes cannot alter that intrinsic character. According to the learned Senior Counsel, rummy may be played for diverse purposes and that the money involved merely constitutes the prize or stake attached to the outcome. Placing stakes upon such a game does not diminish its character as a game of skill. At the same time, rummy played with stakes involves assessment by the players of their own relative skill, and that the outcome of the game is principally determined by the player's knowledge, training and expertise. Learned Senior Counsel submitted that Gameskraft merely operates as an intermediary platform provider; it neither participates in the game nor has any stake in the outcome thereof. Hence, the Revenue has fundamentally mischaracterised the nature of the activity.

16.5. Learned Senior Counsel contended that rummy has consistently been recognised as a game of skill and, therefore, cannot be treated as gambling merely because it is played with stakes. ***RMDC-I*** replaced the earlier "scintilla of skill" test with the "preponderance of skill" test, under which competitions substantially involving skill fall outside the ambit of gambling and constitute legitimate trade protected under Articles 19(1)(g) and 301 of the Constitution.

16.6. Learned Senior Counsel further submitted that ***State of Andhra Pradesh v. K. Satyanarayana*** (supra), itself involved rummy played with stakes, yet this Court held that rummy is "mainly and preponderantly a game of skill". According to him, the reference to "gambling in some other way" pertains only to side-betting or wagering by third parties and not to the mere playing of rummy with stakes between players. Reliance was also placed upon ***K.R. Lakshmanan*** (supra), wherein this Court distinguished games of skill from games of chance and held that wagering on a game of skill does not amount to gaming or gambling.

16.7. Learned Senior Counsel submitted that the decisions of the various High Courts in ***Junglee Games India Pvt. Ltd v. State of Tamil Nadu and others***[18], ***Head Digital Works Pvt. Ltd and another v. State of Kerala***[19] and ***All India Gaming Federation v. State of Karnataka***[20]correctly applied the principles laid down in ***RMDC-I, RMDC-II, Satyanarayana and K.R. Lakshmanan,*** and

[18] 2021 SCC OnLine Mad 2762
[19] 2021 SCC OnLine Ker 3592
[20] 2022 SCC OnLine Kar 435

consistently held that games predominantly involving skill do not become gambling merely because stakes are involved.

16.8. Reference was made to the decision in ***Kunhayammed v. State of Kerala***[21] to contend that dismissal of Special Leave Petitions by non-speaking orders carries no precedential value under Article 141.

16.9. In conclusion, learned Senior Counsel submitted that wagering or betting on a game of skill is both judicially and statutorily recognised as permissible under Indian law. According to him, the distinction between games of skill and games of chance has been consistently maintained by this Court, beginning from ***RMDC-I and RMDC-II*** and reaffirmed in ***K.R. Lakshmanan***. He contended that several gaming enactments formulated by Parliament and State Legislatures expressly exempt games of skill from the ambit of gambling legislation. Consequently, Section 30 of the Indian Contract Act, dealing with wagering agreements, has no application to games predominantly involving skill. He further submitted that the Department itself had historically accepted that online skill-based gaming platforms do not engage in "betting and gambling" and had accordingly levied and collected only service tax upon the commission component. Hence, rummy or any other game of skill played with stakes cannot be characterised as "betting and gambling".

---

[21] (2000) 6 SCC 359

16.10. In light of the aforesaid submissions, the learned Senior Counsel contended that the High Court of Karnataka was fully justified in setting aside the show cause notices issued by the appellants and consequently the appeals preferred by the Revenue deserve to be dismissed.

17. ***Mr. Dhruv Mehta*****,** learned Senior Counsel appearing for Respondent No.3 in Civil Appeal Nos. 8241 – 8244 of 2026 submitted that online gaming platforms have consistently been treated as service providers and not as suppliers of actionable claims relating to betting and gambling. In support of this contention, he referred to the Service and Accounting Codes (SAC) issued by the Central Board of Indirect Taxes and Customs (CBIC) under Notification No. 11/2017 dated 28.06.2017, in exercise of powers under Sections 9(1), 11(1), 15(5), and 16 of the CGST Act, 2017. This Notification reflected the contemporaneous legal understanding that "betting and gambling", insofar as it relates to online games, is restricted to games of chance, and does not extend to games of skill played with stakes.

17.1. Further, the learned Senior Counsel submitted that Respondent No.3 pays GST at the prescribed rate on their charges for the supply of platform services under SAC 998439. SAC 999692, when contrasted with SAC 998439, makes it clear that "gambling and betting services" are attracted only in relation to games of chance and not in relation to games of skill. The distinction between games of

skill and games of chance is constitutionally recognised, and the statutory exemptions granted to games of skill under various gambling legislations are consistent with this constitutional classification. In support thereof, reliance was placed on Section 12 of the Public Gaming Act, 1867; Section 13 of the Maharashtra Prevention of Gambling Act, 1887; and Section 11 of the Tamil Nadu Gaming Act, 1930. Further, the interpretation of the phrase "betting and gambling" must be consistent with Entries 34 and 62 of List II and Entry 6 of Schedule III to the CGST Act and constitutionally, placing a bet on a game of skill does not amount to "betting and gambling". Such games are entitled to constitutional protection under Article 19(1)(g).

17.2. Learned Senior Counsel also urged this Court that the entire skill-based gaming sector is based on the above-mentioned jurisprudence, consistently applied for over six decades by the constitutional courts of this country, including this Court. The actions of the Department are a deviation from the settled position of the law and threaten to upset the settled jurisprudence, resulting in guaranteed destruction of the industry.

17.3. Relying upon the GST Council's resolutions and 2023 amendment, the learned Senior Counsel submitted that the amendments were introduced solely due to the lack of legislative clarity concerning the taxability of online money gaming. The Revenue was fully conscious of the fact that gaming companies could not, under the pre-amendment framework, be regarded as suppliers of

actionable claims. Consequently, a deeming provision was introduced, whereby gaming companies are now deemed to be suppliers of actionable claims. The very incorporation of such a deeming fiction is a clear acknowledgement that in the absence thereof, gaming companies could not be treated as such under the existing law. By virtue of the deeming provision, gaming companies are, for the first time, brought within the scope and ambit of the taxing statute as 'suppliers'. It is only upon such statutory deeming that the incidence of tax is sought to be fastened on such entities under the GST regime. In other words, the introduction of deeming fiction in Section 2(105) shows that prior to the amendment, the Act did not contemplate this fiction, as a deeming provision is enacted to assume the existence of a fact that does not really exist.

17.4. In support thereof, the learned Senior Counsel referred to the judgments in ***Manish Trivedi v. State of Rajasthan***[22] and ***Rajasthan Industrial Development & Investment Corporation & another v. Diamond and Gem Development Corporation Ltd & another***[23]**.**

17.5. Learned Senior Counsel then submitted that Amendment to CGST Rules by introducing Rules 31B and 31C without touching preexisting Rule 31A, further proves that Rule 31A, as it existed, did not cover online gaming. In other words, the very mechanics for operationalising the levy of GST *qua* online money

[22] (2013) 12 SCR 205
[23] (2013) 4 SCR 331

gaming did not exist prior to the 2023 amendment. Explanation inserted by the 2023 amendment to the proviso to Rules 31B and 31C suggests that Rule 31A was not applicable to online gaming and continues to be inapplicable post-amendment. Online gaming platforms do not take part in the game or have any stake in the outcome. It is merely an intermediary that enables the players to play the game by providing a platform. Hence, online gaming companies do not supply any actionable claims as defined under Section 2(2) of the Transfer of Property Act. If at all any actionable claim exists, it exists only between the players who play rummy with stakes.

17.6. Thus, the learned Senior Counsel contended that the Department's reliance on Section 30 of the Indian Contract Act is self-defeating, because "actionable claims" under the CGST Act and the Transfer of Property Act provide that actionable claims by definition are enforceable in law. A void agreement under Section 30 would fall outside the ambit of an actionable claim and would not constitute a "good" under Section 2(52) of the CGST Act, 2017. Hence, any alleged supply of claims would not be amenable to tax. Services offered by online gaming providers do not fall within the scope of wagering contracts since there is no 'wagering' or 'betting' by a player with the platform. He also referred to the revenue earned by the gaming companies till date and the tax demand raised by the Revenue and submitted that the GST demand is more than the revenue of the

online gaming company and if the interpretation of the learned ASG is accepted, then the same would kill the gaming industry.

17.7. Finally, the learned Senior Counsel concluded that the present Special Leave Petitions are not maintainable in light of an alternative remedy before a Division Bench of the Karnataka High Court. To substantiate the same, he referred to Section 4 of the Karnataka High Court Act, 1961, which provides a statutory right to appeal before a Division Bench. Learned Senior Counsel also relied on the decision of this Court in ***Universal Sompo General Insurance Co. Ltd v. Suresh Chand Jain & another***[24]**,** wherein it was held that, when a party has an alternative remedy to go before the High Court, this Court should not entertain SLP, thereby short-circuiting the legal procedure prescribed.

18. ***Mr. Rakesh Dwivedi,*** learned Senior Counsel appearing for the Chief Financial Officer of Gameskraft (Respondent No.4 in Civil Appeal Nos. 8241 – 8244 of 2026) submitted that by show cause notice dated 23.09.2022, the Revenue had raised an unprecedented demand of Rs.2,09,89,31,31,501/- together with interest and penalty against Respondent No. 1 company and its key managerial personnel. It was contended that for the relevant period 2017-2022, the entire revenue of Gameskraft was approximately Rs. 4,650 crores, which was

[24] 2023 SCC OnLine SC 877

substantially lower than the amount sought to be recovered, thereby demonstrating the absurd and disproportionate nature of the impugned demand.

18.1. Learned Senior Counsel further submitted that the case of the Revenue was that where players on the platform played for stakes, Gameskraft was supplying "actionable claims" in the nature of a chance to win in "betting and gambling", even if the underlying game was one of skill. Refuting this, learned Senior Counsel argued that Gameskraft, functioning as an intermediary governed by the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, merely provided an online platform enabling players to play rummy, a recognised game of skill, against one another, and therefore could not be characterised as engaging in betting or gambling. Thus, the platform services rendered by Gameskraft could not be treated as actionable claim, as alleged by the Revenue. The learned Senior Counsel further stated that players had no claim to any debt or beneficial interest in movable property against Gameskraft through the medium of the platform.

18.2. Learned Senior Counsel submitted that the Revenue's interpretation, namely that online gaming platforms such as Gameskraft were liable to GST as suppliers of goods in the form of actionable claims in the nature of a chance to win in betting and gambling, rather than as suppliers of services, ran contrary to

settled constitutional doctrine. According to Learned Senior Counsel, any tax on "betting and gambling" has historically been understood as a tax on an activity and not a tax on goods, rendering the Revenue's position untenable.

18.3. Learned Senior Counsel also disputed the Revenue's contention that money deposited into the RC Account could not be withdrawn at the option of the player. Reliance was placed on Clause 11.8 of the Terms and Conditions, which permitted a player to discontinue use of the platform at any time and if a positive withdrawable balance or funds remained in the deposit segment, to receive disbursement thereof. Clauses 6.10 and 12.1 were also referred to in order to demonstrate that restrictions concerning money transactions were intended solely to prevent unlawful use of the platform, particularly money laundering through the RC Account.

18.4. Learned Senior Counsel submitted that amounts deposited by players in their RC Accounts were merely held in trust, that title thereto never passed to Gameskraft, and that the company never became the owner of such funds. Reliance was placed on Clause 7.10 of the Terms and Conditions. Hence, the assertion of the Revenue that players lost control over deposited funds, stake amounts or winnings was described as wholly incorrect.

18.5. Learned Senior Counsel submitted that the activities of online gaming platforms such as Gameskraft could only be taxed under GST as a supply of services, which was the basis on which Gameskraft had discharged GST liability during the relevant period 2017-2022. GST had been paid under Section 15(1) of the CGST Act on the net amount collected as "platform fee", and such payments had been accepted by the Revenue until issuance of the impugned show cause notice in September 2022.

18.6. Learned Senior Counsel contended that the levy proposed in the show cause notice was not upon the platform fee, which constituted the actual revenue of Respondent No. 1, but upon a wholly artificial valuation. Levy of GST at 28% as proposed by the Revenue, is not only significantly higher than the company's total revenue, but even greater than the revenue of the entire online gaming sector, stated to be approximately Rs.10,100 crores. Such a levy was characterised as confiscatory, manifestly arbitrary, violative of Articles 14 and 300A of the Constitution of India, and one that would effectively shut down the online gaming industry.

18.7. Learned Senior Counsel further submitted that the show cause notice was patently illegal and without jurisdiction because Gameskraft's facilitation of online rummy did not involve any actionable claim as contemplated under Rule

31A(3) of the CGST Rules. There was no supply of any actionable claim by Gameskraft to winning players. It was argued that Rule 31A(3) was originally confined to the activities of horse racing clubs and had no application to online rummy. In any event, online rummy, being undisputedly a game of skill, did not fall within the expression "betting and gambling" under Rule 31A(3).

18.8. Learned Senior Counsel further submitted that the inapplicability of Rule 31A(3) during the relevant period stood reinforced by the substantive amendments introduced prospectively with effect from 01.10.2023 to the CGST Act and Rules, while Rule 31A(3) itself remained untouched. Particular emphasis was placed on the amendment to Section 2(105) of the CGST Act by the CGST Amendment Act, 2023, whereby a deeming fiction was introduced treating online gaming companies such as Gameskraft as "suppliers" of actionable claims. It was argued that the necessity of such an amendment itself demonstrated that prior to 01.10.2023 companies such as Gameskraft were not suppliers of actionable claims under the GST regime.

18.9. Learned Senior Counsel further urged that if Section 30 of the Indian Contract Act were to be invoked against Gameskraft, the agreements between Gameskraft and its users would become void and unenforceable, in which event no actionable claim could arise between the parties, much less any supply thereof.

18.10. Learned Senior Counsel also disputed the Revenue's reliance on ***Satyanarayana***. It was submitted that the decision concerned "rummy played for stakes" and that the judgment must be read as a whole. The expression used therein could only mean that a club owner was prohibited from side-betting on the outcome of a rummy game, but not from operating a club where rummy was played for stakes between players.

18.11. Learned Senior Counsel argued that the Revenue's submission that the mere presence of stakes converts online rummy into gambling has misconstrued the ratio of ***Satyanarayana***. If accepted, it would imply that any organiser charging fees for participation in a skill-based competition, even a chess tournament, would be guilty of running a gaming house. Such an interpretation, it was submitted, would run directly contrary to the Constitution Bench judgment in ***RMDC-II***, which recognised the legitimacy of business activities involving games of skill. It was lastly submitted that the decision in ***Skill Lotto Solutions*** (supra) dealt with lotteries and had no application to online rummy as organised by Gameskraft.

18.12. It was submitted that GST as an independent source of taxation was introduced into the Constitution of India by the Constitution (101st Amendment) Act, 2016 with effect from 16.09.2016. By the said amendment, Articles 246A,

279A, and 366(12A) were inserted and several taxing entries in List II of the Seventh Schedule were either omitted or modified. One such entry was Entry 62. Prior to the amendment, Entry 62 read: "*Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling*". Post Amendment, it stands confined to: "Taxes on entertainments and amusements to the extent levied and collected by a Panchayat or a Municipality or a Regional Council or a District Council". It was therefore submitted that the legislative field relating to betting and gambling as a taxing entry stood consciously altered with the advent of GST.

18.13. It was submitted that Article 366(12A) defines GST as a tax on the supply of goods, or service or both, excluding alcoholic liquor for human consumption. Article 246A confers concurrent legislative power upon Parliament and the State Legislatures to enact laws with respect to GST, subject to the exclusive domain of Parliament in respect of inter-State supplies. Article 279A provides for the constitution of the GST Council, which is empowered to recommend the goods and services to be subjected to or exempted from GST, as well as the rates of tax. According to learned Senior Counsel, these constitutional provisions are of significance in understanding the meaning and scope of the expressions "goods" and "services" under the GST framework.

18.14. Learned Senior Counsel further submitted that the Constitution draws a clear distinction between regulatory entries and taxing entries, and it is settled

law that a regulatory entry does not by itself confer the power of taxation. Reliance in this regard was placed on the decisions in ***M.P.V. Sundararamier v. State of A.P.***[25]***, Federation of Hotel and Restaurant Assn. of India v. Union of India***[26]***, State of Karnataka v. State of Meghalaya***[27] and ***Mineral Area Development Authority and another v. SAIL and another***[28] ***and State of U.P. v. Lalta Prasad Vaish and Sons***[29].

18.15. It was submitted that numerous entries in Lists I and II impose taxes on goods with reference to specific taxable events or aspects. For instance, Entry 84 of List I concerns duties of excise on manufacture or production of goods, while Entries 92A and 92B relate respectively to sale or purchase of goods and consignment of goods in the course of inter-State trade. Likewise, Entries 53, 54 and 56 to 58 of List II concern distinct taxable events involving goods, with Entry 58 directly relating to taxes on animals and boats. It was argued that Entry 62 of List II, however, had been judicially interpreted differently.

18.16. Learned Senior Counsel thereafter placed reliance on the Constitution Bench decision in ***Godfrey Phillips India Pvt. Ltd v. State of Uttar Pradesh***[30], wherein the scope of Entry 62 of List II was considered. The Court interpreted

---

[25] AIR 1958 SC 468
[26] (1989) 3 SCC 634
[27] (2023) 4 SCC 416
[28] (2024) 10 SCC 1
[29] 2024 INSC 812
[30] (2005) 2 SCC 515

the expressions "entertainments, amusements, betting and gambling" as referring to activities. Applying the principle of *noscitur a sociis*, the expression "taxes on luxuries" was also construed as relating to activities rather than goods. Consequently, it was held that Entry 62 could not sustain a tax on cigarettes or tobacco as goods. On the strength of that reasoning, it was argued that betting and gambling had constitutionally been understood as activities and not goods.

18.17. It was therefore submitted that in the present case, the Revenue seeks to recover GST on the online game of rummy organized by Gameskraft Technologies Pvt. Ltd by treating the activity as "goods", through invocation of Sections 7, 9 and 15(5) of the CGST Act, 2017 read with Rule 31A(3) of the CGST Rules, 2017. According to Learned Senior Counsel, this makes it necessary to examine the constitutional meaning of the term "goods". If the interpretative approach adopted in ***Godfrey Phillips*** (supra) were to be applied to Article 366(12), then "goods" would mean materials, commodities and articles of all kinds, and may not extend to actionable claims.

18.18. Tracing the legislative history, it was submitted that sale of goods was originally governed by Chapter VII (Sections 76 to 123) of the Indian Contract Act, which later stood repealed and replaced by the Sale of Goods Act, 1930. Section 2(7) of the Sale of Goods Act expressly excludes actionable claims and

money from the definition of goods. This exclusion was because actionable claims were already governed as property rights under the Transfer of Property Act, 1882. It was thus submitted that actionable claims have historically been treated as species of property and not as goods. Referring to the essential ingredients of actionable claim, the learned Senior Counsel submitted that historically and legally, "goods" have been understood as materials, articles or commodities, whereas actionable claims belong to an altogether different juristic category of property rights. This settled meaning had become a constitutional *nomen juris* by the time the Constitution (101st Amendment) Act, 2016 came into force.

18.19. Learned Senior Counsel further submitted that Entry 92C of List I, which dealt with taxes on services, though inserted, was never brought into force. Nevertheless, service tax levied by Parliament under its residuary powers under Article 248 read with Entry 97 of List I had been upheld by this Court in ***T.N. Kalyana Mandapam Association v. Union of India and others***[31] ***and Gujarat Ambuja Cements Ltd. and another v. Union of India and another***[32]. Thereafter, the Constitution (101st Amendment) Act inserted Article 366(26A), defining "services" to mean anything other than goods. Counsel emphasized that prior to enactment of the CGST Act, 2017, tax authorities had consistently treated

[31] (2004) 5 SCC 632
[32] (2005) 4 SCC 214

companies organizing online rummy as service providers, and such companies had been paying service tax accordingly.

18.20. Learned Senior Counsel contended that Gameskraft established in 2017 had duly discharged GST on the amount collected as "platform fee" by treating its activity as a supply of services under Section 15(1) of the CGST Act. The Union had accepted such payments without demur until issuance of the impugned show cause notice. By the said notice, however, the Revenue now seeks to invoke Sections 7, 9 and 15(5) of the CGST Act read with Rule 31A(3) of the CGST Rules to levy GST on the entire value of monies involved in each game played on the platform whether by fresh deposits made by players or redeployment of winnings into subsequent games, by recharacterizing the service activity of Gameskraft as supply of goods in the form of actionable claims relating to betting and gambling, instead of supply of services.

18.21. Learned Senior Counsel further submitted that Section 30 of the Indian Contract Act is irrelevant, as the definition of "business" under the CGST Act includes wagers. The relevant amendments are prospective in nature. Nothing prevented the legislature from expressly making them retrospective. He also made a reference to Section 164(3) of the CGST Act in this regard. Although the power existed, it was not exercised.

18.22. Accordingly, the learned Senior Counsel concluded that the essential preconditions for the invocation of Rule 31A are conspicuously absent in the present case, inasmuch as there is neither any actionable claim nor any supply thereof, and the element of chance, which is intrinsic to betting and gambling, is wholly lacking. It was therefore, submitted that the judgment of the High Court of Karnataka setting aside the show cause notice issued by the appellants warrants no interference by this Court.

19. ***Mr. Harish Salve*****,** learned Senior Counsel appearing for the petitioner in WP (C) No. 1374 of 2023, at the outset, submitted that the issue which arises for consideration in the present batch of matters is whether online gaming companies are engaged in the supply of goods, namely "actionable claims", the value of which is liable to tax. Importantly, the issue is whether there exists any actionable claim at all, and whether there is a transfer of actionable claims in the structure of the impugned games. He further submitted that under the CGST Act, "actionable claims" have the same meaning as under Section 3 of the Transfer of Property Act, 1882. Betting and gambling per se are not synonymous with actionable claims.

19.1. Learned Senior Counsel further submitted that the architecture of the impugned tax is that (a) It deems actionable claims to be goods; (b) It deems

betting and gambling to give rise to actionable claims in all circumstances; (c) It assumes that there is a transfer of actionable claims from the Operator to the Players; (d) It assumes that this transfer is thus a supply of goods; and (e) It assumes that the value for this supposed transfer is the gross amount that the Players place in the pool or in the wallet [after the amendments made in October 2023]. Learned Senior Counsel further advanced his arguments to the effect that if assumption (e) which flows from Rule 31A fails, then the tax (to the extent it is otherwise payable) has already been discharged. In any event, this submission is based on the assumption that Rule 31A applies. Historically, in old English law, a debt was referred to as a *chose in action* because the money had not yet been paid. To recover such money, one was required to initiate legal proceedings, a suit in law, which is why it came to be known as an *actionable claim*. The principle was subsequently adopted in Indian law. Thus, unlike horse racing, where wagers are expressly recognised and enforceable by statute, contracts in relation to online games are rendered void under Section 30. Consequently, no actionable claim arises in law; and where no legally enforceable right exists, there can be no "actionable claim" within the meaning of law.

19.2. Learned Senior Counsel further submitted that Section 9 of the CGST Act read with the Schedule III exception limits GST to actionable claims arising from betting and gambling. If the tax is indeed on betting and gambling, then it is the activity that is being taxed, in which case the constitutional entry stands altered.

Alternatively, if the tax is said to be on an actionable claim (as a species of property), then such a claim must first exist in law, and here, it does not.

19.3. Turning now to the question of whether the impugned games amount to "gambling", the learned Senior Counsel submitted that he does not seek to challenge the nature of the game. He concurred with the submission of Dr. Singhvi, learned Senior Counsel, that a game of skill played with stakes would never change the nature of the game and cannot be considered gambling. He acknowledged that the legislature can regulate betting on any activity; it can restrict excessive stakes even on a game of skill; and it may, in the public interest, choose to regulate games played for stakes, even by deeming them to be gambling. However, such regulation must be precise and constitutionally consistent.

19.4. Further, the learned Senior Counsel contended that there are only two possible classifications of games in law: (i) a game of chance or (ii) a game of skill. The classification is binary and mutually exclusive. There is no third category where a game of chance and a game of skill operate concurrently. If, as the learned ASG argued, a game of skill with stakes becomes gambling, then the nature of the game necessarily shifts from one of skill to one of chance. This is because gambling, by statutory definition, implies a game of chance. The argument thus results in a conceptual contradiction: a single game cannot simultaneously be both a game of skill and a game of chance. A game of skill

played for stakes does not *ipso facto* become gambling. Accepting such a position would render everyday incentive-based competitions potentially unlawful. For example, if two individuals agree that the loser of a chess match shall buy the winner a cup of coffee, the interpretation advanced by the learned ASG would render even such a transaction gambling. In the context of a game of skill, the monetary component merely serves as an incentive or reward incidental to the competition. The only legal test the Court must apply is whether the outcome of the game is substantially dependent on the skill and control of the player. If the answer is in the affirmative, then the game is one of skill, and the monetary component is only a prize or reward, not an element that transforms it into gambling.

19.5. Learned Senior Counsel further proceeded to argue that while the legislature is within its competence to define and demarcate which games shall be deemed to constitute gambling, the GST framework fails to adopt any precise or workable definition of "gambling." Instead, it resorts to a vague and overbroad formulation by employing the phrase "chance to win," thereby effectively equating gambling with any contest involving uncertain outcomes. This terminology is inherently limiting and incapable of accommodating games of skill. Thus, if the Department seeks to tax games of chance, it cannot reclassify a game of skill as gambling merely because it is played for stakes. Such an interpretation would be impermissible in light of the ratio laid down by this Court

in ***RMDC-II***, which precludes the treatment of skill-based games played for stakes as gambling. Referring to ***RMDC-II***, the learned Senior Counsel further submitted that gambling, as *res extra commercium*, is restricted to its strict legal definition and cannot be expanded by implication.

19.6. Learned Senior Counsel, therefore, submitted that the determinative factor in identifying betting or gambling is the nature of the outcome, whether it is governed predominantly by chance or by skill, and not the presence or absence of monetary stakes. Hence, a skill-based game does not become gambling merely because it is played for stakes.

19.7. Learned Senior Counsel next turned to the question of whether any actionable claim arises within the structure of the games offered by the Petitioners. Firstly, he submitted that no actionable claim comes into being in the format of online games. Moreover, the analogy of a lottery is inapplicable to the present context. Unlike a lottery, which is created by a promoter and transacted as a fully transferable instrument, online games do not generate any rights that are subsequently transferred from the Operator to the Players. The Operators merely provide a service by hosting a platform on which Players may compete with one another, with the Operator acting as a facilitator (See ***Sunrise Associates*** (supra)). He further contended that even if the amount owed by one Player to another were to be characterized as an actionable claim, there is no actionable claim transferred from the Operator to the Player, or between Players themselves.

19.8. Learned Senior Counsel emphasised that the Petitioners are technology companies providing online platforms on which participants (players) engage in various online games. These include adaptations of conventional card games (such as rummy) as well as new formats such as fantasy sports. He presented a typical game format: (a) As the first step, a Player has to register on the platform. The Player provides a user ID and creates a password. The first stage verification is by sending a One Time Password (OTP) to the mobile device of the Player; (b) In order to participate in a game, the next step is that the Player has to deposit a sum of money (Add Cash) in a digital wallet linked to his account. This is done using the available digital payment channels; (c) The "wallet" was held by the Operator in a separate account in a bank used by the Operator. It has further evolved in current times in that the separate account is under an escrow arrangement with a bank, which holds all the monies that have been deposited by a Player into his wallet; (d) The digital "wallet" is maintained by the Operator, but the funds placed into the wallet are with the escrow account holder i.e. the bank; (e) When a Player participates in a game with other players, he electronically instructs that the money be moved from his wallet into a pool created specifically for that game. The "pool" is administered by the Operator, and the funds from the Players who elect to play in that game move from their wallets into this pool pursuant to their instructions; (f) there are two formats for card game analogues, viz., single games and tournaments; (g) The Players play amongst themselves. In a single game, the pool is first constituted by crediting

the total sums contributed by the Players less the platform fee. At the end of every round, the winner's wallet is credited with the winning from the pool. The platform fee is credited to a separate bank account of the Operator; (h) In a tournament format, the only difference is that the winning amount from different games [i.e. different pools] is consolidated and ultimately paid over to the final winner or may also be distributed game by game and then in the final game. In a variant, a tournament may have multiple winners depending on a ranking system. In the case of a tournament format of game, a Player after paying an entry fee, may even withdraw from the tournament before the tournament begins and his entry fee is credited back to the Player's wallet; (i) A fantasy game is a derivative of a physical event of sport [cricket match, soccer match, kabaddi match, etc]; (j)A Player wanting to join a game is allowed to constitute his own team up to a time before the commencement of the actual game, say up to 30 mins prior to the commencement of the game; (k) The performance of the sportsperson is ranked and awarded points depending on various factors. For example, in cricket, it would be based on a combination of runs scored, catches taken, wickets taken, boundary hits, etc; (l) At the end of the game, the points awarded to each sportsperson are totalled. These are then awarded to those in whose fantasy team the player was included. For example, a Player of a fantasy game is required to construct his team consisting of player X from Team A and player Y from Team B in a physical match between Team A and Team B. The extent of mixing of players that is mandatory depends on the format, for example, a format may

require that not more than 6 players out of 11 be taken from any team; (m) After the physical game is over, the points ascribed to each player in the game are awarded to each Player of the fantasy sport. The Player with the highest score is the winner. There may also be a ranking system in which there may be multiple winners; and (n) In this format, when a Player joins a fantasy game, the amount (fixed) for participation is transferred from his wallet into the pool. The moment the game is over, the pre-determined platform fee is transferred to the Operator's account and the winnings in the Pool are distributed to the winner(s).

19.9. Learned Senior Counsel further argued that till the money is taken out of the digital wallet and is pooled, there is no right to participate. It is only thereafter that the said right arises. Moreover, there are certain restrictions upon the Players, which read as follows: (i) A Player cannot assign his wallet to another Player, nor can money from the wallet be transferred to another Player. The money can be used only for playing on the platform. The Player can withdraw his winnings at any time. The deposit can also be withdrawn upon closure of the account; (ii) The money moves from the wallet only into the designated/registered bank account of the Player, and not into any other account even if the Player wishes otherwise; (iii) Two or more Players cannot join together to play a game. Each individual Player plays against all other Players who have joined the game. The system checks the GPS location to ensure that Players are not together. The question of a Player transferring his right to play to another simply does not arise. Once a

Player joins a game, he cannot quit the game and withdraw his funds. If a Player leaves midway, it will result in the loss of the money put into the pool; and (iv) In a fantasy sport also, there is a cut-off time prior to the commencement of the physical sport, after which a Player cannot elect not to participate.

19.10. Learned Senior Counsel reiterated that once a Player chooses or elects to participate, he cannot transfer his place or right to anyone else. There is no transfer of a right to participate, unlike in the case of lotteries. He further submitted that in the entire scheme, the Operator's role is to create and manage the platform, for which it is entitled to receive a platform fee. Moreover, (a) the Operator does not ever contribute to a pool; (b) there is no prize awarded by the Operator to any Player who wins a game; (c) as a matter of recovery of platform fee, the Operator gets a pre-determined sum out of the pool. Thus, an Operator may get 5% of the pool. These rates are fixed in advance and are not dependent on the individual winning; and (d) the Operator does not receive any share in the winnings in a game.

19.11. Learned Senior Counsel also submitted that the accounting treatment by the Operators in their books of accounts is aligned with the relationship between the Operator and the Player. The amounts in the Players' Wallets, both deposit and winnings wallets, are the property of the Players at all times. This is reflected in the accounts, as these funds are accounted for as liabilities by the Operators. Only the platform fee is accounted for as income by the Operators.

19.12. Coming to the valuation aspect, the learned Senior Counsel made an illustration. If the gross participation or entry amount is Rs.100, and the contribution towards the prize pool out of this amount is Rs.90, the platform fee, including GST at 18%, is Rs.10. The effective GST paid by the gaming companies on this platform fee would be Rs.1.53. However, the Department is demanding GST at 28% on the entire entry fee, i.e., a tax on the pool amount as well, resulting in a tax of Rs.28. This demand amounts to almost three times the gross amount actually recovered by the Operator. Further, the Operator's case is not that GST should be confined to a proportion of its income. Rather, GST is already levied on the entire gross amount received by the Operator. The net income from the business is in fact significantly less than the notional Rs.10 received by way of platform fees, as business expenses have to be incurred from within this amount. The sum comprising the prize pool does not represent the value of the transfer of any actionable claim from the Operator to the Players, for the reasons that no actionable claim comes into existence in the first place; even if the "chance to win" were treated as an actionable claim, it is not *transferred* by the Operator to the Player; In any event, its value cannot exceed the consideration actually paid to the Operator, which is the platform fee (e.g., Rs.10); and Rule 31A is a colourable exercise of legislative power, as it attempts to convert a tax on supply into a tax on betting and gambling, an area that lies outside the scope of GST law.

19.13. Coming to the issue of taxability under the CGST Act in relation to actionable claims, the learned Senior Counsel submitted that Section 2(31) defines "consideration" as payment made for the supply of goods or services and emphasized that the definition of "recipient" under Section 2(93) is not an inclusive definition. Each Player must mandatorily pay a portion of the pool amount to the Operator as consideration for the supply of services. The balance is distributed to the prize winner. Whether a Player wins or loses, the Operator receives only the fixed platform fee. He submitted that the Operator does not perform any service gratuitously. The Operator is indifferent to the outcome of the game; its consideration is derived from all Players uniformly. The Operator's role is confined to providing the infrastructure for Players to engage with each other and this service is supplied equally to all Players. The right to participate, facilitated through the platform, constitutes the core of the supply. Prior to the introduction of GST, Operators were taxed under the Service Tax regime on their gross receipts. Post-GST, Entry 62 of List II, which permitted State taxation on betting and gambling, was omitted.

19.14. Learned Senior Counsel further advanced his arguments that betting and gambling are activities, not actionable claims *per se*. GST improperly attempts to levy tax on such activity by artificially classifying it as the supply of an actionable claim, relying on an inclusive definition of "goods" under Article 366(12), and by excluding all actionable claims except lottery, betting, and gambling from

Schedule III read with Section 7(2). This exclusion is based on an incorrect assumption that betting and gambling inherently are actionable claims. While "lottery" may constitute an actionable claim, betting and gambling, as held in ***Godfrey Phillips*** (supra), are activities, and not actionable claims per se. Therefore, carving out "betting and gambling" from Schedule III to treat them as taxable supplies of goods is conceptually flawed. Rule 31A**,** which prescribes the valuation of supplies in the case of lottery, betting, gambling, and horse racing, subverts the statutory framework and alters the character of the tax from a tax on supply to a tax on activity.

19.15. Learned Senior Counsel, thus, submitted that Rule 31A must conform to Section 15 of the CGST Act, which provides that the value of supply shall be the transaction value, that is, the price actually paid or payable for the said supply. However, Rule 31A(3) treats the entire bet amount or prize pool as the taxable value, irrespective of whether any consideration flows to the Operator, thereby violating Section 15 and artificially inflating the tax base. Such a mechanism constitutes a colourable exercise of delegated legislation, because it imposes a tax not on the actual consideration for a supply**,** but on the gross stakes placed in a pool**,** thereby transforming the tax from one on "supply" to one on "activity", i.e., betting and gambling, which is beyond the GST's scope.

19.16. Learned Senior Counsel then referred to Entry 1 of the Schedule II of the GST Act, submitted that the existence of goods is a necessary precondition to a

charge. In the present case, there is no taxable event since no such goods exist; and although the definition of "goods" includes actionable claims, no actionable claim is in existence. He emphasised the conceptual distinction between the *creation* and *transfer* of actionable claims. For example, if A lends money to B, a debt comes into being. The right to recover that debt constitutes an actionable claim. However, this is merely the creation of an actionable claim, not a transfer. Once B repays the loan, the debt is discharged and the actionable claim ceases to exist or gets extinguished. By contrast, if A were to assign that debt to C while it still exists, that would amount to a *transfer* of an actionable claim. The defining attributes of an actionable claim are: (a) it must be movable property; and (b) it must be actionable in law, i.e., enforceable through legal proceedings. Even assuming, for argument's sake, that the present games involve gambling, he submitted that no actionable claim arises, because under Section 30 of the Indian Contract Act, wagering agreements are void and unenforceable. Therefore, even if a gambling debt were assumed to exist, it would not satisfy the second requirement of being actionable in law.

19.17. The learned Senior Counsel submitted that as stated earlier, the original phrase for actionable claims was *chose in action*. In contrast, if the property was already in possession, it was referred to as *chose in possession*. He emphasized the clause *"which the Civil Courts recognise as affording grounds for relief"* and submitted that this confirms that legal enforceability is integral to the concept of

an actionable claim. Actionable claims must involve a claim to money. While the GST framework appears to rely on the proposition that a "chance to win money" constitutes an actionable claim, this interpretation is flawed. A wagering agreement, even if it offers a chance to win money, creates no legally enforceable right to that money. Therefore, there can be no actionable claim, since the legal requirement of enforceability is absent. The issue is not one of collateral contracts (e.g., in cases where a third-party might be entrusted with money), but whether the wagering contract itself gives rise to a legal right that is assignable. The answer is no: a *chance to win money arising from a wager* cannot constitute an actionable claim.

19.18. Next, the learned Senior Counsel submitted that once something is classified as an actionable claim, its transfer is governed by the Transfer of Property Act. The CGST Act itself defines "actionable claim" by reference to the Transfer of Property Act. A supply of an actionable claim necessarily refers to its sale or transfer. Supply relates to a right to use. Since actionable claims are intangible rights, they cannot be "used" in the ordinary sense. If A gives money to B, that transfer must be either (i)consideration for goods or services, (ii) a loan, or (iii) a gift. If it is none of these, then B holds it in trust. Supply implies consideration and transfer of a right, none of which arise here. To illustrate the importance of legal enforceability, the learned Senior Counsel referred to Section 25(6) of the Supreme Court of Judicature Act, 1873, which dealt with assignment

of choses in action (now codified in Section 130 of the Transfer of Property Act), and Section 136 of the Law of Property Act, 1925 (UK), which permitted legal assignment of debts and other choses in action. Thus, the learned Senior Counsel submitted that even under common law, an actionable claim must confer an enforceable right to money**.** A "chance to win" based on a wager does not satisfy this requirement and therefore cannot be treated as an actionable claim for the purposes of taxation under the CGST framework.

19.19. With regard to the fundamental difference between a lottery and the online games under consideration, the learned Senior Counsel pointed out that in a lottery, the promoter puts down his own money and grants the chance to win a prize. In contrast, in the present case, there is no such grant, the participants pool their own money, and the Operator merely facilitates the game. He referred to the decision of this Court in ***Anraj*** (supra), which considered whether the chance to win, as reflected in a lottery ticket, when transferred constituted a transfer of goods or an actionable claim. Learned Senior Counsel then referred to ***Sunrise Associates*** (supra), where ***Anraj*** (supra) was reversed and it did not examine ***Anraj***'s holding that only the grant (and not the ticket itself) was what could be transferred.

19.20. Learned Senior Counsel, thus, emphasized that there is a single composite right: the right to participate in order to win a prize. If the said right is disconnected from a State grant, then it becomes a right *in personam,* and not an

actionable claim. Unless there is a State grant, the transfer of a ticket does not amount to the transfer of an actionable claim. Moreover, in the present case, all parties are private parties. In ***Anraj*** (supra) lottery tickets were deemed to be goods because they were in the nature of a grant. If the winnings cannot be secured through legal action, there can be no actionable claim. In this case, the only right given is the right to participate; there is no corresponding legally enforceable right to claim winnings from the Operator or any other participant. The ***Sunrise Associates*** (supra) judgment does not hold that participating in a gambling event is an actionable claim. The grant created by the State represented by the ticket and not the ticket itself, which may change hands from the dealer to other parties, was what was held to be taxable in that case. In other words, the grant embodying an actionable claim, which changed hands, was held taxable and thus lottery tickets were taxable.

19.21. Coming to the concept of discharge of an actionable claim, the learned Senior Counsel drew a distinction between transfer and discharge of an actionable claim and submitted that an actionable claim is created when the winner wins and when the prize money is returned to a Player (e.g., upon closure of an account), it is a discharge and not a transfer. Once the debt is repaid or satisfied, the actionable claim ceases to exist. Thus, even where money moves from the Operator to the Player, it is not because the Operator transfers an actionable claim; rather, the debt is simply being discharged. This is the case even when the player

closes his wallet. The Operator plays no role in the transfer of any claim arising between the Players themselves. Even assuming that a gambling debt arises among Players, it is legally unenforceable, and hence not an actionable claim. The actionable claim arising out of winnings is never enforceable and the Operator is not a part of it. A gambling debt is never recoverable. Since the GST Act does not create a new class of actionable claims, but adopts the definition under the Transfer of Property Act, the analysis remains governed by the realm of civil law.

19.22. According to the learned Senior Counsel, what is being taxed under Rule 31A is the entire prize pool, i.e., the *winnings themselves are being subjected to tax.* Further, such winnings, once distributed to the Players and credited into their wallets, become gambling winnings, and therefore are hit by Section 30 of the Indian Contract Act. Once the winnings are credited into a Player's wallet, they are transformed into a simple debt owed by the Operator to the Player. At that stage, what remains is a monetary obligation, which, if enforceable, may qualify as an actionable claim. However, even such an actionable claim is not transferred from the Operator to the Player. It is merely discharged, either by the Operator or through the banks. Unless there is a transfer of an actionable claim in the form of a grant (as in the case of lotteries), there can be no levy under the GST Act, because there is no supply. A mere creation of a debt does not constitute a supply of an actionable claim. By analogy, borrowing a sum from a bank does not

amount to a supply of an actionable claim, just as the issuance of shares does not involve a transfer of property. In support of this proposition, the learned Senior Counsel placed reliance on the English judgment in ***Re VGM Holdings Ltd.***[33]

19.23. According to the learned Senior Counsel, even in cases where the money is not returned to the Player, for any reason, including insolvency of the Operator, the principle of *Quistclose trust* would apply. The principle states that where money is advanced for a specific and designated purpose, it is impressed with the character of a trust, and in the event of the recipient's bankruptcy, such funds do not form part of the bankrupt's estate. In other words, even if the Operator were to go bankrupt, the funds lying in the wallet or pool account would not form part of the Operator's assets in insolvency proceedings. They would be returned to the Player, as the Operator merely held them in trust and had no beneficial interest in them. In support of this proposition, the learned Senior Counsel put reliance on the judgment of the House of Lords in ***Barclays Bank Ltd. v. Quistclose Investments Ltd.***[34]**,** which affirmed that such arrangements create resulting trusts, and the funds are held outside the reach of the debtor's creditors.

19.24. Learned Senior Counsel then referred to the House of Lords judgment in ***Twinsectra Ltd. v. Yardley and Others***[35] to reiterate that even when money is received, the recipient (the Operator herein) does not acquire any beneficial

[33] [1941] 3 All ER 417
[34] 1970 App. Cases 567
[35] (2002) UKHL 12

interest in the funds. The money is held strictly for a specific purpose and therefore, remains subject to a trust. This case affirmed the principle that funds held under a *Quistclose*-type arrangement are not to be treated as the recipient's own assets, and further clarified the fiduciary obligations attached to such funds.

19.25. Further, the learned Senior Counsel submitted that ***Anraj*** (supra) had distinguished two earlier decisions viz., ***Swami Motor Transports (P) Ltd. and another v. Sri Sankaraswamigal Mutt and others***[36] and ***Anwar Khan Mehboob Co. v. State of MP and others***[37], both of which had held that rights in personam are not property. The distinction drawn in ***Anraj*** (supra) was that the grant therein created rights over property which could be transferred. By contrast, in the present case, there is no such grant; rather, the relationships involved are between private individuals and are governed solely by contract. Therefore, the rights in question are rights in personam. Even if such rights in personam are treated as movable property, they still do not qualify as actionable claims, as an actionable claim requires a beneficial interest in movable property that is recognized and enforceable in law. Here, there is only a continued discharge of mutual rights and obligations under a contract, not a transfer of a proprietary interest.

19.26. According to the learned Senior Counsel, once it is concluded that the rights involved in the present case are rights *in personam*, the decision in ***Sunrise***

---

[36] (1962) SCC OnLine SC 230
[37] (1965) SCC OnLine SC 325

Associates (supra) has no application. Even assuming *arguendo* that all the preceding arguments were to fail and it is held that there exists an actionable claim and that there is a supply of such actionable claim by the Operator, even then, the levy fails to meet the statutory requirements under Sections 7, 9 and 15 of the CGST Act. What is taxable under the Act is the transaction value, i.e., the price actually paid or payable for the supply. He also referred to the concept of "transfer" under Schedule II of the Act and pointed out that any transfer of title in goods is a supply of goods; and any transfer of right in goods without transfer of title is deemed to be a supply of services. The Rules including Rule 31A must be guided and constrained by the principles laid down under Section 15. However, in the present case, even if it is assumed that there is a supply, the value of the supply would be the value received by the Operator, i.e., the platform fee, which is not fixed by the Operator, but is derived from the contribution of Players. Taxing the entire pool amount in this context is manifestly arbitrary. The tax, in substance, is not on the value of any supply but is a tax on the bet itself, and hence a tax on betting and gambling as activities per se. Such a tax cannot be imposed under Article 246A, which empowers legislatures to levy tax on the supply of goods and services, not on mere activities.

19.27. On the strength of the foregoing submissions, the learned Senior Counsel prayed that the writ petition be allowed in favour of the petitioners.

20. Adding further, ***Ms. Charanya Lakshmikumaran***, learned counsel appearing for the petitioners in WP (C) No. 1374 of 2023, submitted that the Operators merely provide a neutral online platform facilitating games of skill and are neither participants in the games nor engaged in betting or gambling. According to the learned counsel, the Operators act only as custodians or trustees of the amounts contributed by players towards the prize pool, which are subsequently distributed to the winners, while a fixed portion of the buy-in amount is deducted uniformly from each player as platform fee on which GST at 18% is duly discharged. It was submitted by the learned counsel that the contractual relationship between the Operators and the players, though electronic in form, is legally valid and enforceable under the Information Technology Act, 2000 and the Indian Contract Act, and that all monies held in player wallets or prize pools remain the property of the players and are held in a fiduciary capacity. The learned counsel pointed out that players are entitled to withdraw wallet balances or winnings at any time, and that in the event of cancellation of a game due to technical issues, even the platform fee is not retained and the buy-in amount is restored to the players' wallets.

20.1. Learned Counsel further contended that once a game commences, a player who chooses not to continue merely forfeits participation, with his contribution forming part of the prize pool payable to the winner, but such arrangement does not alter the fiduciary character of the funds. Reliance was also placed on the

insolvency framework under the Insolvency and Bankruptcy Code, 2016 to contend that these segregated funds would not constitute part of the operator's liquidation estate and would remain protected from claims of corporate creditors. Refuting the Department's case that an actionable claim in the nature of a chance to win in betting or gambling is supplied by the operator to players at the stage of payment of the buy-in amount, the learned counsel submitted that such contention is both legally and factually untenable, as the operator supplies only platform services and is merely a facilitator rather than a participant in the game. It was argued that even assuming without admitting that any betting occurs, the same is inter se between the players and not between the operator and the players. The learned counsel emphasized that the real issue is to identify the stage at which any actionable claim, if at all, comes into existence and the persons between whom it is created or transferred. According to the learned counsel, the operators have throughout supplied only online platform services, which during the relevant period were specifically covered within the definition of OIDAR services and were excluded therefrom only pursuant to the legislative amendments introduced in 2023. It was further submitted that Entry 6 of Schedule III must be construed strictly, since it creates a tax liability, and that GST is attracted only in respect of actionable claims constituting betting, gambling or lottery, whereas all other actionable claims are expressly kept outside the scope of GST. Therefore, even if an actionable claim were assumed to exist in the present transactions, unless it answers the description of betting or gambling, it would remain outside the ambit

of GST. On these grounds, the learned counsel prayed that this Court may be pleased to grant the reliefs sought in the writ petitions.

21. Additionally, ***Mr. Sridharan,*** learned Senior Counsel appearing for the Petitioners in WP (C) No. 1374 of 2023 submitted that the case of the Department is that deposits made by the players with the Operator towards the Prize Pool, for distribution to winners of the games played between the players, are liable to GST. This is contrary to the scheme of GST and disregards the actual arrangement in place between the Operators and the Players. The arrangement of the games is undisputed. The Operators provide a platform/infrastructure for players to play online games amongst themselves, which may be casual games or money games. Most online rummy games require at least four or six players to participate. There is no pre-determined prize fund in such games; instead, the players contribute to the Prize Pool by staking money. Each game specifies the amount to be contributed by each player.

21.1. Learned Senior Counsel then submitted that Section 2(31) of the CGST Act, 2017, which defines "consideration", specifically excludes "deposit" from its ambit. Referring to Section 15 of the CGST Act, he submitted that valuation is based on the price charged, and such price must be the sole consideration. As already mentioned the portion of the amount which the operator does not retain, but which instead goes to the winning player, is in the nature of a deposit. Reference was made to Section 30 of the Indian Contract Act, particularly the

third limb which employs the expression "amount entrusted", to emphasize that the amount in question is never recognized as part of the operator's revenue.

21.2. Learned Senior Counsel further submitted that the expressions "deposit" in the English Act and "entrusted" in Section 30 of the Indian Contract Act bear the same meaning *(*See ***Gherulal Parakh v. Mahadeodas Maiya***[38]*)*. In this regard, reference was made to ***Attorney General v. Luncheon and Sports Club Ltd.*** (supra), wherein the issue was whether, for the purposes of betting duty, the value should include only the amount retained by the Luncheon and Sports Club, or also the amount handed over to the winner. The House of Lords held that the latter amount was in the nature of a deposit and, therefore, could not form part of the value for betting duty purposes. In the context of gaming, the issue of whether the Prize Pool is liable to be taxed under the EU VAT regime (which follows the same principles as the GST regime) has been addressed by the European Court of Justice. It was held that where the Prize Pool is kept separate from the Operator's funds and earmarked specifically for the players to be repaid as winnings, such Prize Pool deposit is not liable to VAT, as it does not constitute consideration for the supply of gaming by the Operator.

21.3. To fortify that a deposit does not constitute income or revenue in the hands of the recipient, learned Senior Counsel relied on the decisions in ***Commissioner***

[38] 1959 SCC OnLine SC 4

of Internal Revenue v. Indianapolis Power & Light Co.[39]***, Siddheshwar Sahakari Sakhar Karkhana Ltd. v. Commissioner of Income Tax and others***[40]**,** and ***D.J. Malpani v. Commissioner of Central Excise, Nashik***[41]. Consequently, any amounts received as deposits do not qualify as "consideration" for the purposes of GST. Accordingly, for the supply actually provided by the operator, which is in the nature of a service, valid consideration exists, and GST has been duly discharged thereon.

21.4. Learned Senior Counsel submitted that the Department is seeking to tax two distinct supplies, namely: (i) the supply of platform services by the Operators to the Players; and (ii) gaming transactions between the Players themselves, by attributing the latter to the Operator through a valuation mechanism. This amounts to impermissibly fusing supplies made by one person with supplies or transactions made by another person, solely for the purpose of levying tax. Supplies made by distinct persons cannot be amalgamated and treated as a single supply merely to attract tax liability. In this regard, reliance was placed on the decisions in ***Commissioner of Customs and Excise v. Wellington Hospital***[42]***; Nell Gwynn House Maintenance Fund Trustee v. CCE***[43]***; and Telewest Communications PLC v. Commissioner of Customs & Excise***[44]. Thus, in the

---

[39] 493 US 203
[40] (2004) 12 SCC 1
[41] (2019) 9 SCC 120
[42] [1997] Simon Tax Cases 448
[43] [1999] WLR 174
[44] [2005] EWCA Civ 102

event Rule 31A is upheld, it must be read down so as to provide for deduction of the amount of "Prize Pool" contribution.

21.5. Placing reliance on ***HMRC v. K E Entertainments Ltd.***[45], learned Senior Counsel contended that gaming transactions between Players cannot be treated as a "supply" or "consumption" for the purposes of GST. The GST scheme, when applied to such transactions, fails in its operation. Determination of the 'supplier', 'recipient', 'consideration', or 'place of supply' in these transactions is not possible. Likewise, procedural aspects of GST such as invoicing, delivery, and generation of e-way bills cannot be complied with. Taxing these transactions as supplies of goods in the form of actionable claims is artificial and renders compliance with various parts of the GST scheme impossible. Thus, once a transaction is not treated as a "supply", the taxable event does not arise, and any amounts deposited in relation to such activities are not taxable.

21.6. Referring to the machinery provisions, learned Senior Counsel submitted that the case of the Department is that Operators are liable to pay GST on the Entry Fee/Buy-in Amount received from players, on the basis of Rule 31A. Rule 31A prescribes the 'value of actionable claim in the form of chance to win in betting, gambling or horse racing in a race club shall be 100% of the face value of the bet or the amount paid to the totalisator'. It traces its power from Section 15(5) of the CGST Act, which envisages a two-step process viz., the Government

[45] [2020] UKSC 28

must notify the supplies in terms of Section 15(5) and thereafter, on the recommendations of the GST Council, the Government can prescribe the manner of determining value for such notified supplies. This two-step process has been followed in the past. By way of example, he submitted that in cases involving a composite price for goods and services relating to the supply of renewable energy devices specified under S. No. 234 of the Goods Rate Notification, Notification No. 24/2018-CT (Rate) dated 31.12.2018 was issued under Section 15(5) to amend the Goods Rate Notification and prescribe a special valuation method whereby 70% was taken as the value of goods and 30% as the value of services. Accordingly, in the absence of this mandatory two-step process being followed, the determination of value in terms of Section 15(5) would be rendered ineffective. In support thereof, reliance has been placed on the decisions in ***Hindustan Zinc Ltd. v. CCE, Jaipur*** [46] and ***Assessing Officer Circle (International Taxation) v. Nestle SA***[47].

21.7. According to the learned Senior Counsel, the foundational requirement of Section 15(5) was never complied with in relation to actionable claims prior to 01.10.2023. Rule 31A was inserted merely through Notification No. 3/2018-CGST dated 23.01.2018 under the general rule-making power contained in Section 164, without any corresponding notification under Section 15(5). In contrast, Rules 31B and 31C introduced with effect from 01.10.2023 were

[46] 2008-TIOL-1149-CESTAT-DEL-LB
[47] (2023) 458 ITR 756 (SC)

preceded by Notification No. 49/2023- CGST dated 29.09.2023 specifically notifying "online money gaming" under Section 15(5). This, according to the learned Senior Counsel, itself demonstrates legislative recognition that a notification under Section 15(5) is a mandatory statutory precondition.

21.8. The learned Senior Counsel further contended that the decision in ***Skill Lotto Solutions*** (supra), merely upheld Rule 31A in the context of lotteries and did not examine the specific issue whether Rule 31A could operate independently of compliance with Section 15(5). It was argued that Rule 31B, introduced in 2023, itself creates a legal fiction by deeming the "total amount paid or payable or deposited" by a player to constitute the taxable value. Prior to such amendment, no such deeming fiction existed and therefore, the operator could not be treated as the supplier of the entire pooled amount.

21.9. Developing the submission further, learned Senior Counsel referred to the definitions contained in Section 2 of the CGST Act to contend that the statute consciously distinguishes between "rules" and "notifications". Whereas rules may operate retrospectively, notifications cannot. Consequently, the requirement of a notification under Section 15(5) cannot be treated as a mere procedural formality; rather, it is a substantive statutory safeguard. In the absence of such notification, Rule 31A, insofar as it seeks to determine the value of actionable claims, becomes ineffective and unenforceable. It was therefore submitted that

the defect cannot now be cured retrospectively by subsequently notifying actionable claims under Section 15(5) since such notification can operate only prospectively.

21.10. Learned Senior Counsel also submitted that Rule 31A cannot be sustained under Section 15(4) of the CGST Act. Section 15(4) applies only where valuation cannot be determined under Section 15(1). In the present case, the transaction value is readily ascertainable, namely the platform fee charged by the operator for providing platform services. Since such value is available under Section 15(1), recourse to Section 15(4) is impermissible. Consequently, Rule 31A was argued to be unsustainable both under Section 15(4) and Section 15(5).

21.11. The challenge was then extended to the rate notification mechanism under GST. Learned Senior Counsel submitted that Section 9 of the CGST Act contemplates levy of tax only at rates notified by the Government. Pursuant thereto, the Government issued the Goods Rate Notification and the Services Rate Notification. It was pointed out that following insertion of Rule 31A, Notification No. 6/2018 dated 25.01.2018 inserted Entry No. 229 in Schedule IV of the Goods Rate Notification prescribing GST at 28% on actionable claims in the nature of betting, gambling and horse racing.

21.12. According to learned Senior Counsel, this amendment itself proceeded on the premise that actionable claims constituted "goods". However, the notification merely used the expression "any chapter" without identifying any specific chapter in the First Schedule to the Customs Tariff Act, 1975. It was argued that under the GST framework, classification of goods necessarily depends upon the tariff entries contained in the Customs Tariff Act. Therefore, unless actionable claims were identifiable under at least one tariff heading, the levy mechanism remained incomplete. The expression "any chapter", it was contended, cannot mean "no chapter". Since prior to 01.10.2023 there existed no tariff entry covering actionable claims, the machinery provisions necessary to operationalise the levy were absent, rendering the levy itself ineffective.

21.13. Learned Senior Counsel further relied upon amendments made to the proviso to Section 5(1) of the IGST Act with effect from 01.10.2023. By virtue of those amendments, the Government acquired power to exclude certain notified goods imported into India from the customs valuation and collection mechanism otherwise applicable under the Customs Act and Customs Tariff Act. Simultaneously, "online money gaming" was specifically notified by Notification No. 3/2023 dated 29.09.2023. According to learned Senior Counsel, these amendments demonstrate that substantive as well as machinery changes were considered necessary by Parliament itself to sustain a levy on specified actionable

claims. Prior thereto, online gaming had consistently been treated as a supply of services under the IGST regime.

21.14. On facts, learned Senior Counsel submitted that the operators maintain separate escrow-like bank accounts distinct from their corporate accounts. Amounts deposited by players are credited into such accounts and held in trust for the players. During gameplay, the amounts remain blocked in player wallets and continue to remain in the segregated account. Only upon conclusion of the game are winnings distributed to the successful players, after which the platform fee alone is transferred to the operator's corporate account. Thus, the operators merely retain their platform fee while the prize pool belongs beneficially to the players throughout.

21.15. It was accordingly argued that the operators neither participate in the game nor possess any stake in the outcome of the contest. Reliance was placed on ***Carlill v. Carbolic Smoke Ball Co.*** (supra), to contend that a wagering contract necessarily requires two parties holding opposite views regarding an uncertain event, each standing to win or lose depending on the outcome. Where one party merely facilitates distribution of pooled stakes without itself standing to gain or lose from the uncertain event, the arrangement does not constitute wagering.

21.16. Proceeding on that basis, learned Senior Counsel submitted that sweepstake organisers, totalizator operators and football pool managers are not parties to wagering contracts because they merely collect and redistribute stakes after deducting expenses. Similarly, in the present case, the operator merely acts as a trustee or custodian of player funds and performs a dual function viz., first, as a provider of platform services; and secondly, as a limited trustee holding the prize pool until the outcome of the game is determined.

21.17. It was further submitted that the operators' interest lies solely in earning a fixed platform fee and not in the uncertain event itself. Since a wagering contract necessarily requires reciprocal chances of gain and loss dependent purely upon chance, the operators cannot be regarded as participants in wagering transactions. Reliance was also placed upon ***Gherulal Parakh*** (supra) to contend that Indian law recognizes the same essential attributes of wagering as those accepted in English law.

21.18. Finally, learned Senior Counsel submitted that the GST framework contemplates a taxable supply between a supplier and a recipient. Save and except specifically notified reverse charge situations under Section 9(3), or supplies made "through" ecommerce operators under Section 9(5), liability to pay GST remains upon the supplier. In the present case, the only supply made by the operators is the supply of platform services, on which GST has already been

discharged. The games themselves are played inter se between the players, while the operator merely holds and redistributes the pooled prize money. Consequently, the operator cannot be fastened with tax liability in respect of amounts staked by players amongst themselves. On these submissions, the learned Senior Counsel prayed that the writ petitions be allowed.

22. ***Mr. Gopal Sankaranarayan,*** learned Senior Counsel appearing for the petitioners in WP (C) No. 268 of 2024 and other matters, submitted that in ***RMDC-I,*** the controversy related to revenue earned by entities conducting prize competitions, in which participants paid money for participation and where multiple possible outcomes existed. The legislation under consideration therein sought to impose tax upon such competitions. This Court, while interpreting the relevant provisions of the 1952 Act, held that insofar as an activity involved an element of skill, the State lacked legislative competence to tax the same as gambling. It is in that context that the principle of severability, subsequently noticed in ***RMDC-II***, assumes significance. The Court recognised that competitions involving skill, described in ***RMDC-I*** as "innocent prize competitions", could be severed from competitions purely dependent upon chance. Thus, where money is employed in a game of skill, the activity does not amount to gambling and consequently falls outside the ambit of betting and gambling. Learned Senior Counsel submitted that in the present case, the assessee

merely operates a technological platform and does not itself participate in the game. Equally, the players cannot be regarded as engaging in gambling since rummy has consistently been recognised as a game of skill, and it does not cease to be so merely because stakes are involved.

22.1. Elaborating further, the learned Senior Counsel referred to the example of crossword prize competitions considered in the earlier decisions, where participants were required to fill in predetermined words in a sentence thereby making mere guesses. This Court had disapproved such competitions on the ground that they involved no real skill and observed that only a "scintilla of skill" was present. According to the learned Senior Counsel, the principle emerging from the said decisions is that where no skill is involved, the activity would amount to gambling; however, once skill enters the activity, the Court is required to examine the nature and degree of such skill. He further submitted that the concluding observations in ***Satyanarayana*** relate only to instances of side betting, since the individual placing such wagers contributes no skill whatsoever. Referring again to ***RMDC-I***, it was contended that this Court analysed the charging provision concerning prize competitions and held that competitions involving forecasting or prediction coupled with an element of skill stood outside the scope of betting and gambling. It was on that basis that the provision was read down so as to exclude competitions involving skill. Learned Senior Counsel submitted that subsequent decisions treating activities such as rummy and horse

racing as falling outside the ambit of gambling are founded upon this very principle namely, the predominance of skill. The High Court judgment in ***RMDC-I,*** drawing from English law principles, similarly recognised that the decisive test is the absence of skill. Consequently, only those activities entirely devoid of skill can properly be characterized as betting or gambling, whereas the presence of skill disassociates the activity from the concept of gambling altogether.

22.2. Learned Senior Counsel further submitted that even in the context of lotteries, Courts have consistently held that where any degree of skill is involved, the activity would cease to be a lottery. According to him, games devoid of skill are akin to taking blind shots at a hidden target and are therefore properly classifiable as gambling activities.

22.3. It was next contended that the State may in a given case, possess the authority to tax the assessees for the purposes of collection, but such authority could arise only if the assessees themselves were found to be engaged in betting or gambling. However, the assessees merely provide a platform facilitating interaction between the players and do not themselves place bets or introduce stakes into the game.

22.4. Learned Senior Counsel further submitted that whenever a statute or provision is examined to determine whether it pertains to betting and gambling, courts have invariably applied the distinction between games of skill and games of chance. The presence of skill has always been treated as a determinative factor. Where a game of skill is involved, the activity undertaken by the participants cannot, at any stage, be characterised as betting or gambling. However, if a person profits by wagering upon the outcome of such a game, the activity would amount to betting and gambling. In other words, side betting alone would fall within that category. According to the learned Senior Counsel, this also furnishes the correct interpretation of the concluding observations in ***Satyanarayana***, where the element of skill was confined to the participants in the game itself. In the present case, the assessees neither participate in the game nor place wagers upon its outcome. They merely provide a platform as service providers, discharge GST on the consideration received for such services, and remain unconcerned with the ultimate outcome of the game or the identity of the winner.

22.5. Learned Senior Counsel thereafter referred to Section 7(2)(a) of the GST Act, Schedule III thereto, and Rule 31A of the CGST Rules. It was submitted that Rule 31A(3) has no application to the assessees for two principal reasons: first, the assessees are not engaged in betting, gambling, or horse racing; and second, there is no supply of any actionable claim by the assessees as contemplated under the Rule. According to him, Rule 31A(3) applies only where there exists a supply

of actionable claim in the nature of a chance to win. In the present case, no such supply exists between the platform and the player. The interaction remains exclusively between the players *inter se*, while the assessees merely provide the technological infrastructure and receives platform fees as consideration. It was submitted that the phrase "supply of actionable claim in the form of chance to win" necessarily presupposes the existence of chance as an essential element. Since rummy is a game of skill, the foundational requirement of "chance to win" is absent.

22.6. Learned Senior Counsel further submitted that the assessees had been assigned GST Service Classification Code 998439 relating to "Other online content", whereas online gaming services are separately classified under Service Code 999692. This, according to him, reinforces the position that the assessees are not engaged in gambling services. Reliance was again placed on RMDC I, wherein this Court interpreted the words "or determined by lot or chance" occurring in Section 2(2)(a) by construing the expression "or" as "and". The effect of such interpretation, according to the learned Senior Counsel, was to emphasise the elements of "lot" and "chance" as essential components of the definition. Once those expressions are applied across the categories contemplated by the provision, activities involving skill necessarily stand excluded. The second limb of Section 2(2) and sought to bring all prize competitions within its fold; however, this Court expressly held that competitions involving skill could not be

included within the statutory definition. On the strength of these submissions, learned Senior Counsel contended that the assessees are entitled to the reliefs sought herein.

23. ***Mr. Arvind Datar***, learned Senior Counsel appearing for the Petitioners in WP (C) No. 300 of 2024 submitted that ***RMDC-I*** was an appeal from the judgment of the Bombay High Court concerning the validity of the Bombay Lotteries and Prize Competition Control and Tax Act, 1948. In 1954, the Bombay High Court struck down certain provisions on the grounds of Articles 301 and 304. This Court reversed the decision of the Bombay High Court. After the Bombay High Court judgment, the Prize Competitions Act, 1955 was enacted under Article 252(1), thereby making it a Central law on a state subject. The said enactment was subsequently challenged under Article 32, and the matter was decided in ***RMDC-II***. Applying the doctrine of severability, this Court held that Section 2(1)(d) applied only to games of chance. Consequently, Sections 4 and 5 of the Act and Rules 11 and 12 were, on principles of severability, held applicable only to competitions in the nature of gambling. Competitions involving substantial skill are protected under Article 19(1)(g). Section 2(1)(d), therefore, applied only to competitions where success did not substantially depend on the element of skill. Notably, both judgments were delivered on April 9, 1957. ***RMDC-II*** is of greater significance, as the 1955 Act continues to remain in force.

In view of this and ***RMDC-II***, games of skill continue to be excluded from the scope of the said enactment, and are protected under Article 19(1)(g).

23.1. Learned Senior Counsel further submitted that the last portion of the judgment in ***Satyanarayana***, which he referred to as the "*of course conundrum*" in the present case, does not constitute the *ratio decidendi*. Applying the *Wambaugh test*, even if the last sentence of the judgment in *Satyanarayana* were to be removed, the conclusion or decision would remain unaffected; it therefore does not amount to the *ratio decidendi* of the case. He also placed reliance on the judgment of a Nine-Judge Bench of this Court in ***Property Owners Association and others v. State of Maharashtra and others***[48]**,** which explains the Wambaugh test. Even assuming the same does form the *ratio decidendi*, it would have no binding value as it is *per incuriam* and is contrary to Section 12 of the Public Gambling Act, 1867 and Section 14 of the Hyderabad Act. The learned Senior Counsel further submitted that once rummy has been held to be a game of skill, it would fall outside the purview of the Public Gaming Act, 1867. If the owner of a common gaming house were to make profit out of a game of rummy, the said Act would clearly not apply, rendering the last sentence in ***Satyanarayana*** otiose. A common gaming house is one where there is profit; yet, Section 12 of the Act opens with "nothing in the foregoing provisions," thereby excluding games of

[48] 2024 SCC OnLine SC 3122

mere skill, whether played for profit or otherwise. Therefore, the impugned observation is, at best, an *obiter dictum*, and not binding. The only *ratio decidendi* in ***Satyanarayana*** is that rummy is a game of skill.

23.2. Learned Senior Counsel further proceeded to contend that if the "of course" portion were accepted as the law, then playing rummy would have been an offence even after 1967. On the contrary, even post ***Satyanarayana***, games of skill enjoyed full immunity in the State of Andhra Pradesh. The Hyderabad Act was subsequently replaced by the Andhra Pradesh Gaming Act, 1974, which, under Section 15, exempted games of skill from its scope. This interpretation was affirmed by a learned Single Judge of the Andhra Pradesh High Court in ***Executive Club and others v. State of A.P.***[49], which was not challenged by the State.

23.3. Learned Senior Counsel urged that this Court, in ***K.R. Lakshmanan*****,** after noting the earlier decision in ***Satyanarayana***, held that the expression "mere skill" as used in Section 49-A of the Madras City Police Act, 1888 and Section 11 of the Madras Gaming Act, 1930, would mean a "substantial degree or preponderance of skill". This Court held that whenever a game is one of skill, it cannot be classified as gambling. Further, learned Senior Counsel contended that

[49] 1998 (3) APLJ 138

as held in ***RMDC-II***, once a game is held to be a game of skill, it assumes the character of a commercial contract, as opposed to a wagering contract. In other words, Section 2(1)(d) would not apply to games of skill. The law laid down in ***RMDC-II*** continues to be in force, and games of skill played for stakes constitute a permitted activity.

23.4. Learned Senior Counsel thereafter, submitted that the rationale behind protecting games of skill lies in the fact that the player applies skill, knowledge, and effort in participating in such a game. The reward earned is a consequence of such application and is therefore entitled to constitutional protection under Article 19(1)(g). In contrast, purchasing a lottery ticket or playing a game of pure chance requires no application of mind, and the potential for monetary gain arises solely from luck. In such cases, the parties have no interest in the subject matter of the agreement other than the amount they stand to win or lose. Consequently, wagering and gambling have consistently been disapproved of in all civilised jurisdictions.

23.5. Learned Senior Counsel further asserted that betting or staking on a game of chance constitutes gambling, whereas betting or staking on a game of skill does not. In support thereof, he offered an illustrative analogy: *mens rea* plus a prohibited act constitutes an offence, whereas *mens rea* plus a permitted act does

not. In other words, betting or staking is a constant, while the nature of the underlying event- whether a game of skill or a game of chance- is the variable that determines whether the activity amounts to gambling. Betting or staking on a game of skill is, therefore, a constitutionally protected activity under Article 19(1)(g), and cannot be treated as gambling.

23.6. Addressing the issue of manifest arbitrariness, learned Senior Counsel referred to the judgment of this Court in ***Assn. for Democratic Reforms and another (Electoral Bond Scheme) v. Union of India and others***[50]**,** submit that the observations therein are squarely applicable to Rule 31A(3), which is ultra vires Entry 6 of Schedule III. Entry 6 of Schedule III was omitted with effect from 01.10.2023, whereas the impugned Rule 31A(3) was notified in January 2018, rendering it contrary to the parent statute. Furthermore, Rule 31A(3) ought to have been notified only on the recommendation of the GST Council. It is also ultra vires Entry 62 of the Constitution.

23.7. According to learned Senior Counsel, the judgment of the Nine-Judge Bench in ***Mineral Area Development Authority*** (supra) does not deal with Rule 31A and is, therefore, inapplicable to the present case. There is no dispute in the present matter with respect to the subject matter or the measure of tax. The

[50] (2024) 5 SCC 1

reliance placed on ***Skill Lotto Solutions*** (supra) is misplaced as the said decision was confined to lotteries and has no bearing on Rule 31A(3) which pertains to betting and gambling.

23.8. Learned Senior Counsel further submitted that Rule 31A(3) is invalid for an independent and substantive reason: it impermissibly severs the constitutionally integrated expression "betting and gambling", a composite phrase appearing in Entries 34 and 62 of List II. Neither Parliament nor its delegate can bifurcate this expression, which has acquired a settled constitutional meaning. In any event, Rule 31A(3), by its own language, applies only to games of chance and not to games of skill.

23.9. Without prejudice to the above and assuming *arguendo* that the judgment in ***Mineral Area Development Authority*** *(supra)* applies, the learned Senior Counsel submitted that it, in fact, reiterates their position. The subject matter and the measure of taxation are distinct, and that the measure of tax cannot be used to expand the scope of the taxing entry. Even if the entry fee is treated as the measure of tax, the subject matter remains the underlying activity, namely, whether it constitutes betting and gambling. Since games of skill do not amount to betting and gambling under the constitutional framework, no levy can be sustained merely on the basis that a monetary stake or entry fee is involved.

23.10. Learned Senior Counsel further submitted that the amendment to Entry 62 and insertion of Article 246A did not alter the meaning of "betting and gambling" which continues to apply only to games of chance. Reliance was placed on ***State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd.***[51] to contend that legislative competence to tax must flow strictly from the constitutional text and cannot be expanded through statutory definitions. Accordingly, although "actionable claims" are included as "goods" under Section 2(52) of the CGST Act, the power to tax actionable claims relating to betting and gambling remains confined to games of chance under Entry 62 read with Entry 34 of List II. Since Games of skill do not fall within the ambit of betting and gambling, there is no legislative competence to levy GST on entry fees or stakes in such games, either before or after the 101st Constitutional amendment.

23.11. Learned Senior Counsel pointed out that post-2023, a series of amendments were introduced which resolved the controversy surrounding betting, gambling, and games of skill, thereby ushering in a regime of greater predictability and certainty. The issue arises from the application of Rule 31A(3) during the period 2018 to 2023. Rule 31A(3) is unconstitutional and manifestly arbitrary, and is liable to be struck down on the grounds of legislative incompetence, violation of Article 14, and contrary to the parent Act. Due to

[51] (1959) SCR 379

constitutional and statutory limitations, Rule 31A(3) could not have been made applicable to games of skill.

23.12. Learned Senior Counsel further contended that the rule-making power under Section 15(5) of the CGST Act is conditional upon the recommendations of the GST Council. Reliance was placed on the decision in ***Union of India v. Mohit Minerals Pvt. Ltd.*** (supra), wherein it was held that while exercising rule-making powers under the CGST Act, the Government is bound by the recommendations of the GST Council.

23.13. Learned Senior Counsel further made a reference to the 2nd Report of the Group of Ministers (GoM) on Casinos, Race Courses and Online Gaming, dated December 2022, which recommended that such games be taxed as a supply of actionable claims in the form of betting and gambling, irrespective of whether the online games involved betting on a game of skill or a game of chance. This resulted in the 2023 amendment, which introduced GST at the rate of 28% on the initial deposit, with no additional tax on the platform fee.

23.14. As far as fantasy sports are concerned, the learned Senior Counsel submitted that each participant in a fantasy sports contest emulates the role of a coach or selector by choosing a virtual team of players. For instance, coaches like

Rahul Dravid, Ravi Shastri, Kapil Dev, and Madan Lal select the best eleven players for a real match based on various parameters such as player form, pitch conditions, and historical performance at the venue. Similarly, in fantasy sports, participants draft an eleven-member team from a roster of players belonging to both competing sides. Participants compete for points based on a predefined scoring system which is in turn based on the real-life performance of the selected players in the corresponding sporting event.

23.15. Learned Senior Counsel also emphasized that fantasy sports involve the application of skill, including analytical and strategic decision-making. He pointed out that, mathematically, more than seven lakh combinations of teams are possible (using the formula 22C11), and participants are required to make multiple interrelated strategic choices. The fantasy points system is distinct from the scoring system of the real-world match. The fantasy sports contest is a separate and distinguishable activity from the actual sporting event, with its own constraints, structure, and competitive dynamics. Therefore, the outcome of a fantasy sports contest is controlled and influenced by the skill of the participant, making it a game of skill.

23.16. Referring to the definitions introduced for "online gaming," "online money gaming," and "specified actionable claim", learned Senior Counsel

submitted that under the new regime, online money gaming has been identified as the taxable event, and the measure of tax is the initial deposit amount. These definitions now encompass all games, irrespective of whether they are games of skill or chance. He referred to the amended definition of "supplier," particularly the newly inserted proviso, which provides that any person managing a digital or electronic platform shall be deemed to be the supplier of such actionable claims. He also referred to Entry 6 of Schedule III, which now excludes only *specified* actionable claims, thereby affirming the taxability of online money gaming.

23.17. Learned Senior Counsel drew our attention to Rule 31B, which prescribes the value of supply for online gaming, including online money gaming and submitted that this rule removes the earlier emphasis on the distinction between games of skill and chance and instead focuses solely on whether the activity constitutes "online money gaming." The framework is now omnibus in nature. Rule 31A remains unamended, and the taxation of online gaming now falls within Rules 31B and 31C. If Rule 31B were surplusage, the activity would have continued to be taxable under Rule 31A; however, the fact that this is not the case, indicates that the introduction of Rule 31B marked the beginning of a new taxation regime. Moreover, the presence of a non-obstante clause in Rules 31B and 31C reinforces the position that these rules represent a substantial and distinct departure from the earlier regime. Consequently, betting on games of skill

was not taxable prior to 01.10.2023. Under the present regime, what is taxable is the gross deposit at the rate of 28%.

23.18. Learned Senior Counsel further referred to the judgment of the Rajasthan High Court in ***Ravindra Singh Choudhary v. Union of India***[52] rendered prior to the introduction of Rule 31B, wherein it was held that online fantasy sports games require substantial knowledge, strategy, skill and adroitness, and cannot be classified as gambling, betting, or wagering. He also emphasised that the Department itself had taken the stand that online fantasy games are games of skill. Though an appeal was filed against the Rajasthan High Court judgment, this Court, by order dated 09.09.2022 in SLP (C) No. 15791 of 2022, dismissed the same. Similarly, another SLP (C) Diary No. 18478 of 2020 [*Avinash Mehrotra v. State of Rajasthan & Others*] filed against a different Rajasthan High Court decision, was also dismissed by this Court on 30.07.2021. After referring to earlier orders dismissing SLPs arising from the judgments of the Punjab & Haryana and Bombay High Courts, this Court held that the issue of whether fantasy sports constitute a game of skill is no longer *res integra*. It was pointed out that the Government has accepted that fantasy sports constitute games of skill and are protected under Article 19(1)(g).

---

[52] 2020 SCC OnLine Raj 2688

23.19. Learned Senior Counsel thus submitted that the issue whether fantasy sports constitute games of skill or gambling stands concluded by a consistent line of High Court decisions and repeated dismissal of SLPs by this Court. Relying upon ***Kunhayammed v. State of Kerala*** (supra) and ***Kapico Kerala Resorts (P) Ltd v. State of Kerala***[53], it was contended that although dismissal of an SLP without grant of leave does not attract the doctrine of merger, a reasoned dismissal or observations on a point of law constitute law declared under Article 141 of the Constitution.

23.20. Learned Senior Counsel submitted that the Bombay, Punjab & Haryana and Rajasthan High Courts uniformly held that fantasy sports are games of skill and not gambling. The SLPs filed by *Gurdeep Singh Sachar (SLP (Crl.) Diary No. 43346 of 2019), Union of India (SLP (Crl. Diary No. 41632 of 2019), Varun Gumber (SLP (Crl.) Diary No. 35191 of 2019) and State of Maharashtra (SLP (Crl.) Diary No. 42282 of 2019*) were dismissed. While permitting review on the GST aspect, this Court clarified that the question whether fantasy sports involve gambling was not open for reconsideration.

23.21. It was submitted that in ***Ravindra Singh Chaudhary*** (supra), the Rajasthan High Court held fantasy sports to be games of skill, and the learned

[53] (2020) 3 SCC 18

ASG appearing for the Union accepted that Dream 11's activities did not amount to betting or gambling. The subsequent SLP filed by a third party was dismissed. Reference was also made to an RTI response of the Ministry of Finance accepting the Rajasthan High Court decision and to an Order-in-Original dated 09.12.2022 passed by the Commissioner of CGST and Central Excise, Mumbai, dropping service tax demands against Dream 11 on the ground that fantasy sports involve substantial skill. No appeal having been preferred, the said order attained finality.

23.22. On these premises, it was argued that the consistent judicial view, coupled with repeated dismissal of SLPs and review petitions, has conclusively settled that fantasy sports are games of skill and not gambling. The issue is therefore no longer *res integra*, and the said position constitutes binding law under Article 141, apart from operating as *res judicata* against the Department.

23.23. Learned Senior Counsel then referred to the 2020 and 2022 Final Audit Reports in relation to Dream11, which concluded that fantasy sports are games of skill, not gambling, betting, or wagering, that platform fees alone constitute consideration for GST, and that the prize pool contribution is an actionable claim under Entry 6 of Schedule III.

23.24. Regarding the issue of regulatory oversight, the learned Senior Counsel contended that all online platforms qualify as intermediaries under the IT Act, 2000, and are subject to the 2021 Intermediary Guidelines and Digital Media Ethics Code. He referred to Rules 3(1)(b)(ii) and 3(1)(b)(xi), which prohibit intermediaries from hosting gambling content. Furthermore, the 2023 amendment to the IT Rules, specifically Rule 2(1)(qd) and Rule 2(1)(qf), legally recognise online real money games that do not involve wagering on outcomes and are verified by a Self-Regulatory Body. Rule 4A(3)(a) mandates that only non-wagering games can be certified. Thus, the legality of a game depends on its inherent character, not the presence of money. He also referred to the statement of the Minister for Electronics and IT, who confirmed that over 1,400 betting/gambling websites were blocked by the Government, and none of these involved members of FIFS.

23.25. Learned Senior Counsel then addressed the Show Cause Notice dated September 2023, which sought to classify online fantasy sports as gambling and apply GST at 28% on the entire entry amount, submitting that it ignored binding precedents and amounted to a review of settled law. Notably, the Show Cause Notice referred to in the Order-in-Original is between the period 01.02.2015 to 30.06.2017 (relating to the service tax regime). The learned Senior Counsel thus submitted that, despite the Order-in-Original having dropped the earlier show cause notice, the impugned show cause notice under GST was issued, alleging

suppression and fraud. He pointed out that the demand raised under the show cause notice is grossly disproportionate, being several times higher than the industry's total turnover. To highlight the impact of this demand, it was submitted that the association employs around 15,000 individuals (as of 31.05.2025); FDI is approximately around 1.5 billion Dollars (Rs. 10,800 Crores); Generates a total turnover of 8,200 Crores. However, the impugned demand along with penalty is nearly Rs. 60,000 crores.

23.26. In conclusion, the learned Senior Counsel submitted that Rule 31A(3) be struck down and the writ petition be allowed.

24. ***Mr. Tushar Hemani,*** learned Senior Counsel appearing for the petitioner in TC (C) No. 24 of 2024, commenced his submissions by clarifying that fantasy games are games of skill; they cannot be treated as betting or gambling. Proceeding further, he concurred with the submission of other learned senior counsel for the Assessees that 'game of skill' played with stakes does not partake the character of betting since doing so would result in obliterating the well-settled distinction between 'game of skill' and 'betting and gambling'. He further submitted that there is no 'actionable claim' in the entire transaction, much less any 'actionable claim' being supplied by Vision 11.

24.1. Learned Senior Counsel further contended that even we assume that fantasy games constitute games of chance, that there is a supply of actionable

claim and that Rule 31A(3) is constitutionally valid, even then, the statutory framework under the CGST Act, as it existed prior to 01.10.2023, was wholly inadequate and incompetent to levy tax on 'online gaming' transactions, for the reasons that the definition of supplier (Section 2(105)) prior to 01.10.2023 was incapable of treating online gaming platform as a supplier. The very insertion of a deeming fiction *"shall be deemed to be a supplier of such actionable claim"* clearly indicates that such was not a factual situation prior to insertion of this deeming fiction. To substantiate this argument, he referred to the decision of this Court in ***Union of India v. Rajeev Bansal***[54] wherein it was held that legal fiction is a presumption in law that a thing or facts exist even though, in reality, it does not exist.

24.2. Learned senior counsel further submitted that Rule 31A(3) applies to betting, gambling or horse racing only. '*Betting', 'gambling', 'horse racing', and 'online money gaming' are different and distinct classes of activities which cannot be used interchangeably.* If this were not the case, then Parliament would have provided for a definition of 'betting' or 'gambling' to include 'online money gaming' or in the amended definition of 'online money gaming' [S.2(80B)] to include betting and/or gambling. Another indication that these activities are completely different and distinct can be gathered from the definition of 'specified

[54] 2024 INSC 754

actionable claim' [S.2(102A)] wherein 'betting' falls under clause (i), 'gambling' falls under clause (iii) whereas 'online money gaming' falls under clause (vi). This itself is a clear indication that these activities are required to be treated differently. If betting and/or gambling do not include 'online money gaming', Rule 31A would never apply; and Even if the second argument is rejected, the fact that Rule 31B was introduced clearly demonstrates that Rule 31A was insufficient to tax online gaming. The calculation modalities (face value of bets) between Rule 31A and 31B are the same. Hence, 31B was inserted with the only intention to provide for machinery provisions to quantify the taxes for 'online money gaming'.

24.3. Further, the learned Senior Counsel apprised this Court that Vision 11 has charged facilitation fees and has duly deposited GST amounting to Rs. 63,74,90,457/- on the said fees over the period in dispute i.e., September 2021 to July 2023 and assailed the argument of the learned ASG by claiming that it was always open to the Parliament to include 'online money gaming' under the definition of 'betting', if played with money. However, the fact that the same was not done and instead six distinct and distinct categories were created shows that 'betting' is distinct from 'online money gambling'. As a result, the entire structure of the Act would have been ineffective prior to the amendment.

24.4. Next, the learned Senior Counsel challenged the ambiguity of Section 2(80B) and vehemently contended that the provision broadly and indiscriminately includes any activity played online involving money within the scope of 'Online Money Gaming'. 'Online Money Gaming' does not fit within the exclusion to exclusion clause, i.e., it does not fall under the scope of *"....other than lottery, betting, and gambling"*. Therefore, it is not excluded under Entry 6; it must fall within the ambit of Entry 6, making Article 31A inapplicable. Section 7(2)(a) of the Central Goods and Services Tax Act, 2017 has an overriding effect over Section 7(1) and stipulates that the activities or transactions enumerated in Schedule III shall be deemed neither a supply of goods nor a supply of services. During the relevant period, Schedule III expressly included actionable claims, excluding those pertaining to lottery, betting, and gambling. Thus, actionable claims, other than those related to lottery, betting, and gambling, do not constitute 'supply' under the Act and therefore fall outside the scope of GST.

24.5. Reiterating the argument that there is no 'Actionable Claim' in the entire transaction, the learned Senior Counsel contended that Vision 11 merely facilitates the playing of skill-based games in return for consideration in the form of a platform fee (which is 10 rupees out of 100); the rest 90 rupees remain with the players in their possession. Vision 11 has no lien over the amounts deposited by the users since the same is distributed back to the winners. He also refuted the argument of the learned ASG that the entire amount deposited is the

consideration (supply) on which GST is leviable, by submitting that, levy of GST on the same is illegal and against the scheme of the Act and to that extent, Section 31A is *ultra vires.* Transaction values as per section 15(1) is the price paid or payable as consideration against the supply of goods/services. Hence, only the consideration charged and retained by Vision 11 for facilitating the game can be the price actually paid (consideration against the supply- paid by the recipient).

24.6. Learned Senior Counsel further submitted that the only conceivable basis for the Department to levy GST on the entire deposit amount would be by classifying online money gaming within the broader scope of 'betting and gambling', and thereby invoking Entry 6 of Schedule III read with Rule 31A to justify the imposition of GST on the full face value of the bet. However, the statutory scheme, as it existed prior to 01.10.2023, as well as the foundational principles of the GST framework, do not support such an interpretation. Betting, gambling, online money gaming, and online gaming are conceptually distinct and operate within separate legal spheres. Had the legislature intended to subsume online money gaming within the ambit of betting or gambling, it would have explicitly defined the term or, at the very least, provided a clarificatory explanation to that effect. To substantiate the same, he further added that Rule 31A(3) is wholly arbitrary and is in direct conflict with Section 15, because Rules are subservient to the main provisions and the main provision would always prevail when conflict arises. He also made another strand of argument that *instead*

of striking Rule 31A as ultra vires, this court may read down 31A and restrict its application to the platform fees collected by Vision 11 and other allied platform providers.

24.7. Further, the learned Senior Counsel argued that the issue regarding the levy of GST is directly covered by the judgment of this Court in ***Union of India v. Intercontinental Consultants & Technocrats (P) Ltd***[55]**,** wherein this Court in the context of service tax held that tax is to be paid only on services actually provided by the service provider and not on reimbursement of expenses.

24.8. Placing reliance on the judgment referred to supra, the learned Senior Counsel contended that GST has already been duly discharged on the platform fee, which constitutes the consideration for the service rendered by Vision 11. Further, the gross amount collected for onward distribution among the players cannot be subjected to GST, as it does not represent consideration for any supply. Reference was made to the essential prerequisites for the applicability of the GST Act and during the pre-amendment period (i.e., the period under dispute), the element of a 'supplier' was absent. It is only pursuant to the 2023 amendment, wherein a deeming fiction was introduced through Section 2(105) (definition of

[55] 2018 INSC 217

'supplier'), that the legislature purported to cure this gap by statutorily deeming the existence of a supplier.

24.9. Later, the learned Senior Counsel drew our attention to the observation of this Court in the case of ***CIT v. B C Srinivasa Setty***[56], ***Govind Saran Ganga Saran v. CST***[57] and ***CCE v. Larsen and Toubro Limited***[58] and submitted that the exclusion contemplated under Schedule III, read with Rule 31A of the CGST Rules, is inadequate to validly bring online money gaming within the purview of taxation. The absence of a viable and effective machinery to compute and administer the levy results in the failure of the charging provision, thereby rendering the imposition of tax ultra vires and unsustainable in law. In the alternative, the learned Senior Counsel argued that the very introduction of the subsequent amendment by the legislature is itself indicative of the insufficiency of the pre-amendment statutory scheme; had the existing framework been adequate to tax the transaction in question, no such legislative intervention would have been necessary.

24.10. Thus, the learned Senior Counsel concluded his arguments by contended that during pre-amendment, there was no definition of 'online money gaming',

---

[56] 1981 INSC 41
[57] 1985 INSC 107
[58] 2015 INSC 498

‘specified actionable claim’, no ‘proviso to the definition of Supplier’, hence 31A cannot be applied. Value of taxable supply- transaction value- is only 10 rupees (platform fee). If this Court considers the argument of the learned ASG as right i.e., the value of supply is 100 rupees (i.e., the face value of the bet), and that Sections 15(4) and 15(5) are attracted along with the application of Rule 31A the statutory framework as it stood prior to 01.10.2023 did not contemplate the taxation of 'online money gaming'. 'Betting', 'gambling', 'online money gaming', and 'online gaming' are distinct legal categories, and the pre-amendment scheme did not cover online money gaming within the scope of ‘betting and gambling’. Moreover, in any event, there existed no effective machinery provisions to facilitate the levy and collection of tax on such transactions. Online money gaming does not fall under the term “betting and gambling” or “betting on gambling”, hence Rule 31A fails when read with exclusion clause in Entry 6 of Schedule III.

25. ***Mr. Balbir Singh***, learned Senior Counsel appearing for the petitioners in WP (C) No.541 of 2024 firstly submitted that the expressions “betting” and “gambling” have distinct meanings and historical origins traceable to British and Indian legislation, including the Wagers Act, 1848, the Public Gambling Act, 1867, the Government of India Acts, 1919 and 1935, the Constitution of India, and the GST laws. It was contended that the Revenue has erroneously treated the

two expressions as synonymous. According to the settled legal understanding, "betting" refers to staking money by third parties or spectators on the outcome of an event, whereas "gaming" or "gambling" concerns participants themselves staking money in a game, which may amount to gambling only if the game is predominantly one of chance. Since the games hosted on the petitioner's platform are games of skill, any actionable claim arising therefrom would fall within the exclusion under Entry 6 of Schedule III to the CGST Act and not within the taxable category of "betting and gambling".

25.1. Tracing the legislative history, learned Senior Counsel referred to the Wagers Act, 1848 and Section 30 of the Indian Contract Act, 1872, which rendered wagering agreements unenforceable, and the Public Gambling Act, 1867, which criminalised common gaming houses while expressly exempting "games of mere skill" under Section 12. It was submitted that the 1867 Act did not equate "gaming" with "betting" or "wagering", and reliance was placed on ***Queen-Empress v. Narottamdass Motiram***[59] and ***Ram Pratap Nemani v. Emperor***[60] to show that the distinction between gambling and betting was recognised from the outset. It was only later, through amendments such as the

[59] (1889) ILR 13 BOM 681
[60] (1912) ILR 39 CAL 968

Calcutta Police Act, 1913, that "betting" and "wagering" were specifically included within the scope of gaming laws.

25.2. Addressing the contention of the learned ASG that staking money on games such as rummy would amount to "betting", the learned senior counsel submitted that such an interpretation ignores the settled distinction between betting and gaming. A participant in a game of skill is not a mere spectator wagering on an uncertain outcome but an active player whose skill, judgment, and strategy directly determine success. Therefore, the correct enquiry is whether the underlying activity amounts to gambling or a game of skill. Since the games hosted on the petitioner's platform are games of skill, they cannot be classified as either "betting" or "gambling" merely because stakes are involved.

25.3. Secondly, learned Senior Counsel submitted that the petitioner merely provides an online platform facilitating gameplay and does not supply actionable claims. The transaction involves only the creation of contractual rights between players and not the transfer of any existing actionable claim. Referring to the scheme of the CGST and IGST Acts, it was contended that prior to the 2023 amendments, "online gaming" was specifically recognised under Section 2(17) of the IGST Act as a form of online information service and was uniformly treated

as a supply of services. It was only by the 2023 amendment that "online money gaming" was carved out from the broader category of online gaming, reclassified as "goods" and brought within the ambit of "specified actionable claims". Thus, prior to 01.10.2023, online gaming was statutorily recognised and taxed only as a service. Developing the argument on actionable claims, the learned Senior Counsel submitted that under paragraph 1(a) of Schedule II to the CGST Act, only transfer of title in goods constitutes a supply of goods. The mere creation of a right does not amount to a transfer or assignment of an actionable claim. According to counsel, any actionable claim, assuming one arises, comes into existence only when players deposit money into the prize pool; there is no transfer of such claim unless a participant subsequently assigns or transfers his right to participate, which is impermissible under the platform rules. Reliance was placed on ***CTO v. SBI***[61] to contend that the creation or extinguishment of a right is distinct from the transfer of property in goods.

25.4. It was further argued by the learned Senior Counsel that the petitioner merely acts as a facilitator and retains only the platform fee as consideration for its services, while the prize pool is maintained separately in escrow for the players. Relying on ***Sodexo SVC India (P) Ltd. v. State of Maharashtra***[62],

[61] (2016) 10 SCC 595
[62] (2015) 16 SCC 479

learned Senior Counsel submitted that the intrinsic nature of the transaction is provision of facilitation services and not supply of goods. The amounts contributed towards the prize pool are never appropriated as consideration by the petitioner and therefore cannot form part of the taxable value.

25.5. Thirdly, learned Senior Counsel challenged Rule 31A(3) of the CGST Rules as ultra vires Section 15 of the CGST Act. It was submitted that Section 15(1) mandates valuation based on the transaction value, while Section 15(5) only permits prescription of valuation rules for notified supplies and cannot authorise a valuation mechanism disconnected from the essential character of the levy. By deeming the entire prize pool or face value of the stake as the taxable value, Rule 31A(3) artificially enlarges the levy beyond the actual consideration received by the supplier. Reliance was placed on ***Union of India v. Bombay Tyre International Ltd.***[63]***, CCE v. Acer India Ltd.***[64]***, CCE v. Grasim Industries Ltd.***[65] and ***MADA*** (supra) to contend that the measure of tax must retain a rational nexus with the taxable event and the nature of the levy. It was also submitted that during the relevant period, no notification had been issued under Section 15(5) and therefore Rule 31A(3) could not validly override Section 15(1).

---

[63] (1984) 1 SCC 467
[64] (2004) 8 SCC 173
[65] (2018) 7 SCC 233

25.6. Fourthly, learned Senior Counsel submitted that the statutory framework prior to 01.10.2023 consistently treated online gaming as a supply of services. The petitioner was registered and taxed under SAC 998439 as provider of "other online content" services and discharged GST at 18% on platform fees. It was only through the 2023 amendments to the CGST Act, Rules, and rate notifications that "online money gaming" was specifically classified as "specified actionable claims" and subjected to GST at 28% on the entire deposit amount. These amendments are prospective in nature and cannot retrospectively alter the classification of transactions for prior periods.

25.7. Fifthly, learned Senior Counsel submitted that the 2023 amendment cannot be treated as merely clarificatory. Extensive deliberations by the GST Council and the Group of Ministers between 2021 and 2023 demonstrated that the law, as it previously stood, did not contemplate taxation of online games of skill on the full deposit amount. The subsequent amendments were therefore substantive changes to the statutory regime and not clarifications of an existing position.

25.8. In the alternative, learned senior counsel argued that if the activity were to be characterized as betting or gambling, the underlying claims would become unenforceable in law and therefore cease to qualify as actionable claims. Since

"goods" under the CGST Act exclude money, a claim to money in the prize pool could not, in any event, constitute actionable claims taxable as goods under the GST regime.

26. ***Mr. Tarun Gulati*****,** learned Senior Counsel appearing for the petitioner in WP (C) No. 378 of 2024 commenced his arguments by stating that it operates an online platform where players play various online games of skill against each other including but not limited to Fantasy sport, Poker, Rummy etc. He further challenged the validity of the Section 15(5) of CGST Act and Rule 31A(3) and also dealt with rate notification and service notification in both pre- and post-2023 amendment. Further, the Petitioner/Assessee challenged the Show Cause Notice dated 30.01.2024, whereby it was alleged that assessee has not supplied facilitation services but is engaged in the supply of an actionable claim in the form of a chance to win in betting or gambling and proposed to levy 28% GST on 'face value of the bet'. The assessee has also challenged the validity of section 15(5) of the CGST Act, 2017 and Rule 31A(3) of the CGST Rules.

26.1. Learned Senior Counsel at the outset, assailed the constitutional validity of Section 15(5) of the CGST Act and Rule 31A(3) of the CGST Rules. Section 15(1) laid down the foundational principle for valuation under GST, being the consideration paid or payable for the supply of goods or services. This core principle cannot be overridden by Section 15(5), which merely enables the

prescription of exceptions through delegated legislation. In essence, Section 15(5) cannot be employed as a colourable device to depart from the primary legislative framework governing the measure of tax, or to introduce valuation mechanisms through delegated rules that lack a reasonable nexus with the taxable event—namely, the supply of goods or services. Further, Section 15(5) does not provide any guidance basis on which the rule-making power may be exercised by way of delegated legislation. Accordingly, the only constitutionally tenable interpretation of Section 15(5) is that any rule framed thereunder must adhere to, and be consistent with, the foundational principle of valuation laid down in Section 15(1), namely, the consideration received or receivable for the supply of goods or services. Although Section 15(5) contains a non-obstante clause, such a clause cannot be construed so broadly as to entirely override or nullify the core valuation mechanism enshrined in Section 15(1). Any such interpretation would render Section 15(1) otiose and defeat the legislative intent underlying the scheme of valuation under the CGST Act. In this regard, he relied on the judgment of this Court in ***Laghu Udyog Bharati & another v. Union of India and others***[66]**,** wherein it was held that the Rules cannot be framed that do not carry out the purpose of the chapter and thus cannot be in conflict with the statute.

[66] (1999) 6 SCC 418

26.2. Learned Senior Counsel also made an alternative argument that if Section 15(5) was considered as valid, even then Rule 31A(3) has to be struck down as it is *ultra vires* section 15(5) as the said Rule was prescribed without any notification providing the supplies for which special value has to be prescribed i.e., Rule 31A(3) has been prescribed without following the procedure contemplated u/s 15(5). To strengthen this argument, he took us to the notification No. 49/2023- Central Tax dated 29.09.2023 (brought in effect from 01.10.2023), wherein the Central Government notified 'supply of online money gaming' as a class of supply by the said notification in terms of Section 15(5)- resulting in the insertion of Sections 31B and 31C. No GST can be levied in the present case during the disputed period as Rule 31A(3) does not cover the supply of online money gaming. The value for the said supply came to be provided for the first time by the insertion of Rule 31B.

26.3. Learned Senior Counsel, while concurring with the submissions of Mr. Himani, learned Senior Counsel, contended that the fact that no amendment was made to Rule 31A(3) on insertion of Rule 31B clearly establishes that Rule 31A(3) never contemplated within its folds value of supply in the case of supply of online money gaming. He also quoted the judgment of this Court in ***Balaji Enterprises v. Collector of Central Excise***[67]**,** wherein it was held that the

[67] (1997) 5 SCC 268

insertion of a new entry without amending the old entry establishes that the scope of both entries is different.

26.4. Learned Senior Counsel further submitted that till 2023, all activities of online gaming and allied nature were considered as services. Referring to Section 7(1A), (2) and (3) of the CGST Act, the learned Senior Counsel submitted that the classification of any activity as a supply of goods or services is expressly determined by the legislature either under Section 7(1A) read with Schedule II, or through a notification issued by the Central Government under Section 7(3) of the CGST Act. The legislative intent has consistently been to treat such activities as the supply of services. Specifically, supplies made by online gaming providers have neither been included in Schedule II nor notified under Section 7(3) as a supply of goods. Consequently, he contended that the mere existence of a rule relating to 'supply of actionable claims' cannot, in and of itself, alter the established categorisation of supplies by online gaming platforms from 'supply of services' to 'supply of goods'.

26.5. To substantiate the proposition that 'online gaming' constitutes a 'service' within the meaning of the GST law, the learned Senior Counsel invited our attention to the Goods Tax Rate Notification (Notification No. 1/2017 – Central Tax (Rate) dated 28.06.2017, w.e.f. 01.07.2017), which was issued in exercise of

the powers under Section 9(1) of the CGST Act and delineates the applicable tax rates. He concluded that the Goods Notification does not specify any tariff heading under which the alleged supply can be classified. Section 2(17) of the Integrated Goods and Services Tax Act, as it existed prior to the amendment, defines 'Online Information and Database Access or Retrieval Services' (OIDAR) to include supplies such as 'online gaming'.

26.6. Learned Senior Counsel also referred to Circular No. 27/01/2018-GST dt. 04.01.2018, which specifically clarifies that 'betting and gambling' are services which are to be classified under Entry 34 of the service rate notification and heading 9996 (Notification No. 11/2017-Central Tax (Rate). Relying on the foregoing facts, he submitted that, consequent to the insertion of Rule 31A(3), Goods Rate notification was amended vide Notification 06/2018- Central Tax (Rate) dt. 25.01.2018 to insert Entry 229 to Schedule IV, providing rate of tax as 28%. However, no corresponding amendment was made to Entry 22 (heading 9984) of the Services Rate notification. Definition of OIDAR Services as provided u/s 2(17) of the IGST Act and Entry 24 (heading 9996) of the Service Rate notification was not modified or amended. Entry 229 to the Goods Rate notification did not provide any 'Chapter/Heading/Sub-heading/Tariff item' under which the newly inserted entry is required to be classified.

26.7. Learned Senior Counsel further proceeded to argue that the usage of the term, 'any chapter' does not suffice as in terms of explanation (iii) and (iv) of the Goods Rate Notification (Notification No. 1/2017- Central Tax (Rate), goods have to be classified under First Schedule to the Customs Tariff Act, 1975 and the said schedule contains 'no chapter' or 'heading' under which actionable claim may be classified. Thus, the Government merely added an entry without providing for any heading under which the goods could be classified. Later, he referred to the 2023 amendment and contended that, for the first time, the Government classified 'actionable claim' as goods under the Customs Tariff Act and amended the Service Rate Notification and definition of OIDAR and attempted to bring 'online money gaming' out of the ambit of services. He also pointed out the relevant provisions viz., Section 2(80A), 2(80B), 2(102A), 2(105) and Para 6 of Schedule III that were inserted via 2023 amendments. He also referred to the Notification No. 49/2023-Central Tax dated 29.09.2023 wherein for the first time, it notified class of supplies in terms of Section 15(5) of the CGST Act. Similarly, Notification No. 51/2023-Central Tax dated 29.09.2023 introduced CGST (Third Amendment) Rules, 2023 and inserted Rules 31B and 31C in exercise of power under Section 15(5) of the CGST Act. Then, IGST (Amendment) Act, 2023 dt. 18.08.2023 w.e.f. 01.10.2023 substituted Section 2(17)(vii) which defined OIDAR services. Notification No. 72 / 2023 – Customs (NT) dated 30.09.2023 w.e.f. 01.10.2023 amended the First Schedule to the Customs Tariff Act, 1975, and for the first time inserted tariff entry under which

actionable claims involved in betting and gambling could be classified. Vide Notification No. 12/2023- Central Tax dt. 19.10.2023, Service Rate notification was amended and Entry 34(v) was omitted, viz., gambling falling under the 'heading 9996- Recreational, Cultural and sporting services. Referring to the said notifications and provisions, the learned Senior Counsel submitted that prior to the amendment, i.e, during the disputed period, the intention of the legislature was very clear to the effect that *'online game' as well as 'betting and gambling' are a 'supply of services'.*

26.8. Learned Senior Counsel further submitted that even otherwise, the Petitioner could not have made the alleged taxable supply of goods in the form of an actionable claim, as the supply did not fall under any 'tariff heading/HSN' in the period in dispute. In other words, S.No.229 did not identify any chapter/Heading/Sub-heading/tariff item of the Customs Tariff Act, 1975 under which the alleged supply is classifiable. To substantiate this argument, he referred to the decision of the High Court of Madras in the case of ***Parle Agro Pvt. Ltd v. Union of India***[68]**,** and contended that while Goods Rate notification provides rate of tax, the correct classification has to be made in terms of the Customs Tariff Act, 1975.

[68] 2024 (81) GSTL 283 (Mad)

26.9. By way of an alternate argument, the learned Senior Counsel submitted that even if it is considered that there is an actionable claim in betting and gambling, the same is not supplied by Petitioner, who is merely a technology platform provider in view of the reasons that Ministry of Electronics and Information Technology in WP(C) No. 8946/2023 titled *Social Organization for Creating Humanitu (SOCH) v. UOI* in its affidavit has accepted that *"Online gaming platforms are Intermediary platforms. They provide digital means in the form of gaming platforms and act as a bridge between people who wish to connect, interact and play with each other... The gaming platform merely holds this electronic record and transmits it, without entering any editorial inputs or modifications. Thus, it is a passive facilitator and does not partake in the game itself".* It was further submitted that the petitioner merely acts similar to a credit card company, which acts as a facilitator in the supply of goods or services belonging to another for a commission. Hence, Petitioner's supply is limited to that of 'facilitation' for commission, against which GST has already been paid/discharged; and that, Circular No. 178/10/2022- GST dt. 03.08.2022- on the analysis of the Service Tax and GST laws has provided that tax is levied only on 'consideration'. Consideration refers to the amount payable by one person on account of a supply made by another. He further submits that this circular also clarifies that 'a mere flow of money' does not qualify to be 'consideration'- does not leviable to GST.

26.10. Thus, the learned Senior Counsel concluded by arguing that GST is leviable only on 'consideration' paid for the supply i.e, transaction value and not on every flow of money from one person to another- irrespective of whether Petitioner's output is classifiable as a supply of facilitation services or as supply of goods in the nature of actionable claim. In support of his contentions, the learned Senior Counsel placed reliance on the following decisions in ***State of Rajasthan v. Rajasthan Chemists Association***[69] ***and CIT v. Shoorji Vallabhdas and Co.***[70] wherein, this Court held that Income Tax is a tax on 'income' which can be levied only when there is income. Hence, there can be no tax on 'hypothetical income' based merely on book-entries. Even though the tax is levied on receipt basis, however, there can be no levy when the receipt does not qualify as income of the assessee; ***Commissioner of Income Tax v. Excel Industries Limited***[71], wherein this Court reiterated the law settled by it in ***Shoorji Vallabhdas and Co.*** (supra) and further held that an income can be held to be real and not hypothetical only when there is liability on the other party to pay that amount; ***Union of India v. Intercontinental Consultants & Technocrats Pvt. Ltd.***[72], upon analysing the provisions of the service tax law, this Court held that, in terms of the charging provision, tax is leviable only on the 'value of taxable service'. It was further

[69] (2006) 6 SCC 773
[70] (1962) 46 ITR 144 (SC)
[71] (2014) 13 SCC 459
[72] [2018] 10 SCR 309 (SC)

observed that, as a necessary corollary, any amount that is not computed towards the provision of such taxable service cannot form part of the assessable value, as it does not pertain to the consideration for rendering the taxable service in question. ***Commissioner of Service Tax v. M/s. Bhayana Builders (P.) Ltd.***[73], wherein this Court has held that service tax is chargeable on the 'contract value' agreed between the service recipient and the service provider. Merely by usage of the term 'gross', the service tax department will not become entitled to tax a value which is not the contract value of the taxable service. The Act provides for a nexus between the amount charged and the service provided. ***Goa University v. Joint Commissioner of Central Goods and Services Tax***[74]**,** wherein, on analysis of the GST laws, the Bombay High Court held that the concept of consideration involves an element of contractual relationship and essentially involves a quid pro quo. Any money paid but lacks a contractual relationship and/or quid pro quo is not liable to GST.

26.11. The last limb of argument of the learned Senior Counsel is that measure of tax must have a reasonable nexus with the nature of the tax. Rule 31A(3) is *ultra vires* as the measure of tax provided therein has no nexus with the nature of tax (supply of consideration). Thus, the learned Senior Counsel submitted that Rule 31A(3) of the CGST Rules, insofar as it seeks to impose GST on the entire

---

[73] [2018] SCR 1128 (SC)
[74] (2025) 29 Centax 281 (Bom)

amount of the bet or wager rather than on the 'transaction value' as contemplated under Section 15(1) of the CGST Act, is *ultra vires* the parent statute. He, therefore, concluded by contending that the impugned Show Cause Notice has been issued under Section 74 of the CGST Act, which, as a matter of jurisdictional precondition, requires the existence of an intent to evade payment of tax. Section 74 cannot be invoked in circumstances where the nature and value of the transaction were subject to legitimate interpretational debate and have subsequently been clarified through statutory amendment.

Therefore, the learned Senior Counsel submitted that the impugned Show Cause Notice issued against the Petitioner is without jurisdiction, illegal, and liable to be quashed.

27. ***Dr. Abishek Manu Singhvi,*** learned Senior Counsel appearing for the petitioners (Casinos) in TC (C) Nos. 30, 31, 32 to 35, 51 & 52 of 2024, at the outset, submitted that the issue whether the games conducted in casinos are "games of skill" or "games of chance" does not arise for consideration in the present petitions, the same being pending adjudication in connected matters viz., Civil Appeal Nos. 8241 – 8244 of 2026 and is not the subject matter of the present challenge. According to the learned Senior Counsel, the controversy herein is confined strictly to legislative competence and valuation under the GST framework.

27.1. Learned Senior Counsel contended that after the enactment of the Constitution (One Hundred and First Amendment) Act, 2016, Entry 62 of List II insofar as it related to betting and gambling, stands effaced, thereby denuding the States of legislative competence to tax such activities per se. It was argued that Article 246A is confined to taxation on "supply of goods or services" and does not extend to betting and gambling as independent taxable events. Any such power, if at all, must flow from Entry 97 of List I, requiring a substantive parliamentary enactment and not delegated legislation.

27.2. Learned Senior Counsel further submitted that the entire edifice of the respondents' case proceeds on an erroneous assumption that casinos are engaged in the supply of "actionable claims". It was contended that an actionable claim, as understood under Section 2(1) of the CGST Act read with Section 3 of the Transfer of Property Act, 1882 and Section 30 of the Indian Contract Act, 1872, necessarily involves a claim which is enforceable in law and capable of being assigned. In the case of casino operations, however, all bets are pre-paid and settled instantaneously upon conclusion of each game. No enforceable claim survives thereafter, nor is there any assignment or transfer of any such claim. The player alone participates in the game and cannot transfer his bet or its outcome to any third party. Consequently, Rule 31A(3) of the CGST Rules become wholly inapplicable.

27.3. Learned Senior Counsel further submitted that the respondents have fundamentally misconstrued the nature of casino operations. A customer entering a casino exchanges cash for chips, which are merely tokens representing money for the sake of convenience. These chips are used across multiple games and tables and are repeatedly recycled during the course of play. In certain games such as Poker and Indian Flush, the casino merely acts as a facilitator and earns a commission, while in other games, the casino itself participates as a player. In either case, the only real income earned by the casino is the Gross Gaming Revenue (GGR), which represents the net amount retained by the casino after payouts to players.

27.4. Learned Senior Counsel submitted that since the inception of the GST regime, the petitioners have consistently discharged GST at the rate of 28% on the GGR, being the actual consideration received. It was pointed out that the petitioners have paid GST amounting to Rs. 542.59 crores and have also paid substantial license fees aggregating to Rs.422 crores to the respective State Governments. This long-standing practice is in consonance with the fundamental principle that GST is a tax on value addition and actual consideration, and not on notional or artificial amounts. The invocation of Rule 31 and Rule 31A(3), it was submitted, deviates from this settled position and results in an impermissible expansion of the tax base.

27.5. Learned Senior Counsel further contended that the reliance placed by the respondents on Rule 31, which provides for a residual method of valuation, is wholly misplaced, inasmuch as the said provision can be invoked only when the value of supply cannot be determined under the normal provisions. In the present case, the actual consideration, namely the GGR, is readily ascertainable and forms the basis of taxation. Likewise, Rule 31A(3), which pertains to valuation of actionable claims in betting and gambling, is inapplicable in the absence of any actionable claim. The application of these provisions is therefore ultra vires the parent statute.

27.6. Learned senior counsel also assailed the respondents' approach of treating the aggregate bet amounts placed in each round of every game as the taxable value, described as Gross Bet Value (GBV). It was submitted that such an approach is fundamentally flawed, as the amount staked by players are merely wagers inter se or part of the game mechanics, and do not constitute consideration received by the casino. The chips used for placing bets are recycled multiple times and cannot be attributed to any single taxable event. The GBV methodology is thus not only artificial and notional, but also practically impossible to compute in a real-time gaming environment.

27.7. Learned senior counsel further submitted that the impugned show cause notices, which seek to raise a demand of Rs.16,822.97 crores, and which along with interest and penalty would exceed Rs.33,500 crores, are wholly

disproportionate and confiscatory in nature. Such an excessive demand would have the effect of completely crippling the casino industry, leading to its closure and causing irreparable loss to the petitioners and their shareholders. It was argued that such action is arbitrary and violative of Articles 14 and 19(1)(g) of the Constitution of India.

27.8. Learned senior counsel submitted that the petitioners are operating casinos under valid licenses granted by the State Governments under the relevant statutes, including the Goa, Daman and Diu Public Gambling Act, 1976 and the Sikkim Casinos (Control and Tax) Act, 2002. The activity of running casinos is thus a lawful and regulated activity, subject to payment of substantial license fees and compliance with statutory conditions. The impugned levy therefore indirectly penalizes a lawful business and defeats the very regulatory framework established by the State.

27.9. Without prejudice to the primary submissions, learned Senior Counsel appearing for the petitioners, submitted that even assuming that the petitioner supplies "gambling services" as alleged, the very basis adopted by the respondents for determining the transaction value is wholly unsustainable and manifestly absurd. It was contended that the correct transaction value, even on the respondents' own hypothesis, can only be the GGR, and not GBV as sought to be imposed through the impugned show cause notices by invoking Rule 31A of the CGST Rules.

27.10. Learned senior counsel submitted that GST is a transaction-based tax leviable on the "supply" of goods or services for a "consideration" within the meaning of Section 2(31), in the course or furtherance of business as contemplated under Section 7 of the CGST Act. The value of such supply is determinable in terms of Section 15(1), which mandates that the transaction value shall be the price actually paid or payable for the said supply. In the context of casino operations, the only determinable and actual consideration received by the casino is the Gross Gaming Revenue i.e., the difference between the total value of chips issued to customers and the total value of chips redeemed by them. It was submitted that GST has accordingly been discharged by the petitioners on such GGR at the applicable rate in full compliance with the statutory framework. It was further emphasized that GGR is a globally accepted and industry-standard method for determining casino revenue.

27.11. Elaborating on the mechanics of casino operations, it was submitted that a customer, upon entering the casino, exchanges legal currency for chips, which are merely tokens representing money and are used for convenience in gameplay. These chips do not constitute "goods" within the meaning of Section 2(52) of the CGST Act. Upon completing of gaming activity, the customer returns the remaining chips to the casino counter and receives the equivalent monetary value. The net amount retained by the casino, after such redemption, constitutes the GGR and represents the only real consideration earned by the casino.

27.12. By way of illustration, learned senior counsel submitted that if a player enters the casino and purchases chips worth Rs. 1,00,000 and upon conclusion of gaming returns with chips worth Rs.30,000, the casino effectively retains Rs. 70,000, which constitutes its revenue. Conversely, if the player returns with chips worth Rs.1,20,000/-, the casino incurs a loss of Rs. 20,000 and receives no consideration whatsoever. These scenarios demonstrate that the casino's revenue is contingent upon the net outcome of play and can only be determined upon completion of the gaming cycle. The aggregation of such net outcomes across all players over a given period yields the GGR, which forms the correct basis for taxation.

27.13. Learned senior counsel further submitted that this methodology has been consistently followed not only under the GST regime but also in the pre-GST era. In the State of Goa, casino operations were subject to entertainment tax under the Goa Entertainment Tax Act, 1961, which was levied on a net revenue basis equivalent to GGR. The continuation of this methodology under GST reflects both consistency and adherence to the principle that taxation must be based on real income or consideration, and not on hypothetical or notional figures.

27.14. Learned Senior Counsel submitted that the respondents' reliance on GBV is fundamentally flawed, as GBV does not represent the consideration received by the casino. GBV artificially aggregates the face value of each bet placed in real time by players, including repeated use of the same chips, inter se wagers

among players, and winnings generated during gameplay. This leads to a gross inflation of the taxable base, entirely disconnected from the actual revenue earned by the casino.

27.15. Learned senior counsel contended that the imposition of GST on GBV through Rule 31A violates the settled principles of taxation, including certainty, clarity, simplicity, and predictability. In this regard, reliance was placed on the decision of this Court in ***South Indian Bank Ltd v. Commissioner of Income Tax***[75], wherein, while quoting Adam Smith, it was held that taxation statutes must admit of no presumption, and nothing can be implied. The Revenue's approach, based on assumptions and extrapolations, runs contrary to these foundational principles.

27.16. Learned senior counsel by way of further illustration, submitted that the GST computed by the respondents on GBV is grossly disproportionate, being multiple times higher than the actual consideration received by the casino and several times higher than the GST payable on GGR. Such a levy is not merely excessive but confiscatory in nature, rendering the business economically unviable. It was argued that this demonstrates the inherent absurdity of the GBV approach, which bears no rational nexus to the alleged supply.

---

[75] (2021) 10 SCC 153

27.17. Learned senior counsel further submitted that the practical application of GBV in a physical casino environment is wholly unworkable. Unlike online gaming platforms, casino operations involve physical movement of players across multiple tables and games, with chips being continuously reused and re-circulated. In such a dynamic environment, it is humanly impossible to track, record, or verify the number of bets placed, the value of each bet, or the outcomes across different tables and games. The respondents' methodology, therefore, is not only legally untenable but also operationally impracticable.

27.18. It was emphasised by the learned senior counsel that the transaction between the casino and the player remains incomplete until the conclusion of gameplay and the return of chips. It is only at that stage that the rights and obligations between the parties crystallize, and the actual consideration received by the casino can be determined. Any attempt to tax intermediate stages of gameplay, based on individual bets, is contrary to the very concept of "supply" and "consideration" under the GST framework.

27.19. In conclusion, learned senior counsel submitted that GBV includes multiple components that do not constitute consideration, including recycled chips, inter-player bets, and winnings generated during gameplay. The respondents' attempt to derive GBV through arbitrary extrapolation further

compounds the illegality and leads to manifestly absurd results. It was therefore submitted that the impugned demand, amounting to Rs. 16,822.97 crores (and exceeding Rs. 33,500 crores with interest and penalty), is wholly unsustainable in law and liable to be set aside.

27.20. Learned Senior Counsel submitted that the respondents' resort to the CGST Rules for determination of value is wholly unwarranted when the transaction value is clearly determinable under Section 15(1) of the CGST Act. It was contended that it is a fundamental principle of taxation that the value of a taxable supply cannot exceed the actual consideration received. GBV bears no nexus either to the taxable event or to the actual consideration received by the casino, and hence cannot form the basis for valuation.

27.21. Learned senior counsel in addition, submitted that the entire basis of the show cause notices issued to the petitioners, rests upon the invocation of Section 15(5) of the CGST Act read with Rule 31A(3) of the CGT Rules. According to the learned senior counsel, the respondents have erroneously proceeded on the assumption that the transaction value in the case of casino operations cannot be determined under Section 15(1) and have therefore sought to travel beyond the statutory scheme to invoke delegated provisions. This approach it was contended, is ex facie erroneous, inasmuch as the exchange of chips at the casino counter, reflecting the amount issued and the amount redeemed, provides a clear, precise, and fully ascertainable measure of the actual consideration received by the casino.

Consequently, there is no occasion to invoke any alternative valuation mechanism.

27.22. Learned senior counsel submitted that Section 15(4) of the CGST Act permits recourse to prescribed valuation rules only where the value of supply cannot be determined under Section 15(1). In the present case, since the value of the alleged supply is readily determinable based on GGR, the invocation of Rules 27 to 31, including Rule 31A(3), is wholly unwarranted. Similarly, Section 15(5) merely enables the prescription of the manner of valuation in specified cases; it does not authorise the creation of a valuation mechanism that is wholly detached from the actual consideration paid. The respondents' reliance on these provisions, therefore, amounts to a clear misapplication of the statutory framework.

27.23. Learned senior counsel submitted that GST demand sought to be levied upon the petitioner company is ex facie absurd, confiscatory and unreasonable. The wrongful invocation of Rule 31A of the CGST Rules has resulted in a demand that is wholly disproportionate to the petitioner's actual consideration. For the relevant period, the GST demand exceeds INR 11,139 crore, which, along with interest and equivalent penalty under the CGST Act, may exceed INR 22,250 crore, whereas the petitioner's GGR, being the actual consideration, amounted to only INR 1,640 crore (on which license fee, income tax, and other applicable levies have already been discharged). Such a demand bears no rational nexus to the taxable event and is therefore manifestly arbitrary.

27.24. Learned senior counsel further submitted that any interpretation other than the one canvassed by the petitioner, namely that GGR constitutes the correct measure of valuation, would lead to consequences that are unjust, arbitrary, and confiscatory. Even assuming arguendo that the activity in question falls within the domain of res extra commercium, a proposition expressly disputed by the petitioner, constitutional protections under Article 14 continue to apply in full vigour, as recognised in ***State of M.P. v. Nandlal Jaiswal***[76]***, Gwalior Distilleries (P) Ltd v. State of M.P.***[77] . Learned senior counsel submitted that the evolution of Article 14 jurisprudence further reinforces this position. In ***Joseph Shine v Union of India***,[78] this Court has unequivocally held that manifest arbitrariness constitutes a standalone ground to invalidate State action.

27.25. Applying these principles, it was submitted by the learned senior counsel that the impugned levy is liable to be struck down as it produces consequences that are plainly confiscatory and disproportionate. In ***R.C. Tobacco (P) Ltd v. Union of India***[79]***, relying on Rai Ramakrishan v. State of Bihar***[80] this Court held that a taxing statute may be invalidated if it is plainly discriminatory, lacks a proper assessment mechanism, or operates in a confiscatory manner.

---

[76] (1986) 4 SCC 566
[77] (2020) 12 SCC 690
[78] (2019) 3 SCC 39
[79] 2005 INSC 431
[80] (1963) SC 1667

27.26. Learned senior counsel that the impugned demand, if sustained, would cause irreparable harm to the petitioner and effectively paralyse its business operations, thereby violating not only Article 14 but also the petitioner's fundamental right under Article 19(1)(g). It was further submitted that taxation cannot be based on presumptions or artificial constructs divorced from economic reality. In ***Vodafone International Holdings B.V. v. Union of India and another*** [81] , this Court underscored that certainty and predictability are foundational to any fiscal regime, and arbitrary valuation mechanisms undermine the rule of law.

27.27. On the statutory plane, it was submitted by the learned senior counsel that the reliance placed by the respondents on Rule 31A is fundamentally misconceived. The subsequent introduction of Rule 31C by Notification No. 51/2023-Central tax dated September 29,2023 (with effect from October 1, 2023) specifically providing a valuation mechanism for casino supplies, clearly demonstrates that Rule 31A was never intended to govern such activities. Rule 31C provides that the value of supply in a casino shall be the total amount paid or payable by or on behalf of the player for: (a)purchase of tokens, chips, coins, or tickets; and (b) participation in any event where such instruments are not required.

---

[81] 2012 INSC 45

27.28. It was submitted that if Rule 31A were indeed applicable to casinos, there would have been no necessity for the legislature to introduce a distinct provision in the form of Rule 31C. The coexistence of both provisions, without any amendment or omission of Ruel 31A, confirms that Rule 31A is confined to betting, gambling or horse racing in a race club and does not extend to casino operations.

27.29. Reliance was also placed on the judgment of the Bombay High Court in ***Indian National Shipowners' Association and another v. Union of India and others*** (Writ petition No. 1364 of 2008 decided on march 23, 2009), wherein, it was held that the introduction of a new taxable entry necessarily implies that the activity was not covered under any pre-existing entry. By parity of reasoning, the introduction of Rule 31C presupposes the inapplicability of Rule 31A to casinos.

27.30. It was further submitted that Rule 31C has not been given retrospective effect under Section 164(3) of the CGST Act. Therefore, for the period prior to October 1, 2023, there existed no statutory mechanism to determine the value of the alleged supply in a casino on the basis of Gross Betting Value (GBV). In the absence of such machinery provisions, the levy itself fails.

27.31. In any event, Rule 31A to the extent it is sought to be applied to the petitioner, is ultra vires the CGST Act and contrary to the rule of law. it is well settled that any substantive provision creating or enhancing tax liability must

operate prospectively and cannot be imposed retrospectively in the absence of clear legislative intent.

28. ***Mr. Kavin Gulati***, learned Senior Counsel for the Petitioner in W.P(C)No.50/2025, at the outset, submitted that the Petitioner operates Casino onboard a vessel called 'MV Majestic Pride' in North Goa and the Petitioner has approached this Court challenging the legality of Rule 31A(3). The measure of tax adopted by Rule 31A(3) has no reasonable connection with the taxable event, i.e., of supply, and is, therefore, confiscatory and manifestly arbitrary, being violative of Art. 14. In other words, Rule 31A (3), insofar as it prescribes that the value of the supply is 100% of the total face value of the bet (i.e., the measure of tax), is ultra vires the provisions of the CGST Act; more particularly, Sec 2(31), 7, 9, 15(1), and 15(5) thereto. Petitioner has earnings/income from 3 streams, viz., (i) Entry fees; (ii) Charges for food and beverages, and other incidentals, such as transport charges through ferry etc., and (iii) An amount which represents the difference between the aggregate value of the chips issued to the customers in a day, less the aggregate value of chips returned to them.

28.1. The learned Senior Counsel proceeded to draw a clear distinction between Rule 31A and Rule 31C of the CGST Rules. While Article 31C, *inter alia*, stipulates that the taxable value in the case of Casinos shall be the total amount paid by a player for the purchase of tokens or chips, Rule 31A(3) of the CGST

Rules mandates that the value be computed based on the "total face value of the bet." The implementation of Rule 31A(3) results in an effective rate of tax that significantly exceeds the ceiling prescribed under Section 9 of the CGST Act. Specifically, Section 9 permits a maximum levy of 20% CGST, which, when combined with an equivalent rate under the Goa GST Act, results in a total cap of 40%. However, under Rule 31A(3), the methodology for valuation leads to an effective tax incidence amounting to 155% of the Gross Gaming Revenue (GGR). Rule 31A(3) is both colourable and confiscatory in nature, and manifestly arbitrary. A delegated or subordinate legislation, though facially enacted within the scope of authority conferred by the parent statute, is liable to be struck down if it operates as a colourable device—used as a pretext to circumvent either the constitutional guarantees under Part III or the express provisions of the parent enactment.

28.2. On the strength of these authorities, learned senior counsel contended that Rule 31A(3) by treating the entire face value of all bets or deposits as the taxable value, artificially enlarges the measure of the levy far beyond the actual consideration received by the platform. Such a mechanism, it was argued, destroys the nexus between the taxable event and the value of supply, thereby rendering the levy manifestly excessive and arbitrary. Reliance was also placed

on ***K.T. Moopil Nair v. State of Kerala***[82] ***and Jindal Stainless Ltd. v. State of Haryana***[83]**.**

28.3. Thereafter, the learned Senior Counsel submitted that there is no legislatively prescribed machinery to determine the face value of multiple bets placed at a Casino, rendering Rule 31A(3) arbitrary and violative of Article 14. Once a customer enters a Casino, he may participate in games such as roulette simultaneously at various tables. Furthermore, more than 15 individuals may place varying amounts in bets at the same table. In the absence of any mechanism to monitor and record the bets or the betting amounts of each player, it becomes impossible for the Casino to ascertain either the number of bets placed or the value of such bets. In other words, there is no machinery either in the CGST Act or in the Rules, nor any formula on the basis of which the face value of a bet can be calculated. To fortify this argument, he referred to ***KT Moopil Nair*** (supra) wherein it was held that the absence of a statutorily prescribed machinery to calculate a tax, which leaves it entirely for the executive to devise such a machinery as it thinks fit, would be arbitrary, and, hence, unconstitutional. Applying the ratio to the present case, he submitted that GST authorities have adopted an *ad-hoc* and arbitrary basis for arriving at the face value of the bets

[82] (1961) 3 SCR 77
[83] (2017) 12 SCC 1

purportedly placed in the Petitioner's Casino during the relevant assessment period.

28.4. Learned Senior Counsel, therefore, submitted that while in the case of the Petitioner, the bet value has been estimated by dividing the GGR by the ***'Hold Ratio'*** and in case of other assesses, such as Delta, the face value of the bet has been estimated by dividing the GGR by the ***'House Margin'***. Likewise, Revenue is using different formula for Assessees who are in the same business model.

28.5. Referring to the types of methods used by the Revenue, viz., GGR, Hold Ratio and House Margin, the learned Senior Counsel categorically argued that in the absence of a legislatively defined basis/formula under the CGST Rules, 2017, assessing officer/adjudicating authority cannot determine the face value of multiple bets, when, in fact, it is impossible to calculate the same in real-time, given the setup of a Casino, and considering the fact that a single customer may be placing different bets on different tables simultaneously. In the case of a lottery, it is possible to determine the face value of the supply in terms of Rule 31A(2). There, it is possible for the organiser of the lottery to know the tax liability in advance, and accordingly fix the value of the ticket to cover its tax liability and recover it from the purchaser of the ticket. If this organiser intends

to earn a profit of, say 10%, he would fix the value of the ticket after taking into account the amount of money which each ticket would contribute to the total prize money, plus overheads and profits to arrive at the value of that ticket. On this value of the ticket, the rate of tax would be applied to arrive at the total value of the ticket for which it would then be sold to the customer. An illustration to explain this has been given in ***Skill Lotto Solutions*** (supra). Thus, even though the face value of the ticket is Rs. 100, the value for the purposes of GST would only be Rs. 78.125, so that the burden can be passed on to the ultimate purchaser.

28.6. Learned Senior Counsel, then, drew an analogy with Rule 32(3) and Rule 32(4) of the CGST Rules, wherein the Government has prescribed a specific mechanism for determining the value of supply. It is not the entire amount received from the customer that is treated as the value of supply, but only a specified percentage thereof. This amount, it is submitted, represents the gross value of the supply. This position was contrasted with Rule 31A(3), which merely provides that the *"face value of the bet"* shall be taken into account, without laying down any methodology for its computation. This absence of a defined formula has led to interpretational difficulties. Acknowledging this gap, the Government, in 2023, amended the framework and introduced a fixed formula, whereby the amount actually paid by the customer at the time of entry is deemed to constitute the value of supply for the purpose of levy of GST.

28.7. By way of alternative argument, the learned Senior Counsel advanced his submissions that the insertion of Rule 31C indicates that, prior to 01.10.2023, there existed no machinery provision for calculating the value of the supply. This contention is further fortified upon a perusal of the 51st minutes of the GST Council dated 02.08.2023, wherein it was expressly noted that an amendment to the Rules was considered necessary to provide a mechanism for valuing the supplies made by Casinos. Moreover, a recommendation was made to exclude from the total value of the supply, the value of bets entered into by players using the winnings earned by them from previous bets and games. This recommendation was accepted, as is evident from a reading of the Explanation to Rules 31B and 31C. In certain games, Casinos merely function as platform providers and do not incur any financial loss, as they consistently collect a fixed service charge or platform fee irrespective of the outcome of the game.

28.8. Next, the learned Senior Counsel submitted that Rule 31A(3) travels beyond the mandate of s. 2(31), 7, 9 & 15. That there must be a nexus between the taxable event and the measure. Section 9 provides for a levy of tax on 'supply'. The term 'supply' has not been defined under the Act, but the scope of supply has been defined to include all forms of goods or services agreed to be given for a 'Consideration'. The term 'consideration' as per Sec. 2(31), *inter alia,*

includes 'any payment' made or to be made 'in respect of' the supply of goods or services or the monetary value in respect of such services. Thus, the consideration referred to in Section 7 is inextricably linked to the subject matter of the supply (Casino services in the present case) and nothing more. The proviso to Section 2(31) provides that a deposit made in respect of such supplies shall not be treated as payment, unless the supplier "*applies such deposit as consideration for the said supply*". Applying the said provisions, he made the following submissions:

a) In the present case, the money deposited to get access to the chips is held by the Casinos in trust in a fiduciary capacity, and is, therefore, in the nature of a deposit under Section 2(31) of the Act;

b) It is only the difference between the aggregate value of the chips issued to the customer in lieu of the deposit received and that which is returned, which represents the consideration/gross value of the supply rendered by the Casino;

28.9. Learned Senior Counsel then referred to Section 15(4) of the CGST Act, 2017 r/w Rules governing valuation are set out under Chapter IV, specifically Rules 27 to 31 of the CGST Rules, 2017 and submitted that the provisions clearly demonstrates that the method for determining value is fundamentally connected

to the nature and subject matter of the supply itself. He also referred to Section 15(5) and contended that the *non obstante* clause in Section 15(5) is of limited scope. It merely overrides the valuation provisions under Sections 15(1) and 15(4), but it does not and cannot override the charging provisions contained in Sections 9, 7, and the definition of 'consideration' under Section 2(31). In this context, the learned Senior Counsel argued that Rule 31A of the CGST Rules, which provides that the value of actionable claims (such as bets) shall be 100% of the face value of the bet, goes beyond the mandate of Sections 2(31), 7, and 9. This Rule, in effect, permits taxation on an amount that exceeds the gross turnover or actual consideration received by the supplier, thereby violating the statutory framework of the Act.

28.10. In support of this proposition, reliance has been placed on the judgment of this Court in ***Union of India v. Intercontinental Consultants & Technocrats Pvt. Ltd.***[84]**,** wherein this Court interpreted Section 67 of the Finance Act, 1994 (the valuation provision under the service tax regime) and held that the value of taxable services must be confined to the amount charged for the actual service rendered. It was categorically held that any other amount received, unrelated to the service rendered, could not be included for the purpose of valuation. A similar

[84] (2018) 10 SCR 309

view was taken by this Court in ***Commissioner of Service Tax v. Bhayana Builders (P) Ltd.***[85]

28.11. Learned Senior Counsel summarized his arguments by contending that value of supply cannot transcend the consideration received for such supply and Revenue streams in all three periods have remained the same. By changing the yardstick of measure of tax, the Government is trying to collect more tax even though the rate of tax remains the same. By expanding measure of tax divorced from the supply, the rate of tax is being made redundant. Therefore, the effective rate of tax is crossing the statutory limit as prescribed in Section 9. Since there is no legislatively prescribed machinery to determine the face value on multiple bets, renders 31A(3) arbitrary. Rule 31A(3) travels beyond the mandate of Section 2(31), 7, 9 and 15 of the CGST Act, i.e., beyond the mandate of statutory provisions. Neither Section 15(5) nor Section 164 permits the government by subordinate legislation to expand the meaning of the term consideration. Amount received from a player is in the nature of a deposit. Hence, there is an obligation to return it at the end of the service of supply.

[85] (2018) SCR 1128.

29. ***Mr. Tarun Gulati***, learned Senior Counsel appearing for the Petitioners (Casinos operating in Goa and Sikkim) in WP (C) No. 51 of 2025 and T.C. No. 53 of 2024, commenced his submissions by explaining the factual landscape of Casino operations. In a Casino, one or more players place bets in a game. The face value of the bet is returned to the player if he were to win. Additionally, the winner is entitled to the winnings from the game which are decided on the basis of several factors including the nature of the game, the quantum of bets placed in the game and the return or the winnings from the game which may be pre-decided. The winnings may or may not be equal to the face value of the bet i.e. it cannot be assumed that the value of a 'right to win' is equal to the face value of a bet. The face value of the bet is never the 'consideration' which either accrues to the Casino or is received by the Casino. Unless an amount accrues to a 'Casino', it can never be consideration in its hand. Thus, if Section 15(1) of the CGST Act 2017 Section 15(1) of the were to apply, the face value of a bet can never be the 'transaction value' for a Casino. There are several kinds of games played in a Casino. In some games, players play against each other and the winner is paid using the monies staked by the losers and the Casino is only entitled to a small percentage of the 'pot' which is deducted as a 'house fees' or commission as it only facilitates the game. In these types of games, to charge the Casinos on the amount which it is neither entitled to receive nor is ever received by it is arbitrary and unfair. In the other games, where players also play 'against the house', settlements between winners and losers are made on the table itself - while the

bets of the losers are used to pay the winner, if that falls short, the Casino pays the balance to the winners from its own pocket. Only the net amount (difference between the losing amounts staked by players and winning amounts disbursed to players over a given period) is either paid or received by the Casino. In such situations also, the total bet amount is never receivable or received by the Casino to make it consideration in its hands.

29.1. Learned Senior Counsel emphasised that what is being valued here, is the right to win and not bet value and once a game is over, the Casino pays to the winner the face value of the bet and the winnings. The face value of the bet already belongs to the winner and is merely returned to the winner. As noted above, if there is more than one player, the bets of the losers are used to pay the winner. If the losers' bets fall short, the Casino pays the balance to the winners from its own pocket. If the losers' bets exceed the payment made to the winners, the excess is received by the house. Therefore, what is actually accrued or received by the Casino is only the net excess which is also termed as 'Gross Gaming Revenue' ("GGR") in commercial parlance.

29.2. Learned Senior Counsel, while reiterating the earlier submissions advanced in the online gaming batch and without prejudice to the contention that the petitioners merely provide facilitation services and do not transfer actionable

claims, submitted that GST can be levied only on a "supply" made for "consideration" as contemplated under Sections 7 and 2(31) of the CGST Act.

29.3. Referring to Sections 9 and 15 of the CGST Act, it was contended that GST is chargeable on the "transaction value", namely the "price actually paid or payable" for the supply. Reliance was placed on Union of India v. Mohit Minerals, wherein this Court held that Sections 15(4) and 15(5) operate only where valuation cannot be determined under Section 15(1). According to learned senior counsel, the statutory measure of levy under Section 15(1) is the amount which the supplier is entitled to receive as consideration for the supply. It was therefore argued that the face value of a bet or stake can never constitute the "price" for any supply made by the casino or gaming platform. Even assuming that a "right to win" amounts to an actionable claim capable of being taxed, the platform is not entitled to appropriate the entire stake amount as its own consideration. The only amount retained by the platform is the platform fee or commission, and hence, only such amount can constitute the taxable value for the purposes of GST.

29.4. Learned Senior Counsel further submitted that the face value of the bet is not the "price" for the "right to win". The "right to win" can only be arrived at through probabilities, and thus is not created at the time of the sale of chips. Accordingly, the face value of the chips cannot constitute the transaction value. A transaction involving only money can never amount to a supply. For instance,

if a Casino were to charge a commission, say, 10% on the sale of chips, then such a commission would constitute consideration and would be liable to GST. However, in the absence of such a charge or commission, the mere exchange of money for chips is a transaction in money, and not a supply of goods or services. As such, it is not taxable and cannot be treated as transaction value under Section 15(1) of the CGST Act. The face value of the bet can never be the "price", and can never be the price for the chance to win, which is the true subject matter of valuation. Only the GGR represents the "price" received by the Casino for its supply to players, inasmuch as it is only the GGR amount that actually accrues to the Casino and is both known and ascertainable. Once the measure prescribed under the GST statute is known, there is no scope for estimation or for providing a measure that has no nexus with the transaction value by invoking the CGST Rules. Moreover, the CGST Rules must be framed in conformity with the parent statute, namely the CGST Act. The scheme under Chapter IV of the CGST Rules reflects that Rules 27 to 30 have been drafted in consonance with Section 15(1) of the Act and are intended to derive a value that closely approximates the "price" a supplier would have actually received for the supply in question. Only Rule 31A prescribes a measure which has no nexus with the "price" of the supply. The "price" for any supply of goods or services is the amount that a recipient would reasonably pay for such a supply. The 100% face value of the bet is not the price that a player would pay in order to procure the right to win, a point which, he submitted, is elaborated below.

29.5. Learned Senior Counsel submitted that Rule 31A(3), at best, provides a presumptive basis for taxation. However, such a Rule cannot be applied mandatorily, particularly when the actual value accrued to the Casino is known and determinable under Section 15(1) of the CGST Act. Section 15(4) clearly provides that where the value of supply cannot be determined under sub-section (1), then and only then, shall it be determined in such manner as may be prescribed, i.e., through the CGST Rules. It follows, therefore, that where the price is ascertainable, valuation must be done only under Section 15(1). In such cases, resort to CGST Rules is impermissible. In the facts of the present case, the amount actually charged and received by the Petitioner is ascertainable, and hence, the value of the supply must be determined in accordance with Section 15(1). The value that changes hands between the winners and losers of a game is neither received nor accrued to the Petitioner and cannot be regarded as consideration for any supply made by the Petitioner. Thus, the transaction value as per Section 15(1) is only the GGR, and not the value of the chips purchased. The purchase of chips is merely a transaction in money, which is not subject to GST. In support thereof, he referred to the definition of 'goods' under Section 2(52) and 'services' under **Section 2(102)** of the CGST Act, both of which **exclude 'money'** from their scope.

29.6. The learned Senior Counsel contended that at the time of purchasing chips, there is merely an exchange of money for physical counters which are

representative of money itself. This transaction is clearly one in money, not a supply of goods or services. The chips can be immediately exchanged back for money, and in essence, the bets could also have been placed using real cash i.e., chips are provided only for convenience and function as a substitute for money. This is akin to other monetary transactions, such as obtaining a demand draft in exchange for cash, or exchanging a high-denomination note for a lower denomination one. Furthermore, he stressed that the supply being valued is the chance to win, not the chips themselves. Therefore, money paid for chips cannot constitute the transaction value of the "chance to win", especially since at the stage of purchasing chips, no chance to win has even been created. Despite the notification of Rule 31A(3), the Petitioner's payment of GST on its GGR was correct and lawful.

29.7. Learned Senior Counsel then pointed out that Rule 31A(3) uses a language which appears to be mandatory in nature by providing that the value of supply of actionable claim in the form of chance to win "shall be" 100% of the face value of the bet. The use of such language indicates that there is no possibility of ascertaining the value of supplies under Section 15(1) in all cases where actionable claims are supplied. It virtually seeks to create a deeming fiction by which the primary basis under Section 15(1) of the price of a supply being the measure stands negated in all cases. Delegated legislation cannot prescribe a new measure contrary to the statute. Secondly, it creates an alternative measure which

has no nexus with the price of the supply. Furthermore, Rule 31A(3) an alternative measure with no nexus to the actual price of supply, and is founded on a false presumption, namely, that Casinos receive 100% of the face value of all bets. In reality, bets are placed simultaneously by players, remain on the table, and are settled between winners and losers. Only a net amount, if any, is received by the Casino. Therefore, in the absence of receipt of the entire bet value by the Casino, treating 100% of the bet value as the 'price' of the supply is arbitrary and contrary to how Casino gaming operates.

29.8. Learned Senior Counsel, thus, reiterated that in terms of Section 15(1) of the CGST Act the measure of tax is the 'transaction value', any presumptive basis of valuation which forbids the assessee to pay tax on actual basis is wholly arbitrary and violative of Article 14 of the Constitution. Reference is further made to the decision in the case of ***Union of India and Another v. A Sanyasi Rao and Others***[86]**,** wherein this Court held that while collection of Income Tax under Section 44AC of the Income Tax Act, 1961 on presumptive basis in order to ensure tax compliance is not invalid in law, however, such presumptive basis of valuation cannot disentitle the assessee from the benefit of deductions provided for in the statute and reliefs available to other similarly placed assessees. Thus,

[86] (1996) 3 SCC 465

the primary basis in the statute cannot be nagged by creating a mandatory presumptive basis of valuation.

29.9. Learned Senior Counsel also made a reference in this regard to the decision of the Gujarat High Court in the case of ***Munjaal Manishbhai Bhatt v. Union of India***[87]**,** wherein it has been held that in terms of Section 15(1), price actually paid or payable is the value of supply. Thus, where price 'paid or payable' is available, tax is payable on said price. Gujarat High Court in this case was considering the validity of Entry No. 3(if) of the Notification No. 11/2017-Central Tax (Rate), dated 28th June 2017 whereby on a presumptive value of land in a composite contract of sale of land along with construction of property had been determined as 1/3rd of the total consideration payable for the composite contract. However, Gujarat High Court striking down the validity of the notified valuation held that the presumed value shall not bind assessee in cases wherein "actual value' of the land is separately agreed under a contract. Rule 31A(3) of the CGST Rules mandate the assessee to ignore the actual transaction value despite such value being available and to discharge GST on a presumptive value, the same is arbitrary and ultra vires the CGST Act and ought to be struck down.

[87] 2022 SCC OnLine Guj 2593

29.10. Learned Senior Counsel further contended that in the present case, even Section 15(5) of the CGST Act is under challenge, primarily due to its non-obstante clause. If this non-obstante clause is interpreted in a manner that nullifies or overrides Section 15(1), which defines valuation based on the transaction value then that part of Section 15(5) would be liable to be struck down, not only on the ground of arbitrariness but also on the ground of excessive delegation. The executive cannot be permitted to frame rules that have no nexus or correlation with the mandate under Section 15(1). The scope of rule-making cannot travel beyond the primary statutory mandate of "transaction value" and the "price" for the supply.

29.11. Learned Senior Counsel further reiterated that even if it is presumed that the Petitioner is engaged in the supply of actionable claim in the form of chance to win', the 100% of the face value of bets placed do not reflect the value of such alleged supply since when a bet is placed, there is a 'chance to win' and an equal 'chance to lose' and what is sought to be valued is not the "bet" *per se*, but the "chance to win," and therefore, the enquiry must focus on the price a person is willing to pay to procure such a chance. Every time a bet is placed, there simultaneously comes into existence both a chance to win and an equal chance to lose. If the chance to win can be categorised as goods and becomes an item of trade, the valuation will have to be what a person is willing to pay to procure that right. However, as the chance to lose, which is equal to the chance to win is also

embedded in the chance to win, there is zero net value to the chance to win as the probability to lose is also 50%. The Casino does not receive the bet as consideration. The moment a right to win is created, the Casino incurs a liability to pay the winner the amount of winnings. As far as the Casino is concerned, the amount of bet (receivable) is set off by the amount payable by it (payable). Thus, the amount of bet never unconditionally accrues in favour of the Casino but is offset by a simultaneous liability that gets created to make a payment. In other words, if one were to treat the "chance to win" as a tradable commodity, its market value would effectively be zero, since the risk of loss cancels out the potential gain. Accordingly, it is illogical to assign any positive transaction value to the chance to win at the moment of placing a bet, especially when there is no guaranteed outcome or entitlement. Using a simple example, he explained that if a player bets Rs. 100 on outcome A, the Casino immediately incurs a contingent liability to pay Rs. 100 in winnings. Thus, at the moment of placing the bet, the Casino has not received any net income or consideration. There is no accrual or receivability at this stage, and taxing the Casino on this amount lacks any factual or legal basis.

29.12. To further illustrate the submission, the learned Senior Counsel further drew an analogy from cases under the Insolvency and Bankruptcy Code (IBC). In the case of distressed companies, where liabilities are equal to or exceed the assets, no rational party would pay to acquire such an entity unless the liabilities

are first extinguished. Resolution applicants offer consideration only for the net value, i.e., assets minus liabilities, and not for the gross value of assets in isolation. Applying this logic here, if a player has a 50% chance to win Rs. 10 and a 50% chance to lose Rs. 10, then the net value of that chance is effectively zero, just as the net value of a distressed company would be nil where the liabilities fully offset the assets. No rational party would pay a positive price for such a chance, as the embedded risk completely offsets the potential reward. Accordingly, the valuation of the "chance to win" must necessarily account for the equal and opposite chance to lose, rendering it illogical to assign a standalone positive transaction value to such a chance for the purposes of GST. Thus, the presumption that the bet amount constitutes consideration for the supply of a right to win is fundamentally flawed and can never be regarded as the 'price' that somebody would pay to the Casino to supply a right to win.

29.13. Learned Senior Counsel also contended that the *time of supply* is also of relevance. By way of illustration, he states: "A person enters a Casino and purchases chips. At that stage, there is no supply of a 'chance to win.' It is only when bets are placed that a chance to win arises. Once the game concludes and the results are declared, the chance ceases to exist." Even during the game, the chance to lose exists, and there is no assured receivability of any amount. The Casino may or may not receive a net gain, and even where it does, it is only after settling payments to the winners. As stated earlier, if the winnings exceed the

losses, the Casino is required to make payouts exceeding the amounts received. Thus, the "chance to win" is a transient and uncertain variable that fluctuates during gameplay. Bets can change within seconds, and players may play against the house or against each other. It is, therefore, impossible to account for such dynamic activity with precision. At the stage when bets are placed, the amounts are not received by the Casino, and no tax liability arises. What is ultimately deposited at the end of the day constitutes the Casino's earnings, its gross revenue, net of expenses, and it is only this amount that can be subjected to tax. There must at least be contractual receivability at the stage of the bet for any tax to be imposed. If the transaction involving a chance to win is treated as a supply, then the Revenue must establish what is offered in commerce as consideration for such a chance. The proposition must be tested on a wider commercial scale: if a "chance to win" were to be treated as an item of trade, what would rational parties pay as consideration for it. Accordingly, the transaction value cannot be determined at the point when chips are purchased but only during the course of play, and even then, it is highly indeterminate.

29.14. Moreover, the learned Senior Counsel submitted that Rule 31A(3) is practically impossible to comply with. Across all show cause notices issued in such cases, there is not a single instance where the actual total value of bets has been computed based on physical verification of what was on the table. Instead, assessments have been made solely on the basis of probabilities.

29.15. Learned Senior Counsel further submitted that Rule 31A(3) of the CGST Rules is further ultra-vires on account of "impossibility of performance'. In this regard it is submitted that in case of physical Casinos, settlement of accounts of the Casino mostly takes place at the end of the day and not game-wise. This is so as against chips once purchased by a player, generally multiple rounds of game(s) are played by him, and it is only when the player withdraws from further gaming that settlement takes place. No accounts are kept of each bet placed by a player nor is it possible to keep such accounts. To the best of the knowledge of the Petitioner, there is not even a single case where the actual betting value of every player in every game is available. It is for this reason that in every show cause notice, the Respondents have gone on a notional basis to calculate the value as per Rule 31A. The notional value is based on assumed industry averages and has no basis in fact. Thus, on this account also Rule 31A(3) of the CGST Rules is liable to be declared arbitrary. He referred to legal doctrine, *'lex non cogit ad impossibilia',* which essentially provides that 'the law cannot compel the assessee to do what he cannot possibly do'. Reference in this regard is placed on the decision of this Court in the case of ***Krishnaswamy S. PD & Anr. v. Union of India and Others***[88]. Further reference is also made to the decision of the Gujarat High Court in ***State of Gujarat v. S.A. Himnani Distributors (P.) Ltd.***[89]**,** wherein

[88] (2006) 3 SCC 286
[89] 2013 SCC ONLINE GUJ 7330

the High Court dealt with issue of disallowance of input tax credit qua the goods destroyed by the flood and placing reliance on *'lex non cogit ad impossibilia'* held that the law cannot compel the assessee to do what he cannot possibly do, i.e., comply with the conditions of availing input tax credit on the goods destroyed in flood and thereby ruled in favour of the assessee.

29.16. Without prejudice to his submissions, the learned Senior Counsel submitted that Rule 31A(3) of the CGST Rules is ultra vires even for the reason that it completely ignores the 'doctrine of diversion of income by overriding title' which in principle states that when there is a pre-existing liability to pay which attaches at the source of a receipt, the amount never accrues in favour of the person. The principle suggests that if a person is entitled to receive Rs. 100 but at the very inception, there is a contractual liability linked with the receivable that the Rs. 100 has to be paid to another person, Rs. 100/- cannot be said to have accrued in favour of its recipient, even if physically received – because it stood diverted at the very source by an overriding title. It is a well settled principle of taxation law that where a receipt is accompanied by a pre-existing obligation to pay that amount to another person, the receipt never accrues in favour of the recipient and stands diverted by overriding title at the very source. This principle has been explained by the Privy Council and this Court in the context of the Income Tax law. It has been explained that the doctrine of diversion of income by reason of an overriding title applies when, by reason of an overriding title or

obligation, income is diverted and never reaches the person unconditionally in whose hands it is sought to be assessed. The rationale for not taxing the said income in the hands of that person is that the profit earned by him was not really his profit but it belonged to somebody else and the assessee had no title to it. In the context of charge of GST on Casinos, the said principles would squarely apply as the value of the bet placed by player is accompanied by an overriding liability to pay to the winner the amount of bet placed by him as well as the guaranteed winning amount. In view of the above, the value of the bet is never unconditionally receivable by the Casino, it is always accompanied by a liability to pay. The liability is embedded in the entire transaction. Therefore, the value of the bet never accrues to the Casino. Learned Senior Counsel made a reference in this regard to the decision of this Court in the case of ***CIT v. Sitaldas Tirathdas***[90]**.**

29.17. In view of the aforesaid submissions, which will also apply to cases of online gaming, the learned Senior Counsel concluded that the entire basis of Rule 31A(3) is flawed, contrary to the provisions of the CGST Act, unworkable and manifestly arbitrary and deserves to be struck down and the show cause notices issued under Rule 31A(3) deserve to be struck down.

---

[90] [1961] 41 ITR

30. ***Mr. Gopal Sankaranarayanan***, learned Senior Counsel appearing for Casino submitted that he would adopt all the arguments made by Senior Counsels Sridharan, Tarun Gulati and Kavin Gulati. Dealing with the scope and ambit of Rule 31A, the learned Senior Counsel focused on Article 279A of the Constitution of India, particularly clause (6), and submitted that there must be a harmony between the structure of GST and the development of the national market for goods and services.

30.1. Learned senior counsel further submitted that the demand based on GBV goes not only against the provisions of the GST Act but also against Article 279A and if this Court agrees to tax the Casino based on GBV, then the entire industry will be destroyed.

30.2. Refuting the argument of the learned ASG, the learned Senior Counsel contended that the correct interpretation of Rule 31A is that it only applies to horse racing in a race club and betting and gambling that takes place therein, and not to Casinos.

30.3. Learned Senior Counsel submitted that old (h) provided two concepts, viz., (i) Totalisator, and (ii) Bookmaker- both are services provided to the race clubs and new (h) adds a new concept, which is "license to book maker". Reliance was placed on the decision of this Court in the case of ***Lakshmanan*** and ***Bangalore***

Turf Club Ltd v. ESI[91] which has accepted the distinction between bookmaker and totalizator.

30.4. Learned Senior Counsel stressed that both the decision read with the language of Rule 31A(3) (which uses the word ***"in a race club"***) proves that 31A(3) only applies to horse racing clubs. So, *nomen juris* is- totalizator and bookies are linked to horse race, which the Department is trying to destroy by interpreting Rule 31A(3) to include Casino. Even if this Court were to hold that the assessees are engaged in tax evasion, no liability can be fastened upon them in the present matter, as the legislature has not expressly included Casinos within the ambit of Rule 31A. In support thereof, learned Senior Counsel referred to the decision in ***Commissioner of CGST v. Safari Retreats (P) Ltd.***[92]

30.5. In response to a query from this Court regarding the significance of the expressions 'betting' and 'gambling' as used in Rule 31A(3), learned counsel submits that the terms 'betting', 'gambling', and 'horse racing' are contextually tied to the activities that occur within the premises of a race club. A race club is a venue where multiple activities take place, including but not limited to: (i) horse

---

[91] (2014) 9 SCC 657 (31)
[92] (2025) 2 SCC 523.

owners bringing their horses to participate in races upon payment of a prescribed fee; (ii) jockeys riding the horses during such races; (iii) individuals entering the club, upon payment of an entry fee, purely for the purpose of viewing the races as a form of entertainment; and (iv) persons who enter the premises with the intention of placing bets either through licensed bookmakers or by using the totalizator system. That distinct licenses are issued for each of the aforementioned activities. In light of this composite arrangement and the nature of operations within a race club, the legislature, in its wisdom, deemed it appropriate to specifically refer to betting and gambling activities conducted within a race club under Rule 31A(3). Mere horse racing in a race club is not an activity; it is the betting or gambling in a horse race that makes the act an activity for the purpose of tax. Thus, the location of the race club becomes germane for betting, gambling, or horse racing.

30.6. Upon a query from this Court with regard to the concluding expression in Rule 31A, learned Senior Counsel submitted that the expression "Shall be 100% of the face value of the bet" is meant for bookies and the expression "the amount paid into the totalizator" is for horse racing. He also made an important distinction that betting or gambling can happen in a race club and also in a private space (like a home). "In a race club"- is important for the purpose of interpreting Rule 31A.

He referred to Section 2(17) again and submits that Parliament uses the expression "in a race club".

30.7. In other words, location is important. Learned senior counsel also referred to Rule 31C, wherein the expression "in a Casino" is used. Hence, the learned Senior Counsel contended that Rule 31A(3) is limited to the activities at the race club. Subsequently, added 31B and C deals with Casino and online gaming. For the past 19 years- both during the Service Tax regime (14%) and the GST regime- till 2022 (28%), Casinos were paying tax in accordance with the law. And it was only in 2023, SCN was issued alleging evasion of tax and violation of Rule 31A. He made one important argument that the subject SCN was issued 2 days before the date of notifying Rule 31C.

30.8. Moving further, the learned Senior Counsel concurred with the argument of Mr. Kavin Gulati, learned Senior Counsel, by submitting that the entirety of the transaction does not stop till the token is given back. He also adopted the line of argument advanced by Dr. Abhishek Manu Singhvi, learned Senior Counsel, asserting that it is impossible to track, record, and account for the number of debts and, number of games played by each player in a Casino.

30.9. When this Court inquired as to whether invoices are generated for each game played in the Casino, the learned Senior Counsel answered in the negative and stated that the records are maintained at the stage of encashment, i.e, buying and returning of chips. All the transactions made at the time of entry and exit are fully digitalised, recorded, audited and maintained. The Petitioners (Casinos) are a listed company and a reporting entity under the PMLA guidelines.

30.10. Referring to sections 2(87), 15(4) and 15(5) of the CGST Act, it was contended that any amendment or insertion in the rules pertaining to Casinos must be preceded by a recommendation of the GST Council, which is a necessary precondition under the statutory scheme. In respect of Rule 31A of the CGST Rules, no recommendation or specific consideration was ever made by the GST Council concerning Casinos. The statutory framework necessitates a prior application of mind by the Council to the subject matter, particularly when it relates to the valuation of services such as those offered by Casinos. However, such deliberation was entirely absent. Only reference available is a passing mention in the minutes of the 25th GST Council meeting, wherein the Fitment Committee, at the behest of the State of Maharashtra, placed agenda item No. 10 before the Council, which pertained exclusively to race clubs, not Casinos. Therefore, even if the validity of Rule 31A is sought to be traced to Section 15(4) of the CGST Act, such reliance is insufficient. The Department cannot take the route of Section15(5), as they are constrained by the argument advanced by Mr.

Sridharan under Section 15(5), which mandates a prior notification identifying specific services viz., a requirement that was admittedly never fulfilled. Consequently, the department defaults to invoking Section 15(4); however, even under that provision, the phrase "as may be prescribed" necessitates a prior recommendation of the GST Council, which, again, was not obtained in the case of Casinos.

30.11. Learned Senior Counsel then submitted that it is in this context that the Department relies on the GST Council's prior recommendations in relation to lotteries and race clubs to justify the insertion of Rule 31A. However, such justification is misplaced, as those recommendations did not extend to Casinos. Notably, the Council's explicit recommendations concerning online gaming and Casinos only came subsequently, which formed the basis for the introduction of Rules 31B and 31C. This sequence of events further underscores the fact that Rule 31A, insofar as it applies to Casinos, lacks the requisite statutory foundation. In other words, GST Council at no point in time said that the value of the supply of an actionable claim for Casino is 100% of the face value of the bet.

30.12. Further, the learned Senior Counsel reiterated the principles that a tax must be reasonable, non-arbitrary and not confiscatory and any tax that exceeds the value of the transaction is manifestly arbitrary and violative of Article 14. He

then referred to the decisions, viz. ***CIT v. Pepsi Foods Ltd.***[93]***, and State of Kerala v. Haji K. Kutty Naha***[94]**.**

30.13. Learned Senior Counsel concluded that the insertion of 31B and 31C was only meant to plug a loophole. 31C was introduced with a specific mode of calculation for Casinos, and with a non-obstante clause, making it clear that it was not covered under Rule 31A. He then referred to the decision of ***MM Aqua Technologies v. CIT***[95]**.** The issue in this case was- claiming deduction u/s 43B of the IT Act on the issuance of debentures in lieu of interest accrued and payable to financial institutions. The learned Senior Counsel further submitted that all three principles laid down in the said decision would apply to the present facts, making it clear that Rule 31B and Rule 31C are not clarificatory but prospective. He further argued that the very fact that for the past 20 years the GGR formula has been applied without any dispute or issue (including after the insertion of Rule 31A) and that Rule 31C has now provided reinforcement to the mechanism clearly shows that GBV has never been contemplated. He referred to the decision in ***K T Moopil Nair*** *(supra)* to contend that the tax sought to be levied under Rule 31A is confiscatory.

---

[93] (2021) 7 SCC 413(3)
[94] (1969) 1 SCR 645 (5)
[95] (2021) 10 SCC 816

30.14. Learned Senior Counsel also apprised this Court that as many as 24 countries across the world adopted the GGR formula for taxing Casinos, such as France, Germany, Italy, USA, Mauritius, New Zealand, Singapore, South Africa, UK and so on.

31. ***Mr. Awanish Kumar,*** learned counsel appearing for the petitioner in T.C (C) No. 36 of 2024, submitted that the impugned show cause notice dated 01.10.2023 issued under Section 74(1) of the CGST Act, 2017 is wholly without jurisdiction, arbitrary and violative of Article 265 of the Constitution of India, as it seeks to levy and collect tax without authority of law. It was contended that the demand of Rs. 33,50,50,365/- is ex facie disproportionate and untenable, particularly when the petitioner's total turnover during the relevant period is approximately Rs. 1 crore thereby reflecting complete non-application of mind and a manifestly inflated computation of tax liability.

31.1. Learned counsel submitted that the petitioner is merely a technology platform provide facilitating online gaming services and does not itself engage in betting or gambling. The platform enables users to participate in games, either free or paid, and the petitioner earns only a nominal platform fee or commission for such facilitation, on which applicable GST has already been discharged. The amounts deposited by users form part of a pooled fund, which is redistributed among the winning participants and hosts, and does not constitute revenue or

consideration accruing to the petitioner. Thus, the respondents have fundamentally erred in treating the entire "buy-in" or pooled amount as the taxable value of supply.

31.2. Learned counsel submitted that all games hosted on the petitioner's platform, including fantasy sports, rummy, quiz-based games and other skill-oriented contests, are games of skill and not games of chance. Reliance was placed on ***RMDC-I and K. Satyanarayana*** to contend that competitions involving substantial skill fall outside the ambit of "betting and gambling", and that the mere presence of stakes does not convert a game of skill into gambling.

31.3. It was contended by the learned counsel that the respondents have erroneously classified the petitioner's activities as supply of actionable claims in the nature of betting and gambling. Under Section 7 read with Schedule III of the CGST Act, actionable claims other than lottery, betting, and gambling are excluded from the scope of supply. Since the games hosted by the petitioner are games of skill, they do not fall within the exception. In any event, any actionable claim exists only inter se between participating players and not between the petitioner and the users, and therefore no taxable supply of actionable claim can be attributed to the petitioner.

31.4. The learned counsel further assailed Rule 31A(3) of the CGST Rules as ultra vires Sections 2(31), 7, and 15 of the CGST Act. It was submitted that the Rule artificially deems the value of supply to be 100% of the face value of the

bet, contrary to Section 15(1), which contemplates taxation only on the "transaction value", namely the price actually paid or payable for the supply. According to counsel, the petitioner retains only the platform fee as consideration, on which GST has already been discharged, whereas the pooled amount neither accrues to nor is retained by the petitioner. Consequently, Rule 31A(3) creates an arbitrary legal fiction and violates Article 14 of the Constitution.

31.5. It was further argued that Rule 31A was intended to apply only to traditional betting and gambling activities, such as race clubs, and not to online gaming platforms. Reliance was placed on the subsequent insertion of Rule 31B with effect from 01.10.2023, specifically governing online gaming and online money gaming, to contend that Rule 31A did not apply to such activities prior to the amendment. Hence, the respondents' attempt to invoke Rule 31A retrospectively for the pre-01.10.2023 period is impermissible.

31.6. Learned counsel submitted that the petitioner also challenged the constitutional validity of Section 15(5) of the CGST Act on the ground that it confers unguided and excessive delegated power upon the Government to prescribe valuation mechanisms. It was submitted that Section 15(5) must be read harmoniously with Section 15(1) and cannot authorize valuation divorced from the actual consideration received.

31.7. Learned counsel further contended that the impugned levy exceeds the legislative competence under Article 246A of the Constitution, which permits

taxation only on the supply of goods or services. According to learned counsel, betting and gambling are activities and not supplies of goods or services, and the impugned levy, in substance, seeks to tax gambling itself, which is constitutionally impermissible.

31.8. Learned counsel also submitted that taxation on the gross bet value is wholly disconnected from the actual transaction value and results in manifest arbitrariness, since the petitioner is sought to be taxed on amounts that never accrue to it, unlike other service providers who are taxed only on the consideration actually received.

31.9. Lastly, it was submitted by the learned counsel that the allegation regarding non-issuance of invoices is misconceived, since Section 31(3)(b) of the CGST Act permits non-issuance of invoices where the value of supply is below Rs. 200/- and the show cause notice fails to establish any contrary instance or tax evasion.

31.10. Accordingly, learned counsel prayed that Rule 31A of the CGST Rules, Section 15(5) of the CGST Act, and the impugned notifications and show cause notice dated 01.10.2023 be declared unconstitutional and quashed.

32. ***Mr. Aneesh Mittal***, learned counsel for the petitioner - Britto Amusement Pvt. Ltd (Casino) at the outset, submitted that the petitioner is engaged in the lawful business of operating licensed casinos, wherein gaming activities are conducted in a regulated and monitored environment. The core activity of the

petitioner is limited to providing a platform and infrastructure for games of chance and skill, and not to engage in betting or wagering as a principal. The operational structure clearly demonstrates that the petitioner merely facilitates gaming and does not appropriate the stakes placed by players as its own income.

32.1. Learned counsel submitted that the mechanism of gaming within the petitioner's casino involves issuance of chips to customers upon deposit of legal tender at the designated counter, commonly referred to as the "cage". These chips are issued in exchange for an equivalent amount of money and serve merely as facilitatory instruments for gaming within the casino premises. They are not goods, nor are they independently tradable or capable of any use outside the casino ecosystem. The chips, at all times, remain the property of the petitioner ad are redeemable into legal currency upon surrender. Accordingly, the issuance of chips does not constitute a "supply" within the meaning of Section 7 of the CGST Act.

32.2. Learned counsel further submitted that the amounts deposited by players in exchange for chips are in the nature of deposits held in trust by the petitioner. The petitioner acts merely as a custodian of such funds, which are pooled and redistributed among players based on the outcome of games. The stake or buy-in amount never accrues to the petitioner as income. Consequently, there is no quid pro quo between the entire stake amount and any service rendered by the

petitioner. In absence of consideration, the essential ingredient of "supply" under Section 7(1)(a) fails.

32.3. Learned counsel emphasized that the petitioner's actual earnings arise only upon conclusion of gaming activity and redemption of chips. The difference between the total value of chips issued and the total value redeemed by players constitutes the Gross Gaming Revenue (GGR), which alone represents the consideration for the services rendered by the petitioner. It is only on this net retained amount that GST is discharged. In situations, where chips are returned without participation in any game, no service is rendered and no consideration arises, thereby excluding such transactions from the ambit of taxation.

32.4. Learned counsel submitted that although the term "Gross Gaming Revenue" is not expressly defined under the CGST Act, it has been statutorily recognized under Rule 2(i) of the Meghalaya Regulation of Gaming Rules, 2021, wherein GGR is defined as the gross amount collected from players net of winnings, discounts and other adjustments. This reflects the correct economic and legal understanding that only the operator's retained earnings constitute consideration for supply.

32.5. Learned counsel contended that internationally, including jurisdictions such as the European Union, the United Kingdom and Australia, the accepted measure for taxation of gaming services is the net revenue retained by the operator, i.e., GGR. The reliance placed by the department on Gross Bet Value

(GBV) being the total amount wagered, is misplaced as the same finds no recognition in the CGST Act or any other law in force in India. GBV bears no nexus to the actual consideration received by the petitioner and results in an artificial inflation of taxable value.

32.6. Learned counsel further submitted that Section 15(1) of the CGST Act clearly mandates that the value of supply shall be the transaction value, i.e., the price actually paid or payable where such price is the sole consideration. In the present case, the only amount that can qualify as "consideration" is the GGR retained by the petitioner. Any attempt to tax the entire bet value would be contrary to the statutory mandate and would amount to taxing amounts that never accrue to the petitioner.

32.7. Learned counsel also highlighted the inherent absurdity and arbitrariness in the department's approach. The application of GBV results in taxation of the same amount multiple times as chips are circulated and reused during gameplay. It is practically impossible to determine the value of each bet in a dynamic gaming environment, and such an approach leads to cascading taxation, which is antithetical to the very framework of GST.

32.8. Learned counsel submitted that the impugned demand is grossly disproportionate, being nearly thirteen times the petitioner's gross turnover, and is therefore arbitrary, excessive and violative of Article 14 and Article 265 of the

Constitution of India. The levy lacks authority of law and seeks to tax amounts that do not constitute income or consideration of the petitioner.

32.9. Placing reliance on the doctrine of harmonious construction as elucidated in ***Union of India v. Hansoli Devi***[96] and ***Sultana Begum v. Prem Chand Jain***[97], it was submitted by the learned counsel that Section 15(1) and Section 15(5) must be interpreted in a manner that preserves the integrity of both provisions. Any interpretation that renders Section 15(1) otiose must be rejected.

32.10. In conclusion, learned counsel submitted that the petitioner has correctly discharged GST on the Gross Gaming Revenue, which alone constitutes the consideration for the services rendered. The impugned demand based on Gross Bet Value is contrary to the statutory scheme, violative of constitutional principles, and liable to be set aside. The challenge to the constitutional validity of Rule 31A(3), insofar as it is sought to be applied to casinos, deserves to be allowed.

33. ***Mr. Jay Savla***, learned senior counsel appearing for the petitioners in WP (C) No. 350 of 2024, at the outset, submitted that the petitioners adopt the submissions advanced by various parties in the batch of connected matters. He further submitted that the principal challenge in the present writ petition is

---

[96] (2002) 7 SCC 273
[97] (1997) 1 SCC 373

directed against the show cause notice dated 30.09.2023 issued by the DGGI, whereby a demand of differential GST amounting to Rs. 75,49,14,12,382/- has been raised for the period from 01.07.2017 to 31.03.2023.

33.1. Learned senior counsel submitted that the petitioner operates a technology-based platform offering online poker to its users. Originally, the platform was operated by Quadrific Media Private Limited, which has since been amalgamated with the petitioner pursuant to a scheme sanctioned by the NCLT. The petitioner contends that it merely provides an online intermediary platform facilitating games of skill and has been discharging GST only on the consideration actually earned by it, namely the "rake fee", which ranges between 2.8% to 5% of the contest entry amount.

33.2. Learned senior counsel explained the operational mechanism of the platform, submitting that users are required to register by furnishing basic identification details and thereafter deposit money into a designated wallet. Such deposits are maintained in a separate bank account (Account "A") and are utilized by players to participate in cash games or tournaments. The petitioner deducts its rake fee and transfers the same to a separate operational account (Account "B") while the remaining amount constitutes the prize pool, which is distributed to winning participants.

33.3. It was emphasized that the amounts deposited by players, as well as the winnings (net of rake fee), are held by the petitioner in a fiduciary capacity as a trustee, without any proprietary interest therein. Upon withdrawal requests, the amounts are remitted to players after deduction of applicable TDS in accordance with Sections 194B / 194BA read with Section 115 BBJ of the Income-tax Act, 1961 at the prescribed rate of 30%.

33.4. It was further submitted that even under the pre-GST regime, the petitioner had consistently discharged service tax on the rake amount earned for providing platform services. This practice was subjected to audit by the Deputy Commissioner, Audit -III, Mumbai, culminating in Audit Report No. 188/ 2018-19 dated 27.09.2019 wherein no objection was raised to the petitioner's method of taxation.

33.5. It was also highlighted that while the petitioner's total revenue during the disputed period is approximately Rs. 392 crores, the impugned demand exceeds Rs. 7500/- crores, which is wholly disproportionate. In support of the contention that poker is a game of skill, reliance was placed on academic studies, including publications from IIT, Delhi and the University of Chicago, as well as the Law Commission of India's report.

33.6. On the strength of the aforesaid submissions, it was contended that online poker, being a game of skill, does not fall within the ambit of betting or gambling, and therefore, the impugned show cause notice is liable to be quashed.

34. ***Mr. Pranay Shridhar Chitale,*** learned counsel appearing for the petitioners in WP Nos. 545, 568 and 605 of 2024 submitted that the present writ petitions challenge the legality of the GST demands raised under Rule 31A(3) of the CGST Rules, on the erroneous premise that the petitioners are engaged in "betting and gambling" activities. It was contended that the present matters stand on a distinct footing from the connected batch of cases, inasmuch as the respondents herein have already crystallised the demand by issuing final demand notices aggregating to Rs.778,70,86,872/- in WP(C) No. 545 of 2024, Rs. 536,58,30,659/- in WP(C) No. 568 of 2024 and Rs. 462,20,72,114/- in WP(C) No. 605 of 2024. In contrast, the remaining matters pertain only to the validity of show cause notices, which are yet to culminate in final adjudication.

34.1. Learned counsel submitted that the petitioners operate an online platform enabling users to play the game of rummy, which is a game of skill. It was explained that players participate based on their individual assessment of skill and contribute equal amounts, termed as the "buy-in amount", which collectively forms the prize pool. The said amount is maintained in a segregated account and

is disbursed entirely to the winning player(s). The petitioners do not appropriate any portion of the prize pool, and therefore, such buy-in amounts do not constitute their revenue. The platform's terms and conditions, privacy policy, and user interface consistently present the activity as a skill-based game, devoid of any element of betting or gambling.

34.2. It was further submitted that the petitioners merely charge a platform fee for facilitating access to the online gaming interface, and it is only this fee which constitutes their revenue. GST is duly discharged on such platform fees. A clear distinction is drawn between the platform fee, which is consideration for services rendered by the petitioners, and the prize pool contributions, which are held in trust for the benefit of the players and redistributed to the winners. The latter does not fall within the ambit of "consideration" as defined under Section 2(31) of the CGST Act. The petitioners' role is limited to that of an intermediary providing technological infrastructure, and they neither supply the prize pool nor derive any benefit therefrom. Consequently, any transfer of the prize pool is a transaction inter se between players, on which no GST liability can be fastened upon the petitioners.

34.3. Learned counsel submitted that the impugned demand notices proceed on a fundamentally flawed premise that any game played for stakes constitutes

betting and gambling, thereby attracting GST at 28% on the entire buy-in amount under Rule 31A(3).

34.4. It was contended that the respondents' attempt to classify actionable claims such as betting and gambling as "goods" under the Goods Rate Notification is legally untenable. Prior to 1 October 2023, there was no corresponding entry in the Customs Tariff Schedule to support such classification. Moreover, online gaming and related activities had consistently been treated as "services" under the IGST Act and relevant notifications. The sudden reclassification of such activities as "goods" lacks legislative coherence and disrupts the settled statutory scheme.

34.5. Finally, learned counsel submitted that the impugned demands effectively impose a retrospective tax burden in the absence of explicit statutory authority. It is a settled principle of tax jurisprudence that taxing statutes must be strictly construed, and no liability can be imposed retrospectively unless clearly authorised by law. The impugned action of the respondents, therefore, is ultra vires and unsustainable.

34.6. In view of the aforesaid submissions, it was prayed that this Court may be pleased to allow the present writ petitions and quash the impugned demand notices.

35. ***Mr. Tushar Mehta,*** learned Solicitor General of India, appearing for the State of Maharashtra in SLP (Crl.) No. 2213 of 2020 submitted that the present special leave petition arises from the judgment dated 30.04.2019 passed by the High Court of Judicature at Bombay in Criminal PIL Stamp No. 22 of 2019 filed by Gurdeep Singh Sachar. The High Court held that fantasy gaming constitutes a game of skill and does not amount to betting or gambling even when played with stakes. It further held that Rule 31A of the CGST Rules would have no application and relying upon Entry 998439 of the Explanatory Notes to the Scheme of Classification of Services, concluded that fantasy gaming companies were liable to pay GST only at 18% as service providers and not at 28% on the full-face value of the bets. Learned Senior Counsel submitted that the impugned judgment is vitiated by serious procedural infirmities, inasmuch as findings of far-reaching consequence on taxation were rendered without hearing the Union of India as well as the State of Maharashtra. It was further submitted that no cause of action had arisen for adjudication of GST liability, as the case did not emanate from any show cause proceedings, and in any event, the gaming companies themselves had not approached the Court seeking such determination.

35.1. Learned senior counsel submitted that for the levy of tax under the Goods and Services Tax Act, there must exist a "supply" within the meaning of Section 7. Read with Schedule III, actionable claims are excluded from the ambit of

supply except those in the nature of lottery, betting and gambling. It was submitted that the High Court has already returned a categorical finding that fantasy gaming companies are supplying actionable claims. Significantly, the said finding has not been assailed by the assessees and has therefore attained finality. Consequently, the limited question that arises for consideration is whether such actionable claims are in the nature of betting and gambling so as to attract GST.

35.2. Learned senior counsel submitted that the expressions betting and gambling are not defined under the statute and must therefore be understood in their common parlance sense. The essential elements of betting and gambling are the existence of a stake, the placement of such stake on an uncertain event, and the expectation of gaining substantially more than what is staked depending upon the outcome of such event. It was submitted that fantasy gaming satisfies all these elements. Participants pay an "entry fee", which in substance constitutes a stake. They select teams and enter contests with the expectation of winning; however, the result remains uncertain until the real-world sporting event concludes. The entire activity is thus dependent upon uncertain variables. The underlying inducement for participation is the prospect of earning a return significantly higher than the amount staked. Accordingly, fantasy gaming squarely answers the description of betting and gambling in common parlance.

35.3. Learned senior counsel further submitted that the distinction between games of skill and games of chance is wholly irrelevant in the context of taxation. The Goods and Services Tax Act does not draw any such distinction for the purpose of levy of tax on betting and gambling. Such a distinction may be relevant under statutes like the Public Gambling Act, 1867, where games of skill are exempted from penal consequences, but the same has no bearing on the incidence of GST. Once the essential elements of betting and gambling are satisfied, the levy is attracted irrespective of whether the underlying activity involves skill or chance.

35.4. Without prejudice to the aforesaid submissions, learned senior counsel submitted that fantasy gaming is, in any event, a game of chance, being in the nature of "side betting". While the underlying sport may involve skill for the actual players, participants in fantasy gaming merely stake money on outcomes over which they have no control. They do not actively exercise any skill but merely predict uncertain results. It was submitted that judicial precedents such as ***Dyson v. Mason, King-Emperor v. Arjoon Singh, Re Musa & others, Hari Singh v. Jadu Nandan Singh, Panna Lal v. Emperor and Saligram Khetry v. Emperor*** establish that wagering on an event, even if informed by some degree of judgment, constitutes gambling. The reasoning in Saligram Khetry and Superintendent of Remembrancer of Legal Affairs v. L.E. Renny makes it clear

that while the underlying game may be one of skill, betting on such a game is an independent activity of chance. Fantasy gaming, it was submitted, is nothing but a technologically advanced form of such side betting.

35.5. Learned senior counsel submitted that each time a participant enters a contest upon payment of an entry amount, the platform supplies an actionable claim in the nature of a chance to win. The consideration paid is for acquiring this chance, which is contingent upon an uncertain outcome. Once the elements of betting and gambling are satisfied, the supply falls within the taxable category of actionable claims, and the levy of GST is automatically attracted irrespective of the characterization of the activity as one of skill or chance.

35.6. On the aspect of valuation, learned senior counsel submitted that the contention of the assessees that GST is payable only on the commission retained by them is wholly untenable. Under Section 15(1) of the Goods and Services Tax Act, the value of supply is the transaction value, namely the price actually paid or payable for the supply. In the present case, the full-face of the stake paid by participants constitutes the consideration for the supply of actionable claims. Section 15(2)(c) expressly includes incidental expenses, including commission, within the value of supply, thereby making it clear that commission is only a component and not the entirety of consideration. The amounts paid out to winners are merely incidental expenses incurred by the supplier and cannot be excluded

from the value of supply. Section 15(3) does not provide for exclusion of such payouts.

35.7. Learned senior counsel further submitted that the issue stands concluded by the judgment of this Court in ***Skill Lotto Solutions Pvt. Ltd.*** (supra) wherein it was held that GST on lottery is payable on the full face value and not merely on the commission retained by the distributor. It was submitted that the supply of actionable claims in lottery is in pari materia with the supply involved in fantasy gaming, and therefore, the same principle would apply. Rule 31A of the CGST Rules further reinforces that the valuation must be based on the full value of the bets.

35.8. In view of the aforesaid submissions, learned senior counsel submitted that fantasy gaming constitutes betting and gambling, involves supply of actionable claims, and is liable to GST on the full-face value of the stakes. The impugned judgment of the High Court is therefore liable to be set aside.

REPLY SUBMISSIONS

36. Since several learned counsel advanced substantially similar submissions in reply, in order to avoid repetition and prolixity, this Court has referred only to the rejoinder submissions of some of the learned Senior Counsel, which

adequately encapsulate the principal contentions urged on behalf of the respective parties.

37. Insofar as Fantasy Sports are concerned, ***Mr. N. Venkataraman,*** Additional Solicitor General of India appearing for the Revenue submitted that the legal submissions advanced in relation to online games would equally apply to fantasy sports, the only distinction being that fantasy sports are games of chance. Though the High Courts of Punjab and Haryana, Bombay and Rajasthan have held fantasy sports to be games of skill, and the SLPs filed against such judgments were dismissed by this Court, the issue, according to the learned ASG, cannot be said to have attained finality. The High Court of Punjab and Haryana did not examine the GST aspect at all. In the cases before the High Courts of Bombay and Rajasthan, specific allegations had been made regarding evasion of GST and non-payment under Rule 31A. Nevertheless, the Bombay High Court held that since fantasy sports do not amount to betting or gambling, Entry 6 of Schedule III would not apply and, in the absence of a supply, no GST could be levied.

37.1. At this stage, the learned ASG referred to SLPs filed against the judgment of the Bombay High Court:

a) SLP (Crl.) Diary No. 35191 of 2019 filed by Varun Gumber was dismissed *vide* order dated 04.10.2019.

b) SLP (Crl.) Diary No. 43346 of 2019 filed by Gurdeep Singh Sachar was dismissed *vide* order dated 13.12.2019;

c) SLP (Crl.) Diary No. 41632 of 2019 filed by the Union of India was dismissed *vide* order dated 13.12.2019, while granting liberty to seek review before the Bombay High Court on the GST aspect, since the Union had not been heard before the High Court decided the issue. Thereafter, M.A. No. 502 of 2020 was dismissed on 31.01.2020 with clarification that the review would be confined to the GST aspect and the issue whether gambling was involved or not need not be revised. Pursuant thereto, the Union filed a review petition, which remains pending;

d) SLP (Crl.) Diary No. 42282 of 2019 filed by the State of Maharashtra resulted in notice being issued and stay of the impugned judgment *vide* order dated 06.03.2020. The said SLP forms part of the present batch; and

e) Review Petition Diary No. 5195 of 2022 filed by Varun Gumber was dismissed on delay as well as on merits *vide* order dated 09.11.2022.

On the basis of the aforesaid proceedings, the learned ASG submitted that the issue whether fantasy sports are games of skill or chance remains open and that the doctrine of merger would not apply.

37.2. Learned ASG further submitted that the Rajasthan High Court, in its judgment dated 16.10.2020, left the GST issue to be decided by the authorities in accordance with law. No appeals were filed against the said judgment in *Ravindra*

Singh Chaudhary. Subsequently, in ***Chandresh Sankla*** and ***Sahil Nalwaya***, the Rajasthan High Court followed the same view, against which two SLPs were filed.

(i) SLP Diary No. 18478 of 2020 filed by Avinash Mehrotra was dismissed *vide* order dated 30.07.2021. While doing so, this Court noted that the Bombay High Court judgment had already been stayed in the proceedings initiated by the State of Maharashtra and also observed that the matters concerning the Union and the State stood on a different footing; and

(ii) SLP (C) No. 15791 of 2022 also filed by Avinash Mehrotra came to be dismissed *vide* order dated 09.09.2022 following the earlier order dated 30.07.2021.

On a cumulative reading of the aforesaid orders, the learned ASG submitted as follows:

(a) Since the Bombay High Court decided the GST issue without hearing the Union of India and the State of Maharashtra, liberty was granted to the Union to seek review, which remains pending. Further, the judgment has been stayed at the instance of the State of Maharashtra and the matter is pending before this Court.

(b) The order dated 31.01.2020 confining the review to the GST aspect, without revisiting whether gambling was involved, cannot foreclose the Revenue from

contending that the underlying activity amounts to betting and gambling, since Entry 6 of Schedule III itself depends upon such determination.

(c) The GST issue in relation to fantasy sports remains alive in SLP (Crl.) Diary No. 42282 of 2019 wherein this Court has stayed the Bombay High Court judgment. Hence, the matter cannot be said to have attained finality.

(d) Even while dismissing the SLP against the Rajasthan High Court judgment on 30.07.2021, this Court specifically referred to the pending proceedings involving the Union of India and the State of Maharashtra and observed that those matters stood on a different footing; and

(e) Thus, when the orders are read holistically, the issue remains open and can still be urged by the Revenue notwithstanding dismissal of the earlier SLPs filed by private parties.

37.3. Relying on the decision in ***Kunhayammed*** (supra), the learned ASG submitted that the doctrine of merger would apply only where this Court assigns reasons while dismissing an SLP. A mere observation that "we see no merit in the special leave petition" cannot be treated as a reasoned order. Consequently, such dismissal neither attracts the doctrine of merger nor constitutes a binding declaration of law under Article 141 of the Constitution of India.

38. Learned ASG referred to the contention advanced by Mr. Arvind Datar, learned Senior Counsel, who relied upon the Show Cause Notice dated 27.05.2020 and the consequent Order-in-Original dated 09.12.2022, to contend that the Department had accepted fantasy sports to be games of skill and therefore could not take a contrary stand in the present proceedings. According to the learned ASG, the submission is misconceived since the Show Cause Notice pertained to the period from February 2015 to June 2017, prior to the introduction of the GST regime, and arose under the erstwhile Service Tax framework. The said proceedings, therefore, have no bearing on the post-GST constitutional and statutory regime. Further, in reply to the show cause notice, the Federation of Fantasy Sports itself contended that it was supplying actionable claims and was therefore outside the service tax net. The Order-in-Original dated 09.12.2022 accepted the said position and set aside the demand on the ground that actionable claims stood excluded from the definition of "service" under Section 65B(44). Having accepted that they supply actionable claims, the assessees cannot now contend that no actionable claim exists.

38.1. Learned ASG further submitted that reliance placed by Mr. Arvind Datar, on two audit reports to contend that the Department had accepted fantasy sports as games of skill is misplaced. The audit reports themselves record that the matter is sub judice and subject to the outcome before this Court. At best, the reports reflect that departmental officers were constrained to follow the prevailing High

Court judgments at that stage. The audit observations cannot therefore be treated as binding admissions by the Revenue.

38.2. Learned ASG submitted that fantasy sports are, in essence, a form of side betting. Merely because participants may possess knowledge of the sport, players, pitch conditions or weather forecasts does not alter the nature of the activity. The participant merely "rides on someone else's skill", since the outcome depends entirely upon the performance of real players and not upon any skill exercised by the fantasy participant himself. According to the learned AST, success in fantasy sports is therefore determined predominantly by chance.

38.3. It was accordingly contended that fantasy sports squarely fall within the ambit of "betting and gambling" as understood in ***RMDC-I***. Once the activity is one of chance, the amount staked by participants, though described as an "entry fee", is in substance a bet amount irrespective of the number of participants involved. Reliance was placed on the decision of the Bombay High Court in ***Gurdeep Singh Sachar*** (supra) and it was pointed out that the said finding has not been challenged.

38.4. Learned ASG further submitted that even assuming Section 30 of the Contract Act applies to wagering agreements, the contract between the player and

the online gaming platform is an independent and collateral arrangement facilitating betting and gambling activities for consideration. Such a collateral contract is enforceable and not void under Section 30. The platform supplies a "chance to win" in betting and gambling activities, which constitutes an actionable claim within the meaning recognised in ***Sunrise Associates*** (supra) and ***Gherulal Parekh*** (supra). Consequently, the supply made by online gaming companies is liable to GST as a supply of actionable claims arising out of betting and gambling.

39. Learned ASG dealt with the argument of ***Mr. Harish Salve***, learned Senior Counsel, that rights *in personam* can never constitute actionable claims and that only rights arising by way of State grants, as in lotteries, can amount to actionable claims. Rejecting the submission, the learned ASG illustrated that where "X" advances money to "Y", a debt arises creating an actionable claim, though the transaction is purely private and contractual. Referring to Section 3 the Transfer of Property Act, as adopted under the CGST Act, it was submitted that the definition does not restrict actionable claims only to rights arising from grants. Any claim to a beneficial interest in movable property satisfying the statutory conditions would amount to an actionable claim, irrespective of whether it arises from a grant or a right *in personam*.

39.1. Learned ASG contended that the discussion regarding "grants" in ***Anraj*** (supra) and ***Sunrise Associates*** (supra) arose in the context of the Sales Tax regime, where the taxable event was sale involving transfer of title in goods. In that context, this Court considered whether the State could create transferable rights in lottery tickets. The discussion on grants was therefore relevant only to transfer of title and not to determine whether lottery tickets represented actionable claims. According to the learned ASG, whether a lottery ticket constitutes an actionable claim is independent of whether the right arose by way of grant.

39.2. Applying the ratio of ***Sunrise Associates*** (supra), the learned ASG submitted that under the GST regime, transfer of title is not a prerequisite for levy. GST is attracted on every "supply" and both creation and transfer of actionable claims constitute taxable supplies under Section 7. Hence, it is incorrect to contend that only the State can create actionable claims or that only transfer of actionable claims attracts GST. Further, ***Sunrise Associates*** (supra) merely overruled the "two rights" theory propounded in Anraj and held that a lottery ticket represents a single actionable claim, namely the right to participate and win the prize. It is not an authority for the proposition that only rights arising from grants can amount to actionable claims.

39.3. With regard to the contention that the winning amount cannot be assigned or transferred under the platform terms and conditions and therefore cannot constitute an actionable claim, the learned ASG submitted that the relevant test is whether the beneficial interest is capable of assignment in law. Merely because contractual restrictions are imposed upon players would not alter the legal character of the claim. Such restrictions merely amount to voluntary waiver of rights and do not negate the existence of an actionable claim.

39.4. Learned ASG also rejected the contention that there is no actionable claim because the winning amount is immediately paid to the winner. According to him, the taxable event is the creation and supply of the actionable claim at the time the player acquires the conditional right to win. Subsequent discharge of the claim by payment does not affect the levy of GST, since the taxable event has already occurred.

39.5. Insofar as the argument that the levy is, in substance, a tax on betting and gambling disguised as a tax on supply, the learned ASG submitted that the Revenue is not taxing the activity of betting and gambling per se, but the supply of actionable claims arising therefrom. If the supply qualifies as a taxable supply under the GST regime, recourse to Entry 97 List I is unnecessary.

39.6. Learned ASG further submitted that merely because actionable claims arise out of betting and gambling does not convert the levy into a tax on betting

and gambling itself. The distinction between taxing betting activities and taxing the supply of actionable claims arising therefrom must be maintained.

39.7. Learned ASG thereafter rejected the contention that online gaming companies are not "suppliers" under Section 2(105) of the CGST Act. According to him, GST is payable by the taxable person under Section 9, and every supplier liable for registration becomes a taxable person. Since the actionable claim is supplied only through the online gaming companies, who design the platform, regulate participation, receive stakes and facilitate the opportunity to win, they are at the centre of the transaction. Without them, no supply takes place. Consequently, the online gaming companies qualify as "suppliers" and are liable to discharge GST.

39.8. Referring to online rummy, the learned ASG submitted that though rummy is ordinarily regarded as a game of skill, the online format under consideration lacks any meaningful element of skill assessment. The platform algorithm merely allocates players based on the stake amount without considering comparative skill levels. Unlike physical games where players may assess opponents or choose to withdraw, no such informed choice exists here. According to the learned ASG, the entire structure operates as a gamble induced by stake-based participation and retention incentives.

39.9. Learned ASG also rejected the assessees' contention that there exist two separate contracts viz., one between the players themselves and another between the players and the gaming companies. According to him, the players neither know nor choose their opponents; their only choice is the amount staked. The actionable claim is supplied directly by the gaming company once the player deposits the stake amount and is granted an opportunity to win. GST liability therefore arises at the stage the stake is placed and the opportunity to participate is provided.

39.10. Learned ASG further submitted that taxable supply ordinarily requires consideration. The players do not pay consideration to each other but pay the entire amount to the online gaming companies for the opportunity to participate and win. Consequently, the players cannot be regarded as supplying actionable claims to one another.

39.11. Finally, learned ASG rejected the argument based on Section 9(5) of the CGST Act. According to him, Section 9(5) applies only where an electronic commerce operator merely facilitates a supply between an independent supplier and recipient, as in the case of Swiggy or Zomato. In the present case, however, there is no independent underlying supply routed through the gaming companies. The online gaming companies themselves supply the actionable claims and receive the entire consideration. Hence, Section 9(5) has no application and the gaming companies themselves are liable as taxable persons under Section 9(1).

40. With respect to Casinos, the learned ASG submitted that the underlying activity is undisputedly one of betting and gambling, and the dispute raised by the assessees concerns only the method of valuation adopted by the Revenue. According to the learned ASG, the GGR model adopted by the Casinos is fundamentally erroneous.

40.1. The learned ASG explained that in a Casino, a player first exchanges money for chips. Mere conversion of money into chips does not attract GST, Thereafter, the player participates in games either against other players, against the Casino itself, or against slot machines. Depending on the outcome, the player either gains or loses chips.

40.2. By way of illustration, it was submitted that where two players each purchase chips worth Rs. 100 and participate in a game of roulette, different consequences arise. If Player A loses his Rs. 100, the Casino treats that amount as its earning and regards it as consideration. However, if Player B wins Rs. 300 and exits with Rs. 400 worth of chips, the Casino contends that it has incurred a loss of Rs. 300 and therefore no consideration exists. According to the Casino, the resultant GGR would be negative and no GST would be payable. On the other hand, the learned ASG submitted that this approach demonstrates the inherent flaw in the GGR principle. The Casinos pay GST only when they make a profit

and proceed on the assumption that consideration exists only when a player loses. If the GGR is negative, they contend that no taxable supply has occurred; if positive, GST is paid only on the net amount.

40.3. According to the learned ASG, this position is legally untenable. Liability to GST arises upon the occurrence of a taxable supply and is not dependent upon whether the player ultimately wins or loses. The supply of gambling services remains the same irrespective of the outcome of the game. The Casinos themselves admit that whenever a player loses, the Casino receives consideration, yet GST is not paid transaction-wise and is instead deferred until the end of the day for netting purposes. Such netting off of winnings against losses may be relevant for income tax purposes, but GST is levied on the gross value of supply and not on profits. The GGR principle, therefore, amounts to impermissible adjustment of business expenses against taxable value and cannot be sustained under the GST framework.

41. Addressing a query raised by the Court regarding how GST demands could exceed the total value of chips initially purchased by players, the learned ASG submitted that the functioning of Casinos involves circulation not only of chips purchased by players at the counter but also chips deployed by the Casino itself during gameplay. In games where players play against the Casino, the Casino places its own bets through chips already available at the tables. Such chips are

not reflected as chips exchanged at the counter and therefore the total value circulating within the Casino cannot be confined to the amount initially purchased by players.

41.1. On valuation, the learned ASG submitted that unlike online gaming platforms, Casinos are taxed as suppliers of gambling services. Nevertheless, valuation continues to be governed by Section 15 of the CGST Act. Since the Casinos only disclosed GGR figures, and the GGR principle itself lacked legal sanctity, the Department invoked the residual method under Rule 31 of the CGST Rules. Rule 31 permits determination of value by reasonable means consistent with Section 15 and the valuation provisions under Chapter IV of the Rules.

It was submitted that Rule 31A, which prescribes valuation in betting and gambling activities, merely reiterates the principle under Section 15(1) that the transaction value corresponds to the full face value of the bet. Since gambling services in Casinos necessarily involve solicitation and receipt of bets, the Revenue adopted Rule 31A as a reasonable method for determining the value of supply. According to the learned ASG, without placing bets a player cannot participate in Casino games, and therefore the bet amount constitutes consideration under Section 2(31) of the CGST Act for the supply of gambling services.

41.2. Since Casinos did not maintain records of total bets placed, the Department resorted to a "best judgment" methodology to determine GBV.

41.3. The learned ASG explained that Casino games broadly fall into three categories: (i) rake-based games, (ii) slot machine games, and (iii) live games.
In rake-based games, the Casino merely facilitates gameplay between players and earns a fixed commission or "rake", usually around 5% of the total bets. Accordingly, the Department extrapolated the total betting value from the rake earned. Thus, if the Casino earned INR 1,000 as rake representing 5% commission, the corresponding GBV was determined as INR 20,000.
In slot machine and live games, the Department relied upon the concept of "House Advantage", namely the mathematical edge retained by the Casino in each game. Casinos furnished data regarding house advantage for various games, which was independently verified by the Indian Statistical Institute and found to substantially correspond.

41.4. The Department further relied upon the percentage contribution of each game to the overall GGR. Based on data maintained for 66 days during the relevant period, the Department extrapolated the proportions across the disputed period. Using the house advantage and game-wise contribution to GGR, the GBV for each game was calculated. For example, where a particular game contributed INR 4.46 to a GGR of INR 100 and the house advantage was 4.03%, the GBV

was computed by dividing INR 4.46 by 4.03%, yielding approximately INR 111. GST at 28% was then levied on the aggregate GBV.

41.5. The learned ASG submitted that the Casinos do not dispute either the applicability of GST or the jurisdiction of the authorities, and their objection is confined solely to valuation. According to the Revenue, if the principle of GBV is upheld, disputes regarding actual computation would involve questions of fact to be adjudicated by the statutory authorities and not by this Court.

41.6. It was further submitted that the show cause notices also raise issues concerning classification under the principles of composite and mixed supply. Even if the Court were inclined to interfere with the notices, such issues ought to survive for adjudication by the competent authority since they were neither specifically challenged nor substantively argued before this Court.

42. Appearing for the Petitioners, ***Mr. Harish Salve***, learned Senior Counsel, submitted in rejoinder that he was not addressing the broader issue of whether staking on games of skill or chance constitutes betting or gambling. His submissions were confined to challenging the legal basis on which the Revenue sought to sustain the show cause notices issued to online gaming operators.

42.1. Learned Senior Counsel submitted that the Revenue had shifted its stand. Initially, the case proceeded on the basis that the "chance to win" itself constituted an actionable claim. Subsequently, the Revenue reformulated its case by contending that players acquire a conditional right in the winning amount and that such right constitutes a beneficial interest in movable property.

According to the learned Senior Counsel, this proposition is fundamentally untenable. A player merely possesses a chance of winning depending upon how the game unfolds; such expectation is only a *spes* or hope and does not amount to movable property or a legally enforceable claim.

42.2. Referring to ***Sunrise Associates*** (supra) and ***Anraj*** (supra), learned Senior Counsel submitted that those judgments concerned the transfer of a right created by way of a State grant in the context of lotteries. The Constitution Bench in ***Sunrise Associates*** (supra) did not hold that every "chance to win" constitutes an actionable claim. Rather, the judgments were confined to lottery rights created by the State. Consequently, the Revenue's reliance on those decisions to contend that all gaming transactions involve actionable claims was misconceived.

42.3. It was further submitted that even if money constitutes movable property, "money" itself is excluded from the definition of "goods" under the CGST Act. The alleged beneficial interest in the winning amount arises only after the game concludes. Until then, no enforceable claim exists. At best, the winner acquires a

claim against the losing players at the end of the game, which would amount to a gambling debt.

42.4. Learned Senior Counsel emphasised that ***Sunrise Associates*** (supra) dealt with the right to participate in a lottery, whereas the Revenue's present case concerns a supposed conditional right to the "winning amount". The winning amount itself comes into existence only after the game ends and therefore cannot constitute an actionable claim existing at the commencement of the transaction.

42.5. It was submitted that the operator merely distributes winnings on behalf of the players and neither creates nor transfers any actionable claim. Even assuming such a claim exists, it would amount only to a gambling debt, which is unenforceable under Section 30 of the Indian Contract Act and therefore not an actionable claim in law.

42.6. Learned Senior Counsel further submitted that the Government itself no longer contends that there is any "transfer" of an actionable claim. Instead, the revised argument is that the operator "creates" a claim to a beneficial interest in the winning amount. This, according to the learned Senior Counsel, is contrary to Rule 31A(3), which contemplates supply of actionable claims "in the form of chance to win" and necessarily presupposes transfer rather than mere creation. It was argued that the subsequent introduction of Rule 31B, which adopts broader

language concerning online gaming, demonstrates that Rule 31A(3) was never intended to cover mere distribution of winnings.

42.7. Learned Senior Counsel also rejected the Revenue's contention that there was no entrustment of funds. The operator merely acts as a custodian of player funds held in wallets or escrow arrangements. The player does not lose ownership over such funds merely because withdrawal is temporarily restricted during gameplay.

42.8. It was submitted that the amounts lying in player wallets continue to belong to the players and are recoverable on demand. The operator merely holds and disburses pooled funds in accordance with player instructions. At most, a *chose in action* may arise in favour of the winning player against the losing players at the conclusion of the game, and the operator merely discharges that obligation on behalf of the players.

42.9. Learned Senior Counsel clarified that while claims against the operator for return of wallet balances are enforceable, claims arising from winnings constitute gambling debts and are unenforceable under Section 30 of the Contract Act. Hence, such claims cannot qualify as actionable claims.

42.10. It was further argued that mere creation of a *chose in action* cannot amount to a "supply" under GST law. Supply necessarily presupposes the

existence and transfer of goods or rights from one person to another. The creation of a debt or obligation does not amount to supply. By way of illustration, when a bank grants a loan and a debt arises in favour of the bank, the customer cannot be said to have "supplied" anything to the bank.

42.11. Similarly, if the Revenue's argument were accepted, every shareholder would be treated as supplying a *chose in action* to himself merely because rights arise upon issuance of shares. Such consequences demonstrate the conceptual flaw in equating creation of rights with taxable supply.

42.12. Learned Senior Counsel further submitted that an actionable claim must first be identifiable. In gaming transactions, no such enforceable claim exists prior to conclusion of the game. If losing players refuse to pay winnings, the winner cannot sue for recovery since the claim would amount to a gambling debt barred under Section 30 of the Contract Act. However, claims against the operator for withdrawal of wallet balances stand on a different footing and are enforceable because they arise from the contractual relationship between the player and the operator.

42.13. Summarising his submissions, learned Senior Counsel contended that the operator functions merely as a passive intermediary or custodian of player funds and does not participate in the games, create any betting pool, or own the funds.

The operator only disburses winnings in accordance with player instructions. Even where third-party escrow arrangements exist, the legal relationship remains unchanged. Accordingly, the operator cannot be regarded as supplying actionable claims under the GST regime.

43. Learned senior counsel for the petitioners (casinos) by way of reply, contended that the submissions advanced on behalf of the Revenue proceed on a fundamentally erroneous understanding of both the statutory framework under the CGST Act and the operational mechanics of casinos. At the outset, it was submitted that there is neither any creation, nor transfer, nor supply of an actionable claim by the petitioners. The entire edifice of the Revenue's argument, namely that a casino supplies an actionable claim in the form of a "chance to win" is belied by the Department's own show cause notice. The notice proceeds exclusively on the footing that the petitioners are engaged in the supply of "gambling services" and invokes Rule 31A merely as the "most appropriate rule" for valuation. Significantly, there is not even a single allegation therein that the petitioners supply actionable claims. This omission is not accidental but determinative, for it demonstrates that even the Department did not, at the relevant time, consider the activities of casinos as involving supply of actionable claims so as to attract Rule 31A in its proper sense.

43.1. Learned senior counsel submitted that in any event, the theory of actionable claim is wholly inapplicable to casino transactions. In a casino, the relationship between the player and the house is not that of assignor and assignee of a debt, but one of mutual participation in a game of chance. The casino itself participates in most games by staking an equal amount against the player. Thus, both parties merely create reciprocal chances of winning; there is no independent or pre-existing unsecured debt capable of enforcement. Any notional "debt" that arises from wagering is, in law, unenforceable by virtue of Section 30 of the Indian Contract Act, 1872. Such a claim, being void and incapable of enforcement, does not qualify as an actionable claim. Furthermore, upon conclusion of the game, any such notional obligation is extinguished by payment – either to the player or to the casino. In these circumstances, there is neither existence nor transfer of an actionable claim. Absent such transfer, the very foundation for invoking "supply" under Section 7 collapses, and consequently, no taxable event arises under Section 9 of the CGST Act.

43.2. Learned senior counsel further submitted that the Revenue's attempt to equate casinos with online gaming or fantasy sports platforms is equally misconceived. A casino is not a mere facilitator; it is an active participant in the majority of games offered. When a player enters the casino and exchanges money for chips, such chips are only tokens or facilitators of play and do not represent the purchase of any goods or actionable claims. In the petitioners' establishments,

only a limited category of "rake games" involves the casino acting as a facilitator and earning commission. In all other games, the casino itself wagers against the player. The consideration earned by the casino is therefore not the total value of bets placed, but its net earnings, commonly understood as Gross Gaming Revenue (GGR).

43.3. Learned senior counsel submitted that the reliance placed by the Revenue on Rule 31A to levy tax on the gross bet value (GBV) is legally untenable and economically irrational. Unlike conventional supplies where the consideration corresponds to the value of goods or services received, casino transactions involve continuous wagering with fluctuating stakes, where the casino's actual earnings are only the net revenue. The internationally accepted and industry-standard method for determining taxable value in casinos is GGR, not GBV. The attempt to tax the full face value of each bet disregards this fundamental distinction and results in taxation of amounts that are neither earned nor retained by the casino.

43.4. Learned senior counsel submitted that the methodology adopted by the Department to compute GBV, particularly through reliance on the concept of "house advantage", further exposes the arbitrariness of the impugned levy. House advantage is merely a statistical probability that manifests over prolonged play and cannot be equated with actual income or commission. The Indian Statistical Institute (ISI) Report, relied upon by the Revenue, itself acknowledges the

speculative nature of such calculations, the dependence on multiple variable factors such as player behaviour and game frequency, and the impossibility of arriving at precise figures for several games. Notwithstanding these admitted limitations the Department has mechanically extrapolated data from a limited sample period of 66 days to a span of five years, and derived GBV using a formula that rests entirely on assumptions. Such an exercise is not only methodologically flawed but also legally impermissible.

43.5. Learned senior counsel submitted that the consequences of adopting GBV as the measure of tax are demonstrably absurd. The example cited in the show cause notice itself reveals that against a net revenue of approximately INR 6.54 crores from European Roulette, the Department computed a GBV exceeding INR 242 crores, an amount never realized by the casino. This stark disparity underscores the absence of any rational nexus between the measure of tax and the taxable event. It is well-settled that the measure of tax must bear a reasonable relationship to the nature of the levy, failing which it falls foul of Article 14 of the Constitution, as recognized in decisions such as ***Maneka Gandhi v. Union of India***[98]***, Shayara Bano v. Union of India***[99]***, and State of Rajasthan v. Rajasthan Chemists Association***[100]. The impugned levy, being manifestly arbitrary and confiscatory in nature, is liable to be struck down on this ground alone.

---

[98] (1978) 1 SCC 248
[99] (2017) 9 SCC 1
[100] (2006) 6 SCC 773

43.6. Learned senior counsel further contended that the submission of the Revenue that casinos are not entitled to constitutional protection is equally untenable. The petitioners operate under valid licenses granted by the States of Goa and Sikkim and are subject to statutory regulation. Once the State permits and regulates an activity, it cannot impose arbitrary and disproportionate taxation in violation of Article 14. The doctrine of manifest arbitrariness, as recognized in ***State of M.P. v. Nandlal Jaiswal*** (supra) *and* ***Gwalior Distilleries v. State of M.P.*** (supra) squarely applies in the present case.

43.7. Learned senior counsel submitted that the introduction of Rules 31B and 31C further demonstrates that Rule 31A was never intended to govern casino transactions. The substantial in valuation mechanism post-introduction of Rule 31C, as admitted by the Revenue itself, indicates that the earlier framework was inadequate or inapplicable. The mere use of common expressions such as "betting and gambling" across different rules cannot justify identical valuation methodologies, particularly when the nature of transactions differs significantly. Moreover, even under Rule 31C, there is no supply of actionable claim at the stage of purchase of chips, a position conceded by the Revenue.

43.8. Finally, it was submitted by the learned senior counsel that the reliance on Rule 31A, framed under the general rule-making power in Section 164, cannot override the mandate of Section 15(1) of the CGST Act, which prescribes transaction value as the primary basis of valuation. Only a rule framed under

Section 15(5), with its non-obstante clause can displace Section 15(1). In the absence of such a notification, Rule 31A can operate, at best, as a residual provision under Section 15(4), applicable only where transaction value is not ascertainable. In the present case, the transaction value, namely GGR, is readily determinable and consistently adopted by the petitioners. Therefore, recourse to Rule 31A is wholly unwarranted.

44. In light of the foregoing, learned senior counsel submitted that the Revenue's attempt to levy GST on the gross bet value is contrary to the statutory scheme, unsupported by the factual realities of casino operations, and violative of constitutional principles. The impugned demands, founded on speculative and arbitrary computations, are liable to be set aside.

45. We have heard the extensive arguments made by the respective learned Senior Counsel and learned counsel appearing for the Assessees and the learned Additional Solicitor General of India appearing for the Revenue and carefully perused the materials placed before us.

46. This Court, by order dated 06.03.2020 passed in SLP (Crl.) Diary. No. 42282 of 2019 titled *State of Maharashtra and others v. Gurdeep Singh Sachar and others*, stayed the operation of the impugned judgment and order passed by the Bombay High Court. Subsequently, by order dated 10.01.2025 in SLP (C)

Nos. 19366 – 19369 of 2023 titled *Directorate General of Goods and Services Tax Intelligence (HQS) & Ors v. Gameskraft Technologies Pvt. Ltd & Ors*. and connected matters, this Court directed that further proceedings pursuant to all the impugned show cause notices shall remain stayed till final disposal of the main matter and all tagged matters. The said interim protection was thereafter extended to the petitioners in WP (C) Nos. 412 of 2025 and 467 of 2025 as well, by order dated 22.05.2025.

IV. ANALYSIS AND FINDINGS

47. Before adverting to the issues arising in the present batch of matters, it is necessary to note that several questions concerning the constitutional validity of State legislations regulating and prohibiting online betting and gambling have already been comprehensively examined and decided by this Court in ***Civil Appeal Nos. 6124–6131 of 2023, State of Tamil Nadu and Others v. Junglee Games India Private Limited and Others and connected matters,*** by a separate judgment authored by us. In the said judgment, this Court undertook an exhaustive analysis of the historical, constitutional and societal dimensions of betting and gambling, including the pervasive concerns of addiction, financial distress, public health, public tranquility and the increasing accessibility of wagering activities through digital platforms. The Court upheld the legislative competence of the States under Entry 34 of List II to regulate or prohibit betting

and gambling, including online betting and wagering activities conducted through computers, mobile devices, internet-based applications and other virtual platforms. It was further held that once the element of betting or gambling enters the activity, the intrinsic nature of the underlying game, whether one of skill or chance, loses significance for the purpose of legislative regulation, since betting and gambling constitute a distinct economic activity involving the staking of money or money's worth on uncertain outcomes. Consequently, the constitutional validity of the relevant provisions of the Tamil Nadu Gaming and Police Laws (Amendment) Act, 2021, the Tamil Nadu Prohibition of Online Gambling and Regulation of Online Gaming Act, 2022/2023, and the Karnataka Police (Amendment) Act, 2021 was upheld and the judgments of the High Courts striking down those enactments were set aside.

47.1. In view of the authoritative pronouncement rendered in Junglee Games (supra), it is unnecessary for us to revisit the broader constitutional questions relating to the State's power to regulate or prohibit betting and gambling, the distinction between games of skill and betting on games of skill, or the societal consequences of online wagering activities. Those issues stand concluded by the aforesaid judgment. The controversy in the present batch is of a different character. The principal questions that arise for consideration herein concern the scope and operation of the Goods and Services Tax regime, the taxability of actionable claims arising from betting and gambling, the legislative competence

underpinning such levy, and the validity of the statutory and delegated provisions governing valuation. We shall, therefore, proceed directly to examine those issues.

(A) ISSUES FOR CONSIDERATION

48. Based on the manner in which the challenges have been structured in the batch of writ petitions, transferred cases and Special Leave Petitions, the following issues broadly arise for consideration:

(i) Whether online gaming activities, including fantasy sports and other games played on digital platforms involving staking upon uncertain outcomes, constitute betting and gambling for purposes of the GST framework?

(ii) Whether the provisions of the CGST Act, 2017, including Sections 2(31), 2(52), 7, 9 and 15, together with the corresponding provisions of the State GST enactments and the Rules framed thereunder, insofar as they subject actionable claims arising from betting and gambling to GST, are constitutionally valid, within the legislative competence traceable to Articles 246A and 366(12A) of the Constitution, and otherwise consistent with the constitutional framework, including Articles 14, 19(1)(g), 21 and 265 of the Constitution?

(iii) Whether actionable claims arising from betting and gambling fall within the ambit of "goods" and constitute taxable supplies under the statutory framework embodied in Sections 2(1), 2(31), 2(52), 7, 9 and Entry 6 of Schedule III of the

CGST Act, and whether the inclusion of actionable claims within the definition of "goods" under Section 2(52) is constitutionally and statutorily valid?

(iv) Whether supply of actionable claims arising out of betting and gambling under Section 7 of the CGST Act is confined only to transfer of pre-existing actionable claims or extends to other forms of supply contemplated under the statutory framework, and whether organised betting and gambling arrangements themselves give rise to actionable-claim interests constituting taxable supplies under the GST framework notwithstanding the absence of transfer?

(v) What constitutes "consideration" for the supply of actionable claims arising from betting and gambling transactions under Section 2(31) of the CGST Act, and whether the statutory measure for valuation of such supply is validly provided under Section 15 read with the applicable valuation Rules framed thereunder?

(vi) Whether Rule 31A of the CGST Rules, 2017 is intra vires the provisions of the CGST Act and within the scope of the delegated rule-making power conferred under Sections 15 and 164 of the Act, and whether the valuation mechanism prescribed therein is violative of Article 14 of the Constitution or otherwise suffers from manifest arbitrariness?

(vii) Whether the amendments introduced in 2023, including the amendments to Entry 6 of Schedule III and insertion of Rules 31B and 31C, are clarificatory in

nature and consequently retrospective in operation, and whether the valuation mechanism embodied in Rules 31B is violative of Article 14?

(viii) Whether, in the online gaming framework including fantasy sports platforms, actionable-claim interests arising from betting and gambling arrangements are supplied through the organised gaming structure itself, and whether the online gaming operators merely facilitate transactions inter se between participants or themselves constitute suppliers of such actionable claims under the GST framework?

(ix) Whether, in light of the amendments introduced in 2023, the valuation of online gaming, fantasy sports is required to be determined in accordance with Rules 31B, including in relation to pending show cause notices, adjudication proceedings and consequential demands?

(x) Whether, in light of the amendments introduced in 2023, the valuation of casino transactions is required to be determined in accordance with Rule 31C of the CGST Rules, and whether the Department was justified in resorting to Rule 31 and best judgment methodologies for determination of taxable value under the pre-amendment framework, including in relation to the validity and effect of the pending show cause notices, adjudication proceedings and consequential demands?

(xi) Whether the impugned show cause notices, adjudication proceedings, valuation methodologies and consequential demands raised against online gaming operators, fantasy sports platforms and casinos are sustainable in law?

The aforesaid issues are dealt with and answered in the course of the present judgment having regard to their interrelated and overlapping nature.

(B) BETTING AND GAMBLING

49. Although the broader constitutional questions concerning betting and gambling stand concluded by ***Junglee Games*** (supra), the principles laid down therein nevertheless assume direct relevance for determination of the GST issues arising in the present batch of matters. This is because the taxability of actionable claims under the GST framework, the applicability of Entry 6 of Schedule III and the valuation mechanism under Rule 31A substantially depend upon the true scope and ambit of the expressions "betting" and "gambling".

49.1. At the outset, it must be noticed that every game, whether of skill or chance, involves an outcome that is uncertain and unknown at the commencement of play. A game of skill is dependent only upon one's ability, under whatsoever circumstances, to control the outcome of the game to a substantial degree. There cannot be any quarrel on the proposition that there is an element of uncertainty in

every game. When the degree of control is minimal or insignificant in comparison to the uncontrollable variables determining the outcome of the game, the game loses its character as one of skill and assumes the character of a game of chance.

49.2. In this regard, a distinction may arise between situations where the person placing stakes is merely a spectator or participant distinct from the player, and situations where the player himself stakes upon his own performance. In either case, once money or money's worth is risked upon an uncertain outcome, the activity acquires the character of betting and gambling, irrespective of whether the underlying game involves skill, chance, or a combination thereof.

49.3. As already clarified in ***Junglee Games*** (supra), this Court, after undertaking an exhaustive examination of the expressions "betting" and "gambling", the constitutional framework governing Entry 34 of List II and the relevant judicial precedents including ***RMDC-I***, ***RMDC-II***, ***K.R. Lakshmanan*** and ***Satyanarayana***, held that "betting" and "gambling" constitute a composite and interchangeable expression referring to the act of staking money or money's worth upon uncertain outcomes. This Court expressly rejected the interpretation that Entry 34 ought to be read as "betting on gambling", holding that such construction would be contrary to the constitutional scheme as revealed by the substantive constitutional provisions as well as the legislative heads specified in the entries in the Seventh Schedule thereto. Most significantly, this Court clarified

that the determinative factor in betting and gambling is the 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 a statute expressly protects games of skill irrespective of the involvement of stakes. In the absence of such statutory protection, staking upon uncertain outcomes retains the character of betting and gambling. The Court further clarified that the medium, through which the activity is conducted, whether online or offline, is immaterial, since the essential character of the transaction lies in the staking arrangement itself and not in the technological medium through which it is facilitated. Notably, the Court also distinguished between an 'entry fee' paid merely to secure participation in a genuine skill-based competition and a 'stake' placed upon an uncertain outcome. It was held that in a genuine skill-based competition, the entry fee merely confers a right to participate and is not linked to the uncertain outcome or prize pool. Conversely, in gambling adventures or chance-based competitions, the so-called entry fee itself constitutes the stake amount, since it is paid upon an uncertain outcome and the prize money is intrinsically linked to the pooled stake amounts. The following paragraphs which drive home this proposition with precision, are most pertinent for the adjudication of the issue of taxability of such gaming transactions, and hence extracted hereunder:

"239. The question that, therefore, arises for our consideration is whether the interpretation of "betting and gambling" in Entry 34 of List II, as adopted by the respective High Courts by placing reliance on the judgements in ***RMDC-I*** *(supra),* ***RMDC-II*** *(supra) and* ***K. R. Lakshmanan*** *(supra), can be construed as 'betting on gambling'. In other words, can the State's legislative competence under Entry 34 List II be confined exclusively to betting on games of chance alone, thereby rendering any prohibition or regulation of skill-based games played with stakes unconstitutional.*

240. To address the contentions as canvassed, we must first try to decipher what has been held in the aforesaid three decisions, and more importantly, the context in which the same has been held. What appears from a reading of the decision of this Court in ***RMDC–I*** *(supra) is that the primary issue which the Constitution Bench was confronted with was as regards whether the 1952 Amendment to the Bombay Lotteries and Prize Competitions Control and Tax Act, 1948 would also cover in its ambit "innocent prize competitions". Elaborately dealing with the scheme of the 1952 Amendment Act, this Court observed that had the intention of the legislature been to include "innocent prize competitions" in the regulatory scheme of the 1948 Act, then the same would have been done by prescribing a different, and less stringent, set of regulations as compared to the ones prescribed for the prize competitions which were of a gambling nature. The reason assigned by the Court for the observation was that while an innocent prize competition could be regulated under Entry 60 of the State List, it would be difficult to hold that it could be regulated under Entry 34 of the List II.*

241. Further, what is evident from a reading of the aforesaid decision is that the Court was interpreting the effect of the amendment in the specific context of the legislative history of the impugned legislation and also the definition of "prize competition" enacted by the Legislature itself.

242. Thus, what can be discerned from a reading of ***RMDC–I*** *(supra) is that first, innocent prize competitions were held to be not covered by "betting and gambling" as appearing in Entry 34 of the State List, and secondly, that such innocent prize competitions may be regulated under Entry 60 of the State List. What is further forthcoming from a reading of the said decision is that illegitimate prize competitions may be subject to taxation under Entry 62 of the State List.*

243. However, the most pertinent observation made in the said decision, which bears a direct relevance to the present case, and directly covers the case before us, is the one which was made by the Bench after the discussion on the afore-stated aspects. The Court observed thus:

"20. A similar argument was sought to be raised on a construction of clause (ii) of Section 2(1)(d). As already stated, in between the first and the third categories of prize competitions which, as already seen, are of a gambling nature the definition has included a second category of competitions in which prizes are offered for forecasts of the results either of a future event or of a past event the result of which is not yet ascertained or not yet generally known. It is said that forecasts of such events as are specified in the section need not necessarily depend on chance, for it may be accurately done by the exercise of knowledge and skill derived from a close study of the statistics of similar events of the past. It may be that expert statisticians may form some idea of the result of an uncertain future event but it is difficult to treat the invitation to the general public to participate in these competitions as an invitation to a game of skill. The ordinary common people who usually join in these competitions can hardly be credited with such abundance of statistical skill as will enable them, by the application of their skill, to attain success. For most, if not all, of them the forecast is nothing better than a shot at a hidden target. Apart from the unlikelihood that the Legislature in enacting a statute tarring both lotteries and prize competitions with the same brush as indicated by Section 3 would squeeze in innocent prize competitions in between two categories of purely gambling varieties of them, all the considerations and difficulties we have adverted to in connection with the construction of the first category and the qualifying clause therein will apply mutatis mutandis to the interpretation of this second clause."

(Emphasis Supplied)

244. The extract reproduced above indicates that the Court in ***RMDC-I*** *(supra) considered as to whether events involving the forecast of an uncertain future event, if dependent on statistical skill, will amount to gambling or not. The Court held that although some members of the general public who are invited to such events may exercise statistical skill in making an accurate forecast, yet most of the people could hardly be attributed with such degree of statistical expertise. The said observations of the Court show that it was not oblivious of the reality wherein in the garb of skill, common people would essentially be engaging in forecasting or betting endeavors, and specifically observed that such betting activities would not enjoy the constitutional protection under Article 19(1)(g) and the possibility of some experts exercising skill would not protect such activities from being declared as res extra commercium. What is further discernible from the said observations is that the Court was cognizant of the fact that while games of skill may be excluded from the term "gambling", they would still be covered under the expression "betting" as betting is nothing but staking money on the outcome of a future uncertain outcome.*

245. The case of rummy as well as fantasy sports companies before us stands on a footing similar to the one that was expressly considered and rejected by this Court in ***RMDC-I*** *(supra). While the game of rummy substantially depends on skill, betting on the outcome of a game of rummy is akin to making a forecast on the outcome of an unknown future event, and thus while in a limited number of cases an expert may be able to make an accurate forecast by exercising statistical skill, yet to say that on an open online platform, where common masses play the game with stakes, the nature of the game is anything but betting. Similarly, in the case of fantasy sports, while an expert may make a prediction with some degree of certainty, it is almost common knowledge that the majority of people who participate in such games do so on "gut feeling" rather than on the basis of some mathematical knowledge. Even otherwise, to say that the outcome of a game like cricket, for example, which has innumerable variables that decide the outcome of a given match, can be foreseen by a common person, would be nothing but closing our eyes to the practical reality that in the garb of making fantasy or dream teams, the players are merely taking a shot at a hidden target, merely in a more sophisticated manner, than a slot machine or roulette.*

246. We are not unmindful of the fact that when even the best AI powered prediction models cannot predict with precision the outcome of a cricket match, it would be too much to believe that a common person may calculate, based on statistical knowledge, the best combination of players who would be the best 11 players to perform on a given day in a given match.

247. It is further important to mention that there is no discussion in the said decision as to what are the attributes of the expression "betting" and also whether the legislative competence of the State Legislature under Entry 34 is limited to betting on gambling activities.

248. Further, as regards the decision in ***RMDC–II*** *(supra), the key expression in contention was "competitions which involve substantial skill" and whether they would fall within the regulatory purview of Entry 34 of List II.*

249. The dispute that the court was resolving in ***RMDC–II*** *(supra) was as regards whether the Prize Competitions Act, 1955, covered even competitions where substantial skill was involved, and as such was void for legislative excess. The Court observed that the impugned legislation was severable and thus was valid to the extent it applied to prize competitions of a gambling nature. It is important to underscore that the Court never held that a game of substantial skill played with stakes would be or not be covered under the expression "betting and gambling" appearing in Entry 34. To put it*

differently, it never fell for consideration of the court as regards whether an event where the uncertain outcome of an event was to be predicted would be within the regulatory purview of Entry 34 or not.

*250. Insofar as the decision in **RMDC–II** (supra) is concerned, paragraph no. 9 of the report assumes great significance in the context of the present case. The court observed therein that competitions of a non-gambling nature were not in the mind of the State Legislatures when they resolved that the Central Government should enact a uniform legislation for regulating gambling competitions. It was further observed therein that the competitions involving substantial skill "had not done any harm to the public and had presented no problems to the States, and at no time had there been any legislation directed to regulating them". The said observation of the Court clearly indicates that the decision was not curtailing the power of the State Legislature to legislate on a game of skill, in the event a need was felt to do so but was only deciding the dispute in the context of the legislative history of the legislation impugned before it.*

*251. Further, what also follows as a natural corollary of the aforesaid observations is that if games of substantial skill are conducted in a manner that they start to pose problems for the State or cause harm to the public, then the State will not be powerless to regulate such games of substantial skill as well. Such is the case in the present situation where betting on games of skill is posing a threat to the State and the well-being of the masses, and thus, even as per the dictum in **RMDC–II** (supra), the State Legislature cannot be held to be powerless to regulate the same.*

*252. The situation that the State of Karnataka and Madras respectively faced at the time of enacting the impugned legislation is starkly different from the situation that formed the backdrop in the two **RMDC** cases. The statement of objects of the impugned Acts indicates the widespread problems being caused by the prevalence of online gaming platforms allowing betting and gambling with real money at stake. In such circumstances, the decision in **RMDC – II** (supra) cannot be an impediment, as the decision dealt with a factual scenario entirely different from the current one, and also because the decision does not explain or curtail the scope of the word "betting" appearing in Entry 34 List II.*

253. It needs to be pointed out that the nature of legislation under challenge before us is of a different nature. The legislations impugned in the two RMDC cases never intended to regulate betting on games of substantial skill. All that was sought to be regulated there were situations wherein a participant himself indulged in a game, success in which was not substantially dependent on skill, and it was such regulation

which was challenged on the ground that the phrasing of the legislation left scope for regulation of games of skill too, which would be beyond the competence of the State Legislature under Entry 34 of the List II.

254. The Court in the said decisions never had the occasion to dwell upon the scope of the expression "betting and gambling" as appearing in Entry 34 List II for the simple reason that the factual situations in the said cases were covered by the expression "gambling" inasmuch as the games under consideration there were all where the participant himself took a chance at the "hidden target". Thus, there was no requirement for the Court to consider the scope of "betting" as it appears in the expression "betting and gambling" and also the nature of the conjunction "and" joining the two words.

255. As such, we find it difficult to hold that the decisions in the two ***RMDC*** *cases have taken away the power of the State Legislature to regulate games of skill altogether. It is trite law that the words of the legislature cannot be treated as mere surplusage and some meaning and weight must be ascribed to the words employed by the lawmakers while drafting the legislation. This principle only assumes greater importance when the words under consideration belong to a foundational document like the Constitution itself, whose draftsmen were none other than the founding fathers and mothers of our nation.*

256. While it may be true that games of skill may not get covered by the expression "gambling", it is not correct to say that even "betting" on games of skill would be out of the competence of the State Legislature to legislate upon.

257. We next turn our attention to the decision of this Court in ***K.R. Lakshmanan*** *(supra). In the said decision, betting on horse-racing was held not to be a game of chance and thus entitled to the protection of Section 49 of the Police Act and Section 11 of the Gaming Act. It is pertinent to mention that the protection afforded to betting on horse-racing in the said decision flowed from the protection available to games of "mere skill" under the Police Act and the Gaming Act. It was held by the Court that, being a game of skill, wagering on horse-racing would not amount to gambling. Thus, it was not the scope of the expression "betting and gambling" as appearing in Entry 34 which was the subject matter of determination, rather, the issue pertained to whether horse racing would be entitled to the protection of the exception that the State Legislature had itself carved out for games of "mere skill".*

258. What follows from a reading of the decision as aforesaid is that where the State Legislature, in its wisdom, has deemed it appropriate to regulate games where monetary stakes are involved, without affording any special protection to games of mere skill, the decision in ***K.R. Lakshmanan*** *(supra) will not be of much avail. In the absence of Sections 11 and 49 of the Gaming Act and Police Act, respectively, would the decision in* ***K.R. Lakshmanan*** *(supra) still be the same? We find the answer to be a 'No'.*

259. We also take note of the observation made by the Australian High Court in ***King v. Connara*** *reported in* ***61 CLR 596****, to the effect that whether an activity belongs to the category of commerce or to the category of gaming/gambling, is a matter of social opinion and not jurisprudence. The Constitution makers, by enacting a broad entry 34 have left ample scope for the State Legislatures to keep an eye on the efflux in social opinion as regards these activities and codify the regulations necessary to deal with a changing social order. As we have already discussed, with the disruption caused by the ushering of internet and mobile based gaming, the State Legislatures cannot be forced to remain tethered to the traditional understanding of gaming or gambling. It is also evident that the decisions relied upon by the Petitioners, were all rendered in specific factual scenarios, entirely different from the one in hand. Moreover, the approach adopted by this Court in all those decisions was to give true meaning and effect to the intent of the Legislature, as was forthcoming from the tone and tenor of those specific legislations. However, in none of those decisions, has Entry 34 been interpreted to mean that the scope of the Entry excludes activities pertaining to skill from its scope – and while many of the State Legislatures deemed it appropriate to create exceptions in favour of skill in the earlier legislations, they cannot be held to be bound by what was once the understanding of the concept, and which understanding may not anymore align with the realities of the modern, technology driven social life.*

260. A reading of the decision in ***K.R. Lakshmanan*** *(supra) also indicates that the Court considered the manner in which the Club operated and conducted the horse-races, as well as the process by which betting happened. The observations of the Court point out that the entire process of conducting races and betting on them was highly regulated and organized, which is very different from the uncertainty and veil of invisibility associated with online gaming activities, whether of skill or of chance.*

261. Further, as a reading of paragraph no. 37 would make evident, the Court held that wagering or betting on horse racing, when it takes place within the premises of the Club on the date when such a race is actually run on the turf of the Club, would not be illegal. However, the Court immediately added that betting at any place other than the Club, like the streets or bazaars would not enjoy immunity. Therefore, it appears that

the idea of physical control and regulation over the aspect of betting was a predominant reason why the Court held betting inside the Club as being legal. Such physical boundaries or possibility of control are palpably missing from the online gaming landscape.

262. There is another aspect of the matter which requires some consideration. The nature of the legislation impugned in the two RMDC cases was such that the legislations were aimed at regulating/taxing "prize competitions" wherein the success of the participant did not substantially depend on the skill of the participant. Similarly, in ***K.R. Lakshmanan*** *(supra), this Court was called upon to adjudicate whether betting on horse-racing could be prohibited by the legislation impugned therein, which had a specific provision conferring immunity to games of mere skill.*

263. However, the situation in the present case is of a different nature. The question is not that whether games of substantial skill simpliciter can be prohibited by virtue of Entry 34 List II. This much is settled that such games would not amount to gambling and hence enjoy the protection of Article 19(1)(g) of the Constitution. The question is that when a player or third person places a bet on the uncertain outcome of a game of skill, with the hope of earning an amount more than he has staked, would such an act, which indubitably amounts to betting, not be covered by the expression "betting and gambling" used in Entry 34 and thus be amenable to regulation by the State Legislature. In view of the discussion as aforesaid, which indicates that even the much relied upon decisions in the two ***RMDC*** *cases left scope for the State Legislature to regulate activities wherein the uncertain outcome of a future event is to be forecasted.*

264. Even in a game of skill, the outcome of the game being played by multiple players is an uncertain future event, and even with much exercise of skill, can never be predicted with certainty. We would also like to observe that a game of skill, played without stakes dependent on the outcome is very different from a societal perspective as compared to a game of skill played with stakes on the outcome of the game. The former does not amount to betting or gambling, but the latter amounts to betting, and thus falls within the purview of the legislative powers of the State.

265. Having elaborately discussed the decisions in the two ***RMDC*** *cases and* ***K.R. Lakshmanan*** *(supra), we shall now proceed to analyse if the High Courts while passing the impugned judgments, correctly applied the dictum to the factual scenario before us. In other words, can the views of the respective High Courts in this regard that 'betting and gambling' by its very nature only pertains to games of chance be sustainable in law?*

*266. We are not in agreement with the ratio evolved in **AIGF** (supra) and **Junglee Games** (supra) respectively holding the view that the Entry 34 in List II which reads as "betting and gambling" should be read as "betting on gambling".*

267. This finding is a clear Constitutional aberration, tinkering with the Constitution or actually rewriting the Constitutional text which Courts are not entitled to do. The expression betting and gambling is not strange, alien or unacceptable expression, requiring a course correction through a Court judgment. "Betting and gambling" is a common usage expression across the world and across several legislation within the country and outside. It is like usage of the expression in common parlance "pipes and tubes". "Betting and gambling" is a set expression and the two terms in the expression go with the flow. Both the High Courts erred seriously in rendering a finding that Entry 34 List II should be read as "betting on gambling" thereby meaning that only betting on a game of chance would tantamount to gambling, which can be regulated under the said Constitutional Entry and through this interpretation, both the High Courts have provided immunity to betting or putting stakes on game of skill once and for all from the purview of Entry 34 List II.

268. Once it goes out of the Constitutional scheme and therefore would remain unregulated is something which not only goes against the teeth of various judgments but the underlying Constitutional principle that betting on uncertain events irrespective of the underlying game being a game of skill or chance, would fall within the rigors of Entry 34 List II.

269. When the uncertainty remains the same and the constant factor in both these groups of games also remains the same, an interpretation taking one out of the regulation and retaining the other especially when the State Governments of Karnataka and Tamil Nadu tracing their power to Entry 34 List II had removed the protection to stakes played on games of skill, is an erroneous reading of Entry 34 of List II.

270. According to the High Courts, the act of staking would constitute "betting" and only when such betting takes place in relation to a gamble, i.e., taking a chance or in a chance-based game, would the States be entitled to exercise their legislative powers under Entry 34 List II. For the reasoning of the High Court to be logically correct, it must be correct to say that the element of gambling does not involve placing any stakes. However, such a statement would be incorrect. Both betting and gambling involve the aspect of staking. Therefore, to eliminate the aspect of staking from the element of

gambling and attributing the aspect of staking only to the expression betting is incorrect. In the absence of staking, an activity can never constitute gambling. Merely taking a chance without staking can never be a gamble. It is placing money to win more money that forms the bedrock of a gambling adventure.

271. The question that arises is what is then the difference between the scope of the terms "betting" and "gambling". Both betting and gambling are interchangeable expressions. They mean the same and are understood as an activity of placing money on an uncertain and unknown outcome of either an event or a sporting event or a random occurrence or non-occurrence of anything.

272. The expression "betting and gambling" cannot be split to mean that the staking angle alone would amount to betting whereas the risk angle or the chance element would amount to gamble. Both betting and gambling involve the aspect of staking money on an uncertainty. Merely because the risk element is commonly perceived as "taking a chance", it cannot mean an expression would cover only games of chances. In both rummy, a game of skill, and Teenpathi, a game of chance, the persons staking on the uncertain outcome, equally risk and "take a chance" on their unknown and uncertain victory.

273. The protection afforded to games of skill under Entry 34 cannot be construed as protection to betting on games of skill, which essentially becomes a gambling enterprise. The protection is to games of skill, where such games are to be conducted not in a manner which essentially renders them into gambling activities by allowing the players to bet on the uncertain outcome of their victory.

*274. As stated above **RMDC-I** (supra) neither dealt with a game of skill nor with persons staking on games of skill. The only ratio that can be deciphered from the ratio in **RMDC-I** (supra) is that a prize competition, which is chance-based and is played upon paying an entry fee, would constitute gambling with the stake amount being the entry fee. What follows, which is also the ratio in **RMDC-I** (supra), is that any prize competition or tournament which is skill based and is played upon paying an entry fee would not constitute gambling. Nothing more can be read into **RMDC-I** (supra).*

*275. Therefore, to even remotely suggest that **RMDC-I** (supra) re-casted Entry 34 List II from "betting and gambling" to "betting on gambling" is incorrect, and such a finding emanates from a misreading of RMDC-I.*

*276. The sheet anchor of the online gaming companies' submission is a far-fetched interpretation by interlocking couple of sentences in the Judgments of this Court in **RMDC-I** (supra), **RMDC-II** (supra), **K.R. Lakshmanan** (supra) and **Satyanarayana** (supra), respectively, without examining the underlying context.*

*277. The Online gaming companies have placed strong reliance on the following findings rendered by the Constitution Bench judgement in **RMDC-I** (supra):*

> *"At one time the notion was that in order to be branded as gambling the competition must be one success in which depended entirely on chance. If even a scintilla of skill was required for success the competition could not be regarded as of a gambling nature. The Court of Appeal in the judgment under appeal has shown how opinions have changed since the earlier decisions were given and it is not necessary for us to discuss the matter again. It will suffice to say that we agree with the Court of Appeal that a competition in order to avoid the stigma of gambling must depend to a substantial degree upon the exercise of skill. Therefore, a competition success wherein does not depend to a substantial degree upon the exercise of skill is now recognised to be of a gambling nature."*
>
> *(Emphasis Supplied)*

278. The contention canvassed on behalf of the online gaming companies is erroneous as the above finding in RMDC cannot be read to support their contention for the following reasons:

a) *The first question that requires to be asked is whether in the facts of **RMDC-I** (supra), any game of skill was played with stakes. The answer to this question is an overwhelming No. When in the facts of **RMDC-I** (supra), there was no element of staking on a game of skill by any player/participant, the Judgement in **RMDC-I** (supra) cannot be a binding precedent for the principle that a Game of Skill when played with Stakes would not be gambling.*

b) *However, the Judgement in RMDC-1 is crucial and lays down an important principle of law and must be understood in the light of the underlying facts.*

c) *The 1939 Act, the 1948 Act and the 1952 Act defined "prize competition". The 1952 Act, under Section 12A levied a tax on such "prize competitions". The State of Bombay traced the power to levy the tax to the erstwhile Entry 62 of List II of the 7th Schedule to the Constitution of India which permitted the State to levy taxes on Betting and Gambling. The endeavour of the Promoter in RMDC- I was to somehow establish that the definition of prize competition covered Skill based competitions, and the State was therefore incompetent to levy a Tax under Entry 62 List II as the same would not be gambling.*

d) *This Court examined the three limbs of the definition of prize competitions and came to a conclusion that in all the three categories the success in the Competition was chance based and proceeded to uphold the levy of the State under Entry 62 List II by declaring them to be gambling adventures. At this juncture, the Department takes recourse to Sutra No.1 placed before this Court i.e. There is no gambling if no stakes are involved, irrespective of whether the underlying game is a game of skill or game of chance.*

e) *The question that therefore arises is what were the "stakes" in the facts of* ***RMDC-I*** *(supra). The answer lies in the underlying High Court Judgement in* ***RMDC-I*** *(supra), placed on record by learned Senior counsel Mr. Gopal Sankaranarayanan.*

f) *In the first paragraph, the following was recorded as facts of the case:*

"The registered office of the petitioners is situated in Bangalore. They own and run a weekly newspaper called the Sporting Star. This paper is printed and published in Bangalore and it contains a crossword prize competition called the R.M.D.C. Crosswords for which entries are received from various parts of India including the State of Bombay. The petitioners have agents and depots in various places in the territory of India including the State of Bombay <u>to collect entry forms and fees for being forwarded to the petitioners at Bangalore</u>. The petitioners advertise their crossword prize competition in various publications in various places in India including the State of Bombay."

(Emphasis Supplied)

g) *Therefore, every participant of the prize competition, which was subject matter in* ***RMDC-I*** *(supra), had paid an "entry fee" to participate in the Competition. Section 12A, which levied the tax on such prize competitions adopted the Gross Entry Fee (Total Entry Fee collected) as the measure of Tax.*

h) *In other words, the Entry Fee paid by a participant, for a prize competition covered under the respective Acts, which were inherently gambling adventures, constituted the stake amount. This is because the Entry Fee was paid only on the uncertain and unknown outcome of the event to gain an amount higher than what was staked. It is for this reason that the Department in Sutra No. 3 contended that a Game of Chance involving even a competition fee, is gambling, because the entry fee paid for such a competition would constitute the stake amount.*

i) *The same is however not true when the underlying game is a game of skill. An entry fee paid for a competition, which is skill based, would not be gambling.* ***RMDC-I****'s ratio becomes pertinent only in this context.*

j) *In a prize competition involving an entry fee, when the underlying competition is skill based, the entry fee would be for obtaining a right to participate in the competition. The entry fee cannot be construed as stake amount placed on the unknown and uncertain outcome of the competition. This is because, unlike an entry fee paid for a gambling adventure, in a skill based competition, the prize money is never linked to the bet or stake amount. With utmost certainty, in a gambling adventure, the pool money assured to the winner is always linked to the bet or stake amount.*

k) *The online gaming companies, being aware of this subtle difference, attempted to treat both the scenarios as the same. In other words, the online gaming companies contend that in both the scenarios, the entry fee is only for the right to participate in the competition. It is at this juncture that the intention of the participant becomes pertinent.*

l) *In a chance-based competition or an inherently gambling adventure, the participant is merely taking a shot at a hidden target and it is for that reason that the entry fee would itself constitute the stake amount. However, in a Skill based competition, the entry fee would be paid towards obtaining a right to participate and the intention is not to take a shot at a hidden target. As stated earlier, in a skill-based competition, the prize money is never linked to the stake amount. The expression "entry fee" is a misnomer in a Game of Chance.*

m) *Here again, the online gaming companies contend that since rummy is a game of skill, the stakes placed by each participant must be treated akin to an entry fee for a skill-based competition. It was also argued that since the Revenue concedes that an entry fee for a skill-based*

competition is not gambling, the show-cause notices in the present batch of maters requires to be quashed.

n) *This argument requires to be rejected outright because the online gaming companies in the facts and circumstances of the case have not called for participants to participate in any tournament conducted by them where there are winners announced and declared by the companies at the end of the competition. To the contrary, the terms and conditions is a clear invitation to place stakes on the uncertain and unknown outcome of each game and where each game has a winner, unlike a tournament. The companies cannot be permitted to state that there can be hundreds of tables (or virtual rooms) with varying amounts of pool money and each table is a tournament by itself. Such a contention would be too far-fetched and defies logic and what is commonly understood as a competition or tournament.*

o) *The aforesaid can also be looked into from one another angle. If one examines the online gaming platforms, it is nothing but a systematic inducement technique to ensure a player bets more and more. This is provided in the form of discounts, incentives for repeated betting, incentives for a particular number of victories and of course, as stated above, retaining the winnings upto a particular amount before it could be withdrawn and a prohibition to withdraw the deposited amount before it is turned into winnings by staking the deposited amount repeatedly. This never happens in a skill based competition. A promoter or an organizer of a skill based competition never induces a player or a participant to repeatedly stake. The amount collected as an entry fee in a skill based competition would merely entitle a player or participant to participate in the game.*

p) *In short, an entry fee for a chance-based adventure and a skill-based competition boils down to the intention of the player and the intention of the promoter.*

q) *It is in the above context that the ratio in **RMDC-I** (supra) requires to be appreciated. If a promoter is floating a skill-based competition for an entry fee, that per se would not be gambling. If a promoter is floating a chance-based competition for an entry fee, that per se would constitute gambling. This alone is the inference that can be drawn from **RMDC-I** (supra).*

r) ***RMDC-I*** *(supra) cannot be relied upon by the online gaming companies to contend that games of skill, when played for stakes, would not amount to gambling, especially when the underlying facts in* ***RMDC-I*** *(supra) did not involve a game of skill and did not involve placing stakes on such games of skill.*

279. In the context of Entry 34 List II, the ratio in ***RMDC-I*** *(supra) is crucial. The States have the power to regulate a chance-based competition even for an entry fee since that would constitute the stake amount. The States do not have the power to regulate skill-based competitions for an entry fee since the entry fee will not constitute the stake amount. For example, the States cannot interfere with BCCI conducting IPL tournaments or a school Under-14 All India Cricket Tournament. However, powers under Entry 34 List II can be exercised by the States even on games of skill when they are played for stakes since the stake element would amount to betting and gambling, providing the basis for the States to interfere.* ***RMDC-I****'s ratio merely seeks to achieve this purpose.*

280. If for any reason, in a given set of facts and circumstances, it is found that the entry fee partakes the character of a stake or nothing but the stake based on the outcome of such a game or competition involving skill, then it would become betting and gambling. On the other hand, if it retains its character only as an entry fee and the organizers reward the winner with the trophy or a cash prize or a prize money which is announced in advance, then it is in the nature of a reward for one who has succeeded in the competition and would not take the colour and character of a bet amount. This distinction is not academic or superficial and happens in reality.

281. Lastly, on a perusal of the judgment in ***RMDC-I*** *(supra), the stand of the State is in fact, supported. This Court took recourse and examined the aspects of gambling from the ancient history perspective, the mythological perspective and the perspectives offered by various religions. After quoting extensively from the Rig Veda, the Mahabharata, Yajnavalkya, and Vrihaspati, this Court also took note of* ***Hamilton's Hedaya*** *and the following was quoted with approval:*

> *"…Hamilton in his Hedaya, Vol IV, book XLIV, includes gambling as a kiraheeat or abomination. He says "<u>It is an abomination to play at chess, dice or any other game; for if anything is staked it is gambling, which is expressly prohibited in the Koran or if, on the other hand, nothing be hazarded it is useless and vain</u>."*
>
> *(Emphasis Supplied)*

*282. Nothing could be more telling than the above reference to **Hamilton's Hedaya** by this Court. If this Court really intended to permit and constitutionally protect games of skill being played with stakes, it could not have possibly quoted **Hamilton's Hedaya** and in particular, the above extract in support of that proposition, since it says exactly to the contrary. There is nothing in **RMDC-I** (supra) to suggest that this Court took note of **Hamilton's Hedaya** and expressed its disagreement over the same. To the contrary, in what could be termed as a lecture on the aspects of Betting and Gambling and how the same could not be elevated to the level of a fundamental right under the Constitution, this Court took recourse to **Hamilton's Hedaya** as a supporting document and specifically quoted a portion which says that chess being played with stakes would amount to Gambling. There cannot be any doubt that chess is a Game of Skill. Therefore, to even remotely suggest that **RMDC-I** (supra) is good law for the proposition that a game of skill being played with stakes enjoys constitutional protection is incorrect and deserves to be rejected.*

*283. There is something else that has drawn our curiosity. When, according to the State, **RMDC-I** (supra)'s ratio would not be applicable in the present case, why is the State then placing reliance on **RMDC-I** (supra)? The answer lies in the 2nd category of games covered by the definition of prize competition, which was subject matter of interpretation in **RMDC-I** (supra).*

284. In the 2nd category of competition, prizes were offered for the forecast of results either of a future event or of a past event, the result of which is not yet ascertained or not yet generally known. This category was declared by this Court as a gambling adventure. The State, in the facts of the present case drew a parallel to contend that the players in the platform are doing nothing but forecasting their victory in a game of rummy, which event is unknown, uncertain and not known at the time of placing the stake. When this Court has held such forecasting to be gambling, the State contends that the players are equally gambling because the act of staking on the unknown and uncertain victory in the game is no less forecasting.

*285. The online gaming companies contend that the interpretation of the State would overturn 70 years of jurisprudence, as all courts in India have understood **RMDC-I** (supra) in such a way that it protects games of skill to be played with stakes, and the same would not amount to gambling. With the greatest of respect, the above alleged ratio does not flow on an explicit reading of **RMDC-I** (supra). When what does not flow from **RMDC-I** (supra) has been canvassed for 70 years as if emanating from **RMDC-I** (supra), the same is erroneous and requires a course correction. There are multiple*

judgments rendered by various High Courts which hold that games of skill played with stakes amounts to gambling, and all these judgments have also considered ***RMDC-I*** *(supra). It is therefore incorrect to say that the views of the gaming companies have alone been upheld or adopted throughout the country for 70 years. In fact, the contention of the State is truly in spirit with* ***RMDC-I*** *(supra) because the gaming companies are taking shelter under a game of skill while actually promoting gambling, which was frowned upon by this Court in* ***RMDC-I*** *(supra). Explicit gambling, though, while playing a game of skill, would remain gambling and taking protection under an assumed ratio of* ***RMDC-I*** *(supra) would be virtually undoing* ***RMDC-I*** *(supra).*

a. Online Gaming Companies' Interpretation of RMDC-II

286. The online gaming companies before this Court treated the severability principle laid down in ***RMDC-II*** *(supra) as an extension of* ***RMDC-I*** *(supra) to contend that games of skill move away from the regulatory sphere of Entry 34 List II. The State completely agrees with this contention. It is true that a genuine skill-based competition cannot be within the regulatory sphere of Entry 34 List II. However, to further stretch it to contend that since games of skill are outside the purview of Entry 34 List II, even staking on them would not be governed by the said entry is incorrect and cannot be accepted.*

287. RMDC-II *(supra) will apply and protect games of skill from the purview of Entry 34 List II only when they are not played for stakes. However, once stakes are introduced in a game of skill, the said entry would gain full relevance, and the States will be competent to regulate stakes being placed on a game of skill. It is incorrect to state that since games of skill enjoy constitutional protection, even staking on such games of skill enjoys equal protection. They do not, and such an interpretation must be eschewed at the outset, and such an interpretation would, in fact, be overturning what* ***RMDC-I*** *(supra) and* ***RMDC- II*** *(supra) intended to achieve.*

288. Lastly, reliance placed by the gaming companies on the decision in ***K.R. Lakshmanan*** *(supra) is also misplaced. As we have already discussed, the decision protected only such betting on horse-racing as took place within the club premises on the day of the race being run in the racing club. This protection can be drawn from the second category of games considered in* ***RMDC-I*** *(supra) wherein the forecasting of uncertain events on the basis of statistical expertise and skill was considered. When forecasting the outcome of a horse-race is considered, the people who are present inside the club on the day of the race being run definitely constitute a small group of persons who may be attributed with above-average expertise in the factors affecting the outcome of a horse race. The situation in* ***K.R. Lakshmanan*** *(supra) was entirely*

different from the situation before us, where there is no enclosure in the virtual world, and where the average participant cannot be credited with the expertise of a punter inside a racing club. Furthermore, the express declaration of betting from outside the club premises as illegal by the decision in the said case further reinforces that the decision was passed in the specific context of horse-racing, which is very different in scale, accessibility and outreach than online gaming activities.

289. Therefore, it is abundantly clear that there is no legal shelter for the online gaming companies to claim that placing stakes on games of skill would not amount to betting and gambling. The Authorities relied on by the Union and the States uniformly hold the contrary.

……

292. The terms betting and gambling which are often used interchangeably and carry a specific meaning in common parlance. The following are the ingredients of betting and gambling:

- **a)** *There must be a stake/bet.*
- **b)** *The bet that is placed must be on the result of an uncertain outcome.*
- **c)** *The stakes must be placed with a hope of gaining substantially more than what is being staked, depending upon the result of the uncertain event.*

293. There is no question of manifest arbitrariness as betting and gambling are independent activities by itself and it is not concerned with the nature of the game being played. The artificial construction that is sought to be created by the online gaming companies will denude the State from all the powers to regulate and prohibit betting and gambling for times to come. If such a contention is allowed to be sustained, it will cause grave injustice to the saintly ideals of the Fathers of our Constitution.

294. If one examines the Judgements rendered across several jurisdictions, an inescapable conclusion that one would arrive at is that the underlying classification of a game as either skill or chance is immaterial and once any game is played with stakes, it would amount to betting and gambling.

……

304. *A perusal of the Judgements rendered pre-Constitution as well as post-Constitution clearly indicates that as far as betting and gambling is concerned, a differentiation cannot be made between games of chance and games of skill because*

the player staking the amount, in both cases, does it with a hope of winning more money than what is staked. That is the essence of gambling. An enquiry as to the nature of the game as that of skill or chance can be done only when the Statute in question protects game of skill from penal prosecution. Only in such cases, a differentiation between game of skill and game of chance is required for the purpose of ascertaining conviction. In the absence of such a provision, the differentiation based on the underlying game pales into insignificance as the underlying activity is betting and gambling in both cases. When a particular statute does not differentiate between games of chance or games of skill, the gaming companies cannot possibly argue that even in the absence of a protection clause they continue to be a protected species. Rendering the states powerless to remove such clauses of protection would amount to a constitutional injustice and prohibits the state from exercising policy discretion towards public welfare.

305. Therefore, when the element of betting and gambling enters the picture, the nature of the game ceases to be of relevance. The common aspect of addiction and desire to gain more and more looms large wherever staking money on an uncertain event is involved. When such is the case, there is no question of manifest arbitrariness since the States have always been permitted to regulate or prohibit betting and gambling. The States had hitherto permitted and protected betting and gambling on games of skill. When a technological boom happened and when the vicious activity of betting and gambling entered every household, the States wanted to remove such protection. While states like Telangana have proactively made it an offence to gamble (even on games of skill) in cyberspace, the Judgements of the Madras High Court and Karnataka High Court have restrained the two States from preventing the destruction of the future of the youth. The Judgements have not factored in the social evils and consequences that would accrue if betting and gambling are so rampant and prevalent in the society.

306. The Judgement of the Division Bench in ***Director General of Police, State of Tamil Nadu v. Mahalakshmi Cultural Association*** *reported in* ***2012 SCC OnLine Mad 1130*** *is of utmost importance as it lays down the correct position of law. The High Court of Madras held as follows:*

> *"21. Playing of cards perhaps may be for relaxing oneself or for an entertainment provided such play has limitations. Playing of cards with stakes has two evils i.e., it corrupts the mind of the players to become addict and it makes most of the players bankrupt. Discussions above undoubtedly point against the practice of indulging in gambling, be it rummy or other similar games, where wagering or betting is involved. We may also refer to the ordinary use of the expression "winning". The word "winning" has been given the following meaning in the Universal Dictionary of English Language, namely, "Amount won, esp. money won in betting." In the Oxford*

English Dictionary, the word "winning" is given the following meaning, namely, "Things or sums gained, gains, profits, earnings in mod. use chiefly applied to money won by gaming or betting." In Webster's Third International Dictionary, the word "winning" is given the following meaning, namely, "Something one wins esp. the money won by success in competition." Therefore, in the event a place is used for gambling, it will be termed to be a gambling house and such gambling would amount to an illegal activity in the event the member or the guests or the club/association make profit out of such gambling. The object of the Association is also to allow the members to play cards not amounting to gambling.

22. We may also refer to yet another aspect as to whether the guests can be also allowed to play rummy. As per the objects of the Association, it is entitled to entertain members and guests. So long as the guests are allowed to use the association premises for an activity which is not illegal, the Police has no authority to proceed against them, as the Association would be entitled to allow them to avail the facilities. <u>In the event the guests are found playing rummy (13 cards) with stakes, they would be also considered as indulging in gambling.</u>

xxx xxx xxx

24. On the basis of the above discussions, we arrive at the following conclusions:-

(1) The game of rummy (13 cards) is only a game of skill even though an element of chance is also involved.

(2) In the event rummy is played by the members or the guests without stakes, the provisions of the Chennai City Police Act are not attracted.

(3) <u>In the event rummy is played by the members or the guests with stakes, the provisions of the Chennai City Police Act are attracted.</u>

(4) In the event the club/association either allows its members or guests to play rummy with stakes or make any profit or gain out of such gambling, the Police has the authority to invoke the provisions of the Chennai City Police Act.

(5) In order to ascertain as to whether the premises is used as a gaming house for gambling, the Police is entitled to invoke Section 23 of the Act."

(Emphasis Supplied)

*307. The High Court of Karnataka, in **AIGF** (supra) had held that games of Skill do not metamorphize into games of chance merely because they are played online, and therefore, the Judgement of this Court in **MJ Sivani** (supra) cannot be the best guide to distinguish online games and physical games.*

*308. This Court had considered playing of **any game**, whether of skill or chance, for money or money's worth to be gambling/gaming in **MJ Sivani** (supra). The High Court of Karnataka has failed to apply this ratio and has cursorily distinguished the facts of the dispute in **AIGF** (supra) from what was considered to be "gaming" as per common parlance in **MJ Sivani** (supra).*

*309. In **MJ Sivani** (supra) this Court referred to two definitions of Gaming as given in the **Strouds Judicial Dictionary** and **Black's Law Dictionary** reported in **6th edn. at 679**, as given below:*

> *"(i) The Strouds Judicial Dictionary:*
> *To play any game, whether of skill or chance for money or money's worth; and the act is not less gaming because the game played is not in itself unlawful and whether it involved or did not involve skill.*
>
> *(ii) The Black's Law Dictionary Bryan A. Garner & Henry C. Black, Black's Law Dictionary, (6th ed.) 679, 1990*
>
> *The practice or act of gambling. An agreement between two or more persons to play together at a game of chance for a stake or wager which is to become the property of the winner, and to which all contribute. The elements of gaming are the presence of price or consideration, chance and prize or reward."*

*310. The Court also noted that Section 2(7) of Mysore Police Act, 1963, defines "gaming" to mean that "it does not include a lottery but all forms of wagering or betting in connection with **any** game of chance, except wagering or betting on a horse-race, when such wagering or betting takes place". Accordingly, the Court defined 'Gaming' in the following words:*

> *"<u>Gaming is to play any game whether of skill or chance for money or money's worth and the act is not less gaming because the game is not in itself unlawful and whether it involved or did not involve skill</u>."*

(Emphasis Supplied)

*311. In **MJ Sivani** (supra) this Court, while determining the issue of the legality of prohibition on video games, under Section 2(7) of the Mysore Police Act, 1963, observed that, even if video games were considered to be games of skill, the outcome could be manipulated by tampering with the machines. Therefore, the court refused to grant protection to these games.*

312. The medium of play, whether online or not, is not relevant to the issue. The only thing that is required to be checked is whether, irrespective of the nature of the game and irrespective of the medium of play, whether stakes are involved. The moment stakes are involved the medium of playing or the nature of the game as one of skill or chance is irrelevant because it will constitute betting and gambling.

313. As far as the contention of the online gaming companies that the legislation violates their fundamental rights under Article 19(1)(g) is concerned, it has to be rejected at the outset for the simple reason that once the trade being carried out by the companies is classified as a "betting and gambling" enterprise, it becomes res extra commercium and the question of applicability of Article 19 does not arise.

CONCLUSION

375. In lieu of the aforesaid discussion, we summarise our findings as follows:

(a) The High Court of Madras and the High Court of Karnataka respectively committed an error in giving a very narrow interpretation to Entry 34 of the List II. Both the High Courts failed to take into account the power intended to be bestowed upon the State Legislature under the said Entry by the framers of the Constitution. This has rendered both the States powerless to prohibit the activity of betting and gambling.

*(b) A natural corollary of the observations made by this Court in **RMDC-II** (supra) is that if games of substantial skill are conducted in a manner that they start to pose problems for the State or cause harm to the public, then the State will not be powerless to regulate such games of substantial skill as well. In the present case, since betting on games of skill is posing a threat to the State and the well-being of the masses, such betting would not enjoy immunity merely because it is taking place on a game of skill.*

(c) There was no occasion for this Court to consider the scope of the term "betting" as it appears in the expression "betting and gambling" in Entry 34 List II, and also the nature of the conjunction "and" joining the two words, while rendering the decisions in ***RMDC-I*** *(supra) and* ***RMDC-II*** *(supra) respectively.*

(d) While it may be true that games of skill may not get covered by the expression "gambling", it is not correct to say that even "betting" on games of skill would be out of the competence of the State Legislature to legislate upon.

(e) In ***K.R. Lakshmanan*** *(supra), the scope of the expression "betting and gambling" as appearing in Entry 34 was not the subject matter of determination, rather, the issue pertained to whether horse racing would be entitled to the protection of the exception that the State Legislature had itself carved out for games of "mere skill" under Section 49 of the Police Act and Section 11 of the Gaming Act respectively.*

(f) The decision in ***K.R. Lakshmanan*** *(supra) has no application to cases like the one at hand where the State Legislature, in its wisdom, has deemed it appropriate to regulate games where monetary stakes are involved, without affording any special protection to games of mere skill.*

(g) A reading of the decision in ***K.R. Lakshmanan*** *(supra) also indicates that the Court therein considered the manner in which the Club operated and conducted the horse-races, as well as the process by which wagering/betting happened. The observations of the Court clearly indicate that the entire process of conducting races and betting on them was highly regulated and organized, which is very different from the uncertainty and veil of invisibility associated with online gaming activities, whether of skill or of chance.*

(h) The finding in the impugned judgments that the expression "betting and gambling" ought to be interpreted as "betting on gambling" is a clear Constitutional aberration, tinkering with the Constitution or actually rewriting the Constitutional text which Courts are not legally entitled to do.

(i) The expression "betting and gambling" cannot be split to mean that the staking angle alone would amount to betting whereas the risk angle or the chance element would amount to gamble. Both betting and gambling involve the aspect of staking money on an uncertainty. Merely because the risk element is commonly perceived as "taking a chance", it cannot mean an expression would cover only games of chances.

(j) The protection afforded to games of skill under Entry 34 cannot be construed as protection to betting on games of skill, which essentially becomes a gambling enterprise.

(k) When the element of betting and gambling enters the picture, the nature of the game ceases to be of relevance. The common aspect of addiction and desire to gain more and more looms large wherever staking money on an uncertain event is involved. When such is the case, there is no question of manifest arbitrariness since the States have always been permitted to regulate or prohibit betting and gambling.

(l) The occasion for testing the impugned legislations on proportionality does not arise as activities encompassed under "betting and gambling" are in the nature of res extra commercium and the plain reading of the two ***RMDC*** *decisions also suggests, no one can claim a fundamental right in operating an activity which is extra commercium.*

(m) Games of skill would be protected by the constitutional guarantee laid down under Article 19, but betting or wagering on any game, be it a game of skill, would not be entitled to receive any such protection, unless the Legislature creates an exception in favour of such betting on games of skill.

(n) The competence of the State to regulate certain activity also enables it to prohibit the same activity, subject to Part III of the Constitution, if applicable. The 2021 Amendment has not provided a sweeping definition or a "midas touch". It has merely brought every form of betting and gambling under its sweep, and for that the States are empowered under Entry 34 List II. In absence of availability of the protection of Article 19, total prohibition would not be hit by the test of proportionality.

(o) The phrase "gaming" cannot be said to be nomen juris. The phrase "gaming" is a statutory definition which can be altered according to the will of the Legislature. In no way can it be dependent on the element of chance alone. The definition of "gaming" is fluid and fluctuating across states and different legislations.

(p) In terms of addiction, in terms of monetary losses and in terms of resultant widespread suicides respectively, online money gaming has a definite impact on the public. When such is the case, it has to be recognized that online money gaming has been disturbing the tranquility of the public by making betting and gambling more normalized and accessible. Therefore, public tranquility is breached and consequently, the States would have competence to invoke public order and seek to curb the mischief and restore public tranquility.

(q) The addiction and depression that stems from indulging in online money gaming and the frequent suicides that are reported would go on to indicate that this poses a widespread public health issue as well.

(r) The Tamil Nadu State Legislature relied on the report of the Justice Chandru committee wherein empirical findings related to the widespread harms of betting linked with online gaming have been discussed in detail. As such, the legislations are supported and backed by empirical data contrary to the assertion of the Respondents.

49.4. The conclusions recorded in the connected judgment leave no room for doubt as to the correct legal position. Applying the principles enunciated therein, this Court holds that where online games, including games predominantly involving skill, are played for stakes, the activity attracts the essential characteristics of betting and gambling for the purposes of the impugned levy.

(C) CONSTITUTIONAL VALIDITY OF THE IMPUGNED LEVY IN THE CONTEXT OF BETTING AND GAMBLING

50. In order to understand with clarity the legal sanction and authority for taxability of transactions in games with stakes as 'betting and gambling', a combined and symbiotic reading of the constitutional and statutory provisions, becomes essential.

50.1. With the introduction of the GST regime pursuant to the Constitution (One Hundred and First Amendment) Act, 2016, the constitutional framework governing taxation on betting and gambling underwent a significant transformation. Prior to the said amendment, legislative competence to levy taxes on "betting and gambling" was traceable to Entry 62 of List II of the Seventh

Schedule to the Constitution, which empowered the States to impose "taxes on luxuries, including taxes on entertainments, amusements, betting and gambling".

50.2. Accordingly, before the advent of GST, the exclusive power to levy tax on betting and gambling vested with the States. Such activities were kept outside the ambit of service tax imposed by the Union under the Finance Act, 1994. Section 66D(i) of the Finance Act, 1994 expressly placed "betting, gambling or lottery" within the negative list of services, thereby excluding such activities from the levy of service tax under Section 66B.

50.3. In this context, the statutory definition contained in Section 65B(15) of the Finance Act, 1994 assumes significance and reads thus:

> *"Betting or gambling" means putting on stake something of value, particularly money, with consciousness of risk and hope of gain on the outcome of a game or a contest whose result may be determined by chance or accident, or on the likelihood of anything occurring or not occurring."*

50.4. The aforesaid definition clearly demonstrates that the essential element of betting and gambling lies in staking something of value upon an uncertain outcome. The emphasis is not upon whether the underlying activity is a game of chance or one involving skill, but upon the existence of stakes.

50.5. After the Constitution (One Hundred and First Amendment) Act, 2016, the earlier taxing fields under Entry 62 of List II stood subsumed within the comprehensive GST framework enacted under Article 246A of the Constitution, except for the fact that the power to levy tax on entertainment, which was available to the state prior to the amendment, was conferred on the local bodies like municipalities and panchayats.

50.6. At this juncture, it would be relevant to look into the relevant provisions of the Constitution, particularly Part XI, which is relevant for the present dispute.

"PART XI
RELATIONS BETWEEN THE UNION AND THE STATES

CHAPTER I.—LEGISLATIVE RELATIONS
Distribution of Legislative Powers

245. Extent of laws made by Parliament and by the Legislatures of States.

(1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.

(2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.

246. Subject-matter of laws made by Parliament and by the Legislatures of States.

(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").

(2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters

enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List.

246A. Special provision with respect to goods and services tax.

(1) Notwithstanding anything contained in articles 246 and 254, Parliament, and, subject to clause (2), the Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State.

2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

Explanation.—The provisions of this article, shall, in respect of goods and services tax referred to in clause (5) of article 279A, take effect from the date recommended by the Goods and Services Tax Council.]

50.7. Part XI of the Constitution deals with the relationship between the Union and the States, and Chapter I thereof pertains to legislative relations. Article 245 provides that Parliament may make laws for the whole or any part of the territory of India, while the Legislature of a State may make laws for the whole or any part of the State. The provision thus delineates the territorial extent of legislative power exercisable by Parliament and the State Legislatures. The Seventh Schedule to the Constitution enumerates the subject matters in respect of which Parliament and the State Legislatures are competent to legislate. Under Article

246, Parliament has exclusive power to make laws with respect to matters enumerated in List I (Union List), while the State Legislatures have exclusive power to legislate with respect to matters enumerated in List II (State List). Insofar as matters enumerated in List III (Concurrent List) are concerned, both Parliament and the State Legislatures are competent to enact laws.

50.8. At this juncture, a reference may also be made to the decision of this Court in ***State of Kerala and Ors. v. Mar Appraem Kuri Co. Ltd. and another***[101] where this Court explained the sweep and purport of Articles 245 and 246:

> ***"35.*** *Article 245 deals with extent of laws made by Parliament and by the legislatures of States. The verb "made", in past tense, finds place in the Head Note to Article 245. The verb "make", in the present tense, exists in Article 245(1) whereas the verb "made", in the past tense, finds place in Article 245(2). While the legislative power is derived from Article 245, the entries in the Seventh Schedule of the Constitution only demarcate the legislative fields of the respective legislatures and do not confer legislative power as such. While Parliament has power to make laws for the whole or any part of the territory of India, the legislature of a State can make laws only for the State or part thereof. Thus, Article 245 inter alia indicates the extent of laws made by Parliament and by the State Legislatures.*
>
> ***36.*** *Article 246 deals with the subject-matter of laws made by Parliament and by the legislatures of States. The verb "made" once again finds place in the Head Note to Article 246. This Article deals with distribution of legislative powers as between the Union and the State Legislatures, with reference to the different Lists in the Seventh Schedule. In short, Parliament has full and exclusive powers to legislate with respect to matters in List I and has also power to legislate with respect to matters in List III, whereas the State Legislatures, on the other hand, have exclusive power to legislate with respect to matters in List II, minus matters falling in List I and List III and have concurrent power with respect to matters in List III. (See Subrahmanyan Chettiar v. Muttuswami Goundan)*
>
> ***37.*** *Article 246, thus, provides for distribution, as between Union and the States, of the legislative powers which are conferred by Article 245. Article 245 begins with the*

[101] (2012) 7 SCC 106

expression "subject to the provisions of this Constitution". Therefore, Article 246 must be read as "subject to other provisions of the Constitution".

38. *For the purposes of this decision, the point which needs to be emphasised is that Article 245 deals with conferment of legislative powers whereas Article 246 provides for distribution of the legislative powers. Article 245 deals with extent of laws whereas Article 246 deals with distribution of legislative powers. In these articles, the Constitution Framers have used the word "make" and not "commencement" which has a specific legal connotation. [See Section 3(13) of the General Clauses Act, 1897.]"*

50.9. A special scheme of taxation was introduced by the 101st Constitutional Amendment through the insertion of Article 246A, whereby the power to make laws with respect to Goods and Services Tax was conferred upon both Parliament and the State Legislatures in relation to intra-State supplies, while the exclusive power to legislate with respect to inter-State supplies was conferred upon Parliament. It is also pertinent to note that Entry 34 of List II confers legislative competence upon the States in respect of betting and gambling. The power to legislate in respect of betting and gambling would encompass all facets thereof, including regulation, control, prohibition and taxation, subject to the constitutional framework governing taxation post the 101st Constitutional Amendment. Consequently, by virtue of Article 246A, the Legislature is competent to levy Goods and Services Tax not only in respect of supplies relating to betting and gambling, but also in respect of any other taxable supply falling within the ambit of the GST legislation.

50.10. Moreover, the GST legislation neither creates a new taxable field beyond constitutional competence nor artificially expands the meaning of betting and gambling. It merely gives effect to the conception of betting and gambling, as constitutionally understood and discussed herein, within the framework of Article 246A by rendering supply of actionable claims arising from such activities exigible to GST. The taxable event under the GST regime is not the abstract game, whether of skill or chance, but the supply of actionable claims arising from the staking of money on uncertain outcomes.

50.11. In other words, what is subjected to tax under the GST framework is the supply of actionable claims arising from betting and gambling transactions. Merely because such actionable claims arise out of betting and gambling does not transform the levy into a direct tax on the activity of betting and gambling simpliciter. The distinction between a tax on the activity of betting and gambling and a tax on the supply of actionable claims arising therefrom must be borne in mind.

50.12. Furthermore, provisions of the CGST Act, including Section 15 and other allied provisions, have also been challenged as being violative of Article 366(12A) of the Constitution. Article 366(12A) defines "goods and services tax" to mean any tax on supply of goods, or services, or both, except taxes on the

supply of alcoholic liquor for human consumption. The provision merely furnishes the constitutional meaning of the expression "goods and services tax" within the framework introduced by the Constitution (One Hundred and First Amendment) Act, 2016 and operates as a constitutional definition clause. It, however, does not itself exhaustively define the contours of the taxable event, the scope of "supply", the incidents of valuation, or the statutory treatment of particular classes of transactions. Those matters are left to the legislative framework enacted pursuant to Article 246A. The expression "supply", which constitutes the foundational taxable event under the GST regime, is itself not defined under the Constitution. Nor does the Constitution attempt to codify an exhaustive or immutable conception of "goods" or "services" for purposes of GST legislation. Article 246A confers wide legislative power upon Parliament and the State Legislatures to enact laws with respect to goods and services tax. The statutory framework enacted thereunder is therefore competent to define and regulate the scope of taxable supplies, valuation principles and the treatment of specific categories of transactions, including supplies involving actionable claims. The challenge to the constitutional validity of such statutory provisions founded merely upon the constitutional definition clause therefore cannot be sustained. The validity of such provisions must necessarily be examined within the framework of Article 246A and the legislative competence flowing therefrom.

50.13. It is also trite law that where a legislation is challenged on the ground of being ultra vires the Constitution, one of the primary considerations is to ascertain whether the subject matter of the enactment, in pith and substance, falls within the legislative competence of the legislature concerned. Once legislative competence is established, the Court must then examine whether the enactment transgresses any constitutional limitation or prohibition. In fiscal matters, greater latitude is ordinarily available to the legislature so long as the levy remains traceable to a constitutionally recognised field of taxation.

50.14. As already noticed hereinabove, Article 246A constitutes a special constitutional provision conferring simultaneous legislative competence upon Parliament and the State Legislatures in relation to goods and services tax. The impugned State enactments operate within the constitutional framework contemplated under Article 246A and substantially mirror the statutory structure embodied in the CGST Act. The challenge founded upon legislative incompetence must therefore fail. Equally, the question of repugnancy under Article 254 does not arise here in the conventional sense, having regard to the special constitutional scheme governing GST and the source of legislative power traceable directly to Article 246A itself. In this context, it would be useful to refer to ***Rajiv Sarin v. State of Uttarakhand***[102], which held as under:

---

[102] (2011) 8 SCC 708

"33. It is trite law that the plea of repugnancy would be attracted only if both the legislations fall under the Concurrent List of the Seventh Schedule to the Constitution. Under Article 254 of the Constitution, a State law passed in respect of a subject-matter comprised in List III i.e. the Concurrent List of the Seventh Schedule to the Constitution would be invalid if its provisions are repugnant to a law passed on the same subject by Parliament and that too only in a situation if both the laws i.e. one made by the State Legislature and another made by Parliament cannot exist together. In other words, the question of repugnancy under Article 254 of the Constitution arises when the provisions of both laws are completely inconsistent with each other or when the provisions of both laws are absolutely irreconcilable with each other and it is impossible without disturbing the other provision, or conflicting interpretations resulted into, when both the statutes covering the same field are applied to a given set of facts. That is to say, in simple words, repugnancy between the two statutes would arise if there is a direct conflict between the two provisions and the law made by Parliament and the law made by the State Legislature occupies the same field. Hence, whenever the issue of repugnancy between the law passed by Parliament and of State Legislature are raised, it becomes quite necessary to examine as to whether the two legislations cover or relate to the same subject-matter or different.

34. It is by now a well-established rule of interpretation that the entries in the lists being fields of legislation must receive liberal construction inspired by a broad and generous spirit and not a narrow or pedantic approach. This Court in Navinchandra Mafatlal v. CIT [AIR 1955 SC 58] and State of Maharashtra v. Bharat Shanti Lal Shah [(2008) 13 SCC 5] held that each general word should extend to all ancillary and subsidiary matters which can fairly and reasonably be comprehended within it. In those decisions it was also reiterated that there shall always be a presumption of constitutionality in favour of a statute and while construing such statute every legally permissible effort should be made to keep the statute within the competence of the State Legislature.

35. As and when there is a challenge to the legislative competence, the courts will try to ascertain the pith and substance of such enactment on a scrutiny of the Act in question. In this process, it would also be necessary for the courts to examine the true nature and character of the enactment, its object, its scope and effect to find out whether the enactment in question is genuinely referable to a field of the legislation allotted to the respective legislature under the constitutional scheme."

50.15. Insofar as the challenge to the impugned provisions on the ground of arbitrariness and alleged violation of Articles 14 and 19 of the Constitution is concerned, this aspect has already been dealt with in the connected matter. In the

said judgment, we have examined the circumstances in which a legislation may be struck down as arbitrary and have further held that the doctrine of *res extra commercium* would apply to activities in the nature of betting and gambling, in respect of which no fundamental right to carry on trade or business can ordinarily be claimed. Measures adopted by the State, whether by way of enhancement of fees or imposition of taxes and duties in relation to such activities, constitute regulatory and restrictive measures intended to control or discourage activities having deleterious consequences upon individuals, their families and society at large. The State, in discharge of its constitutional obligations under the Directive Principles of State Policy, is entitled to enact laws aimed at maintaining public order, promoting public welfare and improving the standard of living, as contemplated under Articles 38 and 47 of the Constitution of India (See ***Har Shankar and Others v. The Deputy Excise and Taxation Commissioner and Others***[103], ***Khoday Distilleries Ltd. and Others v. State of Karnataka and Others***[104]). Consequently, the contention that the impugned provisions are arbitrary or violative of rights guaranteed under Articles 14 and 19 is liable to be rejected.

50.16. Further, the scope of judicial review in fiscal matters is necessarily limited. Contentions that the rate of tax is excessive, or that the method of

[103] (1975) 1 SCC 737
[104] (1995) 1 SCC 574

computation or valuation is unreasonable, ordinarily fall within the domain of legislative and economic policy where considerable latitude is available to the legislature. Such matters are therefore not ordinarily amenable to judicial interference unless the statutory framework is shown to be manifestly arbitrary, discriminatory or otherwise constitutionally infirm. It is equally well settled that in matters involving economic and fiscal legislation, the presumption of constitutionality assumes added significance and courts must make every effort to uphold the validity of a fiscal statute rather than strike it down. In ***R.K. Garg v. Union of India and Others***[105]***, and State of Kerala and Anr. v. Builders Association of India and Others***[106], this Court recognised that in matters involving economic and fiscal legislation, the presumption of constitutionality assumes added significance and courts must make every effort to uphold the validity of a fiscal statute rather than strike it down.

50.17. It is equally well settled that considerations of proportionality or equity ordinarily play a limited role in the field of taxation, taxation being an exercise of sovereign power. The State possesses wide discretion in selecting the object, subject, persons, goods, transactions and rates for the purpose of taxation. The wisdom or legislative policy underlying a taxing statute ordinarily does not affect the competence of the legislature to enact such law, particularly when the primary object of fiscal legislation is revenue generation in exercise of sovereign authority

---

[105] (1981) 4 SCC 675
[106] (1997) 2 SCC 183

and where the legislation is otherwise traceable to a constitutionally recognised field of taxation. The amplitude of the State's taxing power has been elaborately explained by the Nine-Judge Bench of this Court in ***Jindal Stainless Ltd.*** (supra) wherein the following passage from Cooley on Taxation was quoted with approval and found apposite:

> *"**Power to tax : An attribute of sovereignty***
>
> ***17.*** *Power to levy taxes has been universally acknowledged as an essential attribute of sovereignty. Cooley in his book on Taxation, Vol. 1 (4th Edn.) in Chapter 2 recognises the power of taxation to be inherent in a sovereign State. The power, says the author, is inherent in the people and is meant to recover a contribution of money or other property in accordance with some reasonable rule or apportionment for the purpose of defraying public expenses. The following passage from the book is apposite:*
>
> *"57. Power to tax as an inherent attribute of sovereignty.—The power of taxation is an essential and inherent attribute of sovereignty, belonging as a matter of right to every independent Government. It is possessed by the Government without being expressly conferred by the people. The power is inherent in the people because the sustenance of the Government requires contributions from them. In fact the power of taxation may be defined as "the power inherent in the sovereign State to recover a contribution of money or other property, in accordance with some reasonable rule or apportionment, from the property or occupations within its jurisdiction for the purpose of defraying the public expenses". Constitutional provisions relating to the power of taxation do not operate as grants of the power of taxation to the Government but instead merely constitute limitations upon a power which would otherwise be practically without limit. This inherent power to tax extends to everything over which the sovereign power extends, but not to anything beyond its sovereign power. Even the federal Government's power of taxation does not include things beyond its sovereign power. But where exclusive jurisdiction over land is granted to another State or country, the land remains subject to the taxing power of the State within whose boundaries it is located."*
>
> ***18.*** *To the same effect is the decision of this Court in Jagannath Baksh Singh v. State of U.P. [Jagannath Baksh Singh v. State of U.P., AIR 1962 SC 1563 : (1963) 1 SCR 220] where this Court observed : (AIR p. 1570, para 15)*
>
> *"15. ... The power of taxation is, no doubt, the sovereign right of the State; as was observed by Chief Justice Marshall inM'Culloch v. Maryland [M'Culloch v. Maryland, 4 L Ed 579 : 17 US 316 (1819)] : (L Ed p. 607)*

'... the power of taxing the people and their property is essential to the very existence of Government, and may be legitimately exercised on the objects to which it is applicable to the utmost extent to which the Government may choose to carry it.'

In that sense, it is not the function of the court to enquire whether the power of taxation has been reasonably exercised either in respect of the amount taxed or in respect of the property which is made the object of the tax. Article 265 of the Constitution provides that no tax shall be levied or collected, except by authority of law; and so, for deciding whether a tax has been validly levied or not, it would be necessary first to enquire whether the legislature which passes the Act was competent to pass it or not."

(emphasis supplied)

19. *Reference may also be made to Dena Bank v. Bhikhabhai Prabhudas Parekh & Co. [Dena Bank v. Bhikhabhai Prabhudas Parekh & Co., (2000) 5 SCC 694] where this Court held : (SCC p. 702, para 8)*

"8. The principle of priority of government debts is founded on the rule of necessity and of public policy. The basic justification for the claim for priority of State debts rests on the well-recognised principle that the State is entitled to raise money by taxation because unless adequate revenue is received by the State, it would not be able to function as a sovereign Government at all. It is essential that as a sovereign, the State should be able to discharge its primary governmental functions and in order to be able to discharge such functions efficiently, it must be in possession of necessary funds and this consideration emphasises the necessity and the wisdom of conceding to the State, the right to claim priority in respect of its tax dues (see Builders Supply Corpn. [Builders Supply Corpn. v. Union of India, AIR 1965 SC 1061 : (1965) 56 ITR 91])."

(emphasis supplied)

20. *In CIT v. McDowell and Co. Ltd. [CIT v. McDowell and Co. Ltd., (2009) 10 SCC 755] where this Court reiterated the legal position in the following words : (SCC p. 763, paras 21-22)*

"21. "Tax", "duty", "cess" or "fee" constituting a class denotes to various kinds of imposts by State in its sovereign power of taxation to raise revenue for the State. Within the expression of each specie each expression denotes different kind of impost depending on the purpose for which they are levied. This power can be exercised in any of its manifestation only under any law authorising levy and collection of tax as envisaged under Article 265 which uses only the expression that no "tax" shall be levied and collected except authorised by law. It in its elementary meaning conveys that to support a tax legislative action is essential, it cannot be levied and collected in the absence of any legislative sanction by exercise of executive power of State under Article 73 by the Union or Article 162 by the State.

22. Under Article 366(28) "Taxation" has been defined to include the imposition of any tax or impost whether general or local or special and tax shall be construed accordingly. "Impost" means compulsory levy. The well-known and well-settled characteristic of "tax" in its wider sense includes all imposts. Imposts in the context have following characteristics:

(i) The power to tax is an incident of sovereignty.

(ii) "Law" in the context of Article 265 means an Act of legislature and cannot comprise an executive order or rule without express statutory authority.

(iii) The term "tax" under Article 265 read with Article 366(28) includes imposts of every kind viz. tax, duty, cess or fees.

(iv) As an incident of sovereignty and in the nature of compulsory exaction, a liability founded on principle of contract cannot be a "tax" in its technical sense as an impost, general, local or special."

(emphasis supplied)

50.18. The above passages would suggest that the primary object of any taxing statute is to raise revenue. They further recognise that levy and collection of taxes constitute an integral fiscal mechanism through which the State secures resources for achieving the constitutional objectives embodied in the Directive Principles of State Policy. This Court in ***Sri Srinivasa Theatre and Ors. v. Government of Tamil Nadu and Ors.***[107]**,** on this aspect held as follows:

"11. *The instrument of taxation is not merely a means to raise revenue in India; it is, and ought to be, a means to reduce inequalities. You don't tax a poor man. You tax the rich and the richer one gets, proportionately greater burden he has to bear. Indeed, a few years ago, the Income Tax Act taxed 94p out of every rupee earned by an individual over and above Rupees one lakh. The Estate Duty Act, no doubt since repealed, Wealth Tax Act and Gift Tax Act are all measures in the same direction. It is for this reason that while applying the doctrine of classification — developed mainly with reference to and under the concept of "equal protection of laws" — Parliament is allowed more freedom of choice in the matter of taxation vis-a-vis other laws. If this be the situation*

[107] (1992) 2 SCC 643

in the case of direct taxes, it should be more so in the case of indirect taxes, since in the case of such taxes the real incidence is upon some other than upon the person who actually makes it over to the State though, it is true, he cannot avoid the liability on the ground that he has not passed it on. In the matter of taxation it is, thus, not a question of power but one of constraints of policy — the interests of economy, of trade, profession and industry, the justness of the burden, its 'acceptability' and other similar considerations. We do not mean to say that taxation laws are immune from attack based upon Article 14. It is only that Parliament and legislatures are accorded a greater freedom and latitude in choosing the persons upon whom and the situations and stages at which it can levy tax. We are not unaware that this greater latitude has been recognised in USA and UK even without resorting to the concepts of 'equality before law' or "the equal protection of laws" — as something that is inherent in the very power of taxation and it has been accepted in this country as well. (See in this connection the decision of Subba Rao, C.J., (as he then was) in Gorantia Butchayya Chowdary v. State of A.P. [AIR 1958 AP 294 : 1958 Andh LT 36 : (1958) 9 STC 104] where the several US and English decisions have been carefully analysed and explained). In the context of our Constitution, however, there is an added obligation upon the State to employ the power of taxation — nay, all its powers — to achieve the goal adumbrated in Article 38."

50.19. The GST framework is thus sufficiently broad and comprehensive to encompass the present transactions and, in our considered view, squarely falls within the legislative competence traceable to Article 246A of the Constitution. Once the impugned statutory framework is found to be within the constitutionally assigned legislative field and otherwise not violative of any constitutional limitation, the scope of judicial interference in matters involving fiscal policy, legislative classification, valuation methodology and economic regulation remains necessarily limited.

50.20. The assessees had also contended that Parliament lacked competence to classify actionable claims as "goods" under Section 2(52) of the CGST Act. According to the assessees, actionable claims historically stood excluded from the concept of goods under commercial jurisprudence, particularly under Section 2(7) of the Sale of Goods Act, 1930, and had consistently been treated as distinct incorporeal property rights governed under the Transfer of Property Act, 1882. It was therefore submitted that actionable claims could not constitutionally be brought within the ambit of "goods" merely by statutory fiction. The further submission advanced was that Article 366(26A) defines "services" to mean "anything other than goods", and consequently, if actionable claims were not constitutionally comprehended within the expression "goods", they would necessarily fall within the residual constitutional conception of "services". According to the assessees, Parliament may therefore have been competent to subject actionable claims to GST as services, but could not constitutionally deem them to be "goods" under Section 2(52) of the CGST Act.

50.21. The aforesaid contention cannot be accepted. At the outset, Article 366(12) employs an inclusive formulation and provides that "goods includes all materials, commodities and articles". The constitutional definition is therefore not exhaustive in character. The expression "includes" enlarges the scope of the definition and does not operate as a rigid constitutional restriction confining the concept of goods only to tangible movable commodities recognised under pre-

existing commercial legislations. Intangible and incorporeal movable property capable of transfer, delivery, storage and possession have repeatedly been recognised as falling within the ambit of goods (See ***Tata Consultancy Services v. State of A.P.***[108]**.** Moreover, Article 366(12) does not constitutionalise the definition of goods contained in the Sale of Goods Act, 1930 nor freeze the constitutional conception of goods to the historical understanding prevailing under pre-GST commercial jurisprudence.

50.22. It is no doubt true that actionable claims were historically treated as distinct from conventional goods under legislations such as the Sale of Goods Act, 1930. However, such treatment arose within entirely different statutory and juristic contexts governing contracts of sale and transfer of property. The constitutional validity of the GST framework cannot be determined solely by importing rigid classifications evolved under pre-GST commercial legislations enacted for altogether different purposes.

50.23. As already mentioned, Article 246A introduced a comprehensive and sui generis constitutional framework enabling Parliament and the State Legislatures to enact laws with respect to goods and services tax. The GST regime is centered

[108] (2005) 1 SCC 308

around the broad concept of "supply" as the taxable event and is not confined to traditional notions governing sale of goods under earlier commercial statutes.

50.24. The submission of the assessees proceeds upon an incorrect assumption that Articles 366(12) and 366(26A) create rigid compartments freezing every juristic category into either goods or services according to historical commercial law classifications. Neither Article 366(12) nor Article 366(26A) mandates such inflexible compartmentalisation. Article 366(26A), which defines "services" as "anything other than goods", cannot also be construed as constitutionalising pre-existing commercial law distinctions so as to denude Parliament of legislative flexibility within the GST framework enacted pursuant to Article 246A.

50.25. Even otherwise, actionable claims possess several attributes traditionally associated with movable proprietary interests capable of forming the subject matter of trade and commerce. Actionable claims are expressly recognised under the Transfer of Property Act, 1882 as transferable and assignable interests in movable property. Section 130 of the Transfer of Property Act itself contemplates assignment of actionable claims for value. Such interests are capable of transfer, assignment, valuation and commercial dealing and therefore possess characteristics traditionally associated with proprietary interests in goods. The

inclusion of actionable claims within the ambit of "goods" under the GST framework therefore cannot be said to be constitutionally or conceptually alien.

50.26. In this context, the decision of the Constitution Bench in ***Sunrise Associates*** (supra), assumes significance. The Constitution Bench expressly recognised that actionable claims constitute movable property and "goods" in the wider sense of the term, though historically excluded from the ambit of sales tax legislations by specific statutory exclusion. The Court observed that were actionable claims not otherwise comprehended within the wider conception of goods, there would have been no necessity for their express exclusion under sales tax statutes. The relevant portions are as under:

> ***"35.*** *The word "goods" for the purposes of imposition of sales tax has been uniformly defined in the various sales tax laws as meaning all kinds of movable property. The word "property" may denote the nature of the interest in goods and when used in this sense means title or ownership in a thing. The word may also be used to describe the thing itself. The two concepts are distinct, a distinction which must be kept in mind when considering the use of the word in connection with the sale of goods. In the Dictionary of Commercial Law by A.H. Hudson (1983 Edn.) the difference is clearly brought out. The definition reads thus:*
>
> *" 'Property'.—In commercial law this may carry its ordinary meaning of the subject-matter of ownership. But elsewhere, as in the sale of goods it may be used as a synonym for ownership and lesser rights in goods."*
>
> *Hence, when used in the definition of "goods" in the different sales tax statutes, the word "property" means the subject-matter of ownership. The same word in the context of a "sale" means the transfer of the ownership in goods.*
>
> ***36.*** *We have noted earlier that all the statutory definitions of the word "goods" in the State sales tax laws have uniformly excluded, inter alia, actionable claims from the definition for the purposes of the Act. Were actionable claims, etc., not otherwise*

includible in the definition of "goods" there was no need for excluding them. In other words, actionable claims are "goods" but not for the purposes of the Sales Tax Acts and but for this statutory exclusion, an actionable claim would be "goods" or the subject-matter of ownership. Consequently, an actionable claim is movable property and "goods" in the wider sense of the term but a sale of an actionable claim would not be subject to the sales tax laws.

37. *Distinct elements are deducible from the definition of "actionable claim" in Section 3 of the Transfer of Property Act. An actionable claim is of course as its nomenclature suggests, only a claim. A claim might connote a demand, but in the context of the definition it is a right, albeit an incorporeal one. Every claim is not an actionable claim. It must be a claim either to a debt or to a beneficial interest in movable property. The beneficial interest is not the movable property itself, and may be existent, accruing, conditional or contingent. The movable property in which such beneficial interest is claimed, must not be in the possession of the claimant. An actionable claim is therefore an incorporeal right. That goods for the purposes of sales tax may be intangible and incorporeal has been held in Tata Consultancy Services v. State of A.P. [(2005) 1 SCC 308]*

38. *What then is the distinction between actionable claims and other goods on the sale of which sales tax may be levied? The Court in Vikas Sales [(1996) 4 SCC 433] said: (SCC p. 449, para 35)*

"35. When these licences/scrips are being bought and sold freely in the market as goods and when they have a value of their own unrelated to the goods which can be imported thereunder, it is idle to contend that they are in the nature of actionable claims."

It was assumed that actionable claims are not transferable for value and that that was the difference between "actionable claims" and those other goods which are covered by the definition of "goods" in the Sale of Goods Act, 1930 and the sales tax laws. The assumption was fallacious and the conclusion insofar as it was based on this erroneous perception, equally wrong.

39. *The Transfer of Property Act, 1882, deals with transfer of actionable claims in Chapter VIII of that Act. Section 130 of the Transfer of Property Act provides that an actionable claim may be assigned for value. A right on the fulfilment of certain conditions to call for delivery of goods mentioned in a contract is an actionable claim and assignable under Section 130. (See Jaffer Meher Ali v. Budge-Budge Jute Mills Co. [ILR (1906) 33 Cal 702 : 10 CWN 755]) There may also be assignments of an actionable claim dehors Section 130. (See Bharat Nidhi Ltd. v. Takhatmal [(1969) 1 SCR 595 : AIR 1969 SC 313] .) Negotiable instruments, another species of actionable claim, are transferable under the Negotiable Instruments Act, 1881. Transferability is therefore not the point of distinction*

between actionable claims and other goods which can be sold. The distinction lies in the definition of actionable claim. Therefore if a claim to the beneficial interest in movable property not in the vendee's possession is transferred, it is not a sale of goods for the purposes of the sales tax laws."

50.27. Importantly, in ***Skill Lotto Solutions*** (supra), the very same issue arose for consideration, wherein this Court held as under:

> ***"54.*** *It cannot be said that the question as to whether lottery is goods or actionable claim had not arisen in the decision in Sunrise Associates [Sunrise Associates v. State (NCT of Delhi), (2006) 5 SCC 603] . When an item was covered by excluded category, the said conclusion could have been arisen only after consideration of the definition and the exclusionary clause. We, thus, are not in agreement with the submission of the learned counsel for the petitioner that the observations of the Constitution Bench holding lottery as actionable claim is only obiter dicta and not binding. The Constitution Bench in Sunrise Associates [Sunrise Associates v. State (NCT of Delhi), (2006) 5 SCC 603] has categorically held that lottery is actionable claim after due consideration which is ratio of the judgment. When Section 2(52) of the 2017 Act expanded the definition of goods by including actionable claim also, the said definition in Section 2(52) is in the line with the Constitution Bench pronouncement in Sunrise Associates [Sunrise Associates v. State (NCT of Delhi), (2006) 5 SCC 603] and no exception can be taken to the definition of the goods as occurring in Section 2(52).*
>
> ***55.*** *We are of the view that definition of goods under Section 2(52) of the 2017 Act does not violate any constitutional provision nor it is in conflict with the definition of goods given under Article 366(12). Article 366 clause (12) as observed contains an inclusive definition and the definition given in Section 2(52) of the 2017 Act is not in conflict with the definition given in Article 366(12). As noted above, Parliament by the Constitution (One Hundred and First Amendment) Act, 2016 inserted Article 246-A, a special provision with respect to goods and services tax. Parliament was fully empowered to make laws with respect to goods and services tax. Article 246-A begins with non obstante clause that is "Notwithstanding anything contained in Articles 246 and 254", Which confers very wide power to make laws. The power to make laws as conferred by Article 246-A fully empowers Parliament to make laws with respect to goods and services tax and the expansive definition of goods given in Section 2(52) cannot be said to be not in accord with the constitutional provisions.*

64. *We have already noted that under Article 246-A notwithstanding anything contained in Articles 246 and 254, Parliament has power to make laws with respect to goods and services tax. Article 246-A is a special provision with regard to goods and services tax w.e.f. 16-9-2016, which special power has to be liberally construed empowering Parliament to make laws with respect to goods and services tax. The submission of the learned counsel for the petitioner is that actionable claim has been artificially and with a view to assume the power to tax has been included in Section 2(52). The Constitution Bench of this Court in Sunrise Associates [Sunrise Associates v. State (NCT of Delhi), (2006) 5 SCC 603] has held that actionable claims are includible in the definition of goods and had actionable claims were not includible there was no need for excluding them. The Constitution Bench held "were actionable claims, etc., not otherwise includible in the definition of "goods", there was no need for excluding them. In other words, actionable claims are "goods" but not for the purpose of the Sales Tax Acts and but for this statutory exclusion, an actionable claim would be "goods" or the subject-matter of ownership".*

65. *Thus, in view of what has been said above by the Constitution Bench, the submission of the petitioner that actionable claims have been artificially included in the definition of goods cannot be accepted. The Constitution Bench in Sunrise Associates [Sunrise Associates v. State (NCT of Delhi), (2006) 5 SCC 603] has clearly laid down that actionable claims are goods. We, thus, do not agree with the submission of Shri Shrivastava that Parliament has exceeded its jurisdiction in including actionable claims in the definition of "goods" under Section 2(52).*

67. *The inclusion of actionable claim in definition "goods" as given in Section 2(52) of the Central Goods and Services Tax Act, 2017 is not contrary to the legal meaning of goods and is neither illegal nor unconstitutional."*

50.28. Accordingly, the challenge to the constitutional validity of Sections 2(52) and 9(1) of the CGST Act, insofar as the statutory framework includes actionable claims within the definition of "goods" and subjects to GST the supply of actionable claims arising from betting and gambling, is liable to be rejected.

50.29. In view of the aforesaid discussion, the levy of GST on the supply of actionable claims arising from betting and gambling is constitutionally valid, clearly traceable to Article 246A of the Constitution, and does not constitute a direct tax on the activity of betting and gambling simpliciter. The challenge founded upon Article 366(12) and Article 366(12A) of the Constitution is likewise liable to be rejected. The inclusion of actionable claims within the ambit of "goods" under Section 2(52) of the CGST Act and the consequent levy under Section 9(1) therefore cannot be said to transgress the constitutional scheme governing goods and services tax. Accordingly, the challenge to the constitutional validity of Sections 2(52) and 9(1) of the CGST Act is liable to be rejected.

50.30. The challenge founded upon Articles 14, 19(1)(g), 21 and 265 of the Constitution is also liable to be rejected. The statutory framework bears a clear nexus with the taxable event identified by the legislature, namely the supply of actionable claims arising from betting and gambling transactions. The classification adopted between actionable claims arising from lottery, betting and gambling on the one hand, and other actionable claims on the other, is founded upon an intelligible differentia having rational nexus with the object of the GST framework. The contention that the levy or valuation mechanism is commercially onerous, disproportionate or economically burdensome cannot by itself render the statutory provisions unconstitutional. Article 21 has no application in the present fiscal context. The levy is supported by statutory authority traceable to Sections

7, 9 and 15 of the CGST Act read with Schedule III and the relevant Rules framed thereunder, and therefore satisfies Article 265.

50.31. Once the legislative competence underlying the levy, taxable event and valuation framework is sustained, the Rules framed thereunder, including Rules 31A, 31B and 31C of the CGST Rules, cannot independently be invalidated merely by reiterating the same constitutional challenge directed against the parent levy itself. The validity of such delegated legislation thereafter falls to be examined within the settled parameters governing subordinate legislation, including manifest arbitrariness, inconsistency with the parent enactment, excessive delegation or lack of statutory authority. Those aspects shall be dealt with separately in the subsequent part of this judgment. No constitutional infirmity is otherwise made out so as to warrant interference in exercise of judicial review. The impugned Rules are therefore not liable to be struck down on the constitutional grounds urged against the parent levy and statutory framework.

(D) GST FRAMEWORK GOVERNING BETTING AND GAMBLING TRANSACTIONS

Statutory Scheme under the GST Act

51. At the outset, the relevant provisions of the GST Act, 2017 namely, Sections 2(1), 2(52), 7, 9(1) and Schedule III require consideration and they are as follows:

Section 2(1) – "actionable claim" shall have the same meaning as assigned to it in Section 3 of the Transfer of Property Act, 1882 (4 of 1882).

*"**2(52).** "goods" means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;"*

7. Scope of supply.-

(1) For the purposes of this Act, the expression - "supply" includes-

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

[(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.

***Explanation** .-For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;]*

(b) import of services for a consideration whether or not in the course or furtherance of business; [and]

(c) the activities specified in Schedule I , made or agreed to be made without a consideration;

(d) omitted.

"7(1-A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.

(2) Notwithstanding anything contained in sub-section (1),—

(a) activities or transactions specified in Schedule III; or

(b)such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.

(3) Subject to the provisions of [sub-sections (1), (1-A) and (2)], the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as—
(a) a supply of goods and not as a supply of services; or
(b) a supply of services and not as a supply of goods."

*"**9(1)** Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person."*

"Schedule III, Section 7, Entry 6
Activities or transactions which shall be treated neither as a supply of goods nor a supply of services

***6.** Actionable claims, other than [specified actionable claims].*

Prior to Amendment of Entry 6 by substitution with effect from 01.10.2023, it read as under:

"Actionable claims, other than lottery, betting and gambling."

51.1. Section 2(52) defines "goods" in the widest possible terms and expressly includes "actionable claims" within its ambit. Section 7 identifies "supply" as the taxable event under the GST regime, while Section 9(1) is the charging provision levying GST on all intra-State supplies of goods or services or both. Schedule III carves out certain activities and transactions which are to be treated neither as supply of goods nor supply of services. However, Entry 6 of Schedule III specifically excludes from such exemption actionable claims relating to lottery,

betting and gambling. The statutory consequence is therefore clear: while actionable claims generally stand excluded from GST, actionable claims arising out of lottery, betting and gambling remain expressly taxable.

51.2. At this juncture, it must be stated that the challenge to the inclusion of actionable claims within the definition of "goods" under Section 2(52) of the CGST Act cannot be examined by disregarding the statutory definition itself. It is settled law that a statutory definition constitutes a legislative device adopted for purposes of the enactment and must ordinarily be construed in the manner expressly enacted by the legislature, unless the provision is shown to transgress constitutional limitations or the statutory framework itself. Moreover, courts cannot ignore or rewrite a statutory definition so long as the classification adopted bears a reasonable nexus with the object sought to be achieved by the legislation.

51.3. It is equally well settled that while construing a statutory enactment, the intention of the legislature must primarily be gathered from the language employed in the statute itself and courts cannot expand, curtail or rewrite statutory expressions contrary to their plain meaning.

51.4. More than one hundred and twenty-nine years ago, Lord Watson in the celebrated decision of ***Salomon v. Salomon & Co. Ltd.***[109], cautioned as follows:

> "'*The intention of the legislature ' is a common but very slippery phrase, which, popularly understood, may signify anything from intention embodied in positive enactment to speculative opinion as to what the legislature probably would have meant, although there has been an omission to enact it. In a Court of law or equity, what the legislature intended to be done or not to be done can only be legitimately ascertained from that which it has chosen to enact, either in express words or by reasonable and necessary implication.'*"

Likewise, Lord Reid in ***Black-Clawson International Ltd. v. Papierwerke Waldhof-Aschaffenburg***[110] observed as follows:

> "*We often say that we are looking for the intention of Parliament, but that is not quite accurate. We are seeking the meaning of the words which Parliament used. We are seeking not what Parliament meant but the true meaning of what they said.*"

We may also add what Pollack C.B. observed in ***Attorney General v. Sillem***[111]:

> "*If this had been the object of our legislature, it might have been accomplished by the simplest possible piece of legislation; it might have been expressed in language so clear that no human being could entertain a doubt about it.*"

51.5. The aforesaid principles assume even greater significance in the context of fiscal legislation where certainty, predictability and fidelity to statutory text constitute foundational features of the taxing framework. Once Parliament, in express terms, has chosen to include actionable claims within the ambit of

---

[109] [1897 AC 22, 38]
[110] (1975) 1 All ER 810, 814
[111] (1864) 2 H & C 431, 526

"goods" and has consciously preserved taxability in respect of betting and gambling transactions under Schedule III, it is not open to the Court to read down the statutory scheme by importing limitations or exclusions which the legislature itself has consciously refrained from enacting. The challenge to the inclusion of actionable claims within the GST framework must therefore fail. Consequently, the challenge to the validity of Section 2(52) of the CGST Act is also liable to be rejected.

51.6. Once actionable claims arising from betting and gambling are recognised as goods, the scope and ambit of the expression 'supply' under Section 7 assume significance. Notably, Section 7 reinforces the expansive nature of the levy. Section 7(1) employs expressions of the widest amplitude, namely "includes", "all forms of supply", and "such as". It is a settled principle of statutory interpretation that the expression "includes" enlarges the meaning of the term defined and renders the definition illustrative rather than exhaustive. Likewise, the expression "such as" is indicative and illustrative in nature and cannot be construed as restrictive. The phrase "all forms of supply" occurring in Section 7(1)(a) cannot also be artificially confined only to the illustrative forms specifically enumerated therein. In other words, the forms of supply specifically enumerated in Section 7(1)(a), namely, sale, transfer, barter, exchange, licence, rental, lease or disposal, are therefore merely illustrative examples of taxable supplies and not an exhaustive catalogue thereof.

51.7. The legislative intent is manifestly to confer broad scope upon the expression "supply" so as to encompass the diverse forms of modern commercial and economic transactions. The taxable event under GST is not confined to traditional sale-centric concepts but extends to all legally recognised forms of economic supply. The constitutional framework introduced by the Constitution (One Hundred and First Amendment) Act, 2016 reinforces this interpretation. Article 366(12A) defines Goods and Services Tax as "any tax on the supply of goods, or services or both". In contradistinction, Article 366(29A), which operated in the pre-GST regime, repeatedly employed the expression "transfer" while expanding the concept of "tax on the sale or purchase of goods". The distinction is constitutionally significant. While Article 366(29A) was predicated upon transfer of property or transfer of rights, Article 366(12A) deliberately adopts the wider concept of "supply".

51.8. This position stands authoritatively affirmed in ***Union of India v. Mohit Minerals Pvt. Ltd.***[112], wherein this Court observed that Section 7 defines "supply" "with a broad brush" and adopts an inclusive and expansive framework. The court further recognised that GST regime marks a decisive departure from the earlier

[112] (2022) SCC OnLine SC 657

sale-centric taxation model and instead adopts a supply-centric and destination-based structure. The emphasis under GST is therefore upon taxing economic supplies rather than rigidly compartmentalising transactions into conventional categories of goods and services. The following paragraphs are pertinent:

> ***"114.*** *Section 7 of the CGST Act defines the term "supply" with a broad brush and provides for an inclusive definition. Section 7(1)(b) of the CGST Act considers import of services for a consideration to constitute "supply". Section 7(1)(c) of the CGST Act captures any and all activities in Schedule 1 of the CGST Act, irrespective of whether they are made for a consideration. Additionally, Section 7(3) confers the power on the Central Government to specify which transactions are to be treated as a supply of goods and not a supply of services, and vice versa. Section 7(4) of the IGST Act states that supply of services imported into India would be considered as a supply of services in the course of "inter-State trade or commerce". Thus, an Indian importer could also be considered as an importer of the service of shipping which is liable to IGST on inter-State supply, if the activity falls within the definition of "import of service" for the IGST Act and the CGST Act."*
>
> ***"141.*** *GST laws mark a departure from the previous policy of taxing sale/consignments and focuses on the taxing of supplies. The concept of a supply-centric and destination-based tax runs through the scheme of the statutory provisions and the proposals issued by the GST Council. Thus, an amendment to the Constitution was introduced in the form of Article 366(12-A) to create a tax on the supply of goods, or services, or both. In the commercial reality of the times, the conceptual lines between goods and services wear thin. Hence, the focus is on the taxation of supply, as opposed to the creation of neat compartments between goods and services. Section 7(1)(c) of the CGST Act specifically characterises import of services for a consideration to constitute "supply". The only question that falls for determination is whether the imports of goods on a CIF basis would also constitute import of shipping services, by way of deeming fiction."*

51.9. The GST regime therefore taxes supplies and not merely traditional transfers of title or conventional sale transactions. Consequently, once actionable claims are expressly included within the definition of "goods", the expression "supply" under Section 7 must necessarily receive a purposive and expansive

interpretation consistent with the constitutional and statutory architecture of GST. Any other restrictive construction would defeat the very architecture of GST and render the levy incapable of addressing modern commercial transactions which do not conform to traditional forms of transfer.

Actionable Claims arising from Betting and Gambling Transactions and the Nature of Supply

52. At this juncture, it becomes necessary to examine the basic concept and legal nature of an actionable claim. Section 2(1) of the CGST Act adopts the definition of "actionable claim" from Section 3 of the Transfer of Property Act, 1882 which defines it as follows:

> *"**3. Interpretation-clause**.—In this Act, unless there is something repugnant in the subject or context,—*
>
> ***["actionable claim" means a claim to any debt, other than a debt secured by mortgage of immoveable property or by hypothecation or pledge of moveable property, or to any beneficial interest in moveable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent:]***

52.1. An actionable claim, to the extent necessary for the present case, requires the following ingredients:

(a) a claim to a beneficial interest in movable property;

(b) such movable property, in respect of which the beneficial interest exists, must not be in the actual or constructive possession of the claimant; and

(c) the claim must be one which is recognised by a civil court as affording grounds for relief.

52.2. Notably, the definition also recognises that the beneficial interest may be "existing, accruing, conditional or contingent". Consequently, an actionable claim arises once a beneficial interest in movable property recognised by law comes into existence, whether existing, accruing, conditional or contingent. In betting and gambling transactions, once a participant stakes money upon an uncertain event, a contingent beneficial interest capable of maturing into an enforceable claim comes into existence. Such an interest squarely falls within the statutory definition of an actionable claim.

52.3. The contention advanced on behalf of the assessees that actionable claims can arise only from sovereign grants or State-conferred rights is wholly misconceived. A debt arising from a purely private transaction is the classic illustration of an actionable claim. Where one person advances money to another, the creditor's right to recover the amount is a right in personam and nevertheless constitutes an actionable claim. Section 3 of the Transfer of Property Act nowhere restricts actionable claims only to grants made by the State nor does it distinguish between sovereign grants and private rights.

52.4. Every claim to a beneficial interest in movable property satisfying the statutory ingredients therefore constitutes an actionable claim irrespective of whether it arises from contract, private transaction, grant or otherwise. Actionable claims may consequently arise equally from private commercial arrangements, debts, contingent claims and betting or gaming transactions. There exists no legal basis to confine actionable claims only to rights flowing from governmental grants or sovereign instruments such as State lotteries.

52.5. The reliance placed by the assessees upon ***Sunrise Associates*** (supra) and ***Anraj*** (supra) is misplaced to this extent. Those decisions were rendered in the context of pre-GST sales tax legislation where the taxable event was "sale", necessarily involving transfer of goods and transfer of title therein. It was in that context that this Court examined whether lottery tickets constituted goods capable of sale or merely represented actionable claims.

52.6. In ***Anraj*** (supra), one of the contentions advanced was that the State, being merely the promoter of the lottery, possessed no transferable title in the lottery ticket and consequently no sales tax could be levied upon its sale. The discussion concerning grants and transfer of title arose in that context. This Court held that the State could create and confer such rights in relation to lottery tickets and that the same would constitute transfer of rights for the purposes of sales tax

legislation. The discussion concerning grants, however, was confined to the issue of transferability and levy of sales tax and did not determine the independent question as to whether a lottery ticket embodied a beneficial interest in movable property constituting an actionable claim. The character of a lottery ticket as an actionable claim did not depend upon whether the underlying right arose by way of sovereign grant.

52.7. In any event, the bifurcation of rights adopted in ***Anraj*** (supra), namely, between the right to participate in the draw and the right to claim the prize amount, was subsequently overruled in ***Sunrise Associates***. This Court in ***Sunrise Associates*** ultimately held that a lottery ticket represents a single actionable claim comprising the right to participate and the chance to win the prize. ***Sunrise Associates*** cannot therefore be read as an authority for the proposition that actionable claims arise only from sovereign grants or State-conferred rights.

52.8. Thus, the observations in ***Anraj*** (supra) and ***Sunrise Associates*** (supra) concerning transfer-based transactions and rights arising under lottery arrangements cannot be mechanically imported into the GST regime, which operates upon a fundamentally different constitutional and statutory framework centered around the concept of "supply". ***Sunrise Associates*** (supra), properly understood, recognises that a lottery ticket represents an actionable claim and

does not lay down that actionable claims can arise only from sovereign grants or State-conferred rights.

52.9. Another submission advanced on behalf of the assessees is that GST can be levied only where there exists a transfer or assignment of a pre-existing actionable claim and not where actionable claims arise as part of a betting or gaming transaction itself. The aforesaid submission cannot be accepted. As already mentioned, the GST framework does not restrict or confine taxability only to assignment or transfer-based transactions involving pre-existing actionable claims. The taxable event is no longer confined merely to "sale" or "transfer" but extends to the broader concept of "supply". Section 7 of the CGST Act merely requires the existence of a "supply" of goods or services. Entry 6 of Schedule III expressly excludes from the negative list only actionable claims other than lottery, betting and gambling, thereby affirmatively bringing actionable claims arising from betting and gambling within the fold of taxable supply.

52.10. The Revenue also does not predicate its case upon assignment or transfer of actionable claims. Consequently, the provisions of the Transfer of Property Act governing transfer or assignment, including Section 130 thereof, have no application. The CGST Act borrows only the definition of actionable claim from the Transfer of Property Act. In other words, the procedural and substantive

requirements governing assignment or transfer of actionable claims under Chapter VIII of the Transfer of Property Act are not bodily incorporated into the GST framework.

52.11. It must also be noted that Schedule II merely classifies certain supplies as supply of goods or supply of services. It is not an exhaustive catalogue of taxable supplies. The levy of GST arises upon the occurrence of "supply" under Section 7 and not merely upon classification under Schedule II. Consequently, merely because the manner in which actionable-claim interests arise and operate within betting and gambling transactions is not specifically enumerated in Schedule II does not exclude such transactions from the ambit of taxable supply under the CGST Act. In betting and gambling arrangements, where the organised commercial structure operated by the platform gives rise to contingent actionable-claim interests upon participation by players, such arrangements fall within the broad ambit of taxable supply contemplated under Section 7 read with Schedule III.

52.12. It may be also stated that the subsequent discharge or extinguishment of contingent claims upon determination of the gaming outcome likewise does not negate the taxable supply structure arising upon participation in the betting or gaming arrangement. The taxable event under GST is the occurrence of supply

within the framework of the betting or gaming transaction and not merely the eventual payout or transfer of winnings.

52.13. GST thus attaches to the organised betting and gambling framework within which actionable-claim interests arise. In other words, where it is factually established that a gaming platform or gaming company operates and facilitates the commercial arrangement within which betting and gambling transactions take place, and beneficial interests, whether contingent or otherwise, arise upon participation by players so as to constitute actionable claims, the taxable supply contemplated under the GST regime stands attracted. The subsequent maturation, discharge or extinguishment of such interests upon determination of the outcome does not detract from the taxability already attracted at the stage of supply.

Consideration, Valuation and Measure of Levy

53. For a transaction to constitute a taxable supply under the GST regime, consideration must ordinarily exist except in cases specifically covered under Schedule I to the CGST Act. The statutory measure for valuation under the GST framework is governed by Section 15 of the CGST Act, which provides that the value of supply shall ordinarily be the "transaction value", namely, the price actually paid or payable for the supply where the supplier and recipient are not

related and the price is the sole consideration for the supply. Equally significant is the definition of "consideration" contained in Section 2(31), which adopts language of the widest amplitude. The relevant provisions read thus:

Section 15. Value of Taxable Supply.-

(1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

(2) The value of supply shall include-

(a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;

(b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;

(c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;

(d) interest or late fee or penalty for delayed payment of any consideration for any supply; and

(e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

***Explanation** .-For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.*

(3) The value of the supply shall not include any discount which is given-

(a) before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and

(b) after the supply has been effected, if-

(i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and

(ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

(4) where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed.

(5) Notwithstanding anything contained in sub-section (1) or sub-section (4), the value of such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed.

***Explanation**. - For the purposes of this Act,-*

(a) persons shall be deemed to be " related persons " if-

(i) such persons are officers or directors of one another's businesses;

(ii) such persons are legally recognised partners in business;

(iii) such persons are employer and employee;

(iv) any person directly or indirectly owns, controls or holds twenty-five per cent. or more of the outstanding voting stock or shares of both of them;

(v) one of them directly or indirectly controls the other;

(vi) both of them are directly or indirectly controlled by a third person;

(vii) together they directly or indirectly control a third person; or

(viii) they are members of the same family;

(b) the term " person " also includes legal persons;

(c) persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.

> *"2(31) "consideration" in relation to the supply of goods or services or both includes–*
>
> *(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;*
>
> *....*
>
> *Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply".*

53.1. Section 15 (1) thus proceeds upon the "value of supply" and not merely upon the existence of consideration. As mentioned, while consideration is ordinarily necessary for constituting supply under Section 7, the levy under the GST framework ultimately operates upon the value of supply determined in accordance with the statutory valuation mechanism. The statutory scheme therefore ordinarily proceeds upon the actual price paid or payable in respect of the relevant supply except in situations specifically falling within recognised statutory exceptions as contemplated under the Act and the Rules framed thereunder. Thus, in a given case, the transaction value may coincide with the consideration paid for the supply.

53.2. Notably, the expression "transaction value" in Section 15(1) is also directly linked by the words "which is" to the "price actually paid or payable". The statutory formulation therefore treats the transaction value and the price actually paid or payable as forming part of the same valuation construct under Section 15(1). Further, the expressions "in respect of", "in response to" and "for the inducement of" occurring in Section 2(31) are of wide import and indicate a clear legislative intent to confer an expansive meaning upon the concept of consideration under the GST regime. The statute therefore does not confine consideration only to amounts representing the final price. Any payment bearing a direct nexus with the supply and forming an integral part of the commercial arrangement may legitimately constitute consideration for the purposes of the levy.

53.3. In betting and gambling transactions, participation itself is conditional upon payment of stake amounts, such payment cannot be viewed as disconnected from the valuation mechanism contemplated under the GST framework. The amount paid for participation constitutes the price actually paid or payable and also represents the consideration for the supply arising within the organised betting and gambling framework. Without such payment, the participant neither enters the organised betting or gaming arrangement nor acquires the corresponding actionable-claim interest arising therein. In other words, since the supply itself cannot arise independent of payment of the stake amount, the same

legitimately enters the valuation mechanism contemplated under Section 15(1). The payment of stakes is therefore neither collateral nor incidental to the transaction but constitutes the very basis upon which the organised betting and gambling framework operates. The stake amount thus bears a direct and inseparable nexus with the supply arising within such framework.

53.3. It is also a settled principle of fiscal jurisprudence that the measure adopted for quantification of a levy must be reasonable to the taxable event and may not be identical. Reference may be made to the following decisions:

(i) ***Mineral Area Development Authority*** (supra)

> ***"308.*** *The discussion above indicates that the nexus between the measure and levy of tax need not be "direct and immediate". The nexus has to be "reasonable" and must have some relationship with the nature of levy. The reasonability of the nexus will largely depend upon the nature of the tax and the means available with the legislature to design the measure of the tax. Since the measure of the levy is a matter of legislative policy and convenience, [Express Hotels (P) Ltd. v. State of Gujarat, (1989) 3 SCC 677, para 25] the reasonability of the nexus between the measure and tax has to be determined by the courts on a case-to-case basis. While doing so, the Court will bear in mind the fundamental principle that the legislature possesses a broad discretion in matters of fiscal levies."*

(ii) Union of India v. Bombay Tyre International Ltd. (supra)

> *"14. We move on now to a different dimension, to the conceptual consideration of the measure of the tax. Section 3 of the Central Excises and Salt Act provides for the levy of the duty of excise. It creates the charge, and defines the nature of the charge. That it is a levy on excisable goods, produced or manufactured in India, is mentioned in terms in the section itself. Section 4 of the Act provides the measure by reference to which the charge is to be levied. The duty of excise is chargeable with reference to the value of the excisable goods, and the value is defined in express terms by that section. It has long been recognised that the measure employed for assessing a tax must not be confused with the nature of the tax. In*

Ralla Ram v. Province of East Punjab [AIR 1948 FC 81 : 1948 FCR 207] the Federal Court held that a tax on buildings under Section 3 of the Punjab Urban Immovable Property Tax Act, 1940 measured by a percentage of the annual value of such buildings remained a tax on buildings under that Act even though the measure of annual value of a building was also adopted as a standard for determining income from property under the Income Tax Act. It was pointed out that although the same standard was adopted as a measure for the two levies, the levies remained separate and distinct imposts by virtue of their nature. In other words, the measure adopted could not be identified with the nature of the tax. The distinction was observed by a Special Bench of the Patna High Court in Atma Ram Budhia v. State of Bihar [AIR 1952 Pat 359] where a tax on passengers and goods was assessed as a rate on the fares and freights payable by the owners of the motor vehicles. Atma Ram Budhia [AIR 1952 Pat 359] was referred to with approval by this Court in Sainik Motors, Jodhpur v. State of Rajasthan [AIR 1961 SC 1480 : (1962) 1 SCR 517]. This Court in that case repelled the contention that the levy was a tax upon income and not upon passengers and goods. It pointed out that "though the measure of the tax is furnished by the fares and freights it does not cease to be a tax on passengers and goods". The point was considered by this Court again in D.G. Gouse and Co. v. State of Kerala [(1980) 2 SCC 410 : AIR 1980 SC 271 : (1980) 1 SCR 804] where reference was made to the measure adopted for the purpose of the levy of tax on buildings under the Kerala Building Tax Act. The Court examined the different modes available to the Legislature for measuring the levy, and upheld the action of the Legislature in linking the levy with the annual value of the building and prescribing a uniform formula for determining its capital value and for calculating the tax. In the course of its judgment, the Court cited with approval a passage from Seervai's Constitutional Law of India [Second Edn., Vol. 2 at p. 1258] :

"... Another principle for reconciling apparently conflicting tax entries follows from the fact that a tax has two elements: the person, thing or activity on which the tax is imposed, and the amount of the tax. The amount may be measured in many ways; but decided cases establish a clear distinction between the subject-matter of a tax and the standard by which the amount of tax is measured. These two elements are described as the subject of a tax and the measure of a tax...."

It is, therefore, clear that the levy of a tax is defined by its nature, while the measure of the tax may be assessed by its own standard. It is true that the standard adopted as the measure of the levy may indicate the nature of the tax but it does not necessarily determine it. The relationship was aptly expressed by the Privy Council in Re, A Reference under the Government of Ireland Act, 1920 and Section 3 of the

Finance Act (Northern Ireland), 1934 [LR 1936 AC 352 : (1936) 2 All ER 111] when it said:

"... It is the essential characteristic of the particular tax charged that is to be regarded, and the nature of the machinery — often complicated — by which the tax is to be assessed is not of assistance, except insofar as it may throw light on the general character of the tax."

The case was referred to by a Constitution Bench of this Court in R.R. Engineering Co. v. Zila Parishad, Bareilly [(1980) 3 SCC 330 : AIR 1980 SC 1088 : (1980) 3 SCR 1] where the relationship was succinctly described thus: [SCC p. 336, para 16]

"It may be, and is often so, that the tax on circumstances and property is levied on the basis of income which the assessee receives from his profession, trade, calling or property. That is, however, not conclusive on the nature of the tax. It is only as a matter of convenience that income is adopted as a yardstick or measure for assessing the tax. As pointed out in Re, A Reference under Government of Ireland Act [LR 1936 AC 352 : (1936) 2 All ER 111] , the measure of the tax is not a true test of the nature of the tax. Therefore, while determining the nature of a tax, though the standard on which the tax is levied may be a relevant consideration, it is not a conclusive consideration,...."

The principle was reaffirmed by this Court in Hingir-Rampur Coal Co., Ltd. v. State of Orissa [AIR 1961 SC 459, 469 : (1961) 2 SCR 537] where the form in which the levy was imposed was held to be an impermissible test for defining in itself the character of the levy. It was observed:

"... the mere fact that the levy imposed by the impugned Act had adopted the method of determining the rate of the levy by reference to the minerals produced by the mines would not by itself make the levy a duty of excise. The method thus adopted may be relevant in considering the character of the impost but its effect must be weighed along with and in the light of the other relevant circumstances...."

It is apparent, therefore, that when enacting a measure to serve as a standard for assessing the levy the Legislature need not contour it along lines which spell out the character of the levy itself. Viewed from this standpoint, it is not possible to accept the contention that because the levy of excise is a levy on goods

> *manufactured or produced the value of an excisable article must be limited to the manufacturing cost plus the manufacturing profit. We are of opinion that a broader based standard of reference may be adopted for the purpose of determining the measure of the levy. Any standard which maintains a nexus with the essential character of the levy can be regarded as a valid basis for assessing the measure of the levy. In our opinion, the original Section 4 and the new Section 4 of the Central Excises and Salt Act satisfy this test."*

53.4. Thus, although the taxable event under the GST regime is the occurrence of supply involving actionable claims arising out of betting and gambling transactions, the legislature nevertheless possesses considerable latitude in devising standards and methodologies for valuation so long as a reasonable nexus exists with the underlying taxable event. Consequently, merely because the measure adopted for valuation takes into account the entire stake amount does not alter the nature of the levy itself or convert it into a tax on an activity dehors the GST framework. The levy continues to remain one upon taxable supply, the valuation whereof is determined in accordance with the statutory mechanism embodied in Section 15 and the Rules framed thereunder.

53.5. It must also be noted that the proviso to Section 2(31) contemplates a situation where an amount initially given as a deposit retains an independent character unless and until it is appropriated towards consideration for the underlying supply. The proviso therefore applies only so long as the amount continues to remain in the nature of a refundable deposit not yet appropriated

towards the supply. The proviso thus recognises that an amount may initially retain the character of a deposit and would assume the character of consideration only upon appropriation towards the underlying supply.

53.6. In betting and gambling transactions, the stake amount is paid for the very purpose of participation in the organised betting and gambling framework and for acquisition of the corresponding actionable-claim interest arising therein. Even if, at a particular stage prior to participation crystallising, the amount may retain certain attributes of a refundable deposit, the character of such payment fundamentally changes once the participant is admitted into the betting or gaming arrangement and the amount stands appropriated towards participation in the underlying supply. Upon such appropriation, the payment ceases to retain the character of a mere deposit and forms part of the consideration for the supply involving actionable claims.

53.7. The GST regime is also unconcerned with the subsequent manner in which the supplier may utilise, distribute or account for the consideration received after the supply comes into existence. At this juncture, it may also be clarified that the GST framework ordinarily proceeds on gross valuation and not upon a net-based valuation mechanism unless specifically contemplated by statute. In ***Skill Lotto Solutions*** (supra), this Court framed a specific question as to whether prize

money was liable to be excluded while determining the face value of lottery tickets under Rule 31A(2). While answering the said question, this Court took recourse to Section 15(3) and held that exclusion of prize money for the purpose of valuation was impermissible in the absence of any such statutory exclusion under the scheme of the Act. Thus, once an amount stands appropriated towards the underlying supply and enters the statutory valuation mechanism governing such supply, subsequent distribution, disbursal, allocation or retention of amounts arising within the commercial arrangement would not by itself reduce the transaction value unless the statute expressly contemplates such exclusion.

53.8. The relevant inquiry is therefore whether the amount stands appropriated towards the supply at the point participation crystallises within the organised betting and gambling framework. Once such appropriation takes place, the proviso to Section 2(31) ceases to apply and the stake amount enters the valuation mechanism governing the supply. The proviso to Section 2(31) consequently has no application to stake amounts which stand appropriated towards participation in betting and gambling transactions.

53.9. The statutory position may therefore be understood in the following sequence:

(i) so long as an amount retains the character of a refundable deposit not yet irrevocably appropriated towards participation in the betting or gambling arrangement, the proviso to Section 2(31) may continue to operate;

(ii) once the stake amount stands appropriated towards participation in the organised betting or gaming framework, the taxable supply involving actionable claims crystallises and the amount simultaneously assumes the character of consideration for the underlying supply;

(iii) since participation itself is conditional upon payment of the stake amount, the same also constitutes the price actually paid or payable for the supply within the meaning of Section 15(1); and

(iv) consequently, the stake amount legitimately enters the transaction value governing the supply involving actionable claims arising out of betting and gambling transactions.

53.10. The Revenue is therefore correct in contending that the value of supply under Section 15 is intrinsically linked to the amount staked towards participation in the betting or gaming arrangement and that such staking constitutes consideration paid in respect of and for the inducement of the actionable-claim supply arising within the organised betting and gambling framework.

Characterisation of Online Gaming Transactions: Supply of Goods or Services

54. The assessees have contended that online gaming activities constitute supply of services and not supply of goods. Reliance was placed upon Notification No. 11/2017 relating to rates of tax on services, the Scheme of Classification of Services, SAC 998439, SAC 999692 and the definition of "online information and database access or retrieval services" under Section 2(17) of the IGST Act. For ready reference, the aforesaid Notification and the relevant provision are extracted below:

Notification No. 11/2017- Central Tax (Rate) dt. 28.06.2017

> *"In exercise of the powers conferred by sub-section (1) sub-section (3) and sub-section (4)] of section 9, subsection (1) of section 11, sub-section (5) of section 15, sub-section (1) of section 16 and section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, and on being satisfied that it is necessary in the public interest so to do, hereby notifies that the central tax, on the intra-State supply of services of description as specified in column (3) of the Table below, falling under Chapter, Section or Heading of scheme of classification of services as specified in column (2), shall be levied at the rate as specified in the corresponding entry in column (4), subject to the conditions as specified in the corresponding entry in column (5) of the said Table:-*

Sl. No.	*Chapter, Section or Heading*	*Description of service*	*Rate (Per cent)*	*Conditio n*
22	*Heading 9984*	*Telecommunications, broadcasting and*	*9*	*-*

		information supply services.		
34	*Heading 9996* *(Recreational, cultural and Sporting services)*	*(i) Services by way of admission or access to circus,* *Indian classical dance including folk dance, theatrical performance, drama.*	*9*	-
		(ii) Services by way of admission exhibition of cinematograph films where price of admission ticket is one hundred rupees or less.	*9*	-
		(iii) Services by way of admission to entertainment events or access to amusement facilities including exhibition of cinematograph, films, theme parks, water parks, joy rides, merry-go rounds, go-carting, Casinos, race-course, ballet, any sporting event such as Indian Premier League and the like.	*14*	-
		(iv) Services provided by a race club by way of totalisator or a license to bookmaker in such club.	*14*	-
		(v) Gambling.	*14*	-
		(vi) Recreational, cultural and sporting services other	*9*	-

		than (i), (ii), (iii), (iv) and (v) above.		

4. Explanation.- For the purposes of this notification,-

…

(ii) Reference to "Chapter", "Section" or "Heading", wherever they occur, unless the context otherwise requires, shall mean respectively as "Chapter, "Section" and "Heading" in the annexed scheme of classification of services (Annexure).

Section 2(17) of the IGST Act

"online information and database access or retrieval services means *services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply impossible to ensure in the absence of information technology and includes electronic services such as,—*

(i)…

(ii)…

(iii)…

(viii) ***online gaming***

Relevant extracts of Explanatory notes to the scheme of classification of services are reproduced below:

"Annexure - ***Services Code / Scheme of Classification of Services*** - *GS'T (Vol. 4, Pg. 3129, 3197, 3200 and 3249)*
9984
99843 On-line content
998439 Other on-line content n.e.c.

This service code includes games that are intended to be played on the Internet such as role-playing games (RPGs), strategy games, action games, card games, children's games; *software that is intended to be executed on-line, except game software; mature theme, sexually explicit content published*

or broadcast over the Internet including graphics, live feeds, interactive performances and virtual activities; content provided on web search portals, i.e. extensive databases of Internet addresses and content in an easily searchable format; statistics or other information, including streamed news; other on-line content not included above such as greeting cards, jokes, cartoons, graphics, maps
99965 Sports and recreational sports services
999651 Sports and recreational sports event promotion and organization services. This service code includes :

i. services provided by producers or promoters of sports events, with or without facilities
ii. organization and management of sports events by sports clubs offering the opportunity for sports, e.g., footballclubs, bowling clubs, swimming clubs, golf clubs, boxing clubs, body-building clubs, winter sports clubs, chess clubs, track and field clubs, etc.
99969 Other amusement and recreational services
999692 Gambling and betting services including similar online services.

This service code includes :
i. on-line gambling services
ii. on-line games involving betting/gambling.
iii. off-track betting,
iv. Casino and gambling house services
v. gambling slotmachine services vi. other similar services

54.1. We are unable to accept these submissions. If the underlying supply is identified as one involving actionable claims arising out of betting and gambling transactions, the statutory consequence under Section 2(52) read with Section 7 necessarily follows, namely that the supply falls within the ambit of goods under the CGST Act. Notification No. 11/2017 dealing with services therefore cannot govern transactions which are statutorily characterised as supply involving actionable claims constituting goods. In any case, upon examination of Notification No. 11/2017 and the scheme of classification of services contained

therein, there is no specific entry classifying supply involving actionable claims as supply of services. Consequently, it cannot be contended that the statutory framework has consistently treated such transactions as supply of services.

54.2. Moreover, the scheme of classification of services contained in subordinate legislation cannot override the parent statute. It is well settled that notifications and delegated legislation must operate within the framework of the Act and cannot alter the statutory character of a transaction recognised by Parliament. When the CGST Act expressly includes actionable claims within the definition of "goods", no classification under a service notification can derogate from such statutory characterisation. Nevertheless, even when two provisions appear to be in conflict with each other, it is settled law that the provisions must be read harmoniously to ensure that both of them can be enforced.

54.3. Further, SAC 998439 merely deals with online games where payment is made to play the game simpliciter. It does not involve staking upon an uncertain outcome and therefore does not concern actionable claims arising out of betting and gambling transactions. Similarly, SAC 999692 relating to online gambling services would apply only in situations where the platform merely provides facilitative or intermediary services. In fact, even Circular dated 27.08.2017 issued in the context of lottery transactions clarified that lottery constitutes goods

under the GST framework and would accordingly be governed by the goods rate notifications, which falls within the definition of goods. The same principle would necessarily apply to other actionable claims arising out of betting and gambling transactions.

54.4. The assessees contended that Section 2(17) of the IGST Act, prior to the 2023 amendment, included "online gaming" within the ambit of "online information and database access or retrieval services", and that it was only by the 2023 amendment that "online money gaming" came to be specifically excluded and separately dealt with under the amended GST framework. According to the assessees, this demonstrates that online money gaming was treated as a species of services prior to the amendment.

54.5. We are unable to accept the aforesaid contention. The definition of "online information and database access or retrieval services" under Section 2(17) of the IGST Act, though relevant, cannot by itself conclusively determine the true nature and character of the underlying supply for purposes of the CGST Act. At the same time, the mere fact that "online money gaming" came to be specifically carved out and separately dealt with under the amended framework in 2023 does not necessarily imply that such transactions stood conclusively classified as supply of services under the pre-amendment regime.

54.6. Section 2(17) of the IGST Act defining "online information and database access or retrieval services" must therefore receive a contextual construction. Online gaming platforms which merely provide games to be played by users, whether free of charge or upon payment of subscription fees, and which do not involve staking upon uncertain outcomes giving rise to actionable-claim interests, may legitimately fall within the ambit of OIDAR services and consequently constitute supply of services. However, the mere use of internet-based technology or digital infrastructure does not by itself convert every transaction conducted through an online platform into a supply of services. Once the platform facilitates staking upon uncertain outcomes within an organised betting and gambling framework giving rise to actionable-claim interests, and receives amounts paid for participation within such framework, the transaction ceases to remain one of mere technological or facilitative services. The assessees have failed to establish that they are merely providers of technological services. The assessees retain dominion and control over the staked amounts until the uncertain event unfolds and the corresponding distribution takes place in accordance with the platform framework. The statutory character of the transaction must instead be determined with reference to the underlying supply involving actionable claims arising out of betting and gambling transactions. At the same time, the mere fact that "online money gaming" came to be specifically carved out and separately dealt with under the amended framework in 2023 does not necessarily imply that such

transactions stood conclusively classified as supply of services under the pre-amendment regime.

54.7. In essence, once the underlying transaction is properly characterised as supply involving actionable claims arising out of betting and gambling, the charging, valuation and rate provisions under the GST framework must operate in accordance with such statutory characterisation. Merely because certain online or facilitative elements are involved in the conduct of the transaction would not alter its true nature or convert the supply into one of services. The reliance placed upon Notification No. 11/2017, service classifications such as Heading 998439 and Heading 999692 and aforesaid definition in IGST is therefore misplaced.

Rate of Tax and Validity of Notifications

55. For a valid levy under fiscal legislation, it is necessary not only that the taxable event, taxable person be identifiable, but also that the applicable rate of tax be duly prescribed. Under section 9(1), Parliament has prescribed the charging provision and fixed the statutory ceiling for levy, while delegating authority to the Government to prescribe applicable rates upon recommendations

of the GST Council. As per records, the period of dispute may be bifurcated into (i) 01.07.2017 to 24.01.2018; and (ii) 25.01.2018 to 30.09.2023.

55.1. For the first period, Notification No. 01/2017 dated 28.06.2017 prescribed rates for supply of goods. Since actionable claims arising out of betting and gambling did not enjoy a specific entry, the residuary Entry 453 prescribing 9% CGST became applicable. The relevant portion of the Notification reads as under:

> *"In exercise of the powers conferred by sub-section (1) of section 9 [and sub section (5) of Section 15] of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby notifies the rate of the central tax of-*
>
> ….
>
> *(iii) 9 per cent in respect of goods specified in Schedule III*

Sr. No.	***Chapter/Heading/Sub heading/Tariff Item***	***Description of Goods***
453	*Any chapter*	*Goods which are not specified in Schedule I, II, IV, V or VI*

55.2. For the second period, Rule 31A was inserted vide Notification No. 03/2018 dated 23.01.2018. Thereafter, Entry 229 was inserted in Schedule IV to

Notification No. 01/2017 prescribing 14% CGST for actionable claims in the form of chance to win in betting, gambling or horse racing in a race club. For ease of reference, the same is extracted below:

> *"In exercise of the powers conferred by sub-section (1) of section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby notifies the rate of the central tax of -*
>
> *(i) 2.5 per cent in respect of goods specified in Schedule I,*
>
> *(ii) 6 per cent in respect of goods specified in Schedule II,*
>
> *(iii) 9 per cent in respect of goods specified in Schedule III,*
>
> ***(iv) 14 per cent in respect of goods specified in Schedule IV,***
>
> *(v) 1.5 per cent in respect of goods specified in Schedule V, and*
>
> *(vi) 0.125 per cent in respect of goods specified in Schedule VI*
>
> *appended to this notification (hereinafter referred to as the said Schedules), that shall be levied on intra-State supplies of goods, the description of which is specified in the corresponding entry in column (3) of the said Schedules, falling under the tariff item, sub-heading, heading or Chapter, as the case may be, as specified in the corresponding entry in column (2) of the said Schedules.*

SCHEDULE IV - 14%

S. No.	*Chapter/Heading/Sub-heading/Tariff*	*Description of Goods*
229	*Any chapter*	*Actionable claim in the form of chance to win in betting, gambling or horse racing in race club.*

55.3. The challenge raised by the assessees regarding absence of HSN classification or tariff entry under the Customs Tariff Act is devoid of merit. The reference to tariff headings in the notification is merely procedural and intended for administrative convenience. The absence of a specific tariff entry cannot invalidate the levy when the supply is otherwise taxable under the Act; and the applicable rate stands duly prescribed. The notification has to be read so as to mean to cover the goods specified falling under any chapter/heading/sub heading/tariff.

55.4. The Ministry of Finance clarified through Circular No. 06/06/2017-GST dated 27.08.2017 that the expression "–" or "any chapter" appearing in relation to lottery entries signifies absence of a corresponding tariff entry and merely facilitates filing of returns and invoices. For ease of reference, the said Circular is reproduced below:

"Circular No.06/06/2017-CGST

F. No. 354/149/2017-TRU

Government of India
Ministry of Finance
Department of Revenue
Tax Research Unit

New Delhi, the 27th August, 2017

To
The Principal Chief Commissioner/Chief Commissioners/ Principal Commissioner/ Commissioner of Central Tax (All) / Director General of Systems

Madam/Sir,

Subject: - Issue related to classification and GST rate on lottery tickets – regarding

Supply of lottery has been treated as supply of goods under the Central Goods and Services Tax (CGST) Act, 2017.

2. Accordingly, based on the recommendation of the GST Council, the GST rate for supply of lottery has been notified under relevant GST rate notification relating to CGST/IGST/UTGST/SGST. However, entries in the respective notifications mention classification for lottery as "-".

3. In this connection, references have been received, inter-alia, stating that due to discrepancy in code allotted, i.e., lottery is defined as goods but code allotted for lottery is under services, the assessees are not able to upload return or deposit tax in time.

4. The matter has been examined. It should be noted that the process of filing return is linked with rate of tax specified for supply. Further, there is complete clarity about rate of tax on lotteries. As mentioned above, in GST, lottery is goods and the classification indicated in relevant notification for lottery is "-", which means any chapter.

5. That being so, it is clarified that the classification for lottery in respective CGST, IGST, UTGST and SGST notifications shall be 'Any Chapter' of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and tax on lottery should be paid accordingly at prescribed rates, 12% or 28%, as the case may be.

(Ruchi Bisht)
Under Secretary (TRU)"

55.5. The same rationale equally governs actionable claims arising out of betting and gambling. HSN classification is therefore not determinative of the validity of the levy itself. Rule 46 of the CGST Rules further demonstrates this position by

empowering exemption from mandatory HSN disclosure in appropriate cases. 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.

55.6. At the same time, it is clarified that the various circulars relied upon only constitute contemporaneous administrative exposition of the statutory scheme. They do not create the levy independently. The source of levy continues to remain traceable to Sections 2(1), 2(52), 7, and 9(1) of the CGST Act, Entry 6 of Schedule III read with the relevant rate notifications issued under Section 9(1). The notifications and circulars merely operationalise and clarify the statutory framework. Furthermore, the FAQ is only a guide to understand the provisions and would not confer any independent right contrary to the enactment. The challenge to the same is misconceived.

55.7. To sum up, the statutory scheme of the CGST Act, clearly demonstrates that actionable claims are expressly included within the definition of goods; actionable claims arising out of betting and gambling are specifically retained within the taxable net by Entry 6 of Schedule III. The valuation framework embodied in Section 15 validly permits the amounts paid for participation in betting and gambling transactions to form part of the determination of transaction

value. Valid rates of tax were also duly prescribed for the relevant periods through notifications issued under Section 9(1). The challenge founded upon absence of transfer, absence of HSN classification, or alleged characterization as services is therefore misconceived. Accordingly, the levy of GST on supply involving actionable claims arising out of betting and gambling transactions is fully traceable to, and sustained by, the charging, valuation and rate provisions of the CGST Act and the corresponding notifications issued thereunder. Consequently, the challenges to the circulars, FAQs and other executive instruments issued in furtherance of the statutory framework are likewise unsustainable.

(E) VALIDITY OF RULE 31A

56. Rule 31A of the CGST Rules prescribes the mechanism for determination of value in transactions involving lottery, betting, gambling and horse racing. Rule 31A(3), in particular, provides that the value of supply of actionable claims in the form of chance to win in betting, gambling or horse racing shall be 100% of the face value of the bet or the amount paid into the totalizator. It reads as follows:

> ***"Rule 31A. Value of supply in case of lottery, betting, gambling and horse racing.***

(1) Notwithstanding anything contained in the provisions of this Chapter, the value in respect of supplies specified below shall be determined in the manner provided hereinafter.

(2) The value of supply of lottery shall be deemed to be 100% of the face value of ticket or of the price as notified in the Official Gazette by the Organising State, whichever is higher.

***Explanation** :- For the purposes of this sub-rule, the expression "Organising State" has the same meaning as assigned to it in clause (f) of sub-rule (1) of rule 2 of the Lotteries (Regulation) Rules, 2010.*

(3) The value of supply of actionable claim in the form of chance to win in betting, gambling or horse racing in a race club shall be 100% of the face value of the bet or the amount paid into the totalizator.

56.1. At the outset, it must be clarified that Rule 31A neither creates a new levy nor expands the charging provision contained in the CGST Act. As already seen, the levy itself flows from Sections 2(1), 2(52), 7 and 9 read with Entry 6 of Schedule III, which expressly preserves the taxability of actionable claims arising out of betting and gambling. Rule 31A merely operationalises the statutory mechanism of valuation contemplated under Section 15. Thus, Rule 31A is fundamentally a machinery provision enacted to ensure certainty, uniformity and consistency in valuation and to avoid divergent industry practices.

56.2. It must also be clarified here that the challenge to Rule 31A on the ground of manifest arbitrariness is unsustainable. Once the legislature validly identifies

the taxable supply and the statutory framework treats the entire stake amount as consideration paid for acquisition of the contingent actionable-claim interest, prescription of the full face value of the bet as the measure of valuation cannot be said to be manifestly arbitrary or divorced from the statutory scheme. Merely because a different method of valuation or a narrower taxable measure may also have been possible does not render the Rule unconstitutional. The mere fact that the valuation measure results in a higher tax incidence or may operate harshly in certain commercial situations does not by itself render the Rule unconstitutional once the underlying levy and valuation framework bear nexus with the taxable event identified by the statute. Fiscal and economic legislation necessarily permit a greater degree of legislative flexibility in matters of valuation and measure of levy. Rule 31A bears a direct nexus with the nature of the organised betting and gambling transactions sought to be taxed and therefore cannot be characterised as violative of Article 14 of the Constitution.

Validity of Rule 31A within the statutory framework of Section 15

57. A principal challenge advanced by the assessees is that Rule 31A artificially deems the face value of the bet to be the taxable value and thereby travels beyond Section 15(1). We are unable to accept the aforesaid contention. As discussed Section 15(1), already accommodates valuation on the basis of the entire stake amount. Rule 31A merely operationalises and standardises the

valuation methodology already traceable to Section 15. In other words, it merely clarifies the statutory position explicitly in order to avoid ambiguity and inconsistent industry practices. The Rule was introduced *ex abundanti cautela* to place the matter beyond controversy.

57.1. Moreover, Rule 31A neither enlarges the charging provision nor alters the taxable event under the GST regime. As already mentioned, the levy itself arises independently under Sections 7 and 9 of the CGST Act upon the supply involving actionable claims arising out of betting and gambling transactions. Rule 31A merely provides the machinery for valuation of such supplies and therefore squarely falls within the permissible domain of delegated legislation.

57.2. Ultimately, Rule 31A(3) prescribes nothing more than what Section 15(1) itself contemplates. Under both Section 15(1) and Rule 31A(3), the taxable value is the full amount staked by the participant. Once the valuation methodology prescribed under Rule 31A remains fully within the framework of Section 15(1), the challenge that the Rule is excessive, arbitrary or ultra vires necessarily fails.

Statutory framework governing delegated legislation

58. The next challenge to Rule 31A is on the ground that it is not traceable to any provision of the parent enactment and consequently constitutes excessive

delegation. The said challenge must therefore be examined in the backdrop of the statutory framework governing delegated legislation and valuation under the CGST Act. The relevant provisions read as under:

Section 15(4)

> *"Where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed.*

Section 15(5)

> *"Notwithstanding anything contained in sub-section (1) or sub-section (4), the value of such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed.*

Section 2(87)

> *"prescribed" means prescribed by rules made under this Act on the recommendations of the GST Council.*

Section 164. Power of Government to make rules.-

> *(1) The Government may, on the recommendations of the Council, by notification, make rules for carrying out the provisions of this Act.*
>
> *(2) Without prejudice to the generality of the provisions of sub-section (1), the Government may make rules for all or any of the matters which by this Act are required to be, or may be, prescribed or in respect of which provisions are to be or may be made by rules.*

> *(3) The power to make rules conferred by this section shall include the power to give retrospective effect to the rules or any of them from a date not earlier than the date on which the provisions of this Act come into force.*
>
> *(4) Any rules made under sub-section (1) or sub-section (2) may provide that a contravention thereof shall be liable to a penalty not exceeding ten thousand rupees.*

58.1. Section 15(4) authorises prescription of valuation methodology where value cannot be determined under Section 15(1). Section 15(5) further empowers the Government, upon recommendations of the GST Council, to prescribe valuation methodology for notified supplies notwithstanding Section 15(1). Section 2(87) defines the expression "prescribed" to mean prescribed by rules made under the Act on the recommendations of the GST Council. Section 164 confers general rule-making power for carrying out the provisions of the Act, even with retrospective effect or from any other date, after the Act has come into force.

58.2. A conjoint reading of Sections 15(4), 15(5), 164 and Section 2(87) reveals a common statutory thread, namely the requirement of recommendation of the GST Council. Consequently, whether Rule 31A traces its source to Section 15(4), Section 15(5), or the general rule-making power under Section 164, the foundational statutory requirement remains identical and intact. Once it is established that Rule 31A was introduced pursuant to recommendations of the

GST Council, the controversy regarding the precise source of delegated authority loses much of its significance.

GST Council Recommendation supporting Rule 31A

59. The materials placed on record conclusively establish that Rule 31A(3) was preceded by and founded upon recommendations of the GST Council. Prior to the 25th GST Council Meeting, the Fitment Committee prepared agenda notes dealing with taxation of lotteries, betting, gambling, casinos and horse racing. Agenda Items 48 to 51 assume significance and they are reproduced below:

> ***"a)*** *Under Agenda Item 48, a proposal was made to tax betting and gambling as actionable claims and a corresponding entry be introduced in the Goods Rate Notification. The Fitment Committee considered the proposal and stated that Casinos and racecourses are similar to organizers of lotteries and sell a chance to win, which is an actionable claim. The Fitment Committee therefore suggested that actionable claim in the form of chance to win in betting and gambling, including horse racing, should be added in the GST Goods Rate Notification at 28%.*
>
> ***b)*** *Under Agenda No. 49, it was noticed by the Fitment Committee that since actionable claims arising out of betting and gambling are being taxed under the residuary Entry No. 453 of Notification 01/2017, a separate entry for actionable claim in the form of chance to win in betting and gambling including horse racing should be added in the GST Rate Schedule for Goods at 28%.*
>
> ***c)*** *Agenda No. 50 dealt entirely with services and did not deal with goods at all.*
>
> ***d)*** *Agenda No.51 dealt with valuation of supply of betting in horse racing. The Fitment Committee took note of the comments provided, which stated that even though valuation of betting and gambling would be covered by Section 15(1), the provision may be misused by the trade by deducting the prize money from the amount paid for betting and gambling. The Fitment committee accepted the*

proposal for introducing a Rule and suggested that the value of supply of betting and gambling shall be hundred percent of the face value of the bet or the amount paid into the totalisator."

59.1. Under Agenda Item 48, the Fitment Committee considered taxation of betting and gambling as actionable claims and observed that casinos and race clubs, like lottery operators, supply a "chance to win", which constitutes an actionable claim. The Committee accordingly recommended taxation of such actionable claims at 28%. Agenda Item 49 noted that actionable claims arising out of betting and gambling were then being taxed under the residuary entry in Notification No. 01/2017 and recommended insertion of a specific entry relating to betting and gambling including horse racing.

59.2. Most significantly, Agenda Item 51 specifically addressed valuation of betting and gambling. The Fitment Committee noted apprehensions that trade participants may seek deduction of prize money from taxable value notwithstanding Section 15(1). In order to eliminate disputes and ensure uniformity, the Committee expressly recommended introduction of a valuation rule providing that the value of supply of betting and gambling shall be 100% of the face value of the bet or the amount paid into the totalizator.

59.3. These agenda items were thereafter placed before the 25th GST Council Meeting under Agenda Item No. 10(1) titled "*Recommendations on Goods*".

Paragraphs 23 and 23.1 of the Minutes of the Meeting clearly demonstrate that the Council approved the recommendations of the Fitment Committee. Thus, once approved, the recommendations of the Fitment Committee merged into and assumed the character of recommendations of the GST Council itself. The contention that Rule 31A lacks recommendation of the GST Council is therefore factually unsustainable.

Scope and Ambit of Section 15(4)

60. The statutory framework under Section 15 contemplates both ordinary transaction-value principles as well as specially prescribed valuation methodologies operating through delegated legislation. Section 15(5), in particular, reflects legislative recognition that certain classes of supplies may require specialised valuation methodologies having regard to their peculiar commercial structure and practical difficulties in assessment. The provision operates independently of the ordinary transaction-value framework contemplated under Section 15(1) and enables prescription of special valuation mechanisms in respect of notified supplies on the recommendations of the GST Council. Such specially prescribed valuation methodologies prevail in respect of the notified class of supplies and do not operate in conflict with Sections 15(1) or 15(4), both of which continue to operate within their respective fields. Such valuation mechanisms constitute matters of legislative and fiscal policy and the

legislature necessarily possesses considerable latitude in devising standards and methodologies for quantification of tax so long as a reasonable nexus exists with the underlying taxable event. The provisions of Sections 15(1), 15(4) and 15(5) must therefore be construed harmoniously so as to give full effect to the statutory valuation framework contemplated under the GST regime. The following decisions are relevant in this regard:

(i) *Sultana Begum v. Prem Chand Jain*[113]:

> ***"11.*** *The statute has to be read as a whole to find out the real intention of the legislature.*
>
> ***12.*** *In Canada Sugar Refining Co. v. R. [1898 AC 735 : 67 LJPC 126] , Lord Davy observed:*
>
> > *"Every clause of a statute should be construed with reference to the context and other clauses of the Act, so as, as far as possible, to make a consistent enactment of the whole statute or series of statutes relating to the subject-matter."*
>
> **…….**
>
> ***14.*** *This rule of construction which is also spoken of as "ex visceribus actus" helps in avoiding any inconsistency either within a section or between two different sections or provisions of the same statute.*
>
> ***15.*** *On a conspectus of the case-law indicated above, the following principles are clearly discernible:*
>
> > *(1) It is the duty of the courts to avoid a head-on clash between two sections of the Act and to construe the provisions which appear to be in conflict with each other in such a manner as to harmonise them.*

[113] (1997) 1 SCC 373

(2) The provisions of one section of a statute cannot be used to defeat the other provisions unless the court, in spite of its efforts, finds it impossible to effect reconciliation between them.

(3) It has to be borne in mind by all the courts all the time that when there are two conflicting provisions in an Act, which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both. This is the essence of the rule of "harmonious construction".

(4) The courts have also to keep in mind that an interpretation which reduces one of the provisions as a "dead letter" or "useless lumber" is not harmonious construction.

(5) To harmonise is not to destroy any statutory provision or to render it otiose."

(ii) *Franklin Templeton Trustee Services (P) Ltd. v. Amruta Garg*[114]:

"17. *The concept of "absurdity" in the context of interpretation of statutes is construed to include any result which is unworkable, impracticable, illogical, futile or pointless, artificial, or productive of a disproportionate counter-mischief [See Bennion on Statutory Interpretation, 5th Edn., p. 969.] . Logic referred to herein is not formal or syllogistic logic, but acceptance that enacted law would not set a standard which is palpably unjust, unfair, unreasonable or does not make any sense. [Bennion on Statutory Interpretation, 5th Edn., p. 986.] When an interpretation is beset with practical difficulties, the courts have not shied from turning sides to accept an interpretation that offers a pragmatic solution that will serve the needs of society [Id, p. 971, quoting Griffiths, L.J.] . Therefore, when there is choice between two interpretations, we would avoid a "construction" which would reduce the legislation to futility, and should rather accept the "construction" based on the view that draftsmen would legislate only for the purpose of bringing about an effective result. We must strive as far as possible to give meaningful life to enactment or rule and avoid cadaveric consequences [See Principles of Statutory Interpretation by Justice G.P. Singh, 14th Edn., p. 50.] ."*

(iii) *CIT v. Hindustan Bulk Carriers*[115]:

[114] (2021) 6 SCC 736
[115] (2003) 3 SCC 57

*"**16.** The courts will have to reject that construction which will defeat the plain intention of the legislature even though there may be some inexactitude in the language used. (See Salmon v. Duncombe [(1886) 11 AC 627 : 55 LJPC 69 : 55 LT 446 (PC)] AC at p. 634, Curtis v. Stovin [(1889) 22 QBD 513 : 58 LJQB 174 : 60 LT 772 (CA)] referred to in S. Teja Singh case [AIR 1959 SC 352 : (1959) 35 ITR 408] .)*

***18.** The statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute.*

***19.** The court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with other parts of the law and the setting in which the clause to be interpreted occurs. (See R.S. Raghunath v. State of Karnataka [(1992) 1 SCC 335 : 1992 SCC (L&S) 286 : (1992) 19 ATC 507 : AIR 1992 SC 81] .) Such a construction has the merit of avoiding any inconsistency or repugnancy either within a section or between two different sections or provisions of the same statute. It is the duty of the court to avoid a head-on clash between two sections of the same Act. (See Sultana Begum v. Prem Chand Jain [(1997) 1 SCC 373 : AIR 1997 SC 1006] .)*

61. The assessees contend that Section 15(4) can be invoked only where valuation is incapable of determination under Section 15(1), and since platform fee or commission is determinable, Rule 31A cannot trace its source to Section 15(4). The said contention cannot be accepted. The expression "cannot be determined" occurring in Section 15(4) cannot be construed in a narrow or pedantic manner so as to apply only in cases of absolute impossibility. Being a machinery provision, Section 15(4) must receive purposive interpretation.

61.1. The provision necessarily extends to situations where uncertainty exists regarding valuation, divergent industry practices prevail, or clarification is required to ensure consistency and uniformity in assessment. The present case exemplifies such circumstances. Despite Section 15(1) contemplating transaction value as the taxable measure, gaming operators uniformly proceeded on the assumption that only the platform fee or commission retained by them constituted taxable value. Rule 31A(3) therefore clarified beyond doubt that the taxable value is the entire amount staked and not merely the retained commission. The Rule thus operates harmoniously with the provisions of Section 15 and merely makes explicit what was always implicit in the statutory framework.

Independent Rule making power under Section 164

62. Even independently of Section 15(4), Rule 31A is sustainable under Section 164. Section 164(1) empowers the Government to make rules for carrying out the provisions of the Act, while Section 164(2) specifically authorises framing of rules in respect of matters which are required to be or may be prescribed. Since Rule 31A merely effectuates and operationalises the valuation mechanism contemplated under Section 15, the Rule squarely falls within the ambit of Section 164. Therefore, even assuming arguendo that Section 15(4) were

inapplicable, Rule 31A would nevertheless remain sustainable as a valid exercise of delegated legislation under Section 164.

62.1. It is equally well settled that where the parent enactment confers rule-making authority together with power to bring such rules into force from a specified earlier date, delegated legislation may validly operate retrospectively. Section 164 of the CGST Act not only empowers the Government to frame rules for carrying out the provisions of the Act but also expressly authorises retrospective operation of such rules within the limits prescribed therein. Consequently, Rule 31A cannot be assailed merely on the ground that the valuation mechanism operates retrospectively. In this regard, reference may be made to the three-Judge Bench decision of this Court in ***State of Madhya Pradesh and Ors. v. Tikamdas***[116]**,** wherein it was held as follows:

> *"5. Let us examine the rival contentions and test the soundness of each briefly. First of all, we have to ascertain the scope and area of the rule making powers, the limitations thereon and the retro-active operation of such rules. There is no doubt that unlike legislation made by a sovereign legislature, subordinate legislation made by a delegate cannot have retrospective effect unless the rule-making power in the concerned statute expressly or by necessary implication confers power in this behalf. Our attention has been drawn to Sections 62(g) and (h) and 63 in this connection, by counsel for the State. The State Government may make rules for the purpose of carrying out the provisions of the Act (Section 62). Such rules may regulate the amount of fee, the terms and conditions of licences and the scale of fees and the manner of fixing the fees payable in respect of such licences [62(g) and (h)]. This provision, by itself, does not expressly grant power to make retrospective rules. But Section 63 specifically states that 'all rules made and notifications issued under this Act shall be published in the Official Gazette, and shall have effect from the date of such publication or from such other date as may*

[116] (1975) 2 SCC 100

be specified in that behalf.' Clearly the Legislature has empowered its delegate, the State Government, not merely to make the rules but to give effect to them from such date as may be specified by the delegate. This provision regarding subordinate legislation does contemplate not merely the power to make rules but to bring them into force from any previous date. Therefore antedating the effect of the amendment of Rule IV is not obnoxious to the scheme nor ultra vires Section 62."

Effect of Absence of notification under Section 15(5)

63. Section 15(5) commences with a non-obstante clause and as mentioned enables the Government, on the recommendations of the Council, to prescribe special valuation mechanisms in respect of notified supplies. The provision operates independently of the ordinary transaction-value framework contemplated under Section 15(1) and reflects legislative recognition that certain classes of supplies may require specialised valuation methodologies having regard to their peculiar commercial structure and practical difficulties in assessment. It is in the aforesaid statutory context that the objection raised by the assessees regarding absence of a prior notification identifying the relevant supply under Section 15(5) before introduction of the Rule is required to be examined.

63.1. The contention of the assessees cannot survive once Rule 31A is found independently traceable to Sections 15(4) and 164. In any event, the Rule is demonstrably founded upon recommendations of the GST Council and therefore satisfies the foundational statutory requirement common to Sections 15(4), 15(5) and 164 alike. Once substantive statutory requirements stand fulfilled and the

Rule is otherwise traceable to statutory rule-making power, the precise statutory channel through which delegated authority was exercised cannot by itself invalidate the Rule.

Applicability of Rule 31A(3) beyond horse racing transactions

64. The assessees have argued that Rule 31A(3) applies only to betting on horse racing conducted in race clubs. The contention is contrary both to the GST Council materials and the plain language of the Rule. The Fitment Committee agenda itself demonstrates that the discussion concerned betting and gambling generally and not merely horse racing. Agenda Item 48 expressly referred to actionable claims arising out of betting and gambling including horse racing.

64.1. Further, Rule 31A(3) employs the expression "betting, gambling or horse racing in a race club". The use of the disjunctive "or" clearly separates betting, gambling, and horse racing in a race club as distinct categories. The Rule also prescribes two different valuation methodologies: (i)100% of the face value of the bet; or (ii) 100% of the amount paid into the totalizator. The latter clearly pertains to totalizator-based horse racing, whereas the former applies generally to betting and gambling transactions.

64.2. As correctly contended by the learned ASG, even betting conducted inside a race club through licensed bookmakers would fall within the first category and be valued on the basis of face value of the bet.

64.3. The interpretation canvassed by the assessees would render substantial portions of the Rule otiose and must therefore be rejected. It is equally well settled that marginal notes cannot control the plain meaning of statutory text. The language employed in Rule 31A(3) clearly manifests legislative intent to extend the Rule to actionable claims arising out of betting and gambling generally.

Meaning of "chance to win"

65. Another contention advanced by the assessees is that the expression "chance to win" confines Rule 31A(3) only to games of chance and excludes games of skill. The said submission is fundamentally fallacious. The expression "chance to win" does not refer to "games of chance" in the jurisprudential sense. It merely describes the opportunity afforded to participants to win upon staking money on an uncertain event. As discussed earlier, whenever a participant stakes money upon an uncertain outcome, he acquires a contingent beneficial interest in the prize pool conditional upon occurrence of the specified outcome. Such contingent beneficial interest constitutes an actionable claim. The expression "chance to win" therefore merely describes the nature of the actionable claim

supplied to the participant and cannot be conflated with the doctrinal distinction between games of skill and games of chance.

65.1. Indeed, the submissions of the assessees reveal inherent inconsistency. On one hand, it is argued that Rule 31A is confined to horse racing; on the other, it is argued that the Rule applies only to games of chance, Horse racing itself has repeatedly been recognised judicially as a game of skill. The contradictory nature of these submissions exposes the infirmity in the interpretative exercise advanced by the assessees. That apart, we have already held that irrespective of whether it is a game of skill or a game of chance, it amounts to betting and gambling which falls within the definition of actionable claim.

65.2. For all the aforesaid reasons, Rule 31A is intra vires the CGST Act and constitutes a valid exercise of delegated legislation. The Rule neither creates a new levy nor enlarges the charging provisions of the statute. It merely operationalises and clarifies the valuation mechanism inhering in Sections 9 and 15 read with Sections 2(1), 2(31), 2(52), 7 and Entry 6 of Schedule III. The prescription of the full face value of the bet as the measure of valuation cannot be said to be manifestly arbitrary, discriminatory, violative of Article 14 or otherwise constitutionally infirm merely because an alternate valuation methodology may

also have been possible. Rule 31A bears a direct nexus with the nature of the organised betting and gambling transactions sought to be taxed and falls within the legislative scheme contemplated under Article 246A of the Constitution. Accordingly, the challenge to Rule 31A fails and the Rule is upheld as a valid machinery provision enacted to effectuate the levy of GST on actionable claims arising out of betting and gambling.

(F) <u>2023 AMENDMENT – PROSPECTIVE OR RETROSPECTIVE?</u>

66. At the outset, it would be apposite to extract the relevant portions of the 2023 Amendment, as follows:

> *[(80A) "online gaming" means offering of a game on the internet or an electronic network and includes online money gaming;]*
>
> *[(80B) "online money gaming" means online gaming in which players pay or deposit money or money's worth, including virtual digital assets, in the expectation of winning money or money's worth, including virtual digital assets, in any event including game, scheme, competition or any other activity or process, whether or not its outcome or performance is based on skill, chance or both and whether the same is permissible or otherwise under any other law for the time being in force;]*
>
> *[(102A) "specified actionable claim" means the actionable claim involved in or by way of—*
>
> *(i) betting;*
>
> *(ii)Casinos;*
> *(iii)gambling;*
> *(iv)horseracing;*
>
> *(v)lottery; or*
>
> *(vi) online money gaming;]*

(105) "supplier" in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied:

[Provided that a person who organises or arranges, directly or indirectly, supply of specified actionable claims, including a person who owns, operates or manages digital or electronic platform for such supply, shall be deemed to be a supplier of such actionable claims, whether such actionable claims are supplied by him or through him and whether consideration in money or money's worth, including virtual digital assets, for supply of such actionable claims is paid or conveyed to him or through him or placed at his disposal in any manner, and all the provisions of this Act shall apply to such supplier of specified actionable claims, as if he is the supplier liable to pay the tax in relation to the supply of such actionable claims;]

Schedule III, Section 7, Entry 6

Activities or transactions which shall be treated neither as a supply of goods nor a supply of services

6. Actionable claims, other than [specified actionable claims].

Notification dt. 06.09.2023

G.S.R. 657(E).—In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely: —

1. Short title and commencement.—(1) These rules may be called the Central Goods and Services Tax (Third Amendment) Rules, 2023.

(2) They shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In the Central Goods and Services Tax Rules, 2017, after rule 31A, the following rules shall be inserted,

namely:-

"31B. Value of supply in case of online gaming including online money gaming.–

Notwithstanding anything contained in this chapter, the value of supply of online gaming, including supply of actionable claims involved in online money gaming, shall be the total amount paid or payable to or deposited with the supplier by way of money or money's worth, including virtual digital assets, by or on behalf of the player:

Provided that any amount returned or refunded by the supplier to the player for any reasons whatsoever, including player not using the amount paid or deposited with the supplier for participating in any event, shall not be deductible from the value of supply of online money gaming.

31C. Value of supply of actionable claims in case of Casino.– Notwithstanding anything contained in this chapter, the value of supply of actionable claims in Casino shall be the total amount paid or payable by or on behalf of the player for –

(i) purchase of the tokens, chips, coins or tickets, by whatever name called, for use in Casino; or

(ii) participating in any event, including game, scheme, competition or any other activity or process, in the Casino, in cases where the token, chips, coins or tickets, by whatever name called, are not required:

Provided that any amount returned or refunded by the Casino to the player on return of token, coins, chips, or tickets, as the case may be, or otherwise, shall not be deductible from the value of the supply of actionable claims in Casino.

Explanation.- For the purpose of rule 31B and rule 31C, any amount received by the player by winning any event, including game, scheme, competition or any other activity or process, which is used for playing by the said player in

a further event without withdrawing, shall not be considered as the amount paid to or deposited with the supplier by or on behalf of the said player."

66.1. The 2023 amendments thus introduced a more detailed statutory framework governing online gaming, online money gaming and specified actionable claims within the GST regime. By way of the amendments, the expressions "online gaming", "online money gaming" and "specified actionable claim" were expressly incorporated into the CGST Act. Entry 6 of Schedule III was correspondingly amended by substituting the earlier reference to actionable claims with the expression "specified actionable claims". The amendments further introduced provisions concerning persons organising, arranging or facilitating online money gaming platforms and introduced more specific valuation mechanisms through insertion of Rules 31B and 31C in relation to online gaming and casino transactions respectively.

66.2. It must be noted at the outset that the 2023 amendments neither create a fresh levy nor introduce a new taxable event for the first time. Taxability of actionable claims arising from betting and gambling already stood recognised under the pre-amendment statutory framework as discussed hereinabove. The amendments principally operate to provide greater statutory specificity and are clarificatory in nature.

66.3. Under the pre-amendment framework governed by Rule 31A, valuation of actionable claims arising from organised betting and gambling arrangements was linked to the amounts paid or staked for participation in such arrangements. The insertion of Rules 31B and 31C refined and standardised the valuation methodology having regard to the commercial and technological structure of online gaming and casino transactions. Rule 31B, read together with the provisos and explanations appended thereto, clarifies that the value of supply in online gaming transactions is to be determined with reference to the total amount paid, payable or deposited with the supplier by or on behalf of the player. The explanations further clarify that redeployment or reuse of winnings without withdrawal does not alter the treatment of such amounts for purposes of valuation. Rule 31C correspondingly prescribes valuation principles governing casino transactions with reference to amounts paid for purchase of chips, tokens, coins or participation in gaming activities within the casino ecosystem.

66.4. It must also be noted that the amendments introduced in 2023 were accompanied by Notification No. 49/2023-Central Tax dated 29.09.2023 issued under Section 15(5) of the CGST Act, whereby supply of online gaming, online money gaming and casino transactions came to be specifically notified for special valuation treatment. Pursuant thereto, Rules 31B and 31C were inserted by

Notification No. 45/2023-Central Tax dated 28.09.2023 prescribing the statutory valuation mechanisms applicable to such notified classes of supply. Rules 31B and 31C therefore operate as special machinery provisions framed pursuant to the statutory delegation embodied in Sections 15(5) and 164 of the CGST Act. They stand on a distinct footing from Rule 31A, which substantially operationalises the ordinary transaction value principles embodied in Section 15(1).

66.5. It is also clear that the aforesaid valuation mechanisms continue to maintain a clear and rational nexus with the underlying taxable supply arising from betting and gambling transactions and merely refine the manner in which such value is quantified and collected within evolving online gaming and casino ecosystems. Rules 31B and 31C therefore cannot be said to be violative of Article 14 for substantially the same reasons as discussed in the context of Rule 31A. The very same principles governing the validity of Rule 31A against Article 14 equally apply to Rules 31B and 31C. Once the underlying levy and valuation framework are sustained, the mere prescription of refined or specialised valuation methodologies tailored to distinct online gaming and casino ecosystems cannot render the Rules manifestly arbitrary or constitutionally infirm merely because an alternate methodology may also have been possible.

66.6. As already discussed hereinabove, Rule 31A was sufficiently broad to govern different organised betting and gambling transactions involving staking

arrangements, including online gaming platforms, the 2023 amendments carve out specific categories from the broader framework already governing actionable claims arising from betting and gambling and prescribe more specific valuation and collection mechanisms in relation thereto. The subsequent amendments therefore do not render the earlier regime invalid but instead provide greater precision and operational clarity within the existing statutory framework. Moreover, the submission regarding alleged divergence between the precise scope of GST Council recommendations and the subsequent breadth of the 2023 amendments does not affect the validity of Rule 31A as it stood during the relevant assessment period.

66.7. As mentioned, the language, structure and object of the 2023 amendments clearly indicate that the amendments are clarificatory in nature. It is well settled that the mere fact that an enactment is brought into force from a particular date does not necessarily imply that it operates only prospectively. Whether an amendment operates retrospectively depends upon its true nature, object and legislative purpose. Amendments enacted to remove doubts, cure defects, clarify existing law, explain legislative intent or validate the existing statutory framework may legitimately receive retrospective operation. The 2023 amendments, viewed in their entirety, principally operate to clarify and standardise the existing framework governing taxation and valuation of actionable claims arising from betting and gambling rather than to introduce a

fresh levy for the first time. Moreover, the use of a non-obstante clause in such circumstances is only a recognised legislative device intended to confer overriding effect upon a special machinery provision over a more general one and does not by itself militate against the clarificatory character of the amendment.

66.8. It is also apposite to observe that protection against retrospectivity ordinarily extends to vested or accrued rights. In the present case, taxability of actionable claims arising from betting and gambling already stood recognised under the pre-amendment statutory framework. Consequently, the challenge to the retrospective application of the clarificatory amendments cannot be sustained.

66.9. In light of the aforesaid principles, it would be apposite to refer to the following decisions of this Court governing retrospective operation of clarificatory, declaratory and validating amendments:

66.10. In ***Zile Singh v. State of Haryana and Ors.***[117] it was reiterated that while statutes are generally prospective, the presumption against retrospectivity does not apply to declaratory or clarificatory enactments. If an amendment is introduced to cure an acknowledged evil, explain the prior law, or supply an obvious omission, retrospective operation may be inferred from legislative intent. The following paragraphs are pertinent: (SCC pp. 8-10, paras 13-18)

---

[117] (2004) 8 SCC 1

*"**13.** It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have a retrospective operation. But the rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the legislature to affect existing rights, it is deemed to be prospective only — "nova constitutio futuris formam imponere debet non praeteritis" — a new law ought to regulate what is to follow, not the past. (See Principles of Statutory Interpretation by Justice G.P. Singh, 9th Edn., 2004 at p. 438.) It is not necessary that an express provision be made to make a statute retrospective and the presumption against retrospectivity may be rebutted by necessary implication especially in a case where the new law is made to cure an acknowledged evil for the benefit of the community as a whole (ibid., p. 440).*

***14.** The presumption against retrospective operation is not applicable to declaratory statutes…. In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is "to explain" an earlier Act, it would be without object unless construed retrospectively. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended…. An amending Act may be purely declaratory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect (ibid., pp. 468-69).*

***15.** Though retrospectivity is not to be presumed and rather there is presumption against retrospectivity, according to Craies (Statute Law, 7th Edn.), it is open for the legislature to enact laws having retrospective operation. This can be achieved by express enactment or by necessary implication from the language employed. If it is a necessary implication from the language employed that the legislature intended a particular section to have a retrospective operation, the courts will give it such an operation. In the absence of a retrospective operation having been expressly given, the courts may be called upon to construe the provisions and answer the question whether the legislature had sufficiently expressed that intention giving the statute retrospectivity. Four factors are suggested as relevant: (i) general scope and purview of the statute; (ii) the remedy sought to be applied; (iii) the former state of the law; and (iv) what it was the legislature contemplated. (p. 388) The rule against retrospectivity does not extend to protect from the effect of a repeal, a privilege which did not amount to accrued right. (p. 392)*

16. *Where a statute is passed for the purpose of supplying an obvious omission in a former statute or to "explain" a former statute, the subsequent statute has relation back to the time when the prior Act was passed. The rule against retrospectivity is inapplicable to such legislations as are explanatory and declaratory in nature. A classic illustration is the case of Attorney General v. Pougett [(1816) 2 Price 381 : 146 ER 130] (Price at p. 392). By a Customs Act of 1873 (53 Geo. 3, c. 33) a duty was imposed upon hides of 9s 4d, but the Act omitted to state that it was to be 9s 4d per cwt., and to remedy this omission another Customs Act (53 Geo. 3, c. 105) was passed later in the same year. Between the passing of these two Acts some hides were exported, and it was contended that they were not liable to pay the duty of 9s 4d per cwt., but Thomson, C.B., in giving judgment for the Attorney General, said: (ER p. 134)*

"The duty in this instance was, in fact, imposed by the first Act; but the gross mistake of the omission of the weight, for which the sum expressed was to have been payable, occasioned the amendment made by the subsequent Act: but that had reference to the former statute as soon as it passed, and they must be taken together as if they were one and the same Act;" (Price at p. 392)

17. *Maxwell states in his work on Interpretation of Statutes (12th Edn.) that the rule against retrospective operation is a presumption only, and as such it "may be overcome, not only by express words in the Act but also by circumstances sufficiently strong to displace it" (p. 225). If the dominant intention of the legislature can be clearly and doubtlessly spelt out, the inhibition contained in the rule against perpetuity becomes of doubtful applicability as the "inhibition of the rule" is a matter of degree which would "vary secundum materiam" (p. 226). Sometimes, where the sense of the statute demands it or where there has been an obvious mistake in drafting, a court will be prepared to substitute another word or phrase for that which actually appears in the text of the Act (p. 231).*

18. *In a recent decision of this Court in National Agricultural Coop. Marketing Federation of India Ltd. v. Union of India [(2003) 5 SCC 23] it has been held*

that there is no fixed formula for the expression of legislative intent to give retrospectivity to an enactment. Every legislation whether prospective or retrospective has to be subjected to the question of legislative competence. The retrospectivity is liable to be decided on a few touchstones such as: (i) the words used must expressly provide or clearly imply retrospective operation; (ii) the retrospectivity must be reasonable and not excessive or harsh, otherwise it runs the risk of being struck down as unconstitutional; (iii) where the legislation is introduced to overcome a judicial

decision, the power cannot be used to subvert the decision without removing the statutory basis of the decision. There is no fixed formula for the expression of legislative intent to give retrospectivity to an enactment. A validating clause coupled with a substantive statutory change is only one of the methods to leave actions unsustainable under the unamended statute, undisturbed. Consequently, the absence of a validating clause would not by itself affect the retrospective operation of the statutory provision, if such retrospectivity is otherwise apparent."

66.11. In ***Commissioner of Income Tax (Central) -I, New Delhi v. Vatika Township Private Limited***[118], this Court recognised that declaratory or clarificatory statutes may operate retrospectively, particularly when introduced to explain the meaning of an earlier enactment or remove doubts as to its effect. The following paragraph is pertinent: (SCC p. 23, para 32)

*"**32.** ... The circumstances under which provisions can be termed as "declaratory statutes" are explained by Justice G.P. Singh [Principles of Statutory Interpretation, (13th Edn., LexisNexis Butterworths Wadhwa, Nagpur, 2012)] in the following manner:*

"Declaratory statutes

*The presumption against retrospective operation is not applicable to declaratory statutes. As stated in Craies [W.F. Craies, Craies on Statute Law (7th Edn., Sweet and Maxwell Ltd., 1971)] and approved by the Supreme Court [**Ed.** : The reference is to Central Bank of India v. Workmen, AIR 1960 SC 12, para 29] :'For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any statute. Such Acts are usually held to be retrospective. The usual reason for passing a declaratory Act is to set aside what Parliament deems to have been a judicial error, whether in the statement of the common law or in the interpretation of statutes. Usually, if not invariably, such an Act contains a Preamble, and also the word "declared" as well as the word "enacted".' But the use of the words 'it is declared' is not conclusive that the Act is declaratory for these words may, at times, be used to introduced new rules of law and the Act in the latter case will*

[118] (2015) 1 SCC 1

only be amending the law and will not necessarily be retrospective. In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is 'to explain' an earlier Act, it would be without object unless construed retrospective. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended. The language 'shall be deemed always to have meant' is declaratory, and is in plain terms retrospective. In the absence of clear words indicating that the amending Act is declaratory, it would not be so construed when the pre-amended provision was clear and unambiguous. An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect and, therefore, if the principal Act was existing law which the Constitution came into force, the amending Act also will be part of the existing law."

66.12. In ***Ghanashyam Mishra and Sons Private Limited v. Edelweiss Asset Reconstruction Co. Limited and Ors.***[119] , this Court reiterated that if the legislature supplies an obvious omission or explains a former statute, the subsequent amendment relates back to the date of the original enactment and may operate retrospectively. The following paragraphs are pertinent:

"89. It could thus be seen that what is material is to ascertain the legislative intent. If legislature by an amendment supplies an obvious omission in a former statute or explains a former statute, the subsequent statute has a relation back to the time when the prior Act was passed.

94. We have no hesitation to say that the words "other stakeholders" would squarely cover the Central Government, any State Government or any local authorities. The legislature noticing that on account of obvious omission certain tax authorities were not abiding by the mandate of the I&B Code and continuing with the proceedings, has brought out the 2019 Amendment so as to cure the said mischief. We therefore hold that the 2019 Amendment is declaratory and clarificatory in nature and therefore retrospective in operation."

[119] (2021) 9 SCC 657

66.13. In ***Commissioner of Income Tax I, Ahmedabad v. Gold Coin Health Food Private Limited***[120], this Court held that the Court must analyse the true nature of the amendment. The date from which it is brought into force is not conclusive; what is material is whether the amendment is clarificatory or substantive. The following paragraphs are pertinent:

> *"**8.** It would be of some relevance to take note of what this Court said in Virtual case [(2007) 9 SCC 665] . Pointing out one of the important tests at para 51 it was observed that even if the statute does contain a statement to the effect that the amendment is clarificatory or declaratory, that is not the end of the matter. The court has to analyse the nature of the amendment to come to a conclusion whether it is in reality a clarificatory or declaratory provision. Therefore, the date from which the amendment is made operative does not conclusively decide the question. The court has to examine the scheme of the statute prior to the amendment and subsequent to the amendment to determine whether amendment is clarificatory or substantive.*
>
> ***18.** As noted by this Court in CIT v. Podar Cement (P) Ltd. [(1997) 5 SCC 482] the circumstances under which the amendment was brought in existence and the consequences of the amendment will have to be taken care of while deciding the issue as to whether the amendment was clarificatory or substantive in nature and, whether it will have retrospective effect or it was not so."*

66.14. In ***State Bank of India v. V. Ramakrishnan and Anr.***[121] this Court held that where an amendment is intended to clarify and set at rest an overbroad interpretation of an earlier provision, such amendment is clarificatory and therefore retrospective in nature.

---

[120] (2008) 9 SCC 622
[121] (2018) 17 SCC 394

67. In view of the aforesaid discussion, we are of the considered view that the 2023 amendments to the CGST Act and the Rules do not introduce a fresh levy nor create a new taxable event for the first time. The amendments principally operate to clarify and standardise the existing framework governing taxation and valuation of actionable claims arising from betting and gambling transactions, including online gaming and casino transactions. The amendments are therefore clarificatory and explanatory in nature insofar as they elucidate, refine and operationalise the already existing statutory framework governing such taxable supplies. The specialised valuation mechanisms introduced thereunder also cannot be said to be manifestly arbitrary or violative of Article 14, the same bearing a clear and rational nexus with the taxable supplies sought to be regulated and valued under the GST framework. Consequently, the challenge founded upon the contention that the levy itself was introduced for the first time only by virtue of the 2023 amendments is liable to be rejected.

67.1. Moreover, once the taxable supply, valuation framework and legislative competence underlying the levy are sustained, Notification No. 45/2023–Central Tax dated 28.09.2023 and Notification No. 49/2023–Central Tax dated 29.09.2023 issued in furtherance thereof cannot independently be said to suffer from any legal infirmity.

(G) VALUATION OF SUPPLY IN ONLINE GAMING, FANTASY SPORTS AND CASINO TRANSACTIONS UNDER THE GST FRAMEWORK

ONLINE GAMING

68. Having examined the statutory framework governing taxation of actionable claims arising from betting and gambling, including the valuation principles operating under Section 15 of the CGST Act, Rule 31A and the subsequent amendments introduced through Rules 31B and 31C, it now becomes necessary to consider the true nature and character of the online gaming transactions in question.

68.1. The principal controversy is whether the activities undertaken on the respondent-platforms merely constitute supply of technological or facilitative services, as contended by the assessees, or whether they involve supply of actionable claims arising out of betting and gambling transactions within the meaning of the GST framework. The issue must necessarily be determined not merely with reference to the technological medium through which the activity is conducted, but with reference to the substantive commercial and legal arrangement underlying the transaction. The assessees further contend that GST

is leviable only upon the platform fee or commission retained by the gaming operator, whereas the Revenue asserts that the entire amount staked by the players constitutes the taxable value of supply under the GST framework. Thus, the determination of the transaction value applicable to such transactions in the present case, in light of the principles already discussed hereinabove, also falls for consideration. A reference may also be had to our finding in the connected matter, where we have upheld the State enactment and drawn a distinction between online and offline games.

Whether online gaming involves supply of an actionable claim

69. At the outset, before determining whether the online gaming transactions in question involve supply of actionable claims, it becomes necessary to first examine whether an actionable claim arises at all within the framework of such transactions. As already discussed hereinabove, an actionable claim requires the existence of:

(a) a claim to a beneficial interest in movable property;

(b) such beneficial interest being outside the possession, actual or constructive, of the claimant; and

(c) the claim being recognizable by civil courts as affording grounds for relief.

69.1. For the purposes of the present transactions, the controversy principally concerns the latter component of the definition, namely the existence of a beneficial interest in movable property not in the possession, actual or constructive, of the claimant. Although the statutory definition of actionable claim also includes claims to debts, the same is unnecessary in the present context, since the organised gaming framework herein clearly gives rise to contingent beneficial interests in movable property. Further, a debt does not arise at the stage of supply herein, as shall be elaborated subsequently. The present analysis shall therefore proceed primarily with reference to that aspect of the definition. We shall now proceed to examine each of the aforesaid ingredients in the context of the present transactions.

Existence of beneficial interest in movable property

70. The first question which arises is whether the participants acquire a beneficial interest in movable property within the meaning of the definition of actionable claim. In our considered view, the answer must necessarily be in the affirmative. The expression "movable property" is not defined under the Transfer of Property Act, 1882. However, Section 3(36) of the General Clauses Act, 1897

defines movable property broadly to mean property of every description other than immovable property. Monetary funds and pooled stake amounts clearly fall within such conception of movable property. Once participants place stakes upon uncertain outcomes within the organised gaming framework, an identifiable pooled stake fund comprising the aggregate stake amounts comes into existence. Such pooled stake fund constitutes present movable property.

70.1. Simultaneously, each participant acquires a contingent beneficial interest in relation to such pooled stake fund represented through the conditional chance to receive winnings depending upon the outcome of gameplay. The right to participate in the game and the contingent entitlement to winnings are therefore not independent concepts but integral components of the same transactional structure. The beneficial interest does not arise only upon declaration of the winner. Rather, the contingent beneficial interest comes into existence immediately upon placement and pooling of stakes, although its ultimate crystallisation depends upon uncertain gameplay outcomes. All participants therefore acquire contingent beneficial interests at the stage of staking itself; subsequent gameplay merely determines whose contingent interest ultimately matures into a determinate entitlement to winnings.

70.2. The right is not absolute but conditional upon success in the game. Nonetheless, it constitutes a legally cognizable beneficial interest in movable property. The contention that no actionable claim arises because the winning amount is immediately paid out is misconceived. That apart, we have already held unless a stake is made, the entry is impermissible and what is paid out is not just a winning amount with a sum which is in excess of the stake, unknown at time of participation.

70.3. The mere fact that the beneficial interest remains contingent upon uncertain future events does not detract from its proprietary character. The definition of actionable claim itself expressly contemplates contingent beneficial interests. Actionable claims frequently involve conditional, future or uncertain entitlements recognised within law.

70.4. Equally, the beneficial interest cannot be reduced merely to a hope or expectation detached from identifiable property. The pooled stake fund exists as present movable property, while the participants acquire contingent beneficial interests therein through the organised gaming structure. The chance to win therefore represents the operational manifestation of such contingent beneficial

interest in movable property. Moreover, the mere fact that a portion of the pooled amount may subsequently be retained by the platform towards platform fees or commissions does not alter the character of the underlying beneficial interest acquired by the participants in relation to the pooled stake fund and contingent winnings structure.

70.5. Accordingly, the organised gaming framework gives rise to contingent beneficial interests in movable property satisfying the first requirement embodied in the definition of actionable claim.

Whether the Movable Property is Outside the Actual or Constructive Possession of the Claimant

71. The second ingredient requires that the movable property in relation to which the beneficial interest arises should not be in the actual or constructive possession of the claimant. This requirement also stands fully satisfied. The contractual architecture governing the gaming platforms herein conclusively demonstrates that players do not retain dominion or control over the stake amounts once such amounts are committed towards gameplay. The platform

regulates deposits, gameplay, withdrawals and payouts, while operational control over the pooled funds remains vested with the gaming company.

71.1. The Revenue relied upon the Terms and Conditions of the Gameskraft platform, which provides as follows:

> ***1.15- RC Account****- "RC Account" means the user account maintained with Gameskraft, which enables users to play games and deposit and utilize funds on the Platform.*
>
> ***1.7- Deposit Segment****- the money deposited by a user is credited. ""Deposit Segment" means the segment of the RC Account to which*
>
> ***1.22- Withdrawable Segment****- "Withdrawable Segment" means the segment of the RC Account to which the winnings of users from the Cash Games are credited, less the applicable Service Fees and other levies/deductions.*
>
> ***1.19- Withdrawable Balance****- "Withdrawable Balance" means the amount in the Withdrawable Segment.*
>
> ***1.21- Withdrawable Request****- "Withdrawal Request" means a request by the user on the Platform to initiate Withdrawal.*
>
> ***1.20- Withdrawal/ Withdraw****- "Withdrawal/Withdraw" means the transfer of all or part of the Withdrawable Balance to a designated Bank Account of a user, upon specific instructions by that user to Gameskraft to initiate such transfer.*

7.11- *You may Withdraw all or any part of the Withdrawable Balance to Your Bank Account, which will be processed by means of an electronic bank-to-bank transfer or such other mode as per your stated preferences and in accordance with Applicable Law.*

7.13 *A Withdrawal Request will be accepted by Us subject to adequate KYC verifications, alignment with the deposit method, Discount terms/restrictions, and/or security reviews by Our automated systems and risk management team.*

The terms further stipulate that:

- Users may withdraw only the "Withdrawable Balance", subject to applicable processing fees and taxes;
- Minimum and maximum withdrawal thresholds apply;
- Withdrawals are processed only after KYC verification; and
- Promotional winnings are not directly withdrawable.

71.2. A cumulative reading of the said clauses establishes the following undisputed position:

(i) A player desirous of participating in games involving stakes must first open an RC Account and monies deposited by the player are initially credited into the "Deposit Segment" of the account.

(ii) The contractual framework governing withdrawals at this stage is itself subject to platform restrictions and controls. The deposited amount does not remain freely withdrawable in an unrestricted manner at the

unilateral option of the player and remains governed by the platform architecture and applicable conditions.

(iii) Only winnings arising from successful gameplay are transferred into the "Withdrawable Segment" and only such winnings constitute "Withdrawable Balance".

(iv) Once amounts stand committed towards participation in gameplay, they cease to remain freely withdrawable and thereafter become governed by the rules regulating gameplay, payout and withdrawal within the platform framework.

(v) Thus, once amounts stand appropriated towards gameplay, the player relinquishes unrestricted dominion and authority over the deposited funds. Such an arrangement cannot be equated with entrustment or retention of continuing beneficial control.

(vi) An additional aspect connected with the withdrawal restrictions further fortifies this conclusion. Clauses 7.11 and 7.13 stipulate that withdrawal requests remain subject to threshold conditions, KYC verification and other platform controls.

71.3. These clauses clearly establish that withdrawals are conditional and subject to contractual and regulatory restrictions. More importantly, amounts committed towards gameplay cease to remain freely withdrawable at the unilateral option of the player. In fact, the learned ASG also rightly submitted that, in the present

case, these features demonstrate that the player relinquishes effective dominion and control over the deposited amount even prior to the commencement of gameplay. Even where winnings subsequently accrue, their withdrawal remains subject to threshold limitations, KYC verification and platform controls. It is also significant that the players neither regulate the gaming pool nor control the payout mechanism, both of which remain governed entirely by the platform framework and its algorithms. Once stakes are placed, the amount stands irrevocably committed towards gameplay and its subsequent utilisation becomes governed solely by platform rules and the uncertain outcome of the game.

71.4. The relevant transaction for the present purposes is therefore the stage at which amounts stand committed, appropriated or deployed towards participation within the organised gaming arrangement. At that stage, the players clearly do not retain actual possession over the movable property in respect of which the beneficial interest arises. Nor do they individually or collectively retain constructive possession over the stake amounts once the same stand committed towards gameplay. The movable property in relation to which the beneficial interest is claimed thus remains outside the actual or constructive possession of the participants.

Entrustment and deposit

72. At the outset, it becomes necessary to examine the concepts of entrustment and deposit in the context of the proviso to Section 2(31) of the CGST Act. Both concepts ordinarily proceed upon the basis that the person providing the funds retains a continuing entitlement to reclaim the amount subject to the terms governing the arrangement. A deposit, particularly within the meaning of the proviso to Section 2(31), contemplates an amount which retains its refundable character unless and until appropriated towards the underlying supply.

72.1. The structure thus demonstrates that the amounts deposited by players cannot be characterised as amounts held under a mere entrustment arrangement or retained as freely refundable deposits under the continuing dominion and control of the participant. In a genuine entrustment, the entrustor ordinarily retains the ability to reclaim the funds subject to the agreed purpose. In the present case, however, once the stake amount stands committed towards gameplay, the participant no longer retains unrestricted reclaimability over the funds. The platform controls the operation of the gaming framework, including pooling of stakes, determination of outcomes and distribution of winnings, while recovery by the participant thereafter depends entirely upon the outcome of gameplay. The essential feature of continuing reclaimability, which underlies a mere entrustment

or refundable deposit arrangement, is therefore absent once the stake amount stands appropriated towards participation in gameplay.

72.2. The proviso to Section 2(31) applies only so long as the amount continues to retain the character of a refundable deposit not yet appropriated towards the underlying supply. Once appropriation towards participation in gameplay takes place, the amount ceases to retain the character of a mere deposit and simultaneously assumes the character of consideration for the underlying supply arising within the organised betting and gaming framework.

72.3. Consequently, 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 within the meaning of the proviso to Section 2(31) of the CGST Act.

72.4. Reliance was also placed by the assessees upon the decisions in ***Barclays Bank Ltd. v. Quistclose Investments Ltd.*** (supra) **and** ***Twinsectra Ltd. v. Yardley & Ors.*** (supra) to contend that amounts segregated by the gaming companies towards payment of winnings would not form part of the general assets of the gaming companies in the event of liquidation and consequently could not be treated as consideration for the supply. We are unable to accept the aforesaid submission. The Quistclose principle arose in the peculiar factual context of

monies advanced for a narrowly specified purpose, coupled with the retention of continuing beneficial control in the lender over the funds so advanced. In *Quistclose*, monies had been advanced exclusively for payment of dividends and the arrangement contemplated return of the amounts in the event the specified purpose failed. It was in those circumstances that the House of Lords held that the funds did not form part of the general assets of the borrower upon liquidation.

72.5. The foundational feature underlying the *Quistclose* doctrine is therefore the retention of continuing control and beneficial interest in the lender or depositor over the funds advanced for the specified purpose. Such an element is wholly absent in the present case. As already discussed hereinabove, once amounts stand committed towards gameplay, the participant ceases to retain unrestricted dominion and control over the stake amounts. The subsequent utilisation, operation and distribution of such amounts becomes governed entirely by the platform structure and the uncertain outcome of gameplay.

Whether the claim is enforceable in law

73. The third ingredient of an actionable claim requires that the beneficial interest be one recognised by civil courts as affording grounds for relief. The principal objection of the assessees in this regard is founded upon Section 30 of the Indian Contract Act, 1872, which renders agreements by way of wager void

and bars suits for recovery of winnings arising therefrom. According to the assessees, if the underlying gaming arrangement itself is unenforceable in law, no enforceable actionable claim can arise therefrom. It was further contended that where the very claim itself arises out of wagering, betting and gambling transactions allegedly hit by Section 30, the same cannot constitute an enforceable actionable claim recognised in law.

73.1. The issue, however, requires a more careful examination. The expression "civil courts recognise as affording grounds for relief" occurring in the definition of actionable claim does not necessarily require that every aspect of the underlying transaction be independently enforceable through a suit for recovery. What requires examination is whether the law recognises the existence of a legally cognizable beneficial interest capable of protection or enforcement in an appropriate manner.

73.2. The submission of the assessees proceeds upon an overbroad understanding of Section 30 of the Contract Act. The provision merely declares agreements by way of wager to be void and bars suits for recovery of winnings arising directly therefrom. Section 30 does not render every collateral, ancillary or connected transaction illegal or void ab initio. The voidness contemplated

under Section 30 therefore does not obliterate the existence of proprietary or beneficial interests arising within the transactional structure.

73.3. A distinction must necessarily be maintained between enforceability of a wagering promise simpliciter and recognition in law of contingent proprietary interests and corresponding transactional obligations arising within organised gaming frameworks. As already discussed hereinabove, the definition of actionable claim does not require that every component of the underlying arrangement be independently enforceable as a wagering contract. What is required is that the law recognises the existence of a legally cognizable beneficial interest capable of protection or enforcement in an appropriate manner.

73.4. It must also be borne in mind that the organised platform framework gives rise to legally cognizable rights and obligations independent of any possible wagering elements that may exist inter se among participants. The participants transact directly with the gaming platform itself, which creates, administers and controls the entire gaming ecosystem. The platform receives and administers stake amounts, maintains RC Accounts, regulates gameplay, determines winners and undertakes corresponding obligations in relation to withdrawals, winnings and payouts.

73.5. The enforceability relevant for purposes of the definition of actionable claim therefore does not depend upon whether every wagering element within the gaming arrangement is independently enforceable inter se among participants. The organised platform structure itself creates corresponding transactional obligations and legally cognizable proprietary interests between the participant and the gaming operator recognised within law.

73.6. The matter may also be viewed from another perspective. At the stage when stakes are placed, the participant acquires a contingent beneficial interest dependent upon uncertain gameplay outcomes. Upon conclusion of gameplay and determination of winnings in accordance with the platform rules, such contingent interest crystallises into a determinate entitlement against the platform in relation to the winnings pool. The platform correspondingly undertakes payout obligations governed by the contractual architecture of the gaming framework. The existence of such legally cognizable entitlements and obligations further demonstrates that the interests arising within the platform structure are recognised in law as affording grounds for relief.

73.7. Consequently, the rights arising within the platform structure cannot be reduced merely to unenforceable wagering promises inter se among participants.

To hold otherwise would lead to manifestly anomalous consequences whereby the platform could receive and control stake amounts, administer winnings and operate the gaming structure while participants remain altogether devoid of legally cognizable rights in relation thereto.

73.8. The principle underlying the Constitution Bench decision in ***Sunrise Associates*** (supra) is also instructive. Lottery tickets, which undeniably arise within betting and gambling frameworks, were nevertheless recognised therein as embodying actionable claims. The contingent and uncertain nature of the prize entitlement was not treated as destructive of the proprietary or actionable character of the underlying beneficial interest.

73.9. At the same time, it is not necessary for the present purposes to conclusively determine the question whether every form of betting and gambling arrangement would stand enforceable in civil law merely because Section 30 of the Contract Act specifically employs the expression "wager". The present inquiry is considerably narrower. What requires determination herein is only whether the contingent beneficial interests arising within the organised gaming framework are recognised in law as affording grounds for relief within the meaning of the definition of actionable claim. That issue must necessarily be answered in the affirmative for the reasons already discussed. Moreover, while

interpreting a taxing statute, the Court is principally concerned with the existence of a taxable event and the statutory framework governing the levy. Mere unenforceability of an underlying contract in civil law does not, by itself, render the levy of tax invalid once the transaction otherwise falls within the ambit of the taxing enactment.

73.10. Accordingly, the actionable-claim interest arising in relation to pooled winnings and contingent prize entitlements satisfies the third ingredient contemplated under the definition of actionable claim. The contention that the actionable-claim interests arising within organised betting and gaming frameworks fail for want of legal enforceability under Section 30 of the Contract Act is therefore liable to be rejected.

Supply of actionable claims in the present transaction

74. Once it is established that there is an actionable claim, the question now turns to supply of the same. At the outset, it becomes necessary to determine whether the online gaming companies themselves qualify as "suppliers" of the actionable claim within the meaning of the CGST Act. Section 2(105) as it stood prior to the 2023 amendments defined "supplier" to mean the person supplying goods or services or both. Sections 22 and 24 obligate every supplier to obtain

registration under the statutory framework, while Section 9(1) fastens the levy upon the taxable person.

74.1. We are in agreement with the submission advanced on behalf of the Revenue that the online gaming companies themselves constitute the suppliers of the actionable claim arising within the organised gaming framework. The entire transaction originates, operates and culminates through the platform architecture controlled by the gaming company. The platform invites participation, prescribes gameplay rules, pools stakes, algorithmically assigns opponents, conducts gameplay, determines outcomes, declares winners and administers disbursal of winnings. Without the platform structure, no actionable-claim interest capable of participation could arise at all.

74.2. As already discussed, the contention of the assessees that the actionable claim is supplied inter se between participating players and that the gaming platform merely renders independent facilitative services cannot be accepted. Factually, the players neither know nor choose the persons against whom they ultimately participate. A player merely selects the amount proposed to be staked, whereafter the platform algorithm assigns the player to a gaming pool consisting of other participants staking corresponding amounts. The players therefore do not

negotiate with one another, enter into consensual arrangements inter se, or independently structure the gaming transaction.

74.3. There is consequently neither privity nor mutuality among players capable of constituting an independent inter se supply arrangement. Equally significant is the fact that the entire transactional framework remains exclusively governed by the gaming platform. The platform alone controls participation mechanics, pooling of stakes, determination of outcomes, payout structures and withdrawal mechanisms. The consideration arising within the transaction is also routed entirely through the platform ecosystem.

74.4. In reality, by the time a participant enters gameplay, the stake amount already stands committed within the organised gaming framework operated by the platform. At that stage, the participant acquires the contingent right to participate and the corresponding opportunity to succeed upon the occurrence of uncertain outcomes governed by the platform structure. The supply relevant for the purposes of the GST framework therefore arises through the platform mechanism itself and not through any independent consensual arrangement inter se between players. If the online gaming platform is removed from the transaction, no gaming pool exists, no participation framework survives, no

contingent right capable of participation arises and no actionable-claim interest comes into existence at all.

74.5. The online gaming companies thus do not merely facilitate an independently existing transaction between players. They themselves create, structure, administer and supply the actionable-claim interest arising within the organised betting and gaming framework. This position also stands statutorily reinforced under the amended framework by the proviso inserted to Section 2(105) of the CGST Act, which specifically contemplates persons who organise or arrange, directly or indirectly, supply of specified actionable claims, including online money gaming, as suppliers for purposes of the GST framework. Consequently, the online gaming companies squarely qualify as "suppliers" within the meaning of Section 2(105) of the CGST Act and are accordingly liable under the charging framework contained in Section 9(1).

74.6. Coming to the consideration and valuation aspects, and applying the principles already discussed, it is clear that the consideration for the actionable-claim supply arising within the organised betting and gaming framework is the amount staked towards participation in gameplay involving uncertain outcomes. Under the amended framework embodied in Rule 31B, the statutory measure

adopted for valuation stands linked to the amount deposited with the supplier for participation in online money gaming. As already mentioned, the aforesaid valuation mechanism nevertheless maintains a clear and rational nexus with the underlying taxable supply arising from organised betting and gambling transactions, since participation in gameplay itself is conditional upon the prior deposit and administration of amounts within the platform ecosystem.

74.7. The assessees therefore cannot be permitted to artificially dissect the transaction and contend that only the commission or platform fee retained by the gaming company represents the taxable component thereof. The actionable-claim interest itself arises upon placement and appropriation of stakes towards participation in gameplay involving uncertain outcomes, while the determination of the statutory valuation measure falls to be governed in accordance with Section 15 read with the applicable Rules.

74.8. Equally untenable is the contention that winnings, prize pools or subsequent payouts must be excluded while determining taxable value under the statutory framework. As already discussed hereinabove, Section 15(3) specifically enumerates the deductions permissible from the transaction value and

Parliament has consciously not provided any exclusion in respect of winnings, prize pools or payouts arising within betting and gambling transactions.

74.9. Thus, under the amended framework contemplated by Rule 31B, the statutory measure of valuation attaches to the amount deposited with the supplier for participation in online money gaming, and not merely to the amount actually staked in a particular round of gameplay. Consequently, amounts lying in the RC Account or Deposit Segment, to the extent deposited for participation in online money gaming, constitute the statutory basis for valuation under Rule 31B irrespective of the quantum actually staked in any individual game.

74.10. It is also necessary to note at this juncture that the Explanations appended to Rules 31B and also 31C further provide that winnings redeployed into subsequent gameplay without withdrawal shall not constitute a fresh deposit for valuation purposes. Consequently, GST attaches once to the value entering the gaming ecosystem at the point of initial deposit or purchase of chips or tokens as prescribed under Rules 31B and 31C respectively, and not repeatedly upon each individual act of staking funded from the same deposit.

74.11. Upon a comprehensive examination of the statutory framework, the contractual structure governing the gaming platforms, and the authoritative

precedents governing actionable claims and betting transactions, we find the submissions advanced on behalf of the Revenue to be well-founded and deserving of acceptance.

74.12. For all the aforesaid reasons, we hold:

(i) The activities undertaken on online gaming platforms involving staking upon uncertain outcomes give rise to and constitute supply of actionable-claim interests arising within organised betting and gambling frameworks;

(ii) The online gaming companies themselves constitute the suppliers of such actionable claims within the meaning of Sections 2(105) and 7 of the CGST Act;

(iii) The actionable-claim interest arises once stake amounts stand appropriated towards participation within the organised gaming framework involving uncertain outcomes, whereupon the taxable supply contemplated under the GST framework stands attracted;

(iv) The participants do not retain actual or constructive possession over the movable property in relation to which the beneficial interest arises once the stake amounts stand committed towards gameplay; the platform arrangement therefore cannot be characterised as one of entrustment or mere deposit within the meaning of the proviso to Section 2(31);

(v) The amount staked towards participation in gameplay constitutes consideration within the meaning of Section 2(31) of the CGST Act, while the determination of the statutory valuation measure falls to be governed in accordance with Rule 31B;

(vi) There exists no statutory basis for exclusion or deduction of winnings, prize pools or payout amounts while determining taxable value under the statutory framework; and

(vii) The levy of GST on the statutory valuation measure adopted under the CGST framework, including the amount deposited for participation in online money gaming under Rule 31B, is valid and consistent with the statutory framework of the CGST Act.

FANTASY SPORTS

75. Having examined the broader framework governing online gaming transactions, actionable claims, valuation under Section 15 and the scope of Rules 31A and 31B of the CGST Rules, it now becomes necessary to specifically consider the position of fantasy sports platforms, which also constitute one of the principal categories of online gaming presently in issue. The same requires separate consideration in light of the distinct nature of the contentions advanced on behalf of the fantasy sports operators, particularly the submission that the issue

already stands concluded by earlier judicial pronouncements holding fantasy sports to be games of skill and therefore outside the ambit of betting and gambling.

75.1. It is true that several of the earlier High Court judgments proceeded on the basis that fantasy sports constitute games of skill and therefore fall outside the ambit of betting and gambling. However, the present batch of matters has necessitated a more comprehensive examination of the legal conception of "betting and gambling" itself. As already clarified, the essential element of betting and gambling lies in staking money or money's worth upon uncertain outcomes, irrespective of whether the underlying activity may involve elements of skill or chance. The present GST matters necessarily fall to be examined in light of the aforesaid clarified legal position.

75.2. The effect and legal implications of the judgments and orders relied upon by the assessees, particularly in the context of the plea that the issue already stands concluded by virtue of dismissal of the earlier Special Leave Petitions and connected proceedings, shall now be independently examined.

(i) ***SLP (Crl.) D. No. 43346 of 2019 [Gurdeep Singh Sachar v. Union of India]***

76. Insofar as the Bombay High Court judgment in Gurdeep Singh Sachar v. Union of India and others is concerned, the same proceeded substantially on the premise that fantasy sports constitute games of skill and consequently fall outside the ambit of betting and gambling. On that basis, the Bombay High Court further held that Rule 31A(3) would have no application to the determination of value of supply under the GST framework.

76.1. However, the issue cannot be treated as concluded merely on account of dismissal of the Special Leave Petitions preferred against the said judgment. The Special Leave Petitions preferred by Gurdeep Singh Sachar and the Union of India were dismissed in limine without any reasoned adjudication upon the correctness of the legal principles involved. It is well settled that dismissal of a Special Leave Petition without a speaking order neither attracts the doctrine of merger nor constitutes a binding declaration of law under Article 141 of the Constitution. Reference may be made to ***Kunhayammed*** (supra):

> *"27. A petition for leave to appeal to this Court may be dismissed by a non-speaking order or by a speaking order. Whatever be the phraseology employed in the order of dismissal, if it is a non-speaking order, i.e., it does not assign reasons for dismissing the special leave petition, it would neither attract the doctrine of merger so as to stand substituted in place of the order put in issue before it nor would it be a declaration of law by the Supreme Court under Article 141 of the Constitution for there is no law which has been declared. If the order of dismissal be supported by reasons then also the doctrine of merger would not be attracted because the jurisdiction exercised was not an appellate jurisdiction but merely a discretionary jurisdiction refusing to grant leave to appeal. We have already dealt with this aspect earlier. Still the reasons stated by the Court would attract applicability of Article 141 of the Constitution if there is a law declared by the*

Supreme Court which obviously would be binding on all the courts and tribunals in India and certainly the parties thereto. The statement contained in the order other than on points of law would be binding on the parties and the court or tribunal, whose order was under challenge on the principle of judicial discipline, this Court being the Apex Court of the country. No court or tribunal or parties would have the liberty of taking or canvassing any view contrary to the one expressed by this Court. The order of Supreme Court would mean that it has declared the law and in that light the case was considered not fit for grant of leave. The declaration of law will be governed by Article 141 but still, the case not being one where leave was granted, the doctrine of merger does not apply. The Court sometimes leaves the question of law open. Or it sometimes briefly lays down the principle, may be, contrary to the one laid down by the High Court and yet would dismiss the special leave petition. The reasons given are intended for purposes of Article 141. This is so done because in the event of merely dismissing the special leave petition, it is likely that an argument could be advanced in the High Court that the Supreme Court has to be understood as not to have differed in law with the High Court."

76.2. Equally significant is the fact that, while dismissing the Special Leave Petitions, this Court expressly clarified that it would remain open to the Union of India to seek review before the Bombay High Court insofar as the GST aspect was concerned. Thereafter, while dealing with MA No. 502 of 2020, this Court clarified that the review before the Bombay High Court would remain confined to the GST aspect and that the question whether gambling was or was not involved was not to be revisited within the scope of such review proceedings.

76.3. The aforesaid observations cannot, however, be construed as amounting to an authoritative pronouncement finally determining the scope and ambit of "betting and gambling" for purposes of the present batch of matters. The

observations were rendered while delineating the permissible scope of review before the Bombay High Court and not in the course of a comprehensive adjudication upon the statutory and constitutional issues presently arising for consideration.

76.4. As rightly contended by the Revenue, if the foundational issue concerning whether fantasy sports involve betting and gambling within the meaning of the GST framework were to stand foreclosed altogether, the liberty granted to seek review on the GST aspect would become largely illusory and devoid of practical content. The applicability of Entry 6 of Schedule III and Rule 31A necessarily depends upon whether the actionable-claim supplies arising within fantasy sports contests fall within the exception carved out for betting and gambling. The review proceedings would therefore inevitably require examination of the true nature and character of the underlying activity for purposes of the GST framework.

76.5. More importantly, as already clarified the essential element of betting and gambling lies in staking money or money's worth upon uncertain outcomes, irrespective of whether the underlying activity may involve elements of skill or chance. The present GST matters necessarily fall to be examined in light of the aforesaid clarified legal position.

76.6. It must also be noticed that the judgment of the Bombay High Court itself subsequently came to be stayed by this Court vide order dated 06.03.2020 passed in the proceedings arising at the instance of the State of Maharashtra. The issues concerning GST liability and applicability of Rule 31A therefore remained open and unresolved and now fall for authoritative determination in the present batch of matters.

(ii) ***SLP Diary No. 18478 of 2020 [Avinash Mehrotra v. State of Rajasthan]***

77. In ***Chandresh Sankhla v. State of Rajasthan***, the Rajasthan High Court likewise proceeded on the premise that fantasy sports constitute games of skill and consequently fall outside the ambit of gambling under the relevant State gaming legislations. The Special Leave Petition preferred against the said judgment by a third party, namely Avinash Mehrotra, came to be dismissed by this Court vide order dated 30.07.2021. While dismissing the said Special Leave Petition, this Court observed that the issue was "no longer res integra" in view of dismissal of earlier Special Leave Petitions arising from the Punjab and Haryana High Court and Bombay High Court judgments. However, in the very same order, this Court specifically noticed that, in the Bombay High Court proceedings, the Union of India and the State of Maharashtra had not been heard and that notice had thereafter been issued and the judgment of the Bombay High Court stayed vide order dated 06.03.2020. The same are extracted as under:

"We have heard Mr. Prashant Kumar, learned counsel for the petitioner who continues to press for adjournment, and points out a judgment dated 06.02.2020 of the State of New York Supreme Court, Appellate Division which is at page 139 of the paper book in which, according to him, the fantasy sports spoken of in this matter are pure gambling and not games of skill.

This matter is no longer res integra as Special Leave Petitions have come up from the Punjab & Haryana High Court and have been dismissed by this Court as early as on 15.06.2017. Also, from the Bombay High Court, Special Leave Petitions have been dismissed on 04.10.2019 and 13.12.2019.

However, we must point out that in the Bombay High Court case, the Union and the State of Maharashtra were not heard, as a result of which, by an order dated 06.03.2020, notice was issued and the impugned judgment stayed.

Considering that the Union and State matter is completely different and that private petitioners' Special Leave Petitions have been dismissed earlier, this Special Leave Petition is also dismissed."

77.1. This Court further expressly observed that the proceedings involving the Union of India and the State of Maharashtra stood on a footing different from the earlier Special Leave Petitions preferred by private parties. The order dismissing the Special Leave Petition filed by Avinash Mehrotra must therefore be understood in the context in which it came to be rendered, namely, while declining to entertain a third-party challenge after earlier dismissals of Special Leave Petitions preferred by private individuals.

77.2. Further, the observations contained in the said order were rendered in the course of dismissal of a Special Leave Petition without any comprehensive adjudication upon the statutory and constitutional questions arising in the present

batch of matters and therefore cannot be treated as a binding declaration of law under Article 141 of the Constitution. The said order likewise cannot be construed as an authoritative pronouncement conclusively determining the scope and ambit of "betting and gambling" for purposes of the present batch of matters. More particularly, the order itself expressly recognised that the proceedings involving the Union of India and the State of Maharashtra concerning the GST implications stood on a different footing and continued to remain pending. In any event, the present GST matters necessarily fall to be examined in light of the clarified legal position with respect to betting and gambling as discussed hereinabove.

(iii) ***SLP (C) Diary No. 27511 of 2017 [Varun Gumber v. Union Territory of Chandigarh]***

78. In ***Varun Gumber v. Union Territory of Chandigarh***, the Punjab and Haryana High Court held that fantasy sports constitute games of skill and consequently do not fall within the ambit of gambling under the relevant State gaming legislations. The Special Leave Petition preferred against the said judgment came to be dismissed in limine by this Court vide order dated 15.09.2017.

78.1. The dismissal of the said Special Leave Petition, however, was without any reasoned adjudication upon the correctness of the legal principles involved. As already mentioned, such dismissal in limine without a speaking order neither attracts the doctrine of merger nor constitutes a binding declaration of law under Article 141 of the Constitution and the same merely signifies that this Court was not inclined, in exercise of its discretionary jurisdiction under Article 136, to grant leave in the facts and circumstances then obtaining.

78.2. Thereafter, a review petition came to be preferred against the dismissal order after a delay of 1586 days. The review petition was dismissed both on the ground of delay as well as on merits. While dismissing the review petition, this Court observed that no sufficient cause had been shown for condonation of delay and further held that even on merits, the order under review did not suffer from any error apparent on the face of the record warranting reconsideration.

78.3. The aforesaid observations in the review proceedings likewise cannot be construed as amounting to a comprehensive affirmation of the reasoning adopted by the Punjab and Haryana High Court on the substantive issues presently arising for determination. The scope of review is necessarily limited to examining whether the order under review suffers from any manifest error apparent on the

face of the record. Reference may be drawn to ***Surendra Koli v. State of UP and Ors.***[122]:

> ***"8.*** *We have perused the judgment and order passed by this Court and other relevant documents before us as pointed out by the learned Senior Counsel. It is well settled that the scope of a review petition under Article 137 of the Constitution of India is very limited and cannot be equated to that of an appeal. The review petitions can be allowed by this Court only on the ground that there is an error apparent on the face of the record subject to such an error being pointed out by the parties and this Court being satisfied that such an error is so manifest in the face of the order that it undermines its soundness or results in miscarriage of justice requiring consideration and interference by this Court. While considering scope of review petitions, in Kamlesh Verma v. Mayawati [Kamlesh Verma v. Mayawati, (2013) 8 SCC 320 : (2013) 3 SCC (Civ) 782 : (2013) 4 SCC (Cri) 265 : (2014) 1 SCC (L&S) 96] ; Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi [Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi, (1980) 2 SCC 167 : 1980 SCC (Tax) 222] and Sow Chandra Kante v. Sk. Habib [Sow Chandra Kante v. Sk. Habib, (1975) 1 SCC 674 : 1975 SCC (Cri) 305 : 1975 SCC (L&S) 184] amongst others, this Court has cautioned that finality of the judgment delivered by the Court will not be reconsidered on the aforesaid ground unless the Court is satisfied that a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility."*

78.4. Therefore, the observations made while declining review cannot therefore be elevated into an authoritative pronouncement conclusively determining the ambit of "betting and gambling" within the framework presently under consideration.

78.5. Thus, the issue concerning applicability of the GST framework to fantasy sports transactions and the consequential taxability of actionable claims arising

---

[122] (2014) 16 SCC 718

therefrom therefore continued to remain open and falls for authoritative determination in the present batch of matters.

Whether Fantasy Sports give rise to betting and gambling actionable claims?

79. It now becomes necessary to examine whether fantasy sports, within the framework presently under consideration, constitute betting and gambling and, more importantly, whether the amounts staked by participants represent mere entry fees or stakes placed upon uncertain outcomes with the expectation of monetary gain.

79.1. At the outset, it must be clarified that the present inquiry is not directed towards conclusively determining whether fantasy sports constitute games of skill or games of chance for purposes of penal gaming legislations or Article 19(1)(g) of the Constitution. The present inquiry is rather directed towards examining whether fantasy sports fall within the ambit of betting and gambling in light of the principles already discussed hereinabove and, consequently, whether actionable-claim interests arise so as to constitute taxable supplies within the GST framework. The question, therefore, is whether participation in fantasy sports contests involving pooled stake amounts and contingent prize structures gives rise

to actionable-claim interests constituting supplies arising out of betting and gambling under the GST regime.

79.2. Even assuming that participants in fantasy sports, are not players of the real game and deploy substantial sporting knowledge, statistical analysis, strategic assessment and predictive skill while selecting virtual teams, the same would not detract from the essential transactional character of the activity once money or money's worth is staked upon uncertain future outcomes with the expectation of contingent monetary gain.

79.3. The transactional structure governing fantasy sports contests clearly demonstrates that the amounts paid by participants are not merely access charges or facilitative fees paid for use of a technological platform. The amounts contributed by participants substantially constitute pooled stake amounts appropriated towards contingent prize structures dependent upon uncertain future outcomes. The participant does not merely obtain access to an online interface or technological service; rather, the participant acquires a conditional and contingent chance to win.

79.4. Participation in fantasy sports contests necessarily involves pooled stake amounts contributed by participants towards a common prize structure dependent upon uncertain future events. The eventual entitlement to winnings remains contingent upon the occurrence or non-occurrence of uncertain outcomes beyond the participant's control. The existence of skill, predictive assessment or analytical judgment in selecting virtual teams therefore does not alter the essential character of the transaction once stakes are placed upon uncertain outcomes with the expectation of monetary rewards. It will be worthy to mention here, that if a player himself participants in the game in which he is involved, it can also amount to fixing. Even a person with great skill and ability may fail on a particular day and the participant only anticipates the performance to his level of expectation, which is nothing but gambling. The fantasy participant merely predicts future contingencies and stands to gain or lose money depending upon how those contingencies unfold. Such activity possesses all the essential characteristics of betting and gambling.

79.5. Once stake amounts are appropriated towards participation in such contests, participants acquire contingent actionable-claim interests in relation to the prize pool. The taxable supply arising therefrom, together with the applicable principles governing consideration and valuation, must therefore be determined in accordance with the statutory framework and the principles already discussed

hereinabove in the context of actionable claims, Section 15, Rules 31A and 31B of the CGST Rules.

79.6. At this juncture, it is also relevant to notice the stand and conduct adopted by the fantasy sports operators under the erstwhile service tax regime. The show cause notice dated 27.05.2020 pertained to the pre-GST period from February 2015 to June 2017 under the Finance Act, 1994. In response thereto, the Federation of Fantasy Sports itself contended that fantasy sports involved supply of actionable claims and therefore stood excluded from the definition of "service" under Section 65B(44) of the Finance Act, 1994.

79.7. The adjudicating authority accepted the aforesaid contention and consequently dropped the service tax demand vide order dated 09.12.2022 holding that fantasy sports involved actionable claims. Having successfully avoided service tax liability under the erstwhile regime by asserting that actionable claims were supplied, the assessees cannot now be permitted, under the GST framework, to contend that no actionable claim exists at all. A party cannot be permitted to approbate and reprobate or to "blow hot and cold" upon the same issue depending upon the tax consequences arising under different statutory regimes.

79.8. We are therefore unable to accept the contention that fantasy sports contests stand outside the ambit of betting and gambling merely because elements of skill, sporting knowledge or predictive assessment may be involved in selecting virtual teams.

79.9. In summation, the earlier conclusions recorded by this Court in relation to online gaming platforms involving organised staking arrangements accordingly apply *mutatis mutandis* to fantasy sports contests involving pooled stakes and contingent prize structures. Consequently, the stake amount paid by participants constitutes consideration for the actionable-claim supply and is liable to valuation in accordance with Sections 2(31) and 15(1) read with Rule 31B of the CGST framework.

CASINOS

80. At the outset, it must be noticed that there is no dispute before this Court that the activities carried on by the Casino operators constitute betting and gambling, and the taxable nature of the underlying activity is therefore not in issue. The principal controversy before this Court is confined to the determination of the value of taxable supply in casino transactions and the legality of the methodology adopted by the Department for arriving at such value.

I. Submissions

81. The Casinos contend that GST is liable to be discharged only on GGR, namely the net revenue retained after adjustment of winnings paid out to players against the value of chips or tokens purchased by them. According to the assessees, such retained amount alone constitutes the actual consideration received by the Casino and therefore represents the true transaction value under Section 15 of the CGST Act. The assessees submit that the Department's attempt to levy GST on GBV, namely the aggregate value of bets placed during gaming transactions, is contrary to Section 15 and results in artificial and excessive valuation detached from the actual revenue retained by the Casinos.

81.1. The Casinos further contend that no workable statutory machinery exists for determination of the "face value of the bet" in live casino environments involving continuous circulation of chips, repeated wagering transactions and multiple gaming tables. According to the assessees, Rule 31A(3) is inapplicable to casino transactions and the subsequent insertion of Rule 31C demonstrates that no prior statutory mechanism existed for valuation of casino gaming activities. The assessees additionally challenge the Department's resort to Rule 31 and indirect reconstruction of GBV through extrapolation and house advantage

methodologies. The Casinos also reiterate certain submissions urged in the context of online gaming regarding the existence of actionable claims.

81.2. *Per contra*, the Revenue contends that every bet placed by a player upon an uncertain outcome forms part of the taxable betting and gambling transaction undertaken within the casino ecosystem and that the amount staked by the player constitutes consideration for such activity. According to the Department, GST is attracted upon the taxable supply itself and not upon the ultimate profitability or net retained earnings of the Casino. The Revenue further submits that once the Casinos failed to maintain complete records of actual betting values, recourse to Rule 31 and indirect reconstruction methodologies based on available data and house advantage percentages became both permissible and necessary. According to the Department, Rule 31C merely introduced greater specificity in relation to casino valuation and does not imply absence of any earlier statutory valuation framework.

II. Supply and valuation pertaining to Casinos

Existence of Taxable Supply and Actionable Claims

82. The contention that no actionable claim arises in casino transactions cannot be accepted. As already discussed hereinabove, once a player stakes money upon

an uncertain outcome, the participant acquires a contingent beneficial interest in movable property represented by the potential winnings. Such conditional right to claim winnings upon occurrence of an uncertain event squarely answers the description of an actionable claim within the meaning of Section 3 of the Transfer of Property Act.

82.1. The Casino provides the gaming infrastructure, controls and conducts the games, regulates participation, collects stakes, determines payouts and retains the house advantage. Similar to online gaming platforms, the actionable claim capable of participation and enforcement arises only within the gaming ecosystem operated by the Casino. The supply involving such actionable claims therefore constitutes the taxable event under the CGST framework.

82.2. The contention that no supply or actionable claim arises merely because casino transactions are conducted through chips or tokens also cannot be accepted. A player cannot participate in casino gaming without first placing bets through chips or tokens purchased within the casino ecosystem. The chips or tokens merely constitute the medium through which bets are placed within the casino environment. The taxable event arises when a player stakes such amount upon an

uncertain outcome in the course of betting and gambling activities conducted by the Casino.

82.3. Indeed, the material placed on record demonstrates that the Casinos themselves treated their activities as taxable gambling transactions and discharged GST at the applicable rate, albeit upon a valuation methodology restricted to net retained revenue. The real dispute therefore concerns the determination of taxable value and the methodology adopted for its computation rather than the existence of taxable supply itself.

GST is a tax on supply and not on profits

82.4. At the first instance, the entire foundation of the GGR methodology proceeds on an erroneous understanding of the taxable event under the GST regime. GST is attracted upon a taxable supply and not upon the profitability of the supplier. The levy does not fluctuate depending upon whether the supplier ultimately earns profits or suffers losses in the course of business operations. Consideration arises the moment a player places a bet upon an uncertain outcome for participation in the gambling activity conducted by the Casino. The taxable event crystallises when the player is permitted to participate in the gambling activity upon placing bets through chips or tokens.

82.5. As already mentioned earlier, the subsequent distribution of winnings cannot alter the character of the original payment constituting consideration. The Casinos, however, seek to determine their tax liability based upon the net financial outcome at the end of a gaming cycle by adjusting winnings against losses. Such a methodology is fundamentally incompatible with the structure of GST and is not contemplated.

82.6. The illustrations furnished during the course of hearing clearly expose the fallacy underlying the GGR model. Where a player loses the amount staked by him, the Casinos themselves admit that the amount retained constitutes consideration. However, where another player succeeds and wins a larger amount, the Casinos contend that no consideration exists since the Casino has suffered a loss. The inevitable consequence of this submission is that the existence of consideration becomes contingent upon the outcome of the game. Such a proposition cannot be accepted in law.

82.7. The gambling activity conducted by the Casino remains identical irrespective of whether a player wins or loses. The subsequent adjustment of

winnings or payouts therefore cannot obliterate the taxable supply already completed upon participation in the gambling activity.

82.8. This Court finds merit in the submission of the learned ASG that the GGR principle effectively amounts to netting off business expenses and payouts against receipts for the purpose of arriving at tax liability. Such an exercise may perhaps be relevant in the context of 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 is not confined merely to the residual earnings retained after adjustment of payouts or losses.

III. Applicability of Rule 31, Rule 31A and Rule 31C

83. Coming to Rule 31C, the mere fact that the Rule was subsequently introduced specifically dealing with casino transactions does not imply that casinos prior thereto stood outside the valuation framework contemplated under the CGST Act. Rule 31C merely introduces greater specificity and operational certainty in relation to the methodology of valuation applicable to casino transactions.

83.1. The insertion of a subsequent or more specific provision does not automatically render earlier provisions inapplicable, particularly where the general statutory framework already enabled valuation through reasonable means. Rules 31 and 31A together provided sufficient statutory basis for adoption of a valuation methodology consistent with the nature of betting and gambling transactions carried on by casinos.

83.2. The material on record clearly establishes the operational structure of casino gaming. The mere fact that casino gaming involves multiple players, repeated rounds of betting and continuous circulation of chips does not negate the existence of taxable supply. The subsequent insertion of Rule 31C clarifies the valuation mechanism specifically applicable to casino gaming transactions and, having already been held to be clarificatory and retrospective in nature, must necessarily govern determination of taxable value in the present matters. Rule 31C expressly links the statutory measure for valuation to the total amount paid by the participant for purchase of chips, coins, tokens, tickets or similar instruments utilised for participation in casino gaming activities. Consequently, the valuation framework no longer rests upon reconstruction of the face value of individual bets placed during successive rounds of gameplay, but instead stands anchored to the aggregate amount entering the organised casino gaming ecosystem through acquisition of such instruments for participation.

83.3. We have also clearly stated earlier that Rule 31C neither creates a fresh levy nor alters the essential character of the taxable supply arising from betting and gambling actionable claims within casino transactions. The amendment merely streamlines and standardises the valuation mechanism by adopting a more certain and operationally workable statutory measure for computation of taxable value in casino environments characterised by repeated rounds of gameplay, multiple gaming tables, continuous circulation of chips and practical difficulty in maintaining precise contemporaneous records of individual betting transactions. The legislative shift embodied in Rule 31C therefore reflects recognition of the operational complexities inherent in casino gaming and provides a more structured valuation framework consistent with the realities of such gaming operations.

83.4. In the present case, however, the Department proceeded on the basis of the pre-amended framework and resorted to best judgment assessment through indirect reconstruction of GBV by applying the "House Advantage Method" owing to absence of complete contemporaneous records reflecting aggregate gaming activity. While recourse to Rule 31 and adoption of best judgment methodologies cannot be said to be impermissible under the pre-amended framework, the actual quantification of taxable value and corresponding tax

liability must now necessarily be re-examined in light of the retrospective operation of Rule 31C. Consequently, although the foundational challenge to taxability and valuation under the CGST framework fails, the determination of taxable value in casino transactions shall stand governed by the statutory valuation measure now embodied in Rule 31C.

Scope of interference in writ jurisdiction

83.5. It is also significant that the Casinos have not challenged the legislative competence of Parliament, the applicability of the CGST enactments, or the jurisdiction of the officers issuing the show cause notices. The principal dispute before this Court ultimately concerns the valuation and computation of taxable value in casino gaming transactions.

83.6. As already held hereinabove, the underlying taxability of betting and gambling transactions involving actionable claims under the CGST framework cannot be doubted. Equally, once the assessees admittedly failed to maintain complete and reliable contemporaneous records reflecting aggregate gaming activity, the Department cannot be faulted for resorting to Rule 31 and invoking best judgment methodologies for purposes of valuation and reconstruction.

83.7. However, the actual computation of taxable value and corresponding tax liability now requires reconsideration by the adjudicating authority in light of the valuation framework embodied in Rule 31C and the principles laid down hereinabove. All factual objections relating to the correctness of computation, quantification, assumptions adopted by the Department and related evidentiary issues are left open to be urged before the adjudicating authority, who shall consider the same independently and uninfluenced by any observations on factual computation contained in this judgment.

83.8. Accordingly, the contention that GST is leviable only upon GGR or net retained earnings of the Casino is rejected. Rules 31, 31A and 31C constitute valid machinery provisions governing valuation of such transactions. However, the ultimate computation of taxable value and tax liability shall stand governed by Rule 31C and be determined by the adjudicating authority in accordance with the principles laid down hereinabove, with all factual and computational objections kept open.

V. CONCLUSION

84. In view of the foregoing discussion and the connected judgment, we hold as under:

(i) The essential element of "betting" and "gambling" lies in staking money or money's worth upon uncertain outcomes. The character of betting and gambling does not depend exclusively upon whether the underlying activity is a game of skill or a game of chance, but upon the existence of stakes placed upon uncertain future contingencies. Consequently, even where the underlying activity involves substantial elements of skill, once participation is conditioned upon staking money or money's worth upon uncertain outcomes, the resulting transaction acquires the character of betting and gambling within the framework of the GST legislation. Accordingly, online gaming activities, including fantasy sports and other games played on digital platforms involving staking upon uncertain outcomes, constitute betting and gambling for purposes of the GST framework.

(ii) The legislative scheme embodied in the CGST Act, 2017 and the corresponding State enactments validly subjects actionable claims arising from betting and gambling to GST. The provisions embodied in Sections 2(31), 2(52), 7, 9 and 15 of the CGST Act, insofar as they operate upon actionable claims arising from betting and gambling, are constitutionally valid and clearly traceable to the legislative competence conferred by Article 246A of the Constitution. The levy is upon the taxable supply of actionable claims and not upon the activity of betting or gambling simpliciter.

(iii) Further, the levy of GST on the supply of actionable claims arising from betting and gambling is constitutionally valid and does not transgress Articles 366(12) or 366(12A) of the Constitution. Article 366(12A) merely furnishes the constitutional meaning of "goods and services tax" and does not exhaustively define the contours of taxable supply, valuation or the treatment of specific classes of transactions. Those matters validly fall within the legislative domain contemplated under Article 246A. Consequently, the inclusion of actionable claims within the ambit of "goods" under Section 2(52) and the levy imposed under Section 9(1) cannot be said to violate the constitutional scheme governing GST. The challenge to the constitutional validity of Sections 2(52) and 9(1) of the CGST Act is accordingly rejected.

(iv) The challenge founded upon Articles 14, 19(1)(g), 21 and 265 of the Constitution is likewise liable to be rejected. The statutory framework bears a clear nexus with the taxable event identified by the legislature, namely the supply of actionable claims arising from betting and gambling transactions. Mere commercial hardship, reduction in profitability or increased tax incidence cannot by itself render a fiscal measure unconstitutional. Article 21 has no application in the present fiscal context. The levy is supported by statutory authority traceable to Sections 7, 9 and 15 of the CGST Act read with Schedule III and the relevant Rules framed thereunder and therefore satisfies Article 265.

(v) Once the legislative competence underlying the levy, taxable event and valuation framework is sustained, the Rules framed thereunder, including Rules 31A, 31B and 31C of the CGST Rules, cannot independently be invalidated merely by reiterating the same constitutional challenge directed against the parent levy itself. No constitutional infirmity is otherwise made out so as to warrant interference in exercise of judicial review.

(vi) The concept of "supply" under Section 7 of the CGST Act is not confined merely to transfer of pre-existing actionable claims, but extends to other forms of supply contemplated under the statutory framework, including organised betting and gambling arrangements within which actionable-claim interests arise. The absence of transfer of a pre-existing actionable claim does not take such transactions outside the ambit of taxable supply under the GST framework.

(vii) Organised gaming and betting platforms create and operate the commercial ecosystem within which participants acquire contingent beneficial interests in movable property arising upon participation in betting and gambling transactions involving uncertain future outcomes. Such contingent beneficial interests constitute actionable claims within the meaning of Section 3 of the Transfer of Property Act and accordingly fall within the taxable framework embodied in the

CGST legislation. Consequently, the amount staked or otherwise appropriated towards participation in gameplay constitutes "consideration" within the meaning of Section 2(31) of the CGST Act. There exists no statutory basis for excluding or deducting prize pools, winnings, payouts or similar components while determining taxable value under the statutory framework. The statutory measure for valuation is validly embodied in Section 15 read with the applicable valuation Rules framed thereunder.

(viii) Rule 31A of the CGST Rules is intra vires the provisions of the CGST Act and constitutes a valid machinery provision enacted to operationalise the valuation framework inhering in Sections 9 and 15 of the Act read with Entry 6 of Schedule III and other connected provisions. The Rule neither creates a fresh levy nor enlarges the charging provisions of the statute. Moreover, the valuation mechanism embodied in Rule 31A cannot be characterised as manifestly arbitrary or violative of Article 14 merely. Fiscal and economic legislation necessarily permit a greater degree of legislative flexibility in matters of valuation and measure of levy. Rule 31A bears a direct nexus with the nature of organised betting and gambling transactions sought to be taxed and therefore constitutes a valid exercise of delegated legislation. The challenge to Rule 31A on various grounds is therefore rejected.

(ix) The amendments introduced in 2023, including the amendments to Entry 6 of Schedule III and insertion of Rules 31B and 31C, are clarificatory and explanatory in nature and consequently retrospective in operation in the manner indicated hereinabove. The said amendments neither create a fresh levy nor introduce a new taxable event for the first time, but merely provide greater statutory specificity and operational clarity in relation to valuation and collection mechanisms governing online gaming and casino transactions. Moreover, Rules 31B and 31C likewise constitute valid machinery and valuation provisions governing online gaming and casino transactions respectively.

(x) Upon an examination of the statutory framework and the contractual architecture governing organised online gaming platforms, we hold that online gaming activities involving pooled stakes give rise to actionable-claim interests constituting taxable supplies within the meaning of Section 7 of the CGST Act, 2017. The online gaming operators are not mere intermediaries facilitating transactions inter se between participants, but themselves constitute suppliers of such actionable claims within the framework of the GST legislation. The taxable supply comes into existence upon placement and appropriation of stake amounts towards participation in gameplay itself. Consequently, valuation of online gaming and fantasy sports transactions shall stand governed by Rule 31B, including in relation to pending show cause notices, adjudication proceedings and consequential demands, in light of the clarificatory and retrospective nature of

the 2023 amendments as held hereinabove. The principles governing organised online gaming platforms involving pooled stakes and contingent prize structures apply with equal force to fantasy sports contests and analogous gaming formats.

(xi) Insofar as casino transactions are concerned, this Court is unable to accept the broad challenge mounted against the authority of the Department to resort to Rule 31, reconstruction methodologies or best judgment assessment in the absence of complete and reliable contemporaneous records reflecting aggregate gaming activity. Mere reliance upon mathematical reconstruction, statistical extrapolation or inferential methodologies cannot by itself invalidate an assessment, particularly where the assessees themselves failed to maintain adequate records relating to gaming transactions. At the same time, having held that the valuation framework now embodied in Rule 31C is clarificatory and retrospective in nature, the actual determination and computation of taxable value in casino transactions must necessarily be aligned with the statutory measure contemplated therein. Consequently, while the legality of resorting to Rule 31 and best judgment methodologies under the statutory framework is upheld, the correctness of the actual computations, assumptions, proportional allocations and corresponding tax liability shall remain open for reconsideration by the adjudicating authority in accordance with Rule 31C and the principles laid down hereinabove.

(xii) Thus, the constitutional and statutory challenges mounted against the levy of GST on actionable claims arising from betting and gambling transactions are rejected. The impugned provisions of the CGST Act, the corresponding State enactments, the Rules framed thereunder, including Rules 31A, 31B and 31C, together with the notifications, circulars and executive instruments issued in furtherance thereof, are upheld as constitutionally and statutorily valid.

(xiii) Pending show cause notices, adjudication proceedings and consequential demands relating to online gaming, fantasy sports and casino transactions shall accordingly be considered and decided in accordance with the valuation framework embodied in Rules 31B and 31C, as applicable, and the principles laid down in the present judgment.

85. Before parting, this Court deems it necessary to emphasise that India today stands at the threshold of an unprecedented technological transformation driven by artificial intelligence, digital platforms, fintech ecosystems, blockchain infrastructures, immersive virtual environments and ever-evolving models of online interaction. The law cannot remain static when technology continuously alters the form, medium and mechanics of economic activity. Equally, technological innovation cannot operate in a constitutional vacuum insulated from regulation, taxation and public accountability. Fiscal legislation must

therefore remain sufficiently adaptive to address emerging commercial realities while continuing to conform to constitutional limitations, statutory mandates and settled principles of legal interpretation.

85.1. Fiscal certainty in emerging technological sectors is not merely a matter concerning individual assessees. It bears directly upon investor confidence, digital entrepreneurship, technological innovation, interstate commerce and India's broader aspiration to emerge as a leading digital economy. Predictability, consistency and coherence in taxation jurisprudence are therefore indispensable components of sound economic governance.

85.2. The issues arising in the present batch of matters have afforded this Court an opportunity to reaffirm certain foundational principles governing the exercise of taxing power within digitally mediated economies. While the GST framework must possess sufficient flexibility to respond to new and evolving forms of commercial activity, such flexibility cannot come at the cost of constitutional discipline. The power to tax, however broad, remains circumscribed by legislative competence, statutory prescription and constitutional structure. It is only by preserving this balance between technological innovation and constitutional restraint that the legal system can maintain both certainty and legitimacy in an increasingly digital economic order.

VI. RESULT

86. To sum up:

(i) The levy of GST on actionable claims arising from betting and gambling transactions is constitutionally valid, within the legislative competence conferred by Article 246A of the Constitution, and consistent with the statutory framework embodied in the CGST Act, 2017 and the corresponding State GST enactments.

(ii) The challenge to the constitutional and statutory validity of Sections 2(31), 2(52), 7, 9 and 15 of the CGST Act, 2017, the corresponding provisions of the State GST enactments, and Rules 31A and 31B of the CGST Rules, 2017, together with the notifications, circulars and executive instruments issued in furtherance thereof, fails and is accordingly rejected.

(iii) The amendments introduced by the Central Goods and Services Tax (Amendment) Act, 2023, including the amendments to Entry 6 of Schedule III and insertion of Rules 31B and 31C, are clarificatory and explanatory in nature and shall operate retrospectively in the manner indicated hereinabove.

(iv) Organised online gaming activities, including fantasy sports and analogous gaming formats involving pooled stakes, give rise to actionable-claim supplies

exigible to GST under the statutory framework governing betting and gambling transactions.

(v) Insofar as casino transactions are concerned, recourse to Rule 31 and adoption of best judgment methodologies under the pre-amendment framework cannot be said to be impermissible in the absence of complete and reliable contemporaneous records. However, the ultimate determination and computation of taxable value shall stand governed by Rule 31C in accordance with the principles laid down hereinabove.

(vi) Pending show cause notices, adjudication proceedings and consequential demands relating to online gaming, fantasy sports and casino transactions shall accordingly be considered and decided in accordance with the valuation framework embodied in Rules 31B and 31C of the CGST Rules, as applicable, and the findings recorded in the present judgment.

86.1. The writ petitions and transferred cases are accordingly, dismissed, subject to the observations and directions contained in this judgment.

(i) The time for submitting replies to the show cause notices shall be eight weeks from the date of receipt of a copy of this judgment and considering the long pendency of the matter, the competent authority shall consider the same and pass

orders, in accordance with law and in light of the findings recorded in this judgment, within a period of twelve weeks thereafter.

(ii) As the case may be, the time for filing appeals against the assessment orders shall be twelve weeks from the date of receipt of a copy of this judgment, and the competent authority shall consider the same and pass orders, in accordance with law and in light of the findings recorded in this judgment, as expeditiously as possible.

86.2. Civil Appeal Nos. 8241 – 8244 of 2026 preferred by the Revenue are disposed of. The common judgment and order dated 11.05.2023 passed by the High Court of Karnataka are set aside. Consequently, the show cause notices dated 23.09.2022 issued under Section 74(1) of the CGST Act stand restored. The respondents-assessees shall be at liberty to file their replies and raise all factual and legal submissions before the competent adjudicating authority. The adjudicating authority shall proceed to adjudicate the notices in accordance with law and in the light of the findings recorded in the present judgment. The time limit granted in paragraph 86.1 of the first part shall apply here as well.

86.3. Insofar as Civil Appeal No. 8240 of 2026 is concerned, the controversy essentially relates to grant of licence/permission and does not directly involve a challenge to GST liability. Having regard to the nature of the relief claimed, we find no infirmity in the approach adopted by the High Court in relegating the appellant to pursue the remedies available under the applicable statutory and regulatory framework. However, if the appellant's application seeking licence/permission relating to the period in question remains pending, the competent authority shall dispose of the same in accordance with law within a period of twelve weeks from the date of receipt of a copy of this judgment. The appeal is accordingly disposed of.

86.4. Insofar as Criminal Appeal No. 2933 of 2026 is concerned, the judgment dated 30.04.2019 passed by the High Court of Bombay is set aside to the extent it holds that the transactions in question constitute actionable claims other than betting and gambling and therefore fall outside the ambit of taxable supply under the GST framework. The appellants shall consequently be entitled to proceed in accordance with law in light of the present judgment. The appeal is accordingly allowed in the aforesaid terms.

86.5. All interim orders passed in the connected matters shall stand vacated. There shall be no order as to costs.

87. Pending application(s), if any, stand disposed of.

…….J.
[J.B. PARDIWALA]

..…….J.
[R. MAHADEVAN]

NEW DELHI;
MAY 27, 2026