Staking Money On Uncertain Outcomes: Rewriting valuation logic

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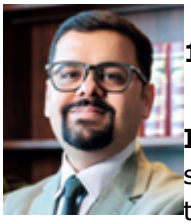

1. The Question That Defined an Industry

INDIA's online gaming industry built itself on a single juridical proposition: that games of skill rummy, fantasy sports, strategic card games are constitutionally protected, exempt from the penal consequences of gambling statutes, and appropriately taxed only on the platform's commission revenue. For nearly a decade, this proposition served as both regulatory shield and tax-planning cornerstone. On 27 May 2026, the Supreme Court of India dismantled it.

The dismantling was surgical rather than wholesale. In *Directorate General of GST Intelligence v. Gameskraft Technologies Pvt. Ltd.* ***2026-TIOL-28-SC-GST*** the Court did not disturb the settled jurisprudence that rummy and fantasy sports are games of skill for purposes of penal gaming legislation. What it held and this is the ruling's enduring significance is that **the skill-versus-chance classification is completely irrelevant to the levy of Goods and Services Tax.** Under the GST framework, the operative question is not what kind of game is being played but whether money is being staked upon an uncertain outcome. If it is, an actionable claim arises; and the supply of that actionable claim is taxable at 28% on the full face value of the stake. The commercial and fiscal consequences of this holding are staggering: tax demands across the sector are estimated at over Rs. 2 lakh crore, a figure that by several accounts exceeds the total revenues of the entire industry.

This article analyses the Supreme Court's reasoning across the three contested dimensions of the case - the definitional, the constitutional, and the valuation and offers a practitioner's assessment of what the ruling changes, what it leaves intact, and where the open questions lie.

2. The Definitional Contest: What Does *"Betting and Gambling"* Mean under GST?

2.1 The Taxpayer's Case: Six Decades of Settled Law

The respondent gaming companies advanced what was, at one level, an argument of extraordinary doctrinal strength. The expressions ***"betting and gambling"*** in Entry 6 of Schedule III to the CGST Act, they submitted, are *nomen juris* - terms that have acquired a settled constitutional meaning through six decades of Supreme Court jurisprudence. The Constitution Bench decisions have consistently construed *"betting and gambling"* as synonymous with activities in which chance predominates. A game of skill : one in which the player's knowledge, training, and expertise substantially determine the outcome has always been treated as a distinct category, standing apart from gambling regardless of whether money is involved.

The assessees further contended that this distinction is not merely judge-made but is reflected in the legislative architecture itself. State gambling statutes routinely exempt games of skill from penal consequences; Parliament enacted the Information Technology framework that treated online gaming as an information service; the GST regime's own classification under SAC 998439 had consistently treated skill-based gaming platforms as suppliers of services, taxable on commission at 18%, rather than as suppliers of actionable claims taxable on the full stake at 28%. The very GST Council's deliberations

between 2021 and 2023 leading ultimately to the October 2023 amendments demonstrated, they argued, that the pre-amendment framework was legally inadequate to impose the full-stake tax. Why else amend, if the law already permitted it?

2.2 The Revenue's Case: The Stake Is the Thing

The Revenue's position was structurally simpler: **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 constitute gambling, the introduction of stakes transforms the activity into gambling. The character of the underlying game is irrelevant once money rides on an uncertain outcome.

On the specific question of State exemptions for games of skill, the Revenue deployed a telling argument: 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 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, for if they did not, there would be nothing to exempt.

On fantasy sports, the Revenue put the point with forensic elegance: 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. More than seven lakh team combinations are possible; the participant makes selections but cannot control the real-world match. Success is, therefore, **determined predominantly by chance.** Fantasy gaming is, at its core, a technologically advanced form of side-betting.

2.3 The Court's Resolution

The Court's resolution of this contest is notable both for what it holds and for what it does not disturb. Drawing on its earlier decision in *State of Tamil Nadu and Others v. Junglee Games India Private Limited and Others ((2026) 43 Centax 33 (S.C.))*, the Bench held 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 was equally explicit about the medium: **whether an activity is conducted 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.** Further, the Court distinguished between an 'entry fee' paid merely to secure participation in a genuine skill-based competition (not linked to the uncertain outcome or prize pool) and a 'stake' placed upon an uncertain outcome. In the platforms before the Court, 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 terminological manipulation calling a stake an *"entry fee"* does not alter the legal characterisation.

3. Constitutional Validity: Legislative Competence and the Limits of Judicial Review

3.1 The Post-101st Amendment Constitutional Framework

Before the Constitution (One Hundred and First Amendment) Act, 2016, the power to tax betting and gambling vested exclusively with the States under Entry 62 of List II. Parliament's service tax expressly excluded *"betting, gambling or lottery"* from its ambit. The 101st Amendment, through Article 246A, introduced a *sui generis* constitutional framework conferring concurrent legislative competence upon

Parliament and the State Legislatures for goods and services tax. The erstwhile taxing fields under Entry 62 of List II stood subsumed within the comprehensive GST architecture.

The Court was clear that Article 246A confers wide legislative power and must be liberally construed. The challenge founded upon legislative incompetence fails. Equally, repugnancy under Article 254 does not arise in the conventional sense, given that the legislative competence under the State GST enactments flows directly from Article 246A itself and not from the entries in the Lists.

3.2 Actionable Claims as *"Goods"* - Disposing of the Historical Objection

The assessees' most technically sophisticated constitutional argument was that actionable claims, historically excluded from the definition of *"goods"* under the Sale of Goods Act, 1930, could not be treated as goods under the GST framework. The argument invoked *State of Madras v. Gannon Dunkerley & Co. (1959) SCR 379* **= *2002-TIOL-493-SC-CT-LB*** to contend that legislative competence must flow strictly from constitutional text and cannot be expanded through statutory definitions.

The Court rejected this on grounds that cut to the root of the objection. Article 366(12) employs an **inclusive formulation** - goods *"includes all materials, commodities and articles"* and, therefore, does not operate as a rigid constitutional restriction. More significantly, the Constitution Bench in *Sunrise Associates v. State (NCT of Delhi) (2006) 5 SCC 603* **= *2006-TIOL-4O-SC-CT-LB*** had already established that ***"were actionable claims not otherwise includible in the definition of goods, there was no need for excluding them."*** In other words, the historical exclusion of actionable claims from Sales Tax Acts was a statutory choice not a constitutional compulsion. Under the GST framework, which neither adopts nor is confined by those historical commercial law classifications, actionable claims may validly be included as goods.

3.3 The Constitutional Limits of Fiscal Challenge

The challenge on Articles 14, 19, 20, 21, and 265 was rejected across the board. The Court restated the settled principle that the scope of judicial review in fiscal matters is necessarily limited: contentions that a rate of tax is excessive, or that a method of computation or valuation is unreasonable, ordinarily fall within the domain of legislative and economic policy. Such matters are not amenable to judicial interference unless the statutory framework is shown to be manifestly arbitrary, discriminatory, or otherwise constitutionally infirm.

On Article 19(1)(g), the Court invoked the doctrine of *res extra commercium* : activities in the nature of betting and gambling are not entitled to claim the full protection of the right to carry on trade or business. The State, in discharge of its obligations under Articles 38 and 47, is entitled to enact restrictive fiscal measures aimed at controlling or discouraging such activities. The argument that the levy would destroy the industry undeniably a powerful commercial contention was held insufficient to render the levy unconstitutional. Mere commercial hardship, reduction in profitability or increased tax incidence cannot by itself render a fiscal measure unconstitutional.

4. The Supply of Actionable Claims: How the Transaction Is Characterised

4.1 The Three Ingredients of an Actionable Claim

The definition of *"actionable claim"* under Section 2(2) of the CGST Act, read with Section 3 of the Transfer of Property Act, 1882, requires: (i) a claim to an unsecured debt or a beneficial interest in movable property; (ii) which is not in the actual or constructive possession of the claimant; and (iii) which is enforceable by civil courts, whether present, future, absolute, or conditional.

The Court held all three ingredients satisfied in online gaming transactions. On the first: once participants place stakes within an organised gaming framework, a pooled stake fund comes into existence as present movable property. Each participant simultaneously acquires a **contingent beneficial interest** in that

fund and the conditional chance to receive winnings depending upon gameplay outcome. This contingent interest comes into existence immediately upon staking, not upon declaration of the winner.

On the second: players do not retain dominion or control over stake amounts once committed towards gameplay. The platform regulates deposits, gameplay, withdrawals, and payouts. Operational control over the pooled funds remains vested with the gaming company. Once appropriation towards participation takes place, the amount simultaneously assumes the character of consideration for the underlying supply.

On the third i.e., enforceability - the Court addressed the assessees' argument based on Section 30 of the Indian Contract Act, which renders wagering agreements void. The Court held that Section 30 does not render every collateral or ancillary transaction *void ab initio*; the voidness contemplated under Section 30 does not obliterate the existence of proprietary or beneficial interests arising within the transactional structure. The platform structure itself creates legally cognisable proprietary interests between participant and gaming operator.

4.2 The Online Gaming Company as Supplier, Not Intermediary

The assessees contended that they were mere technology intermediaries platforms enabling players to play against each other and, therefore, did not supply any actionable claims. The Court rejected this emphatically. **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 company invites participation, prescribes gameplay rules, pools stakes, algorithmically assigns opponents, conducts gameplay, determines outcomes, declares winners, and administers disbursal of winnings. Without the platform, no actionable-claim interest could arise.

5. Consideration, Valuation, and the Rejection of the Commission-Only Model

5.1 The Transaction Value: Full Stake, Not Platform Fee

The valuation contest was the crux of the commercial dispute. The assessees argued that GST should be levied only on the platform fee or commission retained as their actual revenue. The Revenue contended that the entire stake amount paid by the player constitutes *"consideration"* within Section 2(31) and, therefore, forms the *"transaction value"* under Section 15(1).

The Court upheld the Revenue contention. Section 2(31) employs wide expressions *"in respect of", "in response to",* and *"for the inducement of"* indicating legislative intent to confer an expansive meaning upon consideration. Participation in the game is impossible without payment of the full stake amount; such payment is made in respect of and for the inducement of the supply. The amounts paid out to winners cannot be deducted as there is no statutory exclusion analogous to Section 15(3), and deductions from transaction value are permissible only where expressly authorised by statute.

The parallel drawn with *Skill Lotto Solutions Pvt. Ltd. v. Union of India (2021) 15 SCC 667* **= *2020-TIOL-176-SC-GST-LB*** is instructive: GST on lottery is payable on the full face value of lottery tickets and not merely on the commission retained by the distributor. The supply of actionable claims in lottery is *in pari materia* with the supply involved in online gaming.

5.2 Rule 31A: Tracing Its Source and Rejecting the Challenges

Rule 31A of the CGST Rules prescribes the full face value of the bet as the measure of valuation for betting, gambling, and horse racing. The assessees challenged it on four grounds: that it travelled beyond Section 15(1); that it was not preceded by a mandatory notification under Section 15(5); that no specific HSN or tariff classification exists for actionable claims; and that the expression *"chance to win"* confines the Rule to games of chance.

The Court rejected each. Rule 31A does not enlarge the statutory framework; it merely operationalises and standardises the valuation methodology already traceable to Section 15. It was introduced *ex abundanti cautela* to place the matter beyond controversy. On the Section 15(5) notification argument, the Court held that whether Rule 31A traces its source to Section 15(4), Section 15(5) or Section 164 becomes immaterial once it is established that the Rule was founded upon GST Council recommendations i.e., the foundational requirement common to all three provisions. On the HSN classification argument: the **absence of a specific tariff entry cannot invalidate the levy when the supply is otherwise taxable under the Act** ; reference to tariff headings in the notification is merely procedural.

6. The 2023 Amendments: A Clarification, Not a New Beginning

The assessees' most politically potent argument was that the 2023 amendments which specifically defined *"online money gaming"*, introduced a deeming fiction for gaming companies as suppliers, and inserted Rules 31B and 31C constituted an implicit admission by Parliament that the pre-amendment law was insufficient to impose the full-stake tax. 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, they argued.

The Court's answer is worth quoting in its effect: **the 2023 amendments neither create a fresh levy nor introduce a new taxable event for the first time.** The amendments principally operate to provide greater statutory specificity and are clarificatory in nature. The use of a *non-obstante* clause in Rules 31B and 31C is a recognised legislative device to confer overriding effect upon a special machinery provision over a general one and it does not by itself militate against the clarificatory character of the amendment. Accordingly, pending show cause notices, adjudication proceedings, and consequential demands shall be governed by Rule 31B in relation to online gaming and Rule 31C in relation to casino transactions, both of which are retrospective in operation.

7. Casino Valuation: GGR Rejected, Rule 31C Applied

On casino transactions, the principal controversy was confined to valuation. Casinos had consistently discharged GST on Gross Gaming Revenue (GGR) the net amount retained by the casino after paying out winnings on the grounds that GGR represents the actual consideration received by the casino for gambling services. The Revenue, in the absence of complete contemporaneous records, resorted to a best-judgment methodology based on Gross Bet Value (GBV) reconstruction through the *"House Advantage Method".*

The Court rejected the GGR methodology on first principles: **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. Consideration arises the moment a player places a bet upon an uncertain outcome.

The Court found merit in the Revenue's submission that the GGR principle effectively amounts to netting off business expenses and payouts against receipts for the purpose of arriving at tax liability which is an exercise that may be relevant in income tax jurisprudence but is fundamentally incompatible with GST's gross valuation structure.

8. The Road Ahead: Open Questions and Systemic Consequences

The ***Gameskraft*** ruling settles the principal legal questions with finality. The skill-chance binary is ring-fenced from GST; the full stake amount is the transaction value; the 2023 amendments operate retrospectively; and the online gaming company is the supplier of actionable claims. These propositions are now settled law.

What remains open is the question of quantum. The Department's demands across the sector are estimated at over Rs. 2 lakh crore, a figure that several assessees have pointed out exceeds the total

revenues of the entire industry. Whether the Government will exercise its power to compound, settle, or prospectively rationalise the demand in the national interest of preserving a significant employment-generating sector remains a policy question that falls outside the Court's purview but squarely within the Government's.

For the industry, the judgment is a forcing function. Business models built on the commission-fee structure and on the assumption that *"game of skill"* status conferred both regulatory protection and tax advantage must be fundamentally reconsidered. The GST on the full deposit means that operators will need to either restructure their prize pool economics or absorb the tax within their margins, neither an easy nor a simple adjustment at scale.

For tax practitioners, the ruling is a reminder of the breadth of the GST framework and the limits of arguments drawn from pre-GST commercial law classifications. The *"supply"* concept under Section 7 is deliberately broad; the *"consideration"* concept under Section 2(31) is deliberately wide; and the presumption of constitutionality in fiscal matters is strong. Arguments that import limitations from the Sale of Goods Act, the Transfer of Property Act, or the Indian Contract Act into the GST framework will need to demonstrate, with precision, why those pre-GST statutory contexts should govern a framework deliberately designed to break free of them.

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