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Actionable Claims, Uncertain Outcomes, and the Architecture of GST on Online Gaming: Unpacking Gameskraft

ASHWARYA SHARMA

Advocate, Co-Founder & Legal Head, RB LawCorp

1. Introduction: The Taxonomy Problem in Digital Gaming Taxation

Every complex judicial controversy is, at its foundation, a problem of taxonomy. How we classify an activity determines the rules we apply to it. For India's online gaming sector, the taxonomic question is this game skill or chance? is this payment a platform fee or a bet? is this entity a service provider or a supplier of goods? was not merely a question of intellectual ordering; it carried a fiscal consequence of approximately ₹2 lakh crore.

The Supreme Court's decision in ***Directorate General of GST Intelligence v. Gameskraft Technologies Pvt. Ltd.* [2026] 186 taxmann.com 1232 (SC)** is, at its most fundamental level, a judgment about taxonomy. It resolves, with considerable doctrinal force, how online gaming transactions should be classified under the Goods and Services Tax framework and it reaches conclusions that overturn the industry's operating assumptions at every level.

The ruling's significance lies not in any single holding but in the cumulative architecture it constructs: actionable claims arising from staking on uncertain outcomes are goods under Section 2(52); the supply of such claims is taxable under Section 9(1); the online gaming company is the supplier; the entire stake amount is the consideration; Rule 31A is valid; the 2023 amendments are clarificatory and retrospective; and the skill-versus-chance binary is simply not the GST question. Each of these conclusions reinforces the others. Together, they constitute a coherent if commercially harsh statutory framework for taxing India's digital gaming economy.

This article examines the structural logic of that framework, the competing arguments that the Court considered, and the doctrinal propositions that practitioners must now treat as settled law.

2. The Constitutional Scaffolding: From Entry 62 to Article 246A

The constitutional dimension of the Gameskraft ruling is, in some respects, its most durable legacy. For nearly seven decades, the power to tax betting and gambling vested exclusively with the States under Entry 62 of List II. The Union's service tax framework expressly excluded "betting, gambling or lottery" from its negative list under Section 66D(*i*) of the Finance Act, 1994. The constitutional architecture was clear: online gaming platforms, to the extent they hosted games of skill, were outside the betting and gambling taxing entry; and even if they were within it, only the States could tax them and only on whatever measure the States chose.

The Constitution (One Hundred and First Amendment) Act, 2016 altered this architecture fundamentally. Article 246A introduced a *sui generis* constitutional framework conferring concurrent legislative competence upon Parliament and State Legislatures for goods and services tax on intra-State supplies, with exclusive Parliament competence for inter-State supplies. The erstwhile taxing fields under Entry 62 of List II including taxes on

entertainments, amusements, betting, and gambling **stood subsumed within the comprehensive GST framework enacted under Article 246A**, except for entertainment tax, which was specifically devolved to local bodies like municipalities and panchayats.

The assessees mounted a sophisticated challenge to the validity of this constitutional transition: 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; that any power to tax betting and gambling, if at all, must flow from Entry 97 of List I requiring substantive Parliamentary enactment and not delegated legislation; and that since games of skill are constitutionally protected under Article 19(1)(*g*), they cannot be brought within the ambit of betting and gambling merely through statutory redefinition.

The Court rejected the entire constitutional challenge. Article 246A confers wide legislative power and must be liberally construed. 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 within the framework of Article 246A by rendering the supply of actionable claims arising from such activities exigible to GST. The taxable event is not the abstract game but **the supply of actionable claims arising from the staking of money on uncertain outcomes.** 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: GST taxes the latter, not the former.

3. Actionable Claims as Goods: The Statutory and Constitutional Analysis

3.1 The Historical Objection and Its Disposal

The assessees' argument against the inclusion of actionable claims within the definition of "goods" under Section 2(52) of the CGST Act was historically grounded. They traced the legislative history from Chapter VII (Sections 76 -123) of the Indian Contract Act through the Sale of Goods Act, 1930, and to the Transfer of Property Act, 1882. Section 2(7) of the Sale of Goods Act expressly excludes actionable claims and money from the definition of goods because actionable claims were already governed as property rights under the Transfer of Property Act. Actionable claims, they submitted, belong to an altogether different juristic category of property rights, and this settled meaning had become *constitutional nomen juris* by the time the 101st Amendment came into force.

The Court's disposal of this argument is analytically important. The Court did not deny the historical accuracy of the submission; it denied its constitutional relevance. Article 366(12) employs an **inclusive formulation** goods "includes all materials, commodities and articles" which enlarges the scope of the definition and does not operate as a rigid constitutional restriction. The constitutional definition does not constitutionalise the Sale of Goods Act's definition of goods or freeze the constitutional conception to the historical understanding prevailing under pre-GST commercial jurisprudence.

The Constitution Bench in ***Sunrise Associates v. State (NCT of Delhi)*** [2006] 4 STT 105 (SC) had established the critical point: **"were actionable claims not otherwise includible in the definition of goods, there was no need for excluding them."** In other words, the historical exclusion in the Sale of Goods Act presupposes that actionable claims would otherwise be goods and that presupposition is precisely what the GST framework operationalises. The challenge to Sections 2(52) and 9(1) of the CGST Act was accordingly rejected.

3.2 Article 366(12A) and the Scope of "Supply"

A related constitutional challenge was that the inclusion of actionable claims within "goods" and their subjection to GST violated Article 366(12A), which defines "goods and services tax" to mean any tax on supply of goods, or services, or both. The Court disposed of this challenge by clarifying that Article 366(12A) merely furnishes the constitutional meaning of the expression "goods and services tax" and does not exhaustively define the contours of taxable supply, 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 constitutional significance of the distinction between Article 366(29A) which operated in the pre-GST regime and repeatedly employed "transfer" as the taxable trigger and Article 366(12A) which deliberately adopts the wider concept of "supply" was noted with emphasis. **While Article 366(29A) was predicated upon transfer of property or transfer of rights, Article 366(12A) deliberately adopts the wider concept of "supply".** The GST regime therefore taxes supplies, not merely traditional transfers of title.

4. The Supply Framework: Section 7 and Its Expansive Application

Section 7(1) employs expressions of the widest amplitude: "includes", "all forms of supply", and "such as". Each of these is established in statutory interpretation as enlarging rather than restricting. The expression "includes" renders the definition illustrative rather than exhaustive. The expression "such as" is indicative and not restrictive. The phrase "all forms of supply" cannot be artificially confined only to the illustrative forms specifically enumerated namely, sale, transfer, barter, exchange, licence, rental, lease, or disposal. These are merely representative examples of taxable supplies and not an exhaustive catalogue.

The Court was explicit that 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.

Applied to online gaming, this means that even if the creation of a contingent beneficial interest in a pooled stake fund does not fit neatly within any of the specifically enumerated forms of supply, it falls within the broad ambit of taxable supply contemplated under Section 7. 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 a holding that directly addresses the assessees' argument that the "creation" of a right does not amount to a "supply" for GST purposes.

5. The Three-Ingredient Test: Actionable Claims in Online Gaming

5.1 Beneficial Interest in Movable Property

The pooled stake fund comprising aggregate stake amounts constitutes present movable property. Once participants place stakes within the organised gaming framework, each participant acquires a **contingent beneficial interest** in that fund represented through the conditional chance to receive winnings depending upon gameplay outcome. This 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.

5.2 Not in Actual or Constructive Possession of the Claimant

The second ingredient is satisfied because the contractual architecture governing gaming platforms conclusively demonstrates that players do not retain dominion or control over stake amounts once committed towards gameplay. The platform regulates deposits, gameplay, withdrawals, and payouts, while operational control over the pooled funds remains vested with the gaming company. The **proviso to Section 2(31)** which excludes deposits from "consideration" applies only so long as amounts 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.

The Court also addressed the ***Quistclose* argument**: that amounts segregated 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. The Court distinguished ***Barclays Bank Ltd. v. Quistclose Investments Ltd.*** 1970 App. Cases 567 and ***Twinsectra Ltd. v. Yardley*** (2002) UKHL 12 on the ground that 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. The gaming platform context is fundamentally different.

5.3 Enforceability by Civil Courts

The assessees contended that since Section 30 of the Indian Contract Act renders wagering agreements void, no enforceable actionable claim could arise from gaming transactions. The Court held that **Section 30 does not render every collateral, ancillary, or connected transaction illegal or 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 organised platform structure itself creates corresponding transactional obligations and legally cognisable proprietary interests between the participant and the gaming operator. The enforceability relevant for purposes of the actionable claim definition does not depend upon whether every wagering element is independently enforceable inter se among participants.

6. Valuation Mechanics: Why the Entire Stake Is Taxable

The valuation framework is where the ruling's commercial consequences are most starkly felt. The Court held that **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 (for online gaming) and Rule 31C (for casino transactions).

The foundation of this holding lies in the structure of Section 15(1): the expression "transaction value" is directly linked to the "price actually paid or payable"; the expressions "in respect of", "in response to", and "for the inducement of" in Section 2(31) indicate a legislative intent to confer an expansive meaning upon consideration. In betting and gambling transactions, participation itself is conditional upon payment of stake amounts: without such payment, the participant neither enters the organised betting or gaming arrangement nor acquires the corresponding actionable-claim interest. The stake amount therefore bears **a direct and inseparable nexus with the supply arising within such framework**

The principle drawn from ***Skill Lotto Solutions Pvt. Ltd. v. Union of India (2021) 15 SCC 667*** is decisive: once an amount stands appropriated towards the underlying supply and enters the statutory valuation mechanism, subsequent distribution, disbursal, allocation, or retention of amounts arising within the commercial arrangement does not reduce the transaction value unless the statute expressly contemplates such exclusion. No such exclusion exists for online gaming or casino transactions. There exists no statutory basis for excluding or deducting prize pools, winnings, payouts, or similar components while determining taxable value. The GST framework proceeds on gross valuation, not a net-based mechanism, unless specifically contemplated by statute.

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.** 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 Section 15 and the Rules framed thereunder.

7. Rule 31A Validity: Dispensing with the Technical Challenges

The assessees mounted an elaborate challenge to Rule 31A on multiple technical grounds. First, that it was not preceded by a mandatory notification under Section 15(5); second, that the foundational statutory requirement of Section 15(5) was never complied with in relation to actionable claims prior to 01.10.2023; third, that the absence of a specific HSN or tariff classification renders the levy mechanism incomplete; and fourth, that the expression "chance to win" confines Rule 31A(3) only to games of chance.

The Court disposed of all four. On the Section 15(5) notification: **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 namely, the recommendation of the GST Council.** Once it is established that Rule 31A was introduced pursuant to GST Council recommendations, the controversy regarding the precise source of

delegated authority loses much of its significance. Further, Rule 31A is independently sustainable under Section 164(1), which empowers the Government to make rules for carrying out the provisions of the Act. Section 164 also expressly authorises retrospective operation of such rules within the limits prescribed therein. Rule 31A cannot be assailed merely on the ground that the valuation mechanism operates retrospectively.

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 is merely procedural and administrative. The expression "any chapter" appearing in relation to lottery entries signifies absence of a corresponding tariff entry and merely facilitates filing of returns and invoices a rationale that extends equally to actionable claims arising from betting and gambling.

On the "chance to win" argument: the expression **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. The contingent beneficial interest constituting an actionable claim represents a "chance to win" in this descriptive sense; it cannot be conflated with the doctrinal distinction between games of skill and games of chance.

8. The Fantasy Sports Question: GST Taxonomy Separate from Gaming Law Taxonomy

The Court was careful to delineate the precise scope of its inquiry on fantasy sports: it was not determining whether fantasy sports constitute games of skill or chance for purposes of penal gaming legislation or Article 19(1)(*g*). The Bombay, Punjab & Haryana, and Rajasthan High Courts had uniformly held that fantasy sports are games of skill and not gambling and the Special Leave Petitions challenging those rulings had been dismissed. That determination remains undisturbed.

The GST inquiry is structurally separate. For GST purposes, the Court held that participation in fantasy sports contests **necessarily involves pooled stake amounts contributed by participants towards a common prize structure dependent upon uncertain future events.** The existence of skill, predictive assessment, or analytical judgment does not alter the essential character of the transaction once stakes are placed upon uncertain outcomes with the expectation of monetary rewards. The Court observed with particular clarity: 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 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.

This bifurcation skill-based for gaming law, betting and gambling for GST is the most distinctive and practically consequential aspect of the ruling. It creates a two-track legal framework: platforms may continue to lawfully host games of skill under gaming regulation, but they do so under a GST framework that taxes them on the full stake at 28%.

9. Casino Transactions: The GGR Fallacy and Rule 31C

On casino transactions, the sole controversy was valuation. Casinos had operated on the premise that Gross Gaming Revenue: the net amount retained after paying out winnings constitutes the actual consideration received for gambling services and is therefore the proper tax base. The Department, in the absence of complete contemporaneous records reflecting aggregate gaming activity, resorted to a best-judgment methodology through indirect reconstruction of Gross Bet Value by applying the "House Advantage Method".

The Court held that the GGR methodology proceeds on a fundamentally erroneous understanding of the taxable event. **GST is a tax on supply and not on profits.** The levy does not fluctuate depending upon whether the supplier earns profits or suffers losses. The contention that GST is payable only on the net difference between total bets and total payouts i.e., GGR amounts to impermissible adjustment of business expenses against taxable value and cannot be sustained under the GST framework. The GGR principle effectively nets off business expenses and payouts against receipts relevant to income tax jurisprudence but fundamentally incompatible with GST's gross valuation structure.

The Court upheld the Department's recourse to Rule 31 and best-judgment assessment under the pre-amendment framework. However, since Rule 31C introduced by the 2023 amendments and applicable to casino transactions is clarificatory and retrospective, the actual determination and computation of taxable value in casino transactions must now be aligned with Rule 31C, and the correctness of actual computations, assumptions, proportional allocations, and corresponding tax liability shall remain open for reconsideration by the adjudicating authority.

10. Conclusion: Settled Questions and the Practitioner's Map

The ***Gameskraft*** ruling settles the principal legal questions governing GST on online gaming with finality. It does so through a coherent and mutually reinforcing set of propositions that together constitute a definitive framework for the taxation of pooled-stake digital platforms.

The takeaway for the practitioner can be distilled to five propositions. **First**: the skill-versus-chance binary is entirely irrelevant to the GST analysis. The determinative question is whether money is staked upon an uncertain outcome. **Second**: the full stake amount not the platform fee or commission is the taxable value. There is no deduction for prize pools, winnings, or payouts in the absence of an express statutory exclusion. **Third**: the online gaming company is the supplier of actionable claims, not a mere intermediary. The Section 9(5) argument has been definitively rejected. **Fourth**: the 2023 amendments operate retrospectively pending demands will be governed by Rules 31B (online gaming) and 31C (casinos). **Fifth**: the GGR methodology for casinos has been rejected; Rule 31C now governs.

What remains, for both the industry and the Government, is the practical challenge of implementation. Tax demands estimated at over ₹2 lakh crore across the sector demands that in several cases exceed the operator's total revenue will require either the industry to go into liquidation or the Government to exercise its compounding and settlement powers. The Court has resolved the legal question with admirable clarity. The economic question is a different matter entirely and its resolution will shape the contours of India's digital gaming industry for the next decade.

The ***Gameskraft*** decision will be studied, cited, and contested in adjudications, appellate proceedings, and academic commentary for years to come. Its doctrinal architecture linking actionable claims to the GST supply framework through the constitutional bridge of Article 246A represents a significant development in Indian indirect tax jurisprudence. And its core holding that **the stake is the measure of the tax** will serve as the organising principle for all future jurisprudence on the taxation of pooled-stake digital platforms in India.

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