



## The Platform is the Supplier, The Stake is the Consideration, The Bet is the Supply: A Statutory and Constitutional Map of The Gameskraft Ruling

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### **1. The Wager That Backfired: An Opening Perspective**

There is something fitting almost ironic about the fact that India's most consequential indirect tax ruling of this decade is a case about gambling. For when the online gaming industry chose to resist the Revenue's demand of over Rs.2 lakh crore in GST, it was, in a very real sense, placing its own wager: betting that the Hon'ble Supreme Court would accept its reading of the Constitutional framework, the statutory scheme, and six decades of gaming jurisprudence. On 27 May 2026, the wager failed.

In ***Directorate General of GST Intelligence v. Gameskraft Technologies Pvt. Ltd.*** ([2026-VIL-51-SC](#)), the Hon'ble Supreme Court, delivered a ruling that is best understood not as a judgment about online gaming but as a judgment about the structural logic of the GST framework. The gaming context is merely the vessel; the ruling's enduring contribution is doctrinal defining the relationship between actionable claims, the concept of supply under [Section 7](#), the valuation framework under [Section 15](#), and the Constitutional architecture of Article 246A.

The industry's loss is, however, the tax lawyer's gain. The ***Gameskraft*** ruling offers the most comprehensive judicial examination to date of how the GST framework applies to a transaction that does not fit the conventional sale-of-goods mould. Its reasoning on supply, consideration, valuation, delegated

legislation, constitutional competence, and the retrospective character of clarificatory amendments is relevant not just to gaming but to every emerging category of digital commerce that operates through pooled funds, contingent entitlements, and platform-mediated transactions. This article examines that reasoning from a practitioner's vantage point, focusing on the structural propositions that courts, adjudicating officers, and practitioners will need to grapple with in the years ahead.

## **2. The Definitional Question: When Does Staking Become Gambling?**

### **2.1 The Taxpayer's Argument: Skill Creates a Categorical Exemption**

The foundational submission of the respondent gaming companies Gameskraft and the allied fantasy sports operators was that the expression "betting and gambling" in Entry 6 of [Schedule III](#) to the CGST Act carries a settled constitutional meaning: it refers exclusively to activities where chance predominates. A game of skill, by constitutional definition, is not gambling; and since it is not gambling, staking money upon it cannot attract the GST consequences applicable to betting and gambling transactions.

This argument was not adventurous. It rested on a consistent line of Supreme Court authority. In ***State of Andhra Pradesh v. K.R. Lakshmanan***, in ***Dr. K.R. Lakshmanan v. State of Tamil Nadu***, in ***State of Bombay v. R.M.D. Chamarbaugwala (RMDC)*** - [1957-VIL-05-SC](#), and through the Constitution Bench in ***B.R. Satyanarayana***, the Court had consistently maintained that "betting and gambling" are synonymous with chance-based activities, and that a game of skill stands categorically apart. Several State gaming statutes expressly exempt games of skill from penal consequences and those exemptions, the assessee argued, are constitutionally consistent precisely because games of skill are not gambling in the first place. If they were, the legislature could not exempt them from gambling regulation without creating a constitutional anomaly.

## 2.2 The Revenue's Argument: The Stake Is the Defining Element

The Revenue's argument inverted the assessee's logic. **Gambling necessarily arises whenever stakes are involved, irrespective of whether the underlying game is one of skill or one of chance.** The Revenue agreed that a game of skill *per se* may not amount to gambling but the introduction of stakes transforms the activity. The nature of the underlying game does not alter the character of the betting transaction itself.

The Revenue's most pointed argument was structural: 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. Indeed, 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. The exemption presupposes the inclusion; it cannot be read as evidence of exclusion.

## 2.3 The Court's Resolution: The Medium Is Immaterial; the Staking Is Everything

The Court resolved the definitional contest in the Revenue's favour, drawing on its earlier decision in ***State of Tamil Nadu and Others v. Junglee Games India Private Limited and Others*** ([2026-VIL-59-SC](#)). The Bench 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**, irrespective of whether the underlying activity involves skill, chance, or a combination thereof. 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 express 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 online or offline is immaterial. The essential character of the transaction lies in the staking arrangement itself, not in the technological medium through which it is facilitated. And the Court drew the critical distinction between a genuine entry fee (conferring only the right to participate, not linked to the uncertain outcome or prize pool) and a stake (paid upon an uncertain outcome, with prize money intrinsically linked to the pooled stake amounts). **In the platforms before the Court, the so-called entry fee itself constitutes the stake amount** the terminological rebranding does not survive legal scrutiny.

### **3. The Constitutional Framework: Why Article 246A Changes Everything**

The constitutional dimension of the *Gameskraft* ruling deserves sustained attention because it resolves a question of considerable complexity: whether the post-101st Amendment GST framework has the constitutional competence to tax betting and gambling transactions in a manner that the pre-amendment framework explicitly excluded.

Before the 101st Amendment, the position was stark: Entry 62 of List II conferred on the States the exclusive power to levy taxes on betting and gambling; the Finance Act, 1994 expressly excluded betting, gambling, and lottery from the service tax framework under Section 66D(i); and the GST Council's own earlier classifications had treated online gaming platforms as service providers taxable on commission at 18%.

After the 101st Amendment, Article 246A introduced what the Court described as a *sui generis* constitutional framework conferring concurrent legislative competence upon Parliament and the State Legislatures for GST on intra-State supplies. The earlier taxing fields under Entry 62 of List II **stood subsumed within the comprehensive GST framework enacted under Article 246A.**

This means that the States' erstwhile exclusive competence over betting and gambling taxation has, since 2016, coexisted within the broader GST architecture rather than standing apart from it.

The Court held that Article 246A 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. The taxable event under GST is not the abstract activity of betting or gambling 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 maintained. GST taxes the latter, not the former and the latter is squarely within the legislative competence conferred by Article 246A.

On Article 366 (12A)'s definition of GST as "any tax on supply of goods, or services, or both", the Court held that this provision merely furnishes the constitutional meaning of the expression and **does not exhaustively define the contours of taxable supply, valuation, or the treatment of specific classes of transactions**. Those matters are left to the framework enacted pursuant to Article 246A. The challenge to Sections [2\(52\)](#) and [9\(1\)](#) of the CGST Act was accordingly rejected.

## **4. Supply and Consideration: Deconstructing the Transaction**

### **4.1 Section 7 - The Width of "Supply"**

Section 7(1) employs expressions of the widest amplitude: "includes", "all forms of supply", and "such as". The "supply" concept under [Section 7](#) is not confined to traditional transfers of title. It extends to all legally recognised forms of economic supply, and it was deliberately designed to capture the diverse forms of modern commercial and economic transactions.

The constitutional significance of the distinction between the pre-GST Article 366(29A) which employed "transfer" as the taxable trigger and the post-GST Article 366(12A) which employs "supply" cannot be overstated. The GST regime taxes supplies, not merely transfers. **The absence of transfer of a pre-existing actionable claim does not take such transactions outside the ambit of taxable supply.** The creation of contingent beneficial interests upon staking within an organised gaming framework falls squarely within the broad concept of supply.

#### **4.2 The Actionable Claim: Three Ingredients, All Satisfied**

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 a beneficial interest in movable property, not in actual or constructive possession of the claimant, enforceable by civil courts. The Court held all three ingredients satisfied.

On the first: the pooled stake fund comprises aggregate stake amounts constituting present movable property. Each participant acquires a contingent beneficial interest in that fund immediately upon placement and pooling of stakes; subsequent gameplay merely determines whose contingent interest matures into a determinate entitlement. On the second: players do not retain dominion or control over stake amounts once committed towards gameplay; operational control over the pooled funds remains vested with the gaming company. On the third: the platform structure itself creates legally cognisable proprietary interests between participant and operator; Section 30 of the Indian Contract Act does not render every collateral or ancillary transaction void, and the enforceability relevant for the actionable claim definition does not depend upon whether every wagering element is independently enforceable inter se among participants.

#### **4.3 The Platform as Supplier, Not Intermediary**

The Court's holding on the identity of the supplier is structurally significant.

**Online gaming companies themselves constitute the suppliers of the actionable claim arising within the organised gaming framework.** The platform invites participation, prescribes gameplay rules, pools stakes, algorithmically assigns opponents, conducts gameplay, determines outcomes, declares winners, and administers disbursement of winnings. **Without the platform structure, no actionable-claim interest capable of participation could arise at all.** The Section 9(5) argument that gaming platforms are mere intermediaries like food delivery apps, with the players being the actual suppliers was decisively rejected. Unlike Swiggy or Zomato, where the restaurant is the actual supplier, in online gaming there is no independent supply between players.

#### **4.4 Stake as Consideration: The Deposit Argument Rejected**

The assessee argued that amounts deposited by players in their accounts were merely held in trust, with title never passing to the gaming company. Reliance was placed on the ***Quistclose principle*** and on the proviso to Section 2(31), which excludes "deposit" from "consideration".

The Court rejected both. The *Quistclose* principle arose in the peculiar factual context of monies advanced for a narrowly specified purpose, coupled with retention of continuing beneficial control in the lender. The gaming platform context is fundamentally different. 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.

## **5. Valuation: The Full Face Value Principle**

The valuation question produced the ruling's most commercially consequential holding. Section 15(1) provides that the transaction value shall be the price actually paid or payable for the supply. Section 2(31) employs the wide expressions "in respect of", "in response to", and "for the inducement of" indicating legislative intent to confer an expansive meaning upon consideration. In betting and gambling transactions, participation is conditional upon payment of stake amounts. Such payment bears a **direct and inseparable nexus** with the supply arising within the organised framework. The stake amount thus constitutes the price actually paid or payable for the supply.

Following ***Skill Lotto Solutions Pvt. Ltd. v. Union of India*** [2020-VIL-37-SC](#) which held that GST on lottery is payable on the full face value of lottery tickets and not merely on commission retained by the distributor the Court confirmed that the supply of actionable claims in lottery is *in pari materia* with online gaming. There is no statutory basis for exclusion or deduction of winnings, prize pools, or payout amounts while determining taxable value. The GST framework proceeds on gross valuation, not a net-based mechanism, unless specifically contemplated by statute. Deductions from transaction value are permissible only where expressly authorised; none is expressly authorised for betting and gambling transactions.

[Rule 31A](#), which prescribes the full face value of the bet as the measure of valuation, was upheld as a valid exercise of delegated legislation. The Rule was introduced *ex abundanti cautela* to place the valuation position beyond controversy and avoid inconsistent industry practices. It is independently traceable to Sections 15(4), 15(5), and 164, and was founded upon GST Council recommendations the foundational requirement common to all three statutory sources. The "chance to win" expression in Rule 31A(3) describes the opportunity afforded to participants upon staking money on an uncertain event;

it cannot be conflated with the doctrinal distinction between games of skill and games of chance.

## **6. The 2023 Amendments: Clarificatory and Retrospective**

The assessee argued that the 2023 amendments which specifically defined "online money gaming", introduced a deeming fiction for gaming companies as suppliers under Section 2(105), and inserted [Rule 31B](#) and [Rule 31C](#) constituted an implicit legislative admission that the pre-amendment framework was inadequate to tax online gaming on the full stake. If the law already reached these transactions, they asked, why was amendment necessary?

The Court held that **the 2023 amendments neither create a fresh levy nor introduce a new taxable event for the first time.** The taxability of actionable claims arising from betting and gambling already stood recognised under the pre-amendment statutory framework. The amendments principally operate to provide greater statutory specificity, to clarify existing law, and to standardise the valuation and collection mechanism. They are clarificatory and explanatory in nature and accordingly retrospective in operation. 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; it does not militate against the clarificatory character of the amendment.

Consequently, pending show cause notices, adjudication proceedings, and consequential demands relating to online gaming and fantasy sports shall be governed by Rule 31B; those relating to casino transactions shall be governed by Rule 31C both retrospectively.

## **7. The Casino Dispute: GGR v. GBV and the Rule 31C Alignment**

On casino transactions, the controversy was purely one of valuation. Casinos argued that their GST liability should be computed on Gross Gaming Revenue the net amount retained after paying out winnings which they contended

represents the actual consideration received for gambling services. This approach is globally accepted as the industry-standard measure of casino revenue. The Department, in the absence of complete contemporaneous records, resorted to a best-judgment methodology through indirect reconstruction of Gross Bet Value using the "House Advantage Method".

The Court rejected the GGR methodology on first principles: **GST is a tax on supply and not on profits.** Consideration arises the moment a player places a bet upon an uncertain outcome. The subsequent distribution of winnings cannot alter the character of the original payment. The GGR methodology effectively amounts to netting off business expenses and payouts against receipts an impermissible adjustment against taxable value under the GST framework. The Court found that the Department's recourse to Rule 31 and best-judgment assessment under the pre-amendment framework was legally permissible. However, since Rule 31C applicable to casino transactions and introduced by the 2023 amendments is clarificatory and retrospective, the actual determination and computation of taxable value must now be aligned with Rule 31C, and adjudicating authorities must recompute demands accordingly.

### **8. The Industry's Constitutional Challenge: A Comprehensive Rejection**

The assessee challenged the levy on Articles 14, 19, 20, 21, and 265. The Court rejected each challenge in a manner that illuminates the limits of constitutional review in fiscal matters.

On Article 14: the statutory framework bears a clear nexus with the taxable event. **Mere commercial hardship, reduction in profitability or increased tax incidence cannot by itself render a fiscal measure unconstitutional.**

On Article 19(1)(g): the doctrine of *res extra commercium* applies 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. The State is entitled to enact restrictive fiscal measures aimed at controlling or discouraging activities

with deleterious social consequences, in discharge of its obligations under Articles 38 and 47. On Article 21: the provision has no application in the present fiscal context. On Article 265: the levy is fully traceable to statutory authority under Sections 7, 9, and 15 of the CGST Act read with Schedule III and the relevant Rules.

The Court restated the principle that the scope of judicial review in fiscal matters is necessarily limited: contentions that a rate of tax is excessive, a method of computation unreasonable, or a valuation mechanism harsh ordinarily fall within the domain of legislative and economic policy. Fiscal and economic legislation necessarily permit a greater degree of legislative flexibility in matters of valuation and measure of levy. Once legislative competence is established and no constitutional limitation is transgressed, the court's role is to uphold the levy not to evaluate its commercial consequences.

## **9. Five Propositions for the Practitioner**

### **Proposition 1 - The skill-chance dichotomy is ring-fenced from GST.**

Whatever characterisation a game receives for purposes of gaming regulation, penal law, and Article 19(1)(g), the GST analysis asks only one question: is money being staked on an uncertain outcome? If yes, an actionable claim arises and GST follows.

**Proposition 2 - The entire stake is the taxable value.** The instinct to limit the tax base to the platform's revenue has no statutory support. Prize pools, winnings, and payouts are not deductible from transaction value in the absence of an express statutory exclusion. The Skill Lotto Solutions principle is extended to all forms of betting and gambling under the GST framework.

**Proposition 3 - The platform is always the supplier.** Online gaming companies do not supply technology; they supply actionable claims. The

intermediary argument under Section 9(5) is no longer available. The entire consideration the stake is received by and attributed to the platform.

**Proposition 4 - The 2023 amendments reach back into history.** The industry's expectation that the pre-October 2023 period represented a zone of reduced tax liability has not been accepted. Rule 31B governs online gaming and fantasy sports; Rule 31C governs casinos both retrospectively. Pending show cause notices and adjudication proceedings will be decided under the new valuation framework.

**Proposition 5 GGR is not the answer for casinos.** The globally accepted revenue recognition standard for casinos has been judicially rejected as the basis for GST liability. Rule 31C now governs, and adjudicating authorities will need to recompute demands in light of the Court's directions.

## **10. Conclusion: What the Gambler and the Taxman Know**

There is an old saying among gamblers: the house always wins. In the context of GST, the Supreme Court has confirmed a version of this truth: wherever money is staked on an uncertain outcome through an organised platform, the Government through the GST mechanism claims its share of the stake before the game begins.

The ***Gameskraft*** ruling is, at its foundation, a judgment about economic reality rather than legal formalism. The Court looked past the labels "platform fee", "entry fee", "game of skill", "supply of services" and identified the underlying economic transaction: a pooled-stake mechanism in which participants wager money for a chance to win more. Once the economic reality was characterised as betting and gambling for GST purposes, the statutory consequences followed inevitably. The actionable claim arises; the supply crystallises; the consideration is the full stake; and the tax is 28% on the face value of the bet.

For India's online gaming industry, the path forward lies not in further litigation over the legal characterisation of the transaction that question is now settled but in structural renegotiation with the Government over the commercial consequences of the ruling, and in restructuring business models to absorb or mitigate the tax burden. **The law is clear. The economics are painful. The industry must now find a way to play within the rules as the Court has definitively written them.**

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*(The views expressed in this article are strictly personal.)*