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The Stake Is The Tax - How Gameskraft Decoupled GST from the Skill-Chance Binary

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1. A Doctrine Overturned

For nearly seven decades, the lawfulness of a wagering activity in India turned on a single conceptual fulcrum: did skill or chance predominate in determining the outcome? Courts, legislatures, and regulators alike had organised the entire architecture of gaming law around this binary : a classification so deeply embedded in Indian jurisprudence that it had come to be treated as constitutional bedrock. On 27 May 2026, that foundation shifted.

In *Directorate General of GST Intelligence* v. *Gameskraft Technologies Pvt. Ltd.* [(2026) 42 Centax 495 (S.C.)], a two-Judge Bench of Justices J.B. Pardiwala and R. Mahadevan delivered what is arguably the most consequential indirect-tax ruling of this decade for India's digital economy. The Court held, with precision and without qualification, that *the skill versus chance dichotomy; however durable in the constitutional and regulatory context is simply irrelevant to the levy of Goods and Services Tax.* The moment money is staked on an uncertain outcome, an "actionable claim" arises; and the platform facilitating that stake supplies a taxable claim in the nature of betting and gambling, whatever proportion of skill the underlying game may demand.

This single doctrinal move decoupling the GST analysis from the skill versus chance inquiry is the heart of the ruling. By upholding *28% GST on the full face value of amounts deposited* rather than on the platform's commission or gross gaming revenue, the Supreme Court validated tax demands estimated at over ?2 lakh crore across the online gaming sector. What had been the industry's commercial assumption that GST applied only to the platform fee earned on a game of skill was extinguished in a single judgment.

2. The Threshold Question: What Is "Betting and Gambling" under GST?

The pivotal question before the Court was definitional: does the expression "betting and gambling," as it appears in Entry 6 of Schedule III to the CGST Act, extend to games predominantly involving skill when played with monetary stakes? The respondent-taxpayers mounted a formidable argument rooted in decades of constitutional jurisprudence, urging that *"betting and gambling"* are *nomen juris* terms of settled legal art which the Supreme Court's Constitution Bench decisions had consistently construed as synonymous with activities involving games of chance. Rummy had been judicially recognised as a game of skill for over six decades the mere introduction of money could not transform it into gambling.

The Revenue's counter-proposition was starker: *the decisive element of betting and gambling is the existence of stakes upon an uncertain outcome, not the nature of the underlying game.* State enactments exempting games of skill from penal consequences shield participants from prosecution they do not alter the intrinsic character of the activity as gambling. Such exemptions presuppose that the activity would otherwise constitute gambling; a statutory immunity cannot be elevated into a proposition that staking on a game of skill does not amount to gambling.

The Court accepted the Revenue's formulation. Relying on its recently given separate decision by the same bench 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 *"betting" and "gambling" constitute a composite and interchangeable expression referring to the act of staking money or money's worth upon uncertain outcomes.* The determinative factor lies not in the classification of the underlying game but in the staking arrangement itself. 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 protection, staking upon uncertain outcomes retains the character of betting and gambling. The Court further articulated: *where online games, including games predominantly involving skill, are played for stakes, the activity attracts the essential characteristics of betting and gambling for purposes of the impugned levy.*

3. Constitutional Validity: The Architecture of Article 246A

3.1 The Pre-GST Position and the 101st Amendment

Before the Constitution (One Hundred and First Amendment) Act, 2016, the exclusive power to levy tax on betting and gambling vested with the States under Entry 62 of List II. The Union's service tax, enacted under the Finance Act, 1994, expressly placed "betting, gambling or lottery" within its negative list under Section 66D(i). Online gaming platforms had accordingly been assessed to service tax only on the commission component of their revenue. The 101st Amendment restructured this landscape fundamentally: through Article 246A, Parliament and State Legislatures received concurrent power on intra-State GST, and the erstwhile taxing fields under Entry 62 of List II stood subsumed within the comprehensive GST framework.

The Court held that *Article 246A is a special constitutional provision conferring simultaneous legislative competence upon Parliament and the State Legislatures in relation to goods and services tax* and must be liberally construed. 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.

3.2 Actionable Claims as "Goods" — The Constitutional Bridge

A central challenge by the assessees was that actionable claims, historically treated as distinct from conventional goods under the Sale of Goods Act, 1930, could not be included within "goods" under Section 2(52) of the CGST Act. The Court rejected this on multiple grounds. First, Article 366(12) employs an *inclusive formulation* goods "includes all materials, commodities and articles" and therefore does not operate as a rigid constitutional restriction. Second, the Constitution Bench in *Sunrise Associates v. State (NCT of Delhi)* [(2006) 5 SCC 603] had already held: *"were actionable claims not otherwise includible in the definition of goods, there was no need for excluding them."* In other words, actionable claims are goods they were simply excluded from the Sales Tax Acts for specific statutory reasons that do not apply to the GST framework. Third, actionable claims under the Transfer of Property Act are expressly recognised as transferable and assignable interests in movable property; Section 130 itself contemplates assignment for value. Their inclusion within "goods" under GST is neither constitutionally alien nor conceptually incongruous.

4. The Court's Analysis of Statutory Provisions

4.1 Supply under Section 7 — Purposive and Expansive

Section 7(1) employs expressions of the widest amplitude "all forms of supply" and "such as" both illustrative rather than exhaustive. The forms specifically enumerated (sale, transfer, barter, exchange, licence, rental, lease, disposal) are merely representative examples. Crucially, the Court contrasted Article 366(29A) of the pre-GST era, which repeatedly employed "transfer" as the taxable trigger, with *Article 366(12A), which deliberately adopts the wider concept of "supply".* The GST regime taxes supplies not merely traditional transfers of title or conventional sale transactions.

4.2 Nature of the Actionable Claim: Three Ingredients Satisfied

The Court examined whether the three statutory ingredients of an actionable claim were satisfied in online gaming transactions. On the first ingredient - beneficial interest in movable property: once participants place stakes within an organised gaming framework, an identifiable pooled stake fund comprising aggregate stake amounts comes into existence

as present movable property. Each participant simultaneously acquires a *contingent beneficial interest* in that fund - the conditional chance to receive winnings depending on gameplay outcome. This interest arises at the moment of staking, not upon declaration of the winner.

On the second ingredient - property not in actual or constructive possession of the claimant: players do not retain dominion or control over stake amounts once committed towards gameplay. The "entrustment" argument of the assessees was rejected: the proviso to Section 2(31) 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.*

On the third ingredient - enforceability: Section 30 of the Indian Contract Act does not render every collateral or ancillary transaction void. The organised platform structure itself creates corresponding transactional obligations and legally cognisable proprietary interests between participant and gaming operator. *Enforceability for purposes of the definition of actionable claim does not depend upon whether every wagering element is independently enforceable inter se among participants.*

4.3 Who Is the Supplier?

The Court held unequivocally that the online gaming companies themselves constitute the suppliers of actionable claims. 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.* The Section 9(5) argument - that gaming platforms are mere intermediaries like Swiggy or Zomato was rejected. Unlike food delivery platforms where the restaurant remains the actual supplier, in online gaming there is no independent supply between players.

5. Valuation: The Full Stake, Not the Platform Fee

The most commercially significant aspect of the ruling is the Court's treatment of valuation. 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. In betting and gambling transactions, participation is conditional upon payment of stake amounts. The amount paid for participation constitutes *the price actually paid or payable and the consideration for the supply arising within the organised betting and gambling framework.* Following *Skill Lotto Solutions Pvt. Ltd.* v. *Union of India and others* [(2021) 15 SCC 667] which held that GST on lottery is payable on the full face value and not merely on commission retained by the distributor the Court confirmed that *there exists no statutory basis for exclusion or deduction of winnings, prize pools, or payout amounts while determining taxable value.* The supply of actionable claims in lottery is in *pari materia* with online gaming; the parallel is decisive.

Rule 31A, which prescribes the full face value of the bet as the measure of valuation, was upheld as merely operationalising and standardising the valuation methodology already traceable to Section 15. It was introduced *ex abundanti cautela* i.e., out of abundant caution to place the matter beyond controversy. The "chance to win" expression in Rule 31A(3) *does not refer to "games of chance" in the jurisprudential sense* but it merely describes the opportunity afforded to participants upon staking money on an uncertain event.

6. The 2023 Amendments: Clarificatory and Retrospective

The assessees argued that the 2023 amendments introducing "online money gaming" as a category, the deeming fiction for gaming companies as suppliers, and Rules 31B and 31C constituted a fresh levy, implicitly acknowledging that pre-amendment law did not cover online gaming on the full stake. The Court rejected this. The 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 framework. The amendments provide greater statutory specificity and are clarificatory in nature and accordingly *retrospective in operation.* Pending show cause notices, adjudication proceedings, and consequential demands relating to online gaming and fantasy sports are to be governed by Rule 31B.

7. Fantasy Sports and Casinos: The Extended Reach

On fantasy sports, the Court was careful to clarify that it was not determining whether they constitute games of skill or chance for penal gaming legislation or Article 19(1)(g) and that determination remains undisturbed. The GST inquiry is different: participation in fantasy sports *necessarily involves pooled stake amounts dependent upon uncertain future events.* The existence of skill, predictive assessment, or analytical judgment in selecting virtual teams does not alter the essential character of the transaction. The fantasy participant predicts future contingencies and stands to gain or lose depending on how they unfold *such activity possesses all the essential characteristics of betting and gambling.*

On casino transactions, the Court decisively rejected the GGR (Gross Gaming Revenue) methodology. *GST is a tax on supply and not on the profitability of the supplier.* The GGR principle effectively amounts to netting off business expenses against receipts an exercise relevant to income tax but fundamentally incompatible with GST's gross valuation structure. Rule 31C, being clarificatory and retrospective, now governs casino valuation, and adjudicating authorities are directed to recompute demands accordingly.

8. Four Propositions for Practitioners

First, the skill-chance binary has been structurally ring-fenced from GST. A platform may host games that courts have recognised as games of skill for decades. That characterisation survives for gaming regulation and penal law it does not migrate into the GST domain. The GST question is narrower: is money being staked upon an uncertain outcome?

Second, the full deposit amount, not the platform's revenue, is the taxable value. The instinct to tax only what the platform retains has no support in the statutory text. Prize pools, winnings, and payouts are not deductible in the absence of an express statutory exclusion.

Third, the 2023 amendments operate retrospectively. The industry's expectation that the pre-October 2023 period was a legislative gap and therefore a tax-free zone at full stake value has not been accepted.

Fourth, for casinos, the GGR methodology has been definitively rejected. Rule 31C now governs valuation, and adjudicating authorities must recompute demands in light of this retrospective clarification.

9. Conclusion: A Rupture, Not a Refinement

The *Gameskraft* decision does not merely refine existing doctrine — it ruptures the foundational assumption on which the online gaming industry was built and assessed to tax for nearly a decade. By holding that *the essential element of betting and gambling lies in staking money upon uncertain outcomes, irrespective of whether the underlying activity involves skill, chance, or a combination,* the Hon'ble Supreme Court has drawn a sharp line between gaming regulation and gaming taxation. Those lines run parallel and do not intersect.

Tax demands that exceed total industry revenue are not a commentary on the justice of the levy but on its commercial consequences. The Court's answer is unambiguous: the legislature determines fiscal policy; the court determines constitutional validity. Hardship is not unconstitutionality. The GST framework was designed to be economically neutral and legally expansive and the Gameskraft ruling confirms that, in the context of betting and gambling, both the "supply" concept under Section 7 and the "consideration" concept under Section 2(31) operate to their widest extent. ?2 lakh crore of demand is the measure of that width.

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