

## Play Rummy - No GST

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### WHAT

can you call a case in which Dr. Abhishek Manu Singhvi, Mukul Rohatgi, Arvind Datar, Additional Solicitor General N. Venkataraman and a battery of senior advocates appeared before a Single Judge Bench of a High Court? Humungous? Well, that's an understatement! The case involved a GST demand of a whopping Rs. 21,000 crores over alleged gambling, which is obviously a big-ticket business in India. But is it business for GST? Read on..

In Karnataka High Court, a single judge last week passed an order in 325 erudite pages. And your 21000 crore GST demand just disappeared! - [2023-TIOL-531-HC-KAR-GST](#)

### Where it started

#### **Gameskraft Technologies Pvt. Ltd**

., (GTPL) is an Online Intermediary Company incorporated in June 2017, running technology platforms that allow users to play skill based online games. GTPL contends that it has over 10 lakh users from across India and is headquartered in Bangalore and registered under the Central Goods and Services Tax [Act, 2017](#) (CGST Act) and the Karnataka Goods and Services Tax [Act, 2017](#) (KGST Act). It is contended that the company is legally compliant and has been duly filing GST returns and has paid GST and is a **bona fide** tax payer having paid substantial tax to the tune of Rs.1,600/- crores under GST and Income Tax Laws up to June 2022.

During the period between 11.11.2021 and 13.11.2021, the respondents - Revenue (GST Authorities) undertook search and seizure operations of the premises of GTPL, during which, various documents and devices were seized. On 17.11.2021, respondents passed Provisional Attachment Orders attaching the Bank accounts of GTPL under Section 83 of the CGST Act, to which, objections were filed by GTPL, pursuant to which, respondents passed an Attachment Confirmation order dated 30.11.2021.

GTPL challenged the attachment orders and on 03.12.2021. The Karnataka High Court passed an interim order permitting the petitioner to operate the Bank accounts.

Meanwhile, the officials of GTPL were summoned by the respondents for recording of statements and the same continued up to August 2022. In a hearing, the Counsel for the petitioner, submitted before the Court that the respondents have been unnecessarily harassing the Officers of the petitioner inasmuch as either they have been called to the office of the respondents or their Officers came to the office of the petitioner at all points of time during day or night. On 02.08.2022, in addition to the interim order passed earlier, the High Court directed that no precipitative action be taken against the petitioner. It was made clear that this order will not come in the way of the respondents recording further statements of the petitioner within reasonable hours during the day.

On 08.09.2022, respondents issued Intimation Notice under Section 74(5) of the CGST Act, calling upon GTPL to deposit a sum of Rs.20,989,31,31,501/- along with interest and penalty by 16.09.2022. The notice was stayed by the High Court on 23.09.2022.

Immediately thereafter, the respondents issued the impugned Show Cause Notice under Section 74(1) of the CGST Act to the petitioner - GTPL as well as its Founders, CEOs and CFOs, who preferred writ petitions in the High Court.

Some observations of the High Court:

#### Concept of Supply

Under the erstwhile regime, the various indirect taxes were levied on varied activities viz., manufacture, sale or import of goods and on rendering of services. Consequent to introduction of GST from 1st July 2017, the GST is levied solely on the concept of 'supply' of goods and services or both.

Article 366(12A) of the Constitution as amended by Constitution (101st Amendment) Act, 2016 defines 'Goods and Services Tax' to mean the tax on supply of goods, services or both except taxes on the supply of alcoholic liquor for human consumption.

Section 7(1)(a) specifically includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal which are made or agreed to be made for a consideration by a person in the course or furtherance of business.

#### Definition of 'business' under GST to include betting, gambling, lottery

In GST law, the definition of business includes 'wager' or 'any other similar activity'. Therefore, for the purpose of GST, business also includes, betting, gambling, lottery, etc.

The game of rummy is not one where the outcome of an event is being predicted. It is a game where predominantly skill is exercised to control the outcome of the game. The game of Rummy is not one where forecasting or predicting the answer or the winner against stakes is the activity of the player. The game is one, where exercise of substantial skill is the activity of the player, and such skill controls the outcome of the game and not chance. When the outcome of a game is dependent substantially or preponderantly on skill, staking on such game does not amount to betting or gambling.

There is an element of 'chance' in each game and a 'game of skill', may not necessarily be such an activity where "**skill**" must always prevail; however, it is well settled in law, wherein, an activity the "**exercise of skill**" can control the 'chance' element involved in the particular activity, such that the better skill would prevail more often than not, such activity qualifies as a game of skill.

The game of rummy played with stakes is played between players on the basis of the assessment of their own skill. Therefore, while playing for stakes, the player makes a value judgment on his/her skill. The outcome of the game is determined predominantly by the skill of the players. Therefore, rummy played with stakes cannot be viewed as a 'forecast' or a shot at the "**hidden target**".

#### Principle of *Nomen-Juris*

The words "**gambling**", "**game of chance**", "**game of skill**" have developed meanings in judicial parlance. Therefore, applying the principle of *nomen-juris*, the words should be construed in their legal sense, instead of general parlance. While "**gambling**" or "**game of chance**" have been held to involve chance as a predominant element, "game of skill" has an exercise of skill which can control the chance. The element of chance cannot be completely overruled in any case but what is to be seen is the predominant element. In a game of rummy, certain amount of skill is required because the fall of the cards has to be memorised and the building up of rummy requires considerable skill in holding and discarding cards.

Therefore, a game of rummy is a game of skill .

#### Interpretation of Betting and Gambling in the context of GST

The terms "**betting**" and "**gambling**" appearing in Entry 6 of Schedule III of the CGST Act does not and cannot include games of skill within its ambit.

Perusal of the impugned show cause notice as well as contentions and submissions of the respondents will clearly indicate that the same are an outcome of a vain and futile attempt on the part of the respondents to cherry pick stray sentences from the judgments of various Courts including the Apex Court, and High Courts and try to build up a non-existent case out of nothing which clearly amounts to splitting hairs and clutching at straws which cannot be countenanced and is impermissible in law.

#### CONCLUSIONS

The High Court concluded:

- There is a distinct difference between games of skill and games of chance; games such as rummy, etc., as was discussed in several decisions, whether played online or physical, with or without stakes would be games of skill and test of predominance would apply.
- Though Section 2(17) of the CGST Act recognises even wagering contracts as included in the term 'business', but that in itself would not mean that lottery, betting and gambling are the same as games of skill.
- The meaning of the terms "**lottery, betting and gambling**" as contemplated in Entry 6 of Schedule III of the CGST Act should be construed *nomen juris* in the light of the decisions of the Supreme Court and High Courts which do not include games of skill.
- Entry 6 in Schedule III to the CGST Act taking actionable claims out of the purview of supply of goods or services would clearly apply to games of skill and only games of chance such as lottery, betting and gambling would be taxable.
- Taxation of games of skill is outside the scope of the term "**supply**" in view of Section 7(2) of the CGST Act, 2017 read with Schedule III of the Act.
- A game of skill whether played with stakes or without stakes is not gambling.
- A game of mixed chance and skill is gambling if it is substantially and preponderantly a game of chance and not of skill.
- A game of mixed chance and skill is not gambling if it is substantially and preponderantly a game of skill and not of chance.
- Rummy is substantially and preponderantly a game of skill and not of chance.
- **Rummy whether played with stakes or without stakes is not gambling .**
- There is no difference between offline/ physical Rummy and Online/ Electronic/ Digital Rummy and both are substantially and preponderantly games of skill and not of chance.
- Online/Electronic/Digital Rummy whether played with stakes or without stakes is not gambling.
- Other Online/Electronic/Digital games which are also substantially and preponderantly games of skill and not of chance are also not gambling.
- 'Betting' and 'Gambling' contained in Entry 6 of Schedule III to the CGST Act are not applicable to Online/Electronic/Digital Rummy, whether played with stakes or without stakes as well as to any other Online/Electronic/Digital games which are also substantially and preponderantly games of skill.
- Online/ Electronic/ Digital Rummy game and other Online/ Electronic/ Digital games played on the Petitioners' platforms are not taxable as 'Betting' and 'Gambling' as contended by the respondents under the CGST Act and Rules or under the impugned show cause notice issued by the respondents.
- Consequently, the impugned Show Cause Notice dated 23.09.2022 issued by the respondents is illegal, arbitrary and without jurisdiction or authority of law and deserves to be quashed.

The impugned Show Cause Notice dated 23.09.2022 was quashed.

All this makes my head spin faster than a roulette wheel. See, I am getting into gambling! Is roulette gambling or like rummy? It's fun to see high-profile lawyers battling it out in court, especially over a game of cards.

But will the government let go of all that money - thousands of crores - just because you think rummy is not gambling and you can hit the casino without worrying about GST!

Until Next week