Goods And Service Tax (GST) On Online Gaming And Casinos: Legal Challenges And Industry Impact

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ABSTRACT

Implementation of Goods and Service Tax (GST) has introduced new complexities, necessitating a thorough examination of its impact on the dynamic online gaming sector. The Supreme Court's 2026 judgment has permanently foreclosed the position of India's online gaming and casino operators. The GST turns on the presence of a wager, not on whether the underlying game involves skill or chance, and that tax is payable at the applicable rate on the entire amount staked, not the operator's margin. What started as an original Rs. 21,000 show-cause notice turned into the Supreme Court's 2026 judgment. This debate of skill versus chance creates regulatory uncertainty.

KEYWORDS

GST, Online Gaming, Casinos, Betting, Taxation, Regulatory framework.

INTRODUCTION

We see that Indian culture is rich with various forms of entertainment that not only serve as leisure activities but also play significant roles in social, cultural, and educational spheres of life. Over the last few decades, India's online gaming and casino industry has transformed from a niche digital pastime into a multi-billion-dollar sector encompassing fantasy sports, online rummy poker, and licensed casino operations. The online gaming sector has expanded rapidly and forms a significant part of India's digital economy. In 2023, the Indian market generated INR 232 billion. 77% of this revenue came from transaction-based games. The sector is projected to grow at a Compound Annual Growth Rate (CAGR) of 11%, reaching INR 316 billion by 2027. The Indian online gambling market size was valued at USD 3.13 billion in 2025 and is projected to reach USD 6.13 billion by 2034, growing at a compound annual growth rate of 7.47% from 2026-2034.[2]

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[2] IMARC Group, India Online Gambling Market Size, Share & Trends 2025–2034, https://www.imarcgroup.com/india-online-gambling-market (last visited Aug. 21, 2026).

However, this rapid commercial expansion has been accompanied by one of the most contentious tax controversies in India's indirect tax regime, that is, the levy of GST on the full face value of bets rather than on the platform's retained revenue or commission. It began as a technical valuation dispute and has evolved into a constitutional battle touching upon the legislative competence of Parliament, classification of 'actionable claims' as goods, distinction between games of skill and games of chance, and permissible retrospective application of tax law. [3] The article critically analyses the challenges that the judgment leaves unresolved. The article also assesses the resulting impact on the gaming and casino industry.

OBJECTIVES

The objectives are as follows:

1. To critically examine the constitutional and statutory basis on which GST has been levied on online gaming and casinos.
2. To trace the evolution of the legislative and regulatory framework governing online gaming.
3. To identify and analyse the legal challenges that remain unresolved despite the Supreme Court's verdict.
4. To assess the resulting impact of the GST regime on the online gaming and casino industry.

RESEARCH METHODOLOGY

The article adopts a doctrinal legal research methodology, relying on qualitative analysis of primary and secondary legal sources. The article follows a case-law-based analytical approach. It undertakes a critical evaluation of the Supreme Court's 2026 verdict in the *Gameskraft case*, and assesses its practical, constitutional, and industrial implications through analysis of reported financial data and industry commentary.

REGULATORY BACKDROP: SKILL, CHANCE, AND CONSTITUTIONAL BASELINE

[3] Central Goods and Services Tax Act, No. 12 of 2017, § 2(102A), Sch. III (India).

In the case of *State of Bombay v. R.M.D. Chamarbaugwala*[4], the Supreme Court held that gambling is res extra commercium, outside the protection of the fundamental right to trade under Article 19(1)(g), but that a competition substantially dependent on skill does not amount to gambling. The principle was extended in the case of *State of Andhra Pradesh v. K. Satyanarayana*[5], where the Court held that rummy is predominantly a game of skill because it requires memory and the faculty of holding and discarding cards strategically. The doctrine was further consolidated in *Dr. K.R. Lakshmanan v. State of Tamil Nadu*[6], which held that horse racing involves sufficient skill to be excluded from gambling.

These precedents formed the foundation on which the online gaming industry structured itself as skill-based games exempt from the gambling and betting prohibition, and consequently subject to GST only at18% on the platform's service fee under the residuary services entry, rather than at 28% as 'betting and gambling' under the actionable claim framework.

The Punjab and Haryana, and the Bombay High Court validated this approach in *Varun Gumber v. Union Territory of Chandigarh*[7] and *Gurdeep Singh Sachar v. Union of India*[8], respectively, and held that online fantasy sports gaming is not gambling but a game of skill dependent upon exercise of superior knowledge, judgment and attention. The GST was correctly payable only on the platform fee.

LEGISLATIVE FRAMEWORK

Before the 2023 amendment, skill-based games (like rummy and fantasy sports) were taxed at 18% GST on platform fees. Casinos and betting activities were taxed at 28% GST on the face value of bets. Following recommendations of the 50th and 51st GST Council meeting, Parliament enacted the Central Goods and Services Tax (CGST) (Amendment) Act, 2023, and received presidential assent on 18th August 2023. It was notified with effect from 1st October 2023.[9] The amendment:

1. Inserted a new definition of 'online gaming', 'online money gaming', and 'virtual digital assets' under Section 2 of the CGST Act,

[4] State of Bombay v. R.M.D. Chamarbaugwala, AIR 1957 SC 699.
[5] State of Andhra Pradesh v. K. Satyanarayana, AIR 1968 SC 825.
[6] Dr. K.R. Lakshmanan v. State of Tamil Nadu And Anr., AIR 1996 SC 1153.
[7] Varun Gumber v. Union Territory Chandigarh, CWPNo. 7559 of 2017.
[8] Union of India v. Gurdeep Singh Sachar And Ors., 2019 (30) G.S.T.L. 441 (Bom.).
[9] Central Goods and Services Tax (Amendment) Act, No. 30 of 2023 (India).

2. Also inserted a definition of 'specified actionable claim' under Section 2(102A) of the CGST Act,
3. Amended Entry 6 of Schedule III to bring 'specified actionable claim', including online money gaming, casinos, horse racing and lottery, squarely within the tax net,
4. Insertion of Section 15(5), empowering the Government to prescribe a special valuation mechanism for specified actionable claims.

The Central Board of Indirect Taxes and Customs (CBIC) notified Rules 31B and 31C of the CGST Rules vide notification dated September 2023.[10] Rule 31B provides that the value of supply of online gaming shall be the total amount paid or payable to, or deposited with, the supplier by or on behalf of the player, not merely the commission retained by the platform, and clarifies that refunds do not reduce this value. Rule 31C applies an analogous 'total amount paid' standard to actionable claims supplied in a casino. An explanation common to both rules provides that winnings redeployed into further games (without withdrawal) are not treated as a fresh deposit, thereby avoiding a cascading, multiple-taxation effect on the same money as it churns through successive games. [11]

The Promotion and Regulation of Online Gaming Act, 2025[12], was introduced in Parliament as a Finance Bill under Articles 117(1) and 117(3) of the Constitution, with the President's recommendation.[13] The Act seeks to regulate the online gaming sector by establishing a regulatory authority, promoting legitimate online gaming, and prohibiting online games and their related activities. It protects users from associated harms, ensuring responsible use of digital technologies, and providing a uniform national legal framework.

The 56th GST Council meeting, chaired by the Union Finance Minister Nirmala Sitharaman, commenced on 3rd September 2025 in New Delhi, and came up with some recommendations. It would be presented as GST 2.0. It represented a strategic, principled, and citizen-centric evolution of a landmark tax framework.[14] A new 40% GST slab was introduced for specified demerit and luxury goods and services, including specified actionable claims (betting, casinos, gambling, horse racing, lottery, online money gaming).

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[10] Central Goods and Services Tax (Third Amendment) Rules, 2023, Notification No. 51/2023-Central Tax (Sept. 29, 2023) (India).
[11] ICAI GST & Indirect Taxes Comm., Goods & Services Tax Update-204 (2023).
[12] Promotion and Regulation of Online Gaming Act, No. 32 of 2025 (India).
[13] INDIA CONST. art. 117, cls. 1, 3.
[14] Press Release, Press Info. Bureau, Ministry of Fin., Recommendations of the 56th Meeting of the GST Council Held at New Delhi (Sept. 3, 2025), https://gstcouncil.gov.in/sites/default/files/2025-09/press_release_press_information_bureau_0.pdf (last visited Aug. 21, 2026).

DIRECTORATE GENERAL OF GOODS AND SERVICES TAX V. GAMESKRAFT TECHNOLOGIES PRIVATE LIMITED

The Directorate General of GST Intelligence (DGGI) challenged the Karnataka HC decision quashing a Rs. 21,000 crore GST show-cause notice against Gameskraft, [15] leading the apex court to examine the validity of GST on real-money gaming involving stakes. A division bench of Justices J.B. Paradiwala and R. Mahadevan delivered its verdict on 27th May 2026. Court held that GST on actionable claims arising from betting and gambling transactions is squarely within Parliament's legislative competence under Article 246A of the Constitution, read with definitions of 'goods and services' in Article 366(12A).[16]

When a player stakes money on an uncertain outcome, the transaction constitutes 'betting and gaming' for GST purposes regardless of whether success in the underlying game depends on skill or chance.[17] The Court rejected the platform's argument that they were merely providing technological infrastructure while players contract inter se, with the platform acting as a facilitator or intermediary holding the prize pool in trust.

The Court also held that fantasy sports operators are themselves suppliers of actionable claims, since it is the organised platform architecture which creates the very ecosystem within which the contingent beneficial interest (the actionable claim) arises. The amounts staked by players constitute 'consideration' within the meaning of Section 2(31) of the CGST Act, and there is no statutory basis to exclude prize pools, winnings, or payouts when computing the taxable value of supply.

The Court upheld Rule 31A as a valid machinery provision traceable to Sections 15 and 164 of the CGST Act, holding that a valuation rule only bears a 'reasonable nexus' with the taxable event and is not rendered unconstitutional merely because the resulting tax base is far larger than the operator's margin. Rule 31B and Rule 31C were similarly upheld.

The Court held that the 2023 amendments are clarificatory in nature as they do not create a new taxable event or a fresh levy but merely made explicit what was already implicit in the

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[15] Directorate General of Goods and Services Tax Intelligence (HQS) & Ors. V. Gameskraft Technologies Pvt. Ltd. And Ors., 2026 INSC 595.

[16] India Const. art. 246A; id. art. 366, cl. 12A.

[17] Bimal Jain, Supreme Court on GST & Online Gaming: Tax Applies on Betting and Gambling Irrespective of Skill or Chance, CAclubindia (June 4, 2026), https://www.caclubindia.com/articles/supreme-court-on-gst-online-gaming-tax-applies-on-betting-and-gambling-irrespective-of-skill-or-chance-55335.asp (last visited Aug. 21, 2026).

statutory scheme governing actionable claims. Consequently, the amendments operate retrospectively.

LEGAL CHALLENGES

Several distinct legal difficulties persist notwithstanding the SC's resolution of the primary controversy. The significant battleground concerns whether the extended period of limitation and the mandatory equal penalty under Section 74 of the CGST Act can be invoked. Section 74 requires revenue to establish fraud, wilful misstatement, or suppression of facts with intent to evade tax. When the taxpayer's interpretation had been openly disclosed, litigated, and even upheld by a constitutional court, characterising the same conduct as fraudulent creates legal uncertainty and confusion. If the authorities are compelled to proceed under Section 73 instead, the quantum of recoverable demand and the penalty could shrink dramatically.

Before 2023, platforms were paying 18% GST on their platform fee because they believed this was correct law. Companies did not hide their revenue model and acted accordingly. In 2023, the GST law was amended to clearly state that 28% GST is payable on the full face value of bets. The problem is that the government is trying to apply this method retrospectively, which concerns the rule of law and legitimate expectation. Many companies have received GST demands that are larger than the total revenue they earned those years, and such enormous retrospective tax demands are considered highly disproportionate.

The land-based casinos in Goa and Sikkim, the tension between Gross Gaming Revenue (international and pre-existing basis of taxation, reflecting actual earnings) and Gross Bet Value (face value of all chips wagered, regardless of how many time the same chips recirculate at the table) remains a dispute, with the Court permitting best-judgement assessment under Rule 31 for pre-amendment periods where reliable records are unavailable, and as a result many disputes are likely to arise, with each case depending on its own facts and records.

Where GST demands are greater than the total revenue of companies, tax practitioners have warned that companies may be compelled to seek insolvency protection, or the GST Department itself, as an operational creditor, may initiate proceedings before the National Company Law Tribunal (NCLT) against defaulting creditors. As a result, the company's operations may be disrupted and may be liquidated if it cannot be revived.

The challenge exists where DGGI has identified[18] roughly 700 offshore entities offering services to Indian users without GST registration, often through regenerating 'mirror' websites designed to evade blocking orders issued under the Information Technology Act, 2000[19]. While Section 24 of the CGST Act mandates compulsory registration for such offshore suppliers and empowers the authorities to block non-compliant websites and freeze mule bank accounts, but the practical reach of Indian tax law over entities with no physical presence in India remains legally and jurisdictionally contested, and enforcement has so far proceeded largely through website blocking and account freeze, rather than adjudicated tax recovery.

INDUSTRIAL IMPACT

There have been many consequences of the GST imposed on online gaming platforms and casinos. The interpretation resulted in unprecedented tax demands across this sector. The most prominent was a Rs. 21,000 crore GST demand issued to Gameskraft, despite the company's reported revenue of approximately Rs. 4,650 crores during the relevant period. In FY 22, Games 24*7 revenue fell 24.4% YoY to Rs. 1,169 crores. The company's losses stood at Rs. 282 crore in FY 22, compared to Rs. 110 crore profit in FY21[20].

One gaming executive, speaking anonymously, called it a 'death knell' to the industry. According to them, companies were unable to pay salaries; whatever is left will also be severely affected. A founder who had been trying to pivot an 800-person company said only around 80 employees remain. The person said, "This ruling will get every last penny we have left. We cannot service even 10% of this tax demand". Lower-scale businesses were likely to be adversely affected owing to a higher taxation structure, in case they do not come up with creative and innovative ideas and business models.

Licensed casino operations in Goa formed a meaningful component of state tourism revenue, face demands running into thousands of crores each, with several operators such as Delta Corp,

[18] Sakshi Sadashiv K, Ahead of IPL Season, DGGI Cracks Down on Offshore Online Gaming Entities, MediaNama (Mar. 24, 2025), https://www.medianama.com/2025/03/223-ahead-of-ipl-season-dggi-cracks-down-on-offshore-online-gaming-entities/ (last visited Aug. 21, 2026).
[19] Information Technology Act, No. 21 of 2000, § 69A (India).
[20] Harsh Upadhyay & Kunal Manchanda, Games24x7 Scale Shrinks 24% in FY22, Slips Into Losses, Entrackr (Nov. 4, 2022), https://entrackr.com/2022/11/games24x7-scale-shrinks-24-in-fy22-slips-into-losses/ (last visited Aug. 21, 2026).

litigating quantification issues that will take years to resolve even after the principal question of taxability has been settled[21].

The economic impact is real and significant, not just a theoretical concern. Between 2017 and 2023, the online gaming industry attracted Rs. 21,000 crores in FDI. During this period, 3 gaming companies became unicorns, and the industry generated approximately 60,000 direct jobs. Investments were made because the investors believed that they followed the correct law. High Courts and the Supreme Court had accepted the imposition of GST on platform fees. The later SC judgment upholding retrospective demand changed this understanding, and as a result, companies are facing huge tax liabilities. It is a serious concern because no investor expected that a tax practice accepted by tax authorities and upheld by courts would result in massive retrospective tax demands. This may result in reduction of investor's confidence in India's tax system, discourage future domestic and foreign investment in the sector, affect employment and innovation, create uncertainty for businesses, as investors generally prefer stable, predictable, and consistent tax laws before committing capital.

FINDINGS

The analysis undertaken in this article gives us the following findings:

1. GST liability turns on the presence of a wager, not on whether the underlying game is one of skill or chance; where money is staked on an uncertain outcome, GST applies at the prescribed rate on the entire amount staked.
2. The 2023 amendments to the CGST Act and Rules 31A, 31B, and 31C have been held clarificatory rather than creating a new levy, and therefore operate retrospectively.
3. The retrospective tax demands have had a substantial industrial impact, including demands exceeding the annual revenue of several operators, workforce reductions, potential insolvency proceedings, and a decline in investor confidence in the sector.

CONCLUSION

It can be inferred that the authorities closed one chapter of India's GST jurisprudence while opening several others. The GST regime which governs online gaming and casinos reflects the State's legitimate objective of widening the tax base and ensuring uniform taxation of

[21] Delta Corp Calls ₹33,500 Cr. Retrospective GST Demand 'Confiscatory' in SC, Storyboard18, https://www.storyboard18.com/gaming-news/delta-corp-calls-%E2%82%B933500-cr-retrospective-gst-demand-as-confiscatory-in-sc-75220.htm (last visited Aug. 21, 2026).

actionable claims. However, the Supreme Court's 2026 decision, while settling the principal issue of taxability, leaves some constitutional, statutory, and practical questions unresolved. The resulting uncertainty has imposed substantial financial and operational burdens on the industry, with implications for investment, employment, innovation, and expansion. Moving forward, a balanced regulatory framework that combines fiscal certainty, constitutional consistency, and effective oversight is essential to protect both government revenue and the sustainable growth of India's rising digital gaming ecosystem and casinos.