28% GST ON ONLINE GAMING: COMMERCIAL WISDOM SIDELINED IN FAVOUR OF MORAL POLICING AND TECHNICAL VALUATION

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On 27 May 2026, the Supreme Court, in *Directorate General of GST Intelligence (HQS) & Ors. v. Gameskraft Technologies Pvt. Ltd. & Ors.*, upheld the levy of 28% GST on the full face value of bets placed in online gaming, affirming that online money gaming involving monetary stakes constitutes a taxable actionable claim under the GST framework. The Court also upheld the retrospective application of the 2023 GST amendments, exposing the industry to tax demands exceeding ₹1.12 lakh crore, together with interest and penalties.

The ruling marks a significant shift in India's gaming taxation regime. While it provides legal certainty, it also raises fundamental questions as to whether taxation should reflect commercial realities or function as an indirect regulatory tool. The retrospective amendments read with the confirmation by the Supreme Court in effect is prohibitive for the industry.

From Platform Fee to Full Bet Value

Prior to the 2023 amendments, online gaming operators were required to pay GST only on their Gross Gaming Revenue (GGR), which was nothing but the platform fees or commission or service charges. Therefore, hitherto, the platform fee or commission they earned attracted 18% GST. The money deposited was sweepstakes / prize money, shared amongst the players, with the operators taking a small percentage as revenue.

As per the recommendations of the 50th and 51st GST Council Meetings, Parliament amended the CGST and IGST Acts to:

I. Levy 28% GST on the entire amount deposited by players instead of merely the platform fee.
II. Introduce statutory definitions of "online gaming" and "online money gaming".
III. Classify online gaming as a specified actionable claim.
IV. Insert Rule 31B, prescribing that GST be calculated on the full value of deposits, irrespective of subsequent pay-outs to players.
V. Remove the traditional skill versus chance distinction for GST purposes.

The gaming industry challenged both the constitutional validity of the amendments and their retrospective application. It asserted that GST should be levied only on the platform fee (GGR), as this represents the operator's actual revenue, and not on the entire amount staked by players.

It also contended that skill-based games should not be treated as betting or gambling, and it challenged the retrospective application of the 2023 amendments, further arguing that taxing the full stake value exceeded the constitutional scope of GST.

India's Top Court's Findings

The Supreme Court dismissed the industry's contentions and upheld the legislative framework as constitutionally valid. It held that online gaming requiring monetary stakes constitutes betting and gambling for GST purposes, and that the distinction between games of skill and games of chance is immaterial once money is staked. Further, the Court observed that GST is a tax on supply, not on profits, and is therefore rightly leviable on the entire value of bets rather than on the platform fee alone. It also ruled that the 2023 amendments are clarificatory in nature and apply retrospectively, while holding that the levy does not violate Articles 265, 366(12), or 366(12A) of the Constitution.

Where the Judgment Falls Short

Although the judgment has clarified the position on online gaming, it falls short on several essential commercial and policy concerns:

i. It ignores the economic reality of online gaming companies. Operators retain only the platform fee, with the remainder of deposits paid out as winnings. Consequently, when the entire stake is taxed, the tax is levied on an amount that never constitutes the supplier's income.

ii. The judgment has also been criticised for sidelining decades of jurisprudence distinguishing games of skill from games of chance, without adequately addressing earlier case law recognising skill-based gaming as a separate category.

iii. The retrospective operation of the amendments imposes enormous liabilities on businesses that had complied with the prevailing interpretation of GST law at the time. The Court did not adequately address the principles of legitimate expectation or transitional fairness.

iv. The judgment did not take industry sustainability into account. Most international jurisdictions tax gaming operators on Gross Gaming Revenue (Platform Fees) rather than Gross Transaction Value (which includes the sweepstakes / prize money). India now has one of the highest effective tax burdens globally, combining 28% GST on full deposits with 30% TDS on winnings, raising concerns regarding investment, innovation, and long-term competitiveness in the industry.

Impact on the Industry

The judgment has an immediate and far-reaching effect. The retrospective application of tax claims, substantially increases the financial exposure of gaming companies. Operators must now adjust their pricing models and business strategies to account for GST on the total amount deposited by players, rather than on their actual revenue. The decision is also expected to affect investor confidence, accelerate the relocation of businesses to more amenable jurisdictions, reduce employment opportunities in India's fast-growing gaming ecosystem, and encourage the migration of capital and talent overseas. Excessive taxation could inadvertently boost unregulated offshore platforms and hinder India's ambition of becoming a global gaming hub in the long term.

The Way Forward

The judgment settles the legal controversy but highlights the need for comprehensive policy reform. India now requires a unified national framework governing online gaming, an independent regulatory authority responsible for certification, consumer protection, and compliance, and a more balanced GST structure aligned with commercial realities. The Government should tax Gross Gaming Revenue (Platform Fees) instead of the Gross Transaction value (entire value of gaming revenue including the sweepstakes / winnings) and formally recognise gaming as a legitimate industry, while maintaining strong safeguards against addiction, fraud, and money laundering. It is a balancing act the Government should undertake instead of stifling an industry which is giving employment to lakhs of individuals who are involved in the gaming eco system.

Conclusion

In providing the much-needed legal certainty, the Supreme Court has affirmed Parliament's power to tax online gaming and upheld the constitutional validity of the 2023 amendments. However, legal certainty does not necessarily translate into sound economic policy. With this judgment, one chapter of litigation closes but at the same time, it highlights the critical need for legislative and regulatory reform to strike a balance between revenue collection and the sustainability of the industry.

Ultimately, India's long-term success in the online gaming industry will hinge not just on judicial pronouncements, but on whether policymakers embrace a framework that encourages responsible regulation, protects consumers, and enables legitimate businesses to compete globally.

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