

# Tax Flash News

19 May 2023

## Rummy, whether played offline or online with stakes or without stakes, is not gambling

The definition of the term 'goods' in Section 2(52) of the GST Act includes actionable claims. However, actionable claims, other than lottery, betting and gambling, are treated neither as a supply of goods nor a supply of service as per Schedule III of the GST Act. The GST rate on actionable claim in the form of chance to win in betting or gambling is 28% on the total bet value, whereas in the case of facilitation of on-line gaming services, the GST rate is 18% on the platform commission/service fee. In this background, the Karnataka High Court<sup>1</sup> has upheld that rummy is a game of skill and accordingly not betting/ gambling, whether it is played offline or online. Accordingly, GST would be payable at the rate of 18% only.

### Facts of the case

- The Petitioner runs a technology platform that allows users to play online games against each other. Out of the total games, 96% of the games played on the platform of the Petitioner is 'Rummy'.
- Between 11-13 November 2021, Revenue undertook search and seizure operations of the premises of the Petitioner. Thereafter, Revenue passed a Provisional Attachment Order to attach the bank accounts of the Petitioner. Summons were issued to the officials of the Petitioner-Company. Subsequently, on 8 September 2022, Revenue issued Intimation Notice under Section 74(5) of the GST Act. Immediately thereafter, the Revenue issued a show cause notice (SCN) under Section 74(1) alleging that the Petitioner is involved in betting/gambling and supplies actionable claims and that the petitioner is guilty of evasion of GST by misclassifying their supply as services under SAC 998439 and their taxable value.
- Petitioner filed writ petitions challenging the attachment order, intimation notice and show cause notice.

### Petitioner's contentions

- The allegation that Petitioner is involved in the supply of an 'actionable claim' is erroneous. The Petitioner merely facilitates the playing of skill-based games between users/players on its technology platform in return for consideration in the form of platform fees on which GST is paid. Petitioner has no role / influence insofar as the playing of the games are concerned.
- It is well settled that 'games of skill' played with monetary stakes do not partake the character of betting.
- Rummy is a game of skill. The key skills involved in rummy are memorising the fall of cards, building up the right sequences by discarding cards and drawing cards from the open pile.
- It makes no difference if game of skills is played physically or virtually, the same predominance test applies to ascertain the true character of game.
- The buy-in amount is not the property of the Petitioner. It is distributed to the winning players once the game is over.
- It is stated explicitly in the terms and conditions of the game that the monies deposited by the players are held in 'trust' by the Petitioner. There is no liability of GST as this prize pool is not a 'consideration' for any services provided by the Petitioner. The petitioner does not have any right or claim over the price pool and merely holds the same in a fiduciary capacity only to facilitate the games played.

<sup>1</sup> Gameskraft Technologies Private Limited v. Directorate General of Goods Services Tax Intelligence & Ors. [2023-VIL-291-KAR]

- Providing discounts and incentives to market one's business and platform does not change the nature of games played on the platform, also the option to play more games or withdraw the winnings entirely remains with the players.

## Revenue's contentions

- Players of rummy on the Petitioner's platform forecast, i.e., predict in anticipating the unknown and uncertain future event of the player winning the game of rummy and placing stakes on it. This is nothing but betting and gambling.
- Profits and gains from games of rummy amount to betting and gambling in view of the decision of the Supreme Court in the case of *State of Andhra Pradesh v. K. Satyanarayana & Ors*<sup>2</sup>.
- Game of rummy played on the platform of the Petitioner is nothing but a pure game of chance. The only criteria to enter Petitioner's platform is placing stakes by a player.
- Skill is not the qualifying criteria for the impugned game since skill must be discernible from superior knowledge, training, attention, experience and adroitness of the player. Also, platform does not record the skill level of a player and does not disclose the same to all the players seated at a table.
- Petitioner charges 10% of the total amount of stakes placed by the players seated at a particular table as its commission. The Petitioner terming the commission as a 'service fee' for using the platform deserves to be rejected since this is not uniform across the board to all players.

## High Court's decision

The Karnataka High Court allowed the writ petitions in favour of the Petitioner. It quashed the impugned show cause notice and dissolved the interim orders. The prominent inferences pronounced by the Court after analysing several other judgements are as follows:

- Rummy, whether played offline or online with stakes or without stakes, is not gambling.
- Inclusion of wager or other similar activities in the definition of 'business' in Section 2(17) does not mean that 'lottery, betting and gambling' are the same as games of skill.

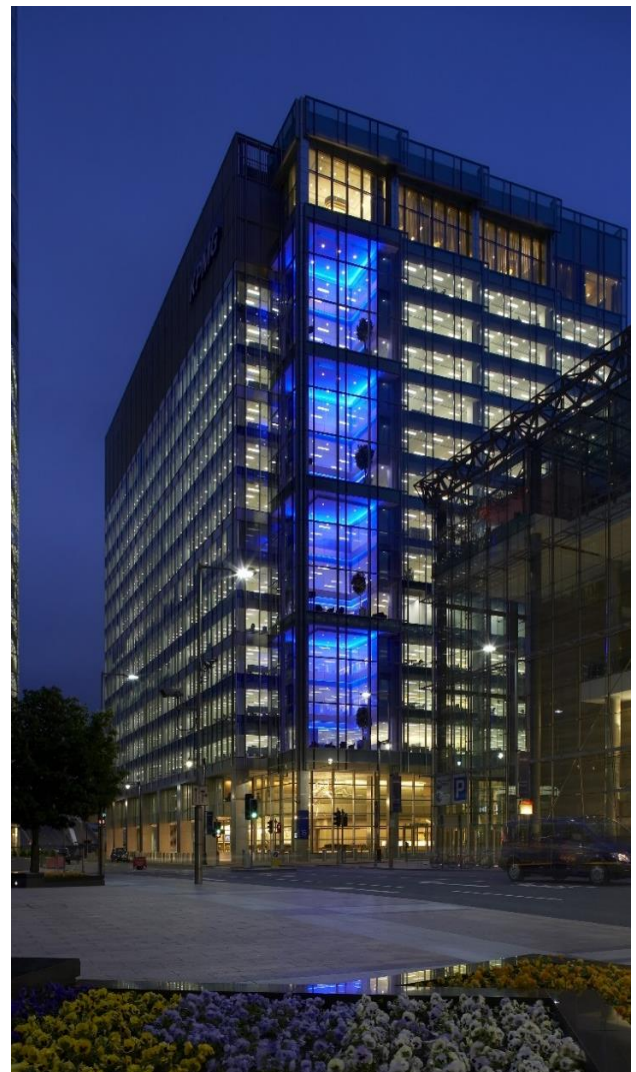
- The terms 'betting' and 'gambling' must be given the same interpretation given to them by the courts in the context of Entry 34 of List II of the Seventh Schedule to the Constitution and the Public Gaming Act, 1867.

## Our comments

The Karnataka High Court Ruling comes as a major relief for the gaming industry, who have been witnessing significant investigations under GST.

The gaming industry would keenly follow the Revenue's next course of action and GST Council's decision on taxability of online games.

Fate of pending investigations on the issue would still need to be seen; specifically, Revenue's next steps on issuing protective SCNs on the matter, given the approaching normal period of limitation for FY 2017-18.



<sup>2</sup> AIR 1968 SC 825

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