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CASE COMMENTARY: DGGI & ORS. V. GAMESKRAFT TECHNOLOGIES PVT. LTD. & ORS.¹

- Niyati Jain

ABSTRACT

The commentary analyses the Supreme Court's decision in Directorate General of Goods and Services Tax Intelligence (Hqs.) v. Gameskraft Technologies Private Ltd., 2026 INSC 595. The issue in the case started with the introduction of the Goods and Services Tax in the online gaming sector. The decision clarifies the issue of retrospectivity of the amendment to the CGST Act, 2023. It affirms the 28% tax levied on online gaming irrespective of whether the game is of skill or chance. It also examines the landmark judgments of the R.M.D. Chamarbaugwalla v. Union of India (1957) and State of A.P. v. K. Satyanarayana (1967). The commentary argues that the court has overridden the previous judgments to displace the skill-dominance framework and introduces the stake-based distinction. It shows how the judgment introduces new terms and raises concerns over the sustainability of the online gaming industry by allowing increased tax rates.

BACKGROUND

In recent times, there has been a rise in the digital economy due to rapid technological development. This has also affected the money gaming sector, from traditional rummy to online money gaming platforms. A recent study by the Interactive Entertainment and Innovation Council (IEIC) shows that India's online gaming sector is expected to grow from

¹ Directorate General of Goods and Services Tax Intelligence (Hqs.) v. Gameskraft Technologies Private Ltd., 2026 INSC 595 (India).

USD 3.7 billion in 2024 to USD 9.1 billion by 2029, i.e., almost two-fold.² Due to this shift, the industry creates a new taxation regime for the government.³

The introduction of Goods and Services Tax in 2017 included rules applying to the gaming sector. Schedule III of the CGST Act, 2017⁴, identifies activities that are not under goods and services and are therefore outside the scope of GST. Entry 6 of this includes “actionable claims”⁵ except lottery, betting, and gambling.⁶ The Act levied an 18% tax on platform fees for such businesses. However, this certainly raised legal issues in 2023 through an amendment to the Act.

The amendment imposed a uniform 28% tax rate on the Gross Gaming Revenue (GGR) of the business, rather than only platform fees.⁷ This blurred the crucial line of difference between games of skill and games of chance.⁸ Initially, this was recommended at the 47th GST Council meeting⁹ and implemented in the 50th GST Council Meeting.¹⁰ This raises many questions, as the tax rate is lethal, as it exceeds the platform's total revenue.¹¹ This led to a series of issues regarding the constitutionality of the Act and a high burden of taxes.

FACTS

Gameskraft Technologies Pvt. Ltd. is an online platform facilitating online skill-based games. The platform's revenue model is charging a “platform fee” for using the provided facilities.¹²

² *India's Online Gaming Sector May Cross Rs. 77,688 Crore (US\$9 Billion) by 2029: Report*, INDIA BRAND EQUITY FOUNDATION (Mar. 20, 2025),

<https://www.ibef.org/news/india-s-online-gaming-sector-may-cross-rs-77-688-crore-us-9-billion-by-2029-report>.

³ Soumya Jain, *E-Gaming Taxation and Government Recommendations, Shrouded in Self-Defeatism*, 6 Int'l J. Legal Sci. & Innovation 228 (2024),

<https://ijlsi.com/article/view/e-gaming-taxation-and-government-recommendations-shrouded-in-self-defeatism/1307>.

⁴ The Central Goods and Services Tax Act, 2017, Sched. III, No. 12, Acts of Parliament, 2017 (India).

⁵ The Transfer of Property Act, 1882, § 3, No. 4, Acts of Parliament, 1882 (India).

⁶ The Central Goods and Services Tax Act, 2017, Sched. III, para. 6, No. 12, Acts of Parliament, 2017 (India).

⁷ The Central Goods and Services Tax (Amendment) Act, 2023, No. 30, Acts of Parliament, 2023 (India).

⁸ Kavya Sharma, *Skill, Chance, and the Constitutional Reckoning at the India's Online Gaming Tax War* (Apr. 17, 2026), <https://ssrn.com/abstract=6809764>.

⁹ Minutes of the 47th Meeting of the Goods and Services Tax Council, paras. 20.1–20.2 (June 28–29, 2022), https://www.gstcouncil.gov.in/sites/default/files/Minutes/47_minutes_0_5.pdf.

¹⁰ Minutes of the 50th Meeting of the Goods and Services Tax Council, para. 6.3 (July 11, 2023), https://www.gstcouncil.gov.in/sites/default/files/Minutes/minutes_of_50th_0.pdf.

¹¹ Neha & Vaibhav Garg, *GST on Online Gaming and Digital Services: A Comprehensive Analysis*, 3 LawFoyer Int'l J. Doctrinal Legal Res. 478 (2025), <https://doi.org/10.70183/lijdlr.2025.v03.59>.

¹² Rishabh Mehta, *Redefining the Game: GST Reforms and Their Implications for India's Gaming Industry*, in *Contemporary Discourses in Business, Law and Public Policy* 17 (Satya Ranjan Mishra ed., 2025), available at <https://ssrn.com/abstract=7301878>.

The Directorate General of GST Intelligence (DGGI) conducted a search and seizure operation at the premises. They seized some documents to claim that Gameskraft misclassified its services to evade taxes.¹³ On September 23, 2022, the petitioner received a show cause notice under Section 74(1) of the 2017 Act,¹⁴ of nearly Rs. 21,000 cr in tax liabilities.¹⁵ The case was filed in the High Court of Karnataka in 2023, which quashed the show-cause notice, as it was contended that the petitioner is engaged in skill-based activities, i.e., rummy, not betting or gambling.¹⁶ The court held that terms under entry 6 of Schedule III are “*nomen juris*”, i.e., cannot be modified through executive authority but exist by constitutional interpretation.¹⁷ Hence, the company is liable to pay only 18% tax on platform fees.

The Union of India filed a special leave petition in the Supreme Court against the judgment of the High Court. Along with this, other petitions were filed against Dream11 Fantasy Pvt. Ltd., Play Games2417, etc. A total of 71 petitions, including the Gameskraft one, were filed and consolidated into one.

ISSUES

The following issues arose for the Supreme Court’s consideration:

1. Whether games played on digital platforms involving staking on certain activities constitute betting and gambling under the GST framework?
2. Whether certain provisions (Rule 31A, Section 2(31), 2(52), 7, 9, 15) of the CGST Act and Rules¹⁸ are unconstitutional, violating Article 14 and Article 19(1)(g)¹⁹?
3. Whether “actionable claims” arising from betting and gambling fall within the ambit of “goods”?
4. Whether valuation mechanism on the entire stake is violative of Article 14²⁰ or suffers from manifest arbitrariness?

¹³ *Gameskraft GST Ruling: Online Gaming*, CANDOUR LEGAL, <https://candourlegal.com/gameskraft-gst-ruling-online-gaming/> (last visited Oct. 2, 2026).

¹⁴ The Central Goods and Services Tax Act, 2017, § 74(1), No. 12, Acts of Parliament, 2017 (India).

¹⁵ Dhananjay Dubey, *From Rummy to Roulette: The Case for Uniform GST on Online Gaming* (Sept. 16, 2025) (unpublished manuscript), <https://dx.doi.org/10.2139/ssrn.5494530>.

¹⁶ *Gameskraft Technologies v. DGGST*, (2023) 116 GSTR 53

¹⁷ *Id.*

¹⁸ The Central Goods and Services Tax Act, 2017, §§ 2(31), 2(52), 7, 9, 15, No. 12, Acts of Parliament, 2017 (India), read with The Central Goods and Services Tax Rules, 2017, Rule 31A(3) (India).

¹⁹ INDIA CONST. arts. 14, 19(1)(g).

²⁰ INDIA CONST. art. 14.

ARGUMENTS BY THE APPELLANT

DGGI argued that gambling involves stakes, whether it is a game of skill or chance. Even though it is a game of skill, if it involves staking, then it is gambling, as participant relies upon the outcome, which is uncertain.²¹ In such case, the operator supplies an actionable claim for winning, thus under the purview of GST. The present activity is of betting and gambling rather than wager under Section 30 of the Indian Contract Act,²² as parties have no control over the outcome. Furthermore, Section 7 of the CGST Act²³ should not be restricted to 'sale' but also to 'actionable claims' created by gaming companies. Thereby rendering them a taxable person liable for paying GST.

ARGUMENTS BY THE RESPONDENTS

Gameskraft had argued that the operator is just an intermediary platform provider and does not participate in the game or stake. Their interest solely lies in the platform fee and not in the stake or player. Yet, GST attempts to classify this as a supply of actionable claims under 'goods' to be taxed. The 28% GST is higher than the business's total revenue.²⁴ This violates Article 19(1)(g) as the tax exceeds 100% of revenue, hampering the business's operation without a reasonable restriction.

They also contended that the 2023 amendment treats games of skill and chance as identical for tax purposes.²⁵ This violates Article 14,²⁶ as this lacks a rational nexus between the classification and purpose of taxes.

JUDGMENT

The judgment was delivered by a two-judge bench comprising *Justice J.B. Pardiwala and Justice R. Mahadevan* on 27 May, 2026. The court took reference from the *RMDC*²⁷ and *Satyanarayana*²⁸ cases to clarify that the act of staking money involves betting and gambling.

²¹ *Digital Rummy Is Not Gambling Under GST Act: Karnataka HC*, SCC BLOG (May 16, 2023), <https://www.scconline.com/blog/post/2023/05/16/explained-karnataka-high-court-decision-to-quash-gst-notice-against-gameskraft-legal-news/>.

²² The Indian Contract Act, 1872, § 30, No. 9, Acts of Parliament, 1872 (India).

²³ The Central Goods and Services Tax Act, 2017, § 7, No. 12, Acts of Parliament, 2017 (India).

²⁴ Sahibpreet Singh & Aditya Talwar, *Freewheeling Fantasy Gaming in India* (Jan. 8, 2024) (unpublished manuscript), <https://dx.doi.org/10.2139/ssrn.5166290>.

²⁵ The Central Goods and Services Tax (Amendment) Act, 2023, No. 30, Acts of Parliament, 2023 (India).

²⁶ INDIA CONST. art. 14.

²⁷ *R.M.D. Chamarbaugwalla v. Union of India*, (1957) 1 SCC 650.

²⁸ *State of A.P. v. K. Satyanarayana*, 1967 SCC OnLine SC 333.

It was further added that staking is a determinative factor irrespective of whether it was a game of skill or chance.²⁹

For the contention against Section 15 of the 2017 Act, it was held that the Constitution only provides for definition of GST under Article 366(12A) and not for the expression 'supply'.³⁰ Thus, the Parliament and State legislatures are competent under Article 246A³¹ to make statutory provisions for other things. It was held that the contended provisions form an intelligible differentia and reasonable restriction. Thus, not violative of Articles 14 and 19. On the retrospectivity of the amendment,³² the court held that the amendment does not introduce a fresh tax levy but gives clarification for pre-existing actionable claims arising from betting and gambling.³³ Hence, it is clarificatory in nature to remove doubts and defects, and thereby has retrospective operation.

The court set aside the Karnataka High Court's judgment. It restored the show cause notice to pay almost Rs.21,000 cr by the business. It confirmed that the 28% tax applies to the full entry amount, not just the platform fees.

CRITICAL ANALYSIS

The judgment shows a shift from skill-chance distinction to the staking-based regulation.³⁴ In *R.M.D. Chamarbaugwala v. UOI*,³⁵ the court said that gambling constitutes '*res extra commercium*', i.e., not a commercial activity. The court only protects activities based on skills determined by the '*predominance test*' under Article 19(1)(g).³⁶ In *State of A.P. v. K.*

²⁹ Directorate General of Goods and Services Tax Intelligence (Hqs.) v. Gameskraft Technologies Private Ltd., 2026 INSC 595 (India).

³⁰Urvi Asher, *Supreme Court Upholds Retrospective GST on Online Gaming and Gambling*, INT'L BUREAU FISCAL DOC. (June 9, 2026), <https://www.ibfd.org/news/supreme-court-upholds-retrospective-gst-online-gaming-and-gambling>.

³¹ INDIA CONST. art. 246A.

³² The Central Goods and Services Tax (Amendment) Act, 2023, No. 30, Acts of Parliament, 2023 (India).

³³ Asher, *supra* note 30.

³⁴Parag Chaturvedi & Abhishek Gaurav Verma, *Gameskraft Technologies Private Limited v. Directorate General of Goods and Services Tax Intelligence (Headquarters) and Ors.*, S. JALAN & CO., <https://www.sjlanco.in/case/gameskraft-technologies-private-limited-vs-directorate-general-of-goods-services-tax-intelligence-headquarters-and-ors/> (last visited Oct. 3, 2026).

³⁵ *R.M.D. Chamarbaugwala v. Union of India*, (1957) 1 SCC 650.

³⁶ IJLLR Journal, *Case Analysis on R.M.D. Chamarbaugwala v. Union of India (1957)*, INDIAN JOURNAL OF LAW AND LEGAL RESEARCH (Sept. 7, 2025), <https://www.ijllr.com/post/case-analysis-on-r-m-d-chamarbaugwala-v-union-of-india-1957> (last visited Oct. 2, 2026).

Satyanarayana,³⁷ the court determined that rummy involves the skill of holding and discarding cards. Hence, it is predominantly a game of skill and requires proof of gambling before classifying it as such.³⁸ However, the SC overrides precedents by displacing the distinction based on proof of gambling and shifting to monetary stake as a factor.³⁹ This led to a uniform taxation regime and a single binary test.

The issue of increasing tax burden is also highlighted by the fact that in FY2025, Gameskraft's total revenue is even less than Rs.4000 cr.⁴⁰ The notice to pay tax of Rs.21,000 cr. extends the total revenue by almost 6 times. This burden questions the sustainability of the online gaming industry, especially for small platforms. The growth and legal status of skill-based companies are also at risk.⁴¹ In September 2025, the government raised GST on online money gaming from 28% to 40%, tightening the regulatory environment.⁴² The chance of people shifting to offshore illegitimate platforms that are not under the GST regime will eventually increase.⁴³

In 2025, the Promotion and Regulation of Online Gaming Act⁴⁴ was passed and came into force on 1 May 2026 (before the said judgment). This bans online money games or services. The Act has extraterritorial operation, extending even to companies outside the territory of India.⁴⁵ However, the uncertainty is that the judgment addresses the post-2023 retrospective period, allowing 28% GST in the backdrop of this Act, which already prohibits the operation of online money games and services. Hence, GST is applicable on these items, which, by a matter of law, are prohibited. This shifts the demand to offshore platforms, which are not under the scrutiny of GST laws.⁴⁶

³⁷ State of A.P. v. K. Satyanarayana, 1967 SCC OnLine SC 333.

³⁸ Content Summary, MANUPATRA ROUNDUP (last visited Oct. 2, 2026), <https://updates.manupatra.com/roundup/contentsummary.aspx?iid=24058>.

³⁹ Sharma, *supra* note 8.

⁴⁰ Priyanshu Kamal, *Gameskraft Crosses Rs 4,000 Cr Revenue in FY25; PAT Down 25%*, ENTRACKR (Sept. 12, 2025), <https://entrackr.com/fintrackr/gameskraft-crosses-rs-4000-cr-revenue-in-fy25-pat-down-25-10452823> (last visited Oct. 2, 2026).

⁴¹ Dubey, *supra* note at 15.

⁴² Harshit Maheshwari, *GST on Online Gaming: 40% Rate, Gameskraft Ruling and Prohibition*, TAXGURU (Sept. 23, 2026), <https://taxguru.in/income-tax/gst-online-gaming-40-percent-rate-gameskraft-ruling-prohibition.html> (last visited Oct. 2, 2026).

⁴³ Neha & Garg, *supra* note at 11.

⁴⁴ The Promotion and Regulation of Online Gaming Act, 2025, No. 32 of 2025, India Code (2025).

⁴⁵ The Promotion and Regulation of Online Gaming Act, 2025, § 1, No. 32 of 2025, India Code.

⁴⁶ Singh & Talwar, *supra* note 24

Another issue lies in the court's characterization of the 2023 amendment as merely clarificatory with retrospective application. The amendment creates fresh legal definitions by introducing two new terms, '*specified actionable claims*' and '*online money gaming*'.⁴⁷ This introduction of new definitions does not sit in par with the claim that the amendment only clarifies the pre-existing regime without introducing anything new.⁴⁸ The judgment will set up a new precedent on retrospective tax claims and the online money gaming sector, along with its challenges.

Conclusion

The judgment has presented the question beyond online gaming: whether the constitutional categories set up through the precedents can be dissolved by the administrative and legislative setting. The skill-chance differentiation has helped the judiciary to assess the state's taxation powers. But the introduction of a stake-based distinction will create a separate fiscal issue for skill-based platforms. Small businesses will also be impacted by offshore migration risk, beyond GST application. On another scale, it allows GST on items that have already been banned by PROGA, 2025. Hence, the judgment will be more outright in establishing a precedent of accepting such a large GST claim, along with the constitutional and fiscal issue of accepting a retrospective tax regime.

⁴⁷ The Central Goods and Services Tax (Amendment) Bill, 2023, PRS LEGISLATIVE RESEARCH (Aug. 2023), <https://prsindia.org/billtrack/prs-products/prs-bill-summary-4207> (last visited Oct. 2, 2026).

⁴⁸ Mehta, *supra* note 12.