



## GST ON GAMING INDUSTRY

Shubh Chheda

Email : shubhcgca@gmail.com

### A. Introduction

Significant boom in the gaming industry over last few years in India, on global basis India is now leading nation in respective industry. The rise of smartphones and the increasing availability of high-speed internet at reasonable prices has made it easier for people to access online games. The phase on which industry is growing has a huge economical potential. The gaming industry is struggling with an unresolved issue of GST over the last years, which would impact the growth of nation in form of tax collection and industries sustainability. The economic potential of the Online Gaming (herein referred as “OG”) industry can be boosted as increase in the bandwidth of network connectivity as well as increase in phone users which turns to ease access to the OG.

The tax side for OG in India is complex and constantly evolving with the availability and constant innovation of different formats within OG. The regulatory framework and indirect tax regime in India, both in the pre-GST as well as post-GST regime, always made a distinction between games of chance involving betting and gambling activities vis-a-vis games of skill while determining the regulatory status and the indirect tax treatment involving rate of tax and value of supply respectively.

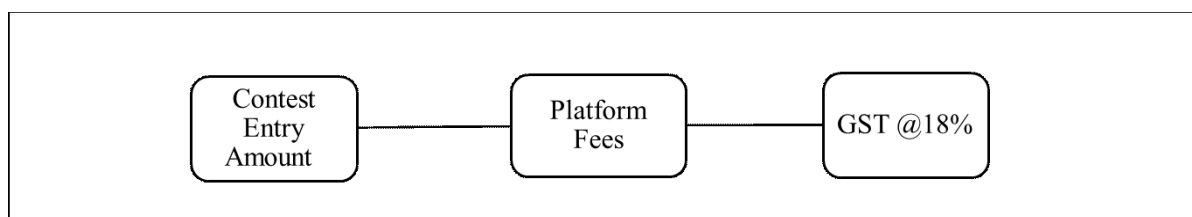
The Courts have interpreted the term 'betting and gambling' to mean games of chance which are covered under the Public Gambling Act, 1867 or state gambling/betting laws. Further, several courts have held that games of skill do not amount to gambling/betting and are considered as a legitimate (lawful) business activity.

As per **Schedule III of the CGST Act, 2017**, “actionable claims other than lottery, betting and gambling and horse racing” are neither treated as a supply of goods nor a supply of services. Accordingly, actionable claims arising from online games of skill are neither treated as a supply of goods nor a supply of services. Under the GST law, as it stands today, GST cannot be levied on actionable claims arising from online games of skill and accordingly, GST of 28 percent is not levied on the Contest Entry Amount (CEA), rather, 18 percent GST is levied on the Gross Gaming Revenue (GGR). Further, the online skill gaming services the GST is levied at 18 percent on the Platform Fee (PF)/Gross Gaming Revenue (GGR), a charge applied by the platform to facilitate play between users.

To Summarize,

Particulars	Game of Skills	Game of Chances
<b>Meaning</b>	One where the outcome is dependent on the expertise, practice, and experience of the player and not merely on chance	Similarly to betting, gambling, and horse racing.
<b>Taxation</b>	Lower tax rate @18% on platform fees	Higher tax rate @ 28% on total value
<b>HSN Code</b>	998439	999692
<b>Examples</b>	Rummy, Dream 11.	-

## B. GST taxing policies on the online gaming industry

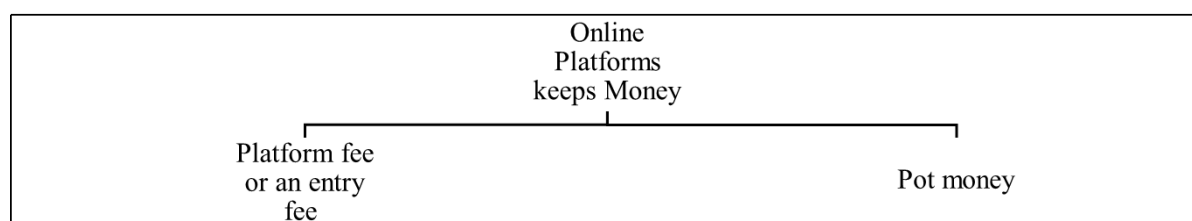


At present, the GST is charged at 18 percent on GGR. However, the amendment increased the rate as well as the value of supply to 28 percent on CEA. The reason behind the amendment is that increase in tax lead to an increase in the total revenue, as the OG industry is profitable, and since GST is a pass-through tax to consumers, the increase will not affect the industry and consumers.

50<sup>th</sup> GST Council Meeting, held on 11th July 2023 passed a crucial decision for the online gaming industry, casinos and the horse racing businesses. The GST Council with the help of the Group of Ministers, made recommendations on the imposition of GST on online gaming, as well as putting an end to the debate over “games of skill or chance.” **28% GST shall apply to online gaming, casinos and horse racing on the full face value.**

Based on the revenue, cost and consumer behaviour related data and assumptions shared by the industry, the report estimates that the change in the GST regime for online gaming services from the current 18 percent on GGR to 28 percent on CEA may render the OG industry not feasible as the increase in GST burden. The change in valuation effectively taxes the OGIs above and beyond their revenue source.

## C. How to Calculate GST?



**Illustration:** If 10 rummy players plan on betting Rs.500, platform fees 100 each player and the platform charges 10% as a fee.

Game of Skill	Game of Chance
a. Platform fees= Rs. 100* 10 participants* 10%charge	a. Platform fees= Rs. 100* 10 participants* 10%charge
b. Platform Fees= 100	b. Platform Fees= 100
c. GST Rate Applicable @18%	c. GST Rate Applicable @28%
d. GST Chargeable= 100*18%= 18	d. GST Chargeable= 100*28%= 28

**The Government of Ministries amended to distinct the classifying online games into skill or chance. Instead, it made the following recommendations:**

Flat GST rate of 28% on all online games, including skill games. Further, this rate will be chargeable on a 'gross revenue' basis, i.e., on the total stake value and not simply on the platform fee paid.

If, in the previous example, the gaming platform charges 28% GST, then the tax becomes:

GST Rate Applicable @28%

GST Chargeable =  $100 * 10 * 28\% = 280$

**New Rule 31B** was introduced to help determine the value of supply for online money gaming consideration. As per this rule, the value of supply would be the amount deposited or paid/payable with the supplier in the form of money or money's worth including a virtual digital asset by or on behalf of the player. Further, the amount returned or refunded shall not be deducted/ nor reversed from the total face value amount of online money gaming.

Amendment in Section 24 of the CGST Act, 2017 is proposed to mandate the obligation to get registered in terms of the Indian GST Laws for the persons providing online money gaming services from a place outside India.

Generally, in the case of import, the recipient is liable to pay GST under the reverse charge mechanism, and the entity situated outside India is not required to take a GST registration. However, the Government for the 1<sup>st</sup> time has introduced registration on a foreign entity if it is supplying online money games to a person in India.

#### **D. Issuance of notices under GST to Online Gaming Companies**

Recently, online gaming companies are in receipt of notices in Form GST DRC-01A alleging that games wherein both skill and chance are involved such as rummy, poker etc. is predominately a game of chance and therefore will be treated as 'betting' or 'gambling'. Hence, the same is outside the purview of Schedule III to Central Goods and Services Tax Act (hereinafter referred to as CGST Act) and are liable to GST @ 28% on full betting amount.

#### **E. Effect of change in rate in OG Industry**

Currently, the gaming companies are discharging GST on platform fee charged to players. Hence, there will be a substantial increase in the GST liability if online money games are treated as 'betting and gambling'.

##### **1. Consumer shift to other platforms:**

The increase in the tax rate and value of supply may lead to a consumer shift from domestic legitimate platforms to offshore online illegitimate platforms.

##### **2. Reduction in GST revenue collection:**

The tax revenue collected from the increased rate of 28 percent on CEA is projected to reduce over the years. This significant reduction in tax revenue can be attributed to factors, such as the consumer shift to offshore platforms and potentially less participation in the regulated domestic market.

##### **3. Gaming start-ups leading to job losses:**

The increase in tax liability on the online gaming industry is expected to have bad impact, specifically for the emerging start-ups in the sector.

##### **4. Degrowth of the industry:**

To cope with the increased tax liability, the industry may have to reduce costs. While, measuring the effect of an increase in indirect tax on the industry, it is important to understand its potential economic effects, industry competitiveness, supply chain, and inflation.

## **F. Exception to general rules:**

Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act, 2016 ("Nagaland Act") expressly recognises virtual team selection games and virtual sport fantasy league games **as games of skill**.

## **G. Some Supporting Case Laws**

1. In **Gurdeep Singh Sachar vs Union of India and Ors**, the Bombay High Court ruled that GST is not applicable on the player's entire deposit, but only on the consideration collected for the supply of goods or services within the platform.
2. **Varun Gumber v. Union Territory of Chandigarh and Ors**, the Supreme Court of India (SC) found that Dream 11 was a game of skill, and such games aren't covered under the Public Gambling Act.
3. A Division Bench of this Court in **Chandresh Sankhla Vs. State of Rajasthan & Ors.-D.B. Civil Writ Petition No.6653/2019** decided on 14.02.2020 in respect of a similar company Dream11 which also provided gaming services online held that the issue is no longer res-integra (a case) and as such gaming services are not in the nature of betting/gambling.
4. **Myteam11 Fantasy Sports Pvt. Ltd. v. Union of India**, D.B. Civil Writ Petition No. 1100 of 2023, decided on 18-1-2023, court satisfied that some of the games offered by the petitioners online have already been held to be games of skill rather than that of chance or that of betting/gambling.

## **H. Conclusion:**

It can be seen that an increase in tax liability from 18 percent on GGR to 28 percent on the CEA would result into a significant decline in the tax revenue within Further, substantial differences are observed in the tax revenue as compared to current taxation structures. Thus, this would gradually result to a decline in the proportion of GST revenue generated by the government and would impact the overall revenue collection. Thus, a thoughtful approach to taxation under GST, considering industry dynamics, competitiveness, can help maintain a sustainable and better online gaming eco-system in India.

---