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Is Gambling Safe Haven for Taxation? Understanding the Applicability of GST Laws in the Gambling Industry

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Abstract

Artificial Intelligence and haptics technology has transformed the way people used to play games in pre-technology times. Earlier, almost all games were played physically like cricket, football, tennis, but with the development of computer games, all these games have been transformed into a virtual form. Though such development is a laudable effort on the part of the developers, certain issues need to be settled before such games can be incorporated into the commercial market. One such concern is the effect of taxation in gambling games. The paper not only covers the taxation aspect of the online gambling games but also other newer forms of gambling like Fantasy League sports, Rummy, Poker and Horse Racing. The idea behind the analysis is to understand whether the current Goods and Service Tax (GST) regime is comprehensive enough to tax such games, considering when GST was introduced, such games were not quite popular. The paper seeks to understand the difference between betting and gambling and how tests like 'mere skill v/s chance' and 'substantial degree of skill' work in categorizing games as gambling activities. The paper also undertakes an analysis of different judicial pronouncements to understand the interpretation of sec 7 of the CGST Act. Lastly, the paper tries to answer the questions like whether Rummy and Poker can be classified as gambling? If the taxation aspect changes if Rummy is played online and offline? What happens if the game has both the element of skill and chance? And whether Horse Racing will also be considered as

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gambling activity under the test of 'mere skill v/s chance'? In the end, the paper concludes the discussion by giving certain recommendations to clear this murky position of taxation.

Introduction

The gambling industry has a long history in the Indian subcontinent. The idea of winning money from the occurrence of a contingent event in which neither party is personally vested has attracted people from different age groups. Since it provides a certain thrill and excitement, the scope of gambling has expanded from mere buying of lotteries tickets and horse racing to fantasy league, Teen Patti and other online betting games. With the emergence of new ways of gambling the issue of taxation has become complicated. The problem with the current Goods and Service Tax (GST) regime is that it was formulated at a time when these new manifestations of gambling were not popular in India. So, now when authorities try to levy the tax in these sorts of gambling games, a multitude of issue arises like whether these gambling activities are taxable under GST or whether earnings from fantasy league or online gambling are a skill-based vocation or pure luck-based games.

The important thing which needs to be understood is that the issue of taxation on gambling depends upon the test of 'mere chance or skill'. The test states that only those activities which give an outcome based on luck shall be taxable since it does not fall under the actionable claim, whereas those returns which are gained from the skill-based game are either exempted from taxation or placed in a lower bracket of tax slab. Thus, when GST was introduced in 2017, the same principle was applied in regards to gambling based income.[1] To determine whether the newer forms of taxation like fantasy league or Teen Patti will fall under the GST regime, it first needs to be determined whether it falls under the ambit of game of skill or chance and then only the issue of taxation can be solved. Before that even, it is imperative to analyse the nature of different types of luck-based before determining their tax liability.

Types of Luck Based Games

Before undertaking the discussion of different types of gambling, it is important to understand the ambit of gambling and how it is different from betting. The initial Finance Act, 1994,[2] defined gambling and betting under the same bracket as "*putting on stake something of value, particularly money, with consciousness of risk and hope of gain on the*

1 GST COUNCIL, BRIEF HISTORY (2017).

2 The Finance Act, 1994, No.32, Acts of Parliament, 1994, §. 65B (15).

outcome of a game or a contest, whose result may be determined by chance or accident." Afterwards, the Law Commission of India in its 276th report stated that betting is the act of putting money or any other stake in the prediction of the outcome of the event.[3] If the event is successful the person wins the money. Such an event is always done against a second party, who places the bet against the prior party. One of the important considerations is that neither party should have any kind of control over the outcome of the event. The term 'betting' is generally considered synonymous with that of wagering.[4]

Whereas, on the other hand, gambling includes a game of chance or a game of skill or a combination of both. The same was stated in sec 9 of the UK Gambling Act.[5] Such activities would include poker, pool, fantasy league and games of similar nature. In the case of *Bimalendu De*,[6] the court held that gambling would include making a bet where the player has a chance to make a profit based on either their skill or luck. Such games not only include chance but also include some skill and are played to win a certain amount. The same was again reiterated in the case of *Public Prosecutor v Veraj Lal*,[7] where the court stated that gambling includes placing of a stake by the player in a game where the result is determined by the skill of the player, but in the case of betting the winning of the prize is solely dependent upon the happening or non-happening of an event which is based on chance. It is important to note that gambling comes under entry 34 of List II of Schedule VII, whereas lottery comes under entry 40 of List I of Schedule VII.[8] It means that the government have excluded lottery from the ambit of gambling and because of that the same shall not be discussed.

Therefore, it can be concluded that wagering, includes within it is ambit gambling, betting and gaming. Gambling entails the occurrence or non-occurrence of an unpredictable event. An important distinction between betting and gambling is that in gambling, the stakes or wager is placed on an event without any clue on the outcome; whereas, in betting the stakes are placed on an event, the outcome of which is based on the performance of the players which are influenced by their skills.[9]

3 Law Commission of India, Report No. 276: Legal Framework: Gambling And Sports Betting Including In Cricket in India (2018).

4 *Id*.

5 United Kingdom Gambling Act 2005, c. 19, § 9 (Eng.).

6 Bimalendu De v. Union of India, AIR 1995 SC 1770.

7 Public Prosecutor v. Veraj Lal Sheth, AIR 1915 Mad. 164.

8 India Const. sch. VII.

9 *Supra* note 4.

Coming back to the types of gambling which are as follows:[10]

Fantasy League

In this game participants create their own imaginary teams using the real players of different teams scheduled to play in different matches. The winning or losing of the game depends on the performance of the real players. For example, if a game is scheduled between Delhi Capital and Kings XI Punjab, then participants get to choose the players from the squad of the teams and once the match starts, the performance of each player in the match will affect whether the participant wins or loses.[11] In this sort of game, the winning is not solely based on luck but depends on the skill of the participant in identifying the ability of the player and carefully selecting one particular player over the other. So, it is thus not merely betting only, but gambling also since it is based on the skill of the participant.

Poker/Teen Patti

Teen Patti or Flush is a type of card poker in which the skill of the participant is required to understand when to make a 'call' or when to 'raise'.[12] The game is not only based on luck but much of it is based on the skill of the player, since the winner is determined by the person who remains in the game till the completion of the hand and has the best hand or highest hand.[13] So, it can be said that it is not betting but a skill-based gambling game. But interestingly, the Kerala High Court in the case of *Ramachandran*[14] held that playing rummy for the stakes shall amount to offence under the Kerala Gaming Act, 1960.

Horse Racing

Horse racing has always been placed in a separate category from all other gambling based games. In horse racing, the bet is placed on the horse, i.e., which horse will win or which horse will come in which position. In reality, the bet is placed not only on the horse but also on the jockey who rides the horse. The skill of the jockey determines the outcome of

10 *The Curious Case of the Indian Gaming Laws*, Nishith Desai Associates, http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/The_Curious_Case_of_the_Indian_Gaming_Laws.pdf. (last visited Jun.14, 2021).

11 Gaurav Laghate, *How Fantasy Sports Is Becoming A Multi-Billion Dollar Business Globally*, The Economic Times, (Mar. 23, 2018), https://economictimes.indiatimes.com/news/sports/how-fantasy-sports-is-becoming-a-multi-billion-dollar-business-globally/articleshow/63436060.cms?from=mdr.

12 Danish Ansari, *How to Play Teen Patti and What Are The Rules You Should Know?,* Republic World, (Apr. 8, 2020), https://www.republicworld.com/technology-news/gaming/how-to-play-teen-patti.html.

13 *Learn Teen Patti*, Teen Patti, https://teenpatti.octro.com/learn-teen-patti/index.html. (last visited on Jun. 13, 2021).

14 Ramachandran K v. The Circle Inspector of Police, 2019 (2) KLJ 26.

the race.[15] It is not merely a luck-based game but rather requires a highly skilled person to understand the track, the capability of each horse, the jockey and other nuances before placing the bet. It is because of these reasons, that it has always been kept separate from betting and gambling. Even the Supreme Court has determined in the case of *Laksmanan*[16] that betting on horse racing is a skill-based game since factors like fitness and the skills of the horse is assessed by the person before placing the bet.

Test of Game of Skill versus Game of Chance

The issue of tax on gambling activities is revolving around the test of 'game of skill' or 'mere chance'. It means that whether the placing of wager took place in a game the outcome of which will be determined by the skill of the participant or by pure luck or mere chance. It may also happen that, certain games are in combination of both skill and chance and in that scenario, courts have held that since there is an element of skill present, so, it will be classified as a game of skill rather than a game of chance. The principle has its foundation in the case of *Rex v Fortier*,[17] where the court held that "*a game of chance and a game of skill are distinguished on the characteristics of the dominating element that ultimately determines the result of the game*."

The court in the case of *Chamarbaugwala*,[18] have interpreted the phrase 'mere skill' to be such games which are mainly based on skill. The court further held that when the success of the competitions largely falls under the skill of the participant, such game will not fall under gambling. It further held that even if the game is based on a game of luck but if there is an element of skill, then such game will be known as a game of skill.

In the USA, apart from the test of mere chance and skill, another test that is applied called the "*Dominant Factor Test*" as laid down in the case of *Morrow v State*.[19] It states that whether a game is a game of skill or a game of chance is to be determined based on the fact that which one of the elements, skill or chance, is dominant in that particular game. The case laid down three qualifications that have to be satisfied to classify gambling activity as a game of skill: *firstly*, Participants must have been able to make an informed judgement based on their skill and sufficient data, *secondly*, the general class of the participants must

15 Cindy Pierson Dulay, *Horse Betting: Types and Terms*, Live About, https://www.liveabout.com/betting-types-and-terms-1880416 (last visited on Jun. 15, 2021).

16 K R Lakshmanan v. State of Tamil Nadu, AIR 1996 SC 1153.

17 Rex v. Fortier, [1957] 13 QB 308 (K.B.).

18 State of Bombay v. RMD Chamarbaugwala, AIR 1957 SC 699.

19 Morrow v. State, 511 P. 2d 127, 129 (Alaska, 1973).

have the required skill and participants must have the opportunity to exercise the same and *lastly*, the result must be decided based on the skill of the participants.

For example, in the game of poker, both the element skill and chance are present. As per this test, it is to be determined which factor, i.e., skill or chance is dominant in that game. To classify poker as a game of skill, it has to be ensured that, *first*, all the participants have the required skill to play the game; *second*, all the participants have the opportunity to excise the skill; and *finally*, the winning in poker is decided based on the skill of the player (like bluffing, raising, folding- which requires honed skills) rather than mere chance. Based on that, the court in the case of *State v Gupton*,[20] held that an athletic game is not a game of chance but rather a game of certain honed skills.

From the above discussion it can be concluded that any such competitions where the winner is decided by draw of lots can be categorized as gambling, since the game does not require any skill to determine the outcome, and the games in which the dominant factor are the skill cannot be classified as gambling.

Applicability of Tax in Different Types of Gambling Games

As discussed, different types of gambling have a different effect on tax which is determined based on the test of mere chance v/s skill and dominant test theory. In this section effect of tax on fantasy sports, Teen Patti and horse racing shall be analysed in a detailed manner through judicial pronouncements. It is important to note that under sec 7(2) of the Central Goods and Service Tax (CGST) Act, items mentioned in schedule III will not come under the ambit of supply. Gambling/betting other than the actionable claim is mentioned in schedule III, which means that only actionable claim which falls under the ambit of gambling is considered as taxable supply and are charged 28% GST on the full amount. Whereas, if the item is not gambling under schedule III, then it means it is a skill-based games and the normal rate as given in the official notification 11/2017 will be charged.[21]

Fantasy Sports

As discussed in the prior section,[22] fantasy sports are a sort of gambling in which participants pick their own teams and the result of their contest depends on the player's

20 State v. Gupton, 30 N.C. 271.

21 CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS, NOTIFICATION NO. 11/2017-CENTRAL TAX (RATE) (2017).

22 Section I.I of this paper.

actual performance in the field. For example, if there is an IPL match between KKR and MI, then participants in a fantasy league would pick their squad from the team list of players. And then the winner of the fantasy league would be determined by the player's actual performance in the field. Thus, it has been contested for quite some time now, whether fantasy league can be taxed under GST provision or not. In other words, does fantasy league falls under the ambit of gambling.

There have been two High Court cases in this regard and both have placed the same ruling that fantasy league is not gambling as it requires a good amount of skill. The first case is by the High Court of Punjab and Haryana,[23] where the facts were that the plaintiff was a registered player in the platform of Dream 11 which hosts fantasy league tournaments. In the course of one cricket match between Ireland and Afghanistan, the plaintiff placed a bet of Rs 24,000 which he lost. Thereafter, he again participated in a football tournament and placed a bet of Rs. 26,000 and he lost that also. So, in the end, the plaintiff lost Rs. 50,000 in total. Afterwards, he made an application stating that he was a victim of illegal gambling and alleged that it was not a skill-based game but rather a game of mere chance.

Court after going through the facts and relying on the position of the *Lakshmanan case*[24] held that competition in which success depends on the skill of the participants were not to be considered as gambling even if there is an element of chance or luck is present, provided that, the predominant requirement of the game was skill. So, it can be seen that the court has used both the test of chance versus skill and the test of dominant factor. The court further held that playing fantasy league requires the same level of skill, judgement and discretion as in any other skill-based games. Participants have to use their judgement to assess the relative worth of their squad against all other available players. So, it can be deduced that there is an element of skill and it predominantly influence the outcome of Dream 11 fantasy games. Hence, it was held that the element of skill pre-dominated the outcome of the fantasy game and that they were games of 'mere skill' and could not amount to gambling. The order was challenged in the Supreme Court which was dismissed and as of now, this remains the current position of fantasy sports.[25]

Another case that was recently decided by the Bombay High Court,[26] also dealt with the issue of fantasy league sports. In this case, the facts were that a PIL was filed against

23 Shri Varun Gumber v. UT of Chandigarh, CWP No 7559/2017.

24 K R Lakshmanan v. State of Tamil Nadu, AIR 1996 SC 1153.

25 *India: Fantasy Sports Games As 'Games of Skill'*, Ss Rana & Co., (Sept. 6, 2018), https://www.lexology.com/library/detail.aspx?g=4c8f352b-7eb1-49b2-b081-849b6d560b94.

26 Gurdeep Singh Sachar v. Union of India, (2019) 75 GST 258 (Bom).

Dream 11 stating that Dream 11 was carrying illegal operations of gambling and wagering under the guise of online fantasy sports gaming and it violated sec 7 of the CGST Act[27] read with 31A of the CGST Rule, 2018.[28]

The petitioner contended that section 7 of the CGST Act provided that activities mentioned in schedule III would not be considered as a supply of goods and services and would therefore be exempted from the levy of GST. In entry (f) of Schedule III, it is mentioned that actionable claims other than betting and gambling were to be charged GST. Furthermore, as per rule 31A (3) of the CGST Rules, 2018, it states that the value of the actionable claim in the form of gambling were to be charged 100% of the face value of the bet. In reading both the provision of Act and Rule together, it would mean that gambling is not excluded from the ambit of GST and that GST shall be charged at the rate of 100% on the face value of the bet made by the participant. Based on this interpretation the petitioner alleged that the entire amount paid by the player would be the basis of calculation for GST, whereas, the rate of 28% is currently being charged for gambling activities.

The defendant on the other hand took the precedent of the *Varun Gumber* case[29] and stated that participants do not bet on the outcome of the match, but rather participants play the role of the selectors and based on the performance of the player the winner of the contest is decided. Thus, it was rather a game of skill than a game of chance. It was important for the defendant to establish it as a game of skill or else they would have to pay 28% GST on the entire amount. However, if it was proved that it was a game of skill, then it would have been charged like any other business establishment.

Court after analysing the arguments of both sides and relying on the *Laksmanan* case[30] held that games played on Dream 11 were game of skill and not chance. It further ruled that the result of any gambling is determined by mere chance and in that regard, if any money is placed then it would be qualified as gambling. Since this is not the case with Dream 11, so it is a game of skill.

The court also ruled against the petitioner on the issue of GST evasion. The court ruled that since it was not a game of chance the application of sec 7 of CGST Act and clause 31A of CGST Rule would not have any application. Those would only come into the application when Dream 11 would have been categorized as gambling which would have happened if it

27 Central Goods and Service Act, 2017, No. 12, Acts of Parliament, 2017, § 7.

28 Central Goods and Service Rules 2018, Rule 31A.

29 Shri Varun Gumber v. UT of Chandigarh, CWP No 7559/2017.

30 K R Lakshmanan v. State of Tamil Nadu, AIR 1996 SC 1153.

was regarded as a game of chance. But, since this was not the case, the court held there was no violation of the GST provisions. Furthermore, the court also held that the amount pooled by the players in the escrow account is an 'actionable claim' as the same is to be distributed amongst the winning members as per the outcome of the game. Now, since the amount so collected falls under the purview of 'actionable claims' it would mean they are exempted from the levy of GST under sec 7 of the Act, as the provision states that "*actionable claim other than gambling…*" which indicated actionable claim is excluded. Since Dream 11's platform is not like betting or gambling, the High Court ruled that money pooled by the players cannot be subject to GST. The court lastly, held that Dream 11 is liable to pay GST to the extent there is a supply of goods or service from the platform at the rate of 18%.[31]

The question was again raised recently in the case of *Chandresh Sankhla*[32] in the Rajasthan High Court in 2020 on the question whether fantasy sports are gambling games. The High Court relied on the judgment of the P&H High Court and Bombay High Court and held the same view that fantasy sports are a game of skill. The court indicated the dismissal of pleas by the Supreme Court and held that matter regarding fantasy sports is settled for now and thereby dismissed the case.

Poker and Rummy

Gambling in poker games like Flush or Bridge are century-old games and have been continued for a long time and have become part of some traditions. Deducing whether Poker is a game of chance or skill is a difficult test because *prima facie* it seems like the luck factor is pre-dominant in such games. But a closer look and detailed analysis suggests that the player only needs mathematical knowledge to deduce the winning hand. The issue has become widespread and it came for judicial scrutiny in the case of *Karan Mutha v State of NCT*.[33] In this case, the petitioner's house was raided by the Delhi Police and he was found to be playing Poker. He was booked under the Delhi Gambling Act. The petitioner contended that Poker is a game of skill and that it is thus exempted from the application of the Delhi Gambling Act. But disappointingly, the petition was withdrawn out of the court and the petitioner sought to approach the trial court first before any decision can be made.

In another case of *Dominance Games Pvt Ltd v State of Gujarat,*[34] the petition was filed under Article 14,19, 21 and 226 of the Constitution for quashing of the order and contending

31 *Supra* note 11.

32 Chandresh Sankhla v. State of Rajasthan, DBC WP No 6653 of 2019.

33 Karan Mutha v. State of NCT, W.P., (Cri.) 3066/2018.

34 Dominance Games Pvt. Ltd. v. State of Gujarat, Special Civil Application No. 6903/2017.

that Poker is a game of skill and not a game of chance and should not be covered under the exemption of the Gujarat Prevention of Gambling Act, 1887. The court took the principle of 'substantial degree of skill' as decided in the case of *R.M.D Chamarbaugwala*,[35] and held that judging other players by their poker face cannot be the lone criteria in deciding a particular game is a game of skill. Such deceiving would fall under the act of bluffing, deceiving and duping of the players. To determine whether a game is a game of skill has to be judged whether a player can with a substantial degree of skill have any control over the game and can change the outcome of the game. Court also differentiated between Rummy and Poker and held that the former requires skill in holding and discarding the cards, whereas, the latter is just misguiding the players by keeping a poker face and thus cannot pass the test of the substantial degree of skill. It held that the history of Poker suggested that it is a game of luck. The Court held that if a game of skill is played with a stake, then such game will be considered as gambling. Thus, it means that Poker is not a game of skill altogether but Rummy is a game of skill. But if Rummy is played for stakes, then it would be characterised as gambling.

Thereafter, in the case of *Play Games 24x7 Pvt Ltd v Ramachandran K*[36] the facts were similar to that of the last case. The petitioner was playing Rummy for stakes and was arrested under the Kerala Gaming Act. Interestingly, the court in this case held that Rummy is a game of mere skill and even if it is played for stakes, it can never be treated as gambling. But the question as to whether playing Rummy for stakes would amount to gambling have to be decided on a case-to-case basis. Factors like, what is the manner in which the games are conducted and what are the stakes involved in the matter are required to be analysed. If the players are just playing Rummy without any side betting, then notification protects the parties involved in it. But, if it is played for any stakes, then the issue might be different which has to be dealt with on a case-to-case basis.

Till now, all the decisions of the different High Courts have been murky. Some have held both Poker and Rummy are gambling. Some have held Rummy as a game of skill and Poker as a game of chance. But the decisions of two High Courts and the Supreme Court (i.e., High Court of Kerala and the High Court of Gujarat) have held that Rummy is a game of skill but would get the character of gambling if played for stakes. Such varied opinions make the application of GST provision in Rummy difficult.

The matter was further unsettled by the Supreme Court in the case of *Mahalakshmi Cultural*

35 State of Bombay v. RMD Chamarbaugwala, AIR 1957 SC 699.

36 Play Games 24x7 Pvt Ltd v. Ramachandran K, W.P. (C.) No. 35535 of 2018.

Association,[37] where the petitioner was arrested for playing online Rummy for stakes by the Chennai Police. Thereafter, a writ petition was filed in the High Court which held that playing Rummy for stakes would amount to gambling. So, the appeal was filed in the Supreme Court. The court before deciding the case took reference to the *Satyanarayana* case[38] and held that the order/notification on which the petitioners were arrested did not deal with the online Rummy and thus arrest was not appropriate. The court further held that whether the current provision of gambling also includes online gambling was to be decided by the government.

It can be concluded by saying that the court differentiated between playing Rummy offline and online and that each would have different ramification or else the court would have included online Rummy under the ambit of offline Rummy. This makes the matter ambiguous, cause after analysing all the cases four scenarios arise. *Firstly*, if Poker is played with or without stakes, it would amount to gambling as it is predominantly a game of chance. *Secondly*, if Rummy is played without any stakes, then it would amount to be a game of skill. In that case, reading sec 7(2) of CGST Act with rule 31A of CGST rules would mean that it would fall under schedule III and will not be charged GST @ 28% on the full amount. *Thirdly*, if Rummy is played for stakes, then it would amount to be a game of skill played for money and would amount to gambling. In that case, it would fall under schedule III of sec 7 of the CGST Act. It essentially means that it would be charged 28% of the full amount the player has won. But most states have banned gambling. So, this provision would not be of much use. *Fourthly*, if Rummy is played online for stakes, it would be like online gambling. However, the position is unsettled in this regard. The court in the case of *Mahalakshmi* tried to differentiate between Rummy for stakes played online and offline and said it cannot read the former into the latter. This would mean that the above principles laid would apply to offline gambling only. In that case, it would be difficult to determine whether profit from online rummy would be taxable. The matter remains murky in this regard.

Horse Racing

Horse racing from the starting has been given a special privilege and has been differentiated from the other sorts of gambling as discussed above.[39] The issue as to whether horse racing is a game of skill or chance was settled in the case of *KR Lakshmanan v State of Tamil*

37 Mahalakshmi Cultural Association v. The Director, Inspector General of Police, Special Leave to Appeal (C.) No(s).15371/2012.

38 State of Andhra Pradesh v. Satyanarayana, AIR 1968 SC 825.

39 Section I.I of the paper.

Nadu.[40] In this case, the court held that betting on a horse is a game of skill rather than a game of chance since various factors have to be taken into account, like the form and fitness of the horse, the skill of the jockey and horse, inherent capacity of the horse and the distance of the race, before any betting decision can be made.

Only when the person can assess all the factors correctly, only then the person has the chance to win the prize money. The court held that "*horse-racing is a sport which primarily depends on the special ability acquired by training…Jockeys are experts in the art of riding. Between two equally fast horses, a better-trained jockey can touch the winning-post*." So, meaning thereby, that betting on horse racing is pre-dominantly a game of skill rather than a game of chance as the player can predict the outcome of the result based on one's skill, whereas, in lottery/gambling the outcome is based only on mere luck.

Now, the question comes as to how the prize earned from horse racing would be taxed since in sec 7(2) of the CGST Act, 2017 it is only mentioned that items mentioned in schedule III will not be considered as supply of goods and service. And in schedule III only actionable claims other than betting and gambling is mentioned. There was some sort of ambiguity in this regard which was clarified in the case of *In Re: Vijay Baburao Shirke*[41] where the applicant owned a number of horses that he used to send in different horse racing competitions. Upon winning the competition he used to get a certain amount of prize money. The issue was whether the amount so received by him would be charged under GST and if charged, what would be the rate of such charge. The Appellate Authority for Advance Ruling held that petitioner owned horses that participated in different competitions organized by different organizers. The organizers are the recipient of these horses and the activity of the petitioner enables the organizer to arrange an event that the public may attend. The horses supplied for these races are specialized ones. They are bred and reared through a defined procedure. Thus, the activity of the applicant is providing the services of specialized and trained horses for the race. Therefore, essentially the question arises whether the petitioner is covered under the scope of supply u/s 7 of the CGST Act and consequentially liable to pay GST.

The components of supply under section 7 of the CGST Act are that there should have been a supply of services, that supply has been made for consideration, and the supply has been made in course of business. Thus, viewed from the above position, it would mean that the petitioner supplies specialized horses to the organisers for racing purpose and if his horse

40 KR Lakshmanan v State of Tamil Nadu, AIR 1996 SC 1153.

41 In Re: Vijay Baburao Shirke, Order No. MAH/AAAR/RS-SK/23/2020-21.

wins the race the petitioner receives the prize which is the consideration for the service. Furthermore, the petitioner undertakes the activity of rearing, maintaining the special horse according to the requirement of each race. So, it can be stated as "*Business*" u/s 2(17) of the Act. Thus, it can be deduced that the petitioner has fulfilled all the components of supply u/s 7 of the Act.

Furthermore, under the CGST Act, the GST council releases the service exempted from the GST duty. It means the services not mentioned in such an exemption list would be taxed. So, under notification No. 17/2017[42] the taxable supply is mentioned with its rates. Since the petitioner is not covered by the exemption list, so he will be covered under the notification. As per that notification, the petitioner shall be charged 18% GST. Thus, in the final order, the authority held that prize money earned through horse racing would be covered under sec 7 of the GST Act, dealing with supply and thus GST at the rate of 18 % would be charged on the amount received.

Conclusion and Suggestions

After thoroughly analysing all the parts and variation of gambling it can be stated that the matter is settled with respect to only certain games. Still, a large number of issues are remaining which are yet to be resolved to have a concrete view of the subject matter. The matter is made more complicated since each state has its own rules because of which, in some states certain gambling games are allowed, but in some states it is banned. This creates a hindrance in enacting uniform gambling laws to settle the matter.

Apart from that, many issues are yet to be decided to bring finality on the matter such as whether the GST shall apply to online gaming; whether the test of pre-dominated skill and chance versus skill test will also be applied to online gaming/multi-player gaming or not; whether an online game of skill played for stakes would turn such games into gambling; whether the online game of Ludo will be regarded as game of skill or chance? There is no clarity regarding different computer/mobile games played for stakes.

The whole gambling games sector lacks taxation rules which makes it a haven for tax evasion. To tackle these aspects, it is suggested that laws of different foreign nations can be analysed to incorporate them into our GST regime. Like in the European Union, the whole gambling business is exempted from taxation.[43] On the other hand, in the United Kingdom

42 *Supra* note 25.

43 Gurudas Khurana, *Goods and Services Tax in Casinos: Understanding the Fiasco of Taxability*, 8 RGNUL Fin. Mer. L.R. 125, (2020).

there are separate laws that deal with the taxation of different types of gambling.[44] In New Zealand, Value Added Tax is charged on the amount actually received by the organiser rather than the whole amount.[45]

Furthermore, in the 276th Law Commission Report,[46] it was suggested that since online gambling are conducted over the telephone and internet, it should come under List I of Schedule VII of the Constitution. This would mean that the central government would have the right to make uniform law governing online gambling.

Apart from that, it is suggested that parliament should make a model law for gambling so that states would have the option to make laws similar to model laws and thus then it would have some sort of uniformity.

And lastly, it is suggested that the model of horse racing should be followed by every state. Every state has exempted horse racing since it is a skill-based game. So, skill-based games should be exempted by all the states so that certain uniformity can be achieved in this regard.

It should be kept in mind that it has only been four years since GST has been applied in the country. A large number of issues are still being analysed to determine their impact on GST and one of them is gambling. It can only be said that in due course of time, with various judicial pronouncements and legislative amendments the matter would gain some clarity.

44 *Supra* note 4.

45 *Supra* note 43.

46 *Supra* note 4.