

WEST BENGAL AUTHORITY FOR ADVANCE RULING

GOODS AND SERVICES TAX

14 Beliaghata Road, Kolkata – 700015

(Constituted under section 96 of the West Bengal Goods and Services Tax Act, 2017)

Members present:

Dr Tanisha Dutta, Joint Commissioner, CGST & CX Joyjit Banik, Additional Commissioner, SGST

Preamble

A person within the ambit of Section 100 (1) of the Central Goods and Services Tax Act, 2017 or West Bengal Goods and Services Tax Act, 2017 (hereinafter collectively called 'the GST Act'), if aggrieved by this Ruling, may appeal against it before the West Bengal Appellate Authority for Advance Ruling, constituted under Section 99 of the West Bengal Goods and Services Tax Act, 2017, within a period of thirty days from the date of communication of this Ruling, or within such further time as mentioned in the proviso to Section 100 (2) of the GST Act.

Every such appeal shall be filed in accordance with Section 100 (3) of the GST Act and the Rules prescribed there under, and the Regulations prescribed by the West Bengal Authority for Advance Ruling Regulations, 2018.

Name of the applicant	Bridge Federation of India
Address	18, Institutional Area, Lodhi Road, New Delhi-110003 West Bengal Address: Metropolitan Building, 2 nd floor, Unit No. 3, 7, J.L. Nehru Road, Kolkata-700013
GSTIN	Unregistered
Case Number	WBAAR 03 of 2024
ARN	Not Applicable
Date of application	February 29, 2024
Order number and date	04/WBAAR/2024-25 dated 29.07.2024
Applicant's representative heard	Mr. Sandeep Chilana, Advocate Mr. Suhaan Mukherjee, Advocate

1.1 At the outset, we would like to make it clear that the provisions of the Central Goods and Services Tax Act, 2017 (the CGST Act, for short) and the West Bengal Goods and Services Tax Act, 2017 (the WBGST Act, for short) have the same provisions in like matter except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the

corresponding similar provisions in the WBGST Act. Further to the earlier, henceforth for the purposes of these proceedings, the expression “GST Act” would mean the CGST Act and the WBGST Act both.

1.2 The applicant is stated to be an apex body for game of contract bridge (hereinafter referred to as “bridge”) in India. The applicant works for the developmental and conduct of the bridge in line with guidelines issued by the World Bridge Federation (hereinafter referred to as “WBF”) for selection of national teams for various events at Asian and zonal level. The applicant states that it along with its designated associates is going to organize an offline/physical tournament of bridge played for money in the state of West Bengal in near future.

1.3 The applicant has made this application under sub section (1) of section 97 of the GST Act and the rules made there under seeking an advance ruling in respect of following question:

- Whether contributions/participation money paid/ stakes bought by the players for playing physical/offline game of bridge (when played for money) or winning thereof or organizing games/tournaments of bridge (when played for money) qualify as supply of ‘specified actionable claims’ under section 2(102A) of the GST Act, 2017?

1.4 The aforesaid question on which the advance ruling is sought for is found to be covered under clause (e) of sub-section (2) of section 97 of the GST Act.

1.5 The applicant states that the question raised in the application has neither been decided by nor is pending before any authority under any provision of the GST Act.

Admissibility of the application:

1.6 In terms of sub-rule (1) of rule 104 of the Central Goods and Services Tax Rules, 2017 and the West Bengal Goods and Services Tax Rules, 2017 (collectively referred to as, the GST Rules), an application for obtaining an advance ruling under sub-section (1) of section 97 shall be made on the common portal in FORM GST ARA-01. The instant application, as made by the applicant, is found to be devoid of any address in the State of West Bengal which indicates prima facie that the applicant doesn’t have any place of business in the state of West Bengal. The expression ‘applicant’, in terms of clause (c) of section 95 of the GST Act means any person registered or desirous of obtaining registration under this Act. The applicant is not registered under the GST Act. However, as the application is made before the West Bengal Authority for Advance Ruling constituted vide notification issued under section 96 of the West Bengal Goods and Services Tax Act, 2017, the applicant was

asked to furnish a written submission as to why the applicant without having any place of business in the state of West Bengal will qualify to file an application of advance ruling before the West Bengal Authority for Advance Ruling.

1.7 The applicant accordingly has furnished a written submission wherein it has been contended that the GST Act envisages two conditions to be fulfilled for seeking an advance ruling which are as follows:

- ✓ Application is filed by an applicant who fulfills criteria mentioned in clause (a) of section 95 of the GST ACT teamed with clause (c) of section 95 of the GST ACT;
- ✓ Application is made for a determination of questions specified under sub section (2) of section 97 of the GST Act.

1.7.1 A conjoint reading of these sections reveals that two conditions need to be fulfilled for earning eligibility the status of an applicant under GST Act.

- I. The applicant is a person either registered under the Act or desirous to get registered under this act and it either engaged in a business of supply of goods or services or desirous of engaging in such business in the state.
- II. The applicant seeking advance ruling to a question in relation to the supply of goods or services or both whether already being undertaken in the state or proposed to be undertaken in such state by such applicant.

1.7.2 The applicant has placed his reliance on an order of the Maharashtra Authority of Advance Ruling, in the matter of Ultra Tech Cement Ltd where the term “Applicant” was clarified by the Ld. Authority as under:

“A perusal of the above clarifies that scope of the term “Applicant” as defined under sub section (c) of section 95 of the CGST Act shall include both, the person registered under CGST Act and also a person who is not registered as on date of applying for advance ruling, but is desirous of seeking registration under CGST Act, in the state where advance ruling is sought....”

1.7.3 The applicant draws attention to the definition of ‘place of business’ under section 2(85) of the GST Act and contends that it is evident from a bare perusal of the statutory definition itself, such a ‘place of business’ comes into existence only once the business has commenced and it would be counterintuitive to suggest that a place of business should exist even at the stage where a business entity is proposing to start its business in a State.

1.7.4 The applicant thus argues that the GST Act does not in any manner cast an obligation on the applicant to have a place of business in the state before filling an application for

advance ruling. The applicant submits that it is desirous of obtaining registration in the state, if required under the law satisfying all the conditions provided under the Act. Having said that, the applicant submits that this authority may take on record the local address of communication in the State of West Bengal as Metropolitan Building, 2nd floor, Unit No. 3, 7, J.L. Nehru Road, Kolkata-700013 with a request to treat this address as part and parcel of the application.

Observation of the Authority for Advance Ruling:

1.8 The GST Act unequivocally requires an applicant either to be registered or desirous of obtaining registration to make an application for advance ruling. Further, as per section 96 of the Central Goods and Services Tax Act, 2017, the Authority for advance ruling constituted under the provisions of a State Goods and Services Tax Act or Union Territory Goods and Services Tax Act shall be deemed to be the Authority for advance ruling in respect of that State or Union territory. Constitution of authority for advance ruling is therefore state specific.

1.9 Under the GST Act, the provision for registration is also state specific. Sub-section (1) of section 22 of the Central Goods and Services Tax Act, 2017 thus states that every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both. Sub-section (3) of section 25 of the GST Act on the other hand makes provisions for voluntary registration.

1.10 Every person including a person desirous for voluntary registration other than the persons belonging to certain specific categories is required to make an application in FORM GST REG-01. An applicant while filing for application for registration has to mandatorily declare the address of principal place of business in the application. Such address must be within the state in respect of which the application has been made. The only exception has been prescribed in sub-rule (1A) of rule 12 of the Central Goods and Services Tax Rules, 2017 and the West Bengal Goods and Services Tax Rules, 2017 related to grant of registration to persons required to deduct tax at source or to collect tax at source in accordance with the provisions of section 51 or section 52, as the case may be.

1.11 From a conjoint reading of the aforesaid provisions of the Act and rules, it transpires that unless a person doesn't have any place of business in a particular state, it cannot be said that the person is desirous of obtaining registration in that state. Desirous of carrying out business activities is not identical with the expression 'desirous of obtaining

registration'. The GST Act, by way of making provisions for voluntary registration, specifically acknowledges the intention of the persons who are 'desirous of obtaining registration' in spite of the fact that such persons are not held liable for compulsory registration. At the same time, the GST Act along with rules made there under makes it abundantly clear that even for the purpose of obtaining voluntary registration in a state, there has to be a place of business of the person in that state.

1.12 This authority is therefore of the view that in respect of a person who is not registered under the GST Act, presence of place of business in a particular state is a pre-condition to qualify to be an applicant in terms of clause (c) of section 95 of the GST Act for making an application for advance ruling before the Authority for Advance Ruling of that state. However, considering the request of the applicant made in the written submission to treat the address Metropolitan Building, 2nd floor, Unit No. 3, 7, J.L. Nehru Road, Kolkata-700013 as part and parcel of the application, the instant application is admitted.

2. Submission of the Applicant

2.1 The applicant submits that it is an apex body, set up in 1952 under The Ministry of Youth Affairs and Sports, Government of India for conducting bridge in India. The applicant expresses that concerned Ministry has recognized it to work as apex body under "priority category" under Ministry of Youth Affairs and Sports, Government of India. The applicant is planning to organize bridge tournament through its associates or organizers in the State of West Bengal shortly.

2.2 The applicant intends to usher in organizing a tournament of contract bridge teamed with its state associations. The applicant submits that currently he is not collecting any participation fees for organizing physical tournaments of bridge or any fee as a totalizator. However, the applicant submits that the ambit of the present application is limited only to the extent of determining whether contributions/ participation money collected from players or winning of the players from physical /offline games of contract bridge (when played for money) would have any GST implications.

2.3 The nature of the tournament, as submitted by the applicant, is as follows:

- ✓ Information about the tournament being organized, is published on the website of the Organizer and also in local newspapers well in advance
- ✓ The players/ participants interested in taking part in the tournament will enroll themselves with the Organizers of the tournament.
- ✓ Players are required to participate in teams.

- ✓ Matches during the tournaments may involve the players investing money or money's worth in each game.
- ✓ Tournament organizers do not lien over this money or money's worth contributed by players. Contribution of money deposited in a common pool and an independent person sponsors prize money.
- ✓ The winning teams would advance to the next rounds gradually till the final winning team is declared.
- ✓ For selected recognized tournaments, players also accrue points based on their performance, which goes towards their selection in the national team to represent the country.

2.4 The applicant first discusses factual position of law prior to GST Amendment Act 30 of 2023 as this amendment raises certain queries in respect of their activities within the definition of supply under section 7 of the GST Act.

Relevant portions of the provisions of section 7 of the GST Act are reproduced hereunder:

“(2) Notwithstanding anything contained in sub-section (1),-

(a) activities or transactions specified in Schedule III; or

(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council,

shall be treated neither as a supply of goods nor a supply of services.”

The following table put a light on the differences in schedule III prior and after commencement of another amendment of GST Act, 2017(30 of 2023 dated 18.08.2023)

Schedule III of the GST Act,2017	
Prior to GST Amendment Act 30 of 2023	After GST Amendment Act 30 of 2023
Entry no 6 Actionable claims other than lottery, betting and gambling	Entry no 6 Actionable Claims, other than Specified actionable claims

2.5 The applicant vehemently underscores that game of bridge cannot be considered as lottery, betting and gambling. The applicant argues that the words '**betting**' and '**gambling**' are *nomen juris* and their legal definition would apply here, especially because terms are not defined under the CGST Act/WBGST Act. In India, the legislative powers are divided

between the centre and the states under the Constitution of India, 1950 .Under its Seventh Schedule, the Constitution grants each state of the country the exclusive power to enact its own laws on “betting and gambling” for its own territory. The *Public Gambling Act, 1867*, a colonial-era statute still in force, has been adopted by several states but some states making their state amendments for the purpose of betting and gambling.

2.6 Stressing on section 12 of Public Gambling Act, 1867 specifically excludes playing of or organizing of games like Bridge played for money or money’s worth from being treated as activities which are “betting” and “gambling”, the applicant contends that relevant statutes of the West Bengal Gambling and Prize Competitions Act, 1957 cement this logic, which is reproduced as under:

*“2(b) **“gaming or gambling”** includes wagering or “betting”, except wagering or betting or betting upon a horse race, when such wagering or betting takes place –*

...

*(iii) with a licensed book-maker or by means of a totalizator as defined in Section 14 of the Bengal Amusement Tax Act, 1922, **but does not include** a lottery or games of cards like **Bridge, Poker, Rummy or Nap”***

2.7 Section 12 of West Bengal Gambling and Prize Competitions Act, 1957 excludes game of skill from the ambit of gambling and betting.

“Nothing in this chapter shall apply to any game of mere skill wherever played: Provided that when such game is played in a public market, fair, carnival or street or in any place where the public may have access, a permit from the Commissioner of Police, in Calcutta or the District Magistrate or the Sub-divisional Magistrate elsewhere, shall be obtained first, by the organizer thereof, or payment of such fee as may be prescribed. Any person contravening the provisions of this section shall be punishable.”

The applicant also articulates the fact that betting and gambling are always used as a phrase in any legal framework in India and is inextricably linked with each other.

2.8 The applicant places its reliance on the following judgments of the Hon’ble Supreme Court where betting and gambling are specifically excluded for games like Bridge which played for money or money’s worth:

- *State of Andhra Pradesh vs K. Satyanarayana AIR 1968 SC 825 (Para 12)*

- *Dr. K.R. Lakshmanan v. State of T.N., (1996) 2 SCC 226 (Para 19)*

The applicant also highlights judgment of Bombay High Court in the matter of Jaywant Balkrishna Sail and Ors. Vs State of Maharashtra & Ors. (Judgment dated 13.06.2017) (Paras 5 & 21) to sustain its claim to keep out game of bridge outside the purview of betting and gambling.

2.9 The applicant advocates the idea of preponderance test as per law to ascertain what dominates or preponderates - skill or chance. Games of chance are those where the winner is predominantly determined by luck/chance; a player is unable to influence such result by his mental or physical skill. The person indulging in a game of chance wins or loses by sheer luck and skill has no role to play. It is such games of chance played for money that fall under the category of “betting” and “gambling”. On the other hand, the result of a game of skill is influenced by the expertise, knowledge, and training of the player.

2.8 The applicant submits that in the matter of ***Junglee Games India Pvt. Ltd. Vs State Of Tamil Nadu & Ors. AIR 2021 Mad 252***, Justice Sanjib Banerjee, then Chief Justice of Madras High Court observed the jurisprudence laid down by the Supreme Court, that ‘**betting**’ and ‘**gambling**’ have become *nomen juris*, i.e., a well-understood legal definition, which has been interpreted and defined by Courts to apply only to “*Games of Chance*”, whereas, “*Games of Skill*” such as Bridge played for money or money’s worth have been held to not fall under ‘betting’ and ‘gambling’. While passing this Judgment, the Division Bench of the Madras High Court placed reliance upon the following judgments of various Courts including the Hon’ble Supreme Court:

- i. State of Bombay v R.M.D. Chamarbaugwala., 1957 SCR 874 (*paragraph 17*)
- ii. R.M.D. Chamarbaugwala and Anr. v Union of India and Anr., 1957 SCR 930 (*paragraphs 5, 23*)
- iii. Dr. K.R. Lakshmanan v State of Tamil Nadu & Anr., (1996) 2 SCC 226 (*paragraph 33*)

2.9 The applicant discusses its viewpoint regarding betting, gambling and lottery as those were featured in entry no 6 of schedule III of the GST Act prior to the GST amendment (30 of 2023) and actionable claims sans betting, gambling and lottery were considered as neither supply of goods nor service in GST. The activities of the applicant of organizing physical/offline tournament remained outside the domain of GST. After the amendment of entry no 6 of Schedule III, it is crucial of the applicant to throw light on other features under “specified actionable claims” to sustain their position in respect of bridge.

2.10 The applicant contends that a plain and simple reading of sub-section 102A of section 2 of the GST Act, 2017, which defines 'specified actionable claim' shows that offline playing games like bridge would not be fall under this category of 'online gaming'.

2.11 The applicant draws attention to other similar changes inserted vide Notification No. 51/2023 Central Tax dated 29.09.2023 in rule 31B and 31C where clarifications have been cited for value of supply in case of online gaming including online money gaming and value of supply of actionable claims in case of casino. The applicant thus contends that notification itself gives no room to the application of physical /offline game of bridge played for money. As evident from the above, even under the amended provisions of the GST Act, organizing tournament or games for physical/offline game of bridge, participating therein or winnings have not in a manner been included in the definition of "supply" or "actionable claim" as contemplated under the amended GST Act and therefore such activities are not chargeable to GST.

2.12 At present, organizers of the bridge are required to discharge GST liability at the rate of 18% only on service fee that is charged by organizers to the participating players. Further a new entry 227A was inserted vide Notification No. 11/2023 Central Tax (Rate) dated 29.09.2023 in schedule IV of the Principal Rate Notification 1/2017 CT(R) dated 28.06.2017 whereby rate of GST on specified actionable claims as defined in sub-section 102A of section 2 of the GST Act,2017 was fixed at the rate of 28%.

2.13 It is however, evident from a bare perusal of the GST Act and rule made there under including amendments that offline or physical game of bridge which is indeed a game of skill would continue to remain outside the periphery of GST in terms of exclusion provided under sub section 2 of section 7 read with entry 6 of the Schedule III of the GST Act.

3. Observations & Findings of the Authority

3.1 We have gone through the records of the issue as well as submission made by the authorized advocates of the applicant during the course of personal hearing. The applicant is planning to organize bridge tournament in the State of West Bengal. The issue involves in the instant case is to determine the taxability under the GST Act in respect of physical/offline game of bridge when played for money/prize. The contention of the applicant on this issue may be summarized as under:

- In terms of clause (a) of sub-section (2) of section 7 of the GST Act, activities or

transactions specified in Schedule III shall be treated neither as a supply of goods nor a supply of services.

- Para 6 of Schedule III has been amended by the Central Goods and Services Tax (Amendment) Act, 2023 substituting the expression 'specified actionable claims' in place of 'lottery, betting and gambling' w.e.f. 01.10.2023.
- The expression 'specified actionable claim' as defined in clause (102A) of section 2 of the GST Act covers betting, casinos, gambling, horse racing, lottery or online money gaming.
- Playing bridge in a physical/offline mode doesn't fall under casinos, horse racing, lottery and online money gaming.
- Further, 'betting' and 'gambling' have a well-understood legal definition, which has been interpreted and defined by Courts to apply only to "Games of Chance".
- Bridge is a card game which is a game of skill. The result of the game is influenced by the expertise, knowledge, and training of the player and therefore it cannot be regarded as a game chance.
- Therefore, when bridge is played for money in a physical/offline mode, it does not get covered by the definition of 'specified actionable claim' and would continue to remain outside the periphery of GST.

3.2 As per sub-section (2) of section 97 of the GST Act, the question on which the advance ruling is sought under this Act, shall be in respect of, —

- (a) classification of any goods or services or both;
- (b) applicability of a notification issued under the provisions of this Act;
- (c) determination of time and value of supply of goods or services or both;
- (d) admissibility of input tax credit of tax paid or deemed to have been paid;
- (e) determination of the liability to pay tax on any goods or services or both;
- (f) whether applicant is required to be registered;
- (g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

3.3 We find that the applicant, in the instant application in FORM GST ARA-01, has specified the issue under the category 'determination of the liability to pay tax on any goods or services or both' stating that "ruling clarifying that no GST is payable on contributions/ winning or organization of physical/ offline game/ tournaments of 'bridge' when played for money". According to the applicant, playing bridge for money in a physical/offline mode

does not get covered by the definition of 'specified actionable claim' and therefore tax under the GST Act would not be levied on such activities.

3.4 The expression 'specified actionable claim' is defined under clause (102A) of section 2 of the GST Act which reads as under:

"specified actionable claim" means the actionable claim involved in or by way of—

- (i) *betting;*
- (ii) *casinos;*
- (iii) *gambling;*
- (iv) *horse racing;*
- (v) *lottery; or*
- (vi) *online money gaming*

3.5 In terms of clause (1) of section 2 of the GST Act, "actionable claim" shall have the same meaning as assigned to it in section 3 of the Transfer of Property Act, 1882 (4 of 1882). Relevant portion of the definition of 'actionable claim' under section 3 of the Transfer of Property Act, 1882 is reproduced below:

"actionable claim" means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the civil courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent;

3.6 It thus appears that actionable claim is a claim to unsecured debt or a claim to beneficial interest in movable property not in possession of the claimant. The applicant has submitted that contract bridge or simply bridge is a trick taking card game using a standard 52 card deck. In its basic format, it is played by four players in two competing partnerships with partners sitting opposite to each other around a table. The game consists of a number of deals each progressing through four phases. The cards are dealt with the players then the players call or bid in an auction seeking to take the contract specifying how many tricks the partnership receiving the contract needs to take to receive points for the deal. During the auction, partners use their bids to exchange information about their hands including

overall strength and distribution of the suits. No other means of conveying or implying any information is permitted.

3.7 We like to reiterate that the applicant, in regard to the game of bridge played for money, has submitted as follows:

- ✓ Matches during the tournaments may involve the players investing money or money's worth in each game.
- ✓ Tournament organizers do not lien over this money or money's worth contributed by players. Contribution of money deposited in a common pool and an independent person sponsors prize money.
- ✓ The winning team would advance to the next level gradually till final winning team is declared. In a recognized tournament, players gather points based on their performance which smooths their journey towards the selection in national arena for representing India.

3.8 In the case of State of Andhra Pradesh v. K. Satyanarayana & Ors. 1968 AIR 825, the Hon'ble Supreme Court tested the game of Rummy on the principle of skill versus chance and held that "The game of Rummy is not a game entirely of chance like the 'three-card' game mentioned in the Madras case to which we were referred. The 'three card' game which goes under different names such as 'flush', 'brag' etc. is a game of pure chance. Rummy, on the other hand, requires certain amount of skill because the fall of the cards has to be memorised and the building up of Rummy requires considerable skill in holding and discarding cards. We cannot, therefore, say that the game of Rummy is a game of entire chance. It is mainly and preponderantly a game of skill. The chance in Rummy is of the same character as the chance in a deal at a game of bridge."

3.9 In Gameskraft Technologies (P.) Ltd vs Directorate General of Goods Services Tax Intelligence [2023] 150 taxmann.com 252 (Karnataka), the issue before the Hon'ble High Court of Karnataka was whether offline/online games such as Rummy which are mainly/preponderantly/substantially based on skill and not on chance, whether played with/without stakes tantamount to 'gambling or betting' as contemplated in Entry 6 of Schedule III of the Goods and Services Act, 2017.

3.10 In the above-referred case, the contention of the petitioner inter alia is found to be as under:

- The petitioner has no role/ influence insofar as the playing of the game is

concerned. The users/players choose the games based on the amount they want to stake to match their skills against other players who want to play for a similar amount. The petitioner merely hosts the game allowing the players to use its platform for participating in the game of rummy and retains a certain percentage of money as 'platform fee' from the deposit amount made by each player.

- During the course of the game, balance amount i.e., amount deposited by the players reduced by the amount retained by the petitioner, is held by the petitioner in a designated account and on this amount, the petitioner has no lien or right. The money is transferred back to the winner at the end of the game.
- It is well settled that "games of skill" played with monetary stakes does not partake the character of betting and it still remains within the realm of 'games of skill' only. The term 'betting and gambling' cannot be artificially bifurcated by the Respondents to carve out an exception by stating that 'games of skill' played with monetary stakes can also partake the character of betting and hence, be taxable at the rate of 28%.
- 'Actionable claim' if any is between the players, which is also not taxable under GST laws, [as per Entry No.6 of Schedule III of CGST Act] since actionable claims are excluded from the ambit of GST (except for lottery, betting and gambling; exceptions which are of no relevance since the games facilitated by the Petitioner qualify as 'games of skill' as has been confirmed by this Hon'ble Court).
- The petitioner is an online intermediary who only provides services of facilitating skill-based game plays between the players and contractual terms of service with the player(s), would show that the petitioner was not supplying any "actionable claim": "Actionable claim" means a claim to an unsecured debt or to a beneficial interest in a moveable property. An actionable claim is a "chose in action" or a right to claim/enforce a debt. In colloquial terms, it can be described as an "I owe you". Since the Petitioner Company does not have any right or claim over the prize pool and merely holds it in a fiduciary capacity only to facilitate the game plays, the very basic criteria for qualifying as an "actionable claim" is not met qua the Petitioner - Company and thus no question of 'supply' of actionable claim by the Petitioner-Company arises.
- "Betting and gambling" under the CGST Act is to be ascribed the same meaning as that under the Constitution of India. Betting and Gambling" under Entry 34 List II has attained constitutional significance. "Betting and Gambling" only relates to games of chance and its scope cannot be extended to include games preponderantly and substantially of skill. "Betting and Gambling" has also been read conjunctively to

mean betting in gambling. Thus, for any game to fall within the import of Entry 34, there has to be betting in gambling.

3.11 The respondent, on the other hand, has contended inter alia as follows:

- The players of online rummy on the petitioner's platform are forecasting i.e., predicting in anticipation the unknown and uncertain future event of the player winning the game of rummy, and are placing stakes on that unknown and uncertain future event for each player on the table. In fact, unless the stakes are placed, a player cannot reach the table. Therefore, each player of rummy on the Petitioner's platform forecasts i.e., predicts in anticipation the unknown and uncertain future event of the player winning the game of rummy, and places stakes on it. This is nothing but betting and gambling according to the Constitution Bench of Hon'ble Supreme Court in RMDC- 1's case supra.
- The act of placing stakes on forecasting the outcome i.e., predicting in anticipation of a future event which is uncertain and unknown is nothing but betting and gambling as the same is nothing but a shot at the hidden target.(RMDC-1 Paras 20 and 21).
- The only question that arises for consideration, is whether the players of online rummy on the platform of the Petitioner are betting and gambling by placing stakes on the outcome of games of rummy. If the answer to this question is in the 'affirmative' and Respondents most humbly submit, it is so, then according to the Hon'ble Supreme Court in Skill Lotto Solutions Pvt Ltd v. Union of India - 2020 SCC Online SC 990, such a transaction would be a supply of actionable claims in the form of betting and gambling. Consequently, the scheme of CGST r/w Rule 31A will govern the transaction to be taxed at 28% on 100% of the bet value.

3.12 The Hon'ble Karnataka High Court held as follows:

- "The meaning of the terms "lottery, betting and gambling" as contemplated in Entry 6 of Schedule III of the CGST Act should be construed nomen juris in the light of the decisions of the Hon'ble Supreme Court, this Court and other High Courts supra which do not include games of skill."
- "Taxation of games of skill is outside the scope of the term "supply" in view of Section 7(2) of the CGST Act, 2017 read with Schedule III of the Act."
- "There is no difference between offline/physical Rummy and Online/Electronic/Digital Rummy and both are substantially and preponderantly games of skill and not of chance;"

- “The expressions, ‘Betting’ and ‘Gambling’ having become nomen juris, the same are applicable for the purpose of GST also and consequently, the said words, ‘Betting’ and ‘Gambling’ contained in Entry 6 of Schedule III to the CGST Act are not applicable to Online/Electronic/Digital Rummy, whether played with stakes or without stakes as well as to any other Online/Electronic/Digital games which are also substantially and preponderantly games of skill”.

However, the Hon’ble Supreme Court of India, vide order dated 06.09.2023 has stayed the aforesaid order of the Hon’ble Karnataka High Court.

3.13 Thus we find that the issue whether offline/online games such as Rummy which are played with/without stakes tantamount to ‘gambling or betting’ as contemplated in Entry 6 of Schedule III of the Goods and Services Act, 2017 is pending before the Hon’ble Supreme Court.

3.14 However, the above-referred case deals with the provisions of the GST Act prior to the amendment made in entry 6 of Schedule III. The expression ‘specified actionable claim’ has been inserted in the aforesaid entry on and from 01.10.2023 vide the Central Goods and Services Tax (Amendment) Act, 2023. The said amendment act has also introduced inter alia definition of ‘online gaming’, ‘online money gaming’, and inserted a new proviso to the definition of ‘supplier’ given in clause (105) of section 2 of the GST Act. To analyze the issue involved in the instant case, we find it apposite to reproduce the definition of ‘supplier’ as under:

"supplier" in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied:

Provided that a person who organises or arranges, directly or indirectly, supply of specified actionable claims, including a person who owns, operates or manages digital or electronic platform for such supply, shall be deemed to be a supplier of such actionable claims, whether such actionable claims are supplied by him or through him and whether consideration in money or money's worth, including virtual digital assets, for supply of such actionable claims is paid or conveyed to him or through him or placed at his disposal in any manner, and all the provisions of this Act shall apply to such supplier of specified actionable claims, as if he is the supplier liable to pay the tax in relation to the supply of such actionable claims;

3.15 It appears that the proviso to section 2(105) specifically deals with the supplier who organizes or arranges, directly or indirectly, supply of specified actionable claims. The issue in the present case is also to determine whether organizing games/tournaments of bridge (when played for money) qualifies as supply of 'specified actionable claims'. However, the aforesaid proviso specifically mentions that consideration in money or money's worth has to be paid or conveyed to the supplier or through the supplier or placed at the disposal of the supplier. In Gameskraft Technologies (P.) Ltd supra, the petitioner retains a certain percentage of money from the amount which is placed by the players as stakes and the balance amount is held by him in a designated account wherefrom the money is transferred back to the winner at the end of the game. However, in the instant case, the applicant neither provides any online platform for participating in the game of bridge nor retains any amount of money as 'platform fee' from the deposit amount made by each player. Further, the applicant being the organizer of the bridge tournament does not lien over the money or money's worth contributed by players. The applicant has submitted that the contribution of money is deposited in a common pool and an independent person sponsors prize money.

3.16 Undisputedly organizing a tournament and allow the players to take part in the tournament against participation fee would qualify to be a supply of services by the organizer to the participants. However, even it is held that playing of bridge against money qualifies to be 'specified actionable claim', the applicant cannot be held to be engaged in supply of specified actionable claim by organizing the tournament of bridge where contribution of money deposited in a common pool and the applicant does not lien over this money or money's worth contributed by players.

In view of the above discussions, we rule as under:

RULING

The applicant cannot be held to be a supplier of 'specified actionable claim' and therefore shall not be liable to pay tax by way of organizing a tournament of physical /offline games of contract bridge when played for money.

(Dr.TANISHA DUTTA)
Member

West Bengal Authority for Advance Ruling

(JOYJIT BANIK)
Member

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