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Dream11's 'online fantasy games' is a game of skill and not 'betting'

The Hon'ble HC, Rajasthan in the matter of **Ravindra Singh Chaudhary vs. Union of India [D. B. Civil Writ Petition No. 20779/2019 dated October 16, 2020]** held that Dream11's online fantasy sports games are not betting/gambling.

Facts:

Ravindra Singh Chaudhary ("**the Petitioner**") filed a Public Interest Litigation alleging that Dream 11 Fantasy Private Limited ("**Respondent**") provides a platform to its users for playing sports and games on a virtual platform, such as fantasy cricket, football, kabaddi, basketball and hockey.

Further, Dream-11, allow its users to register and play various games, to form their own teams made up of real players for cricket, football, kabaddi and NBA with maximum budget of 100 crores.

Furthermore, users initially have to pay an amount of ₹ 100/-, out of which 20% is retained by Respondent, whereas 80% of the remaining balance is transferred towards the winning amount for the game. It is alleged that the game being played on the aforesaid platform is nothing else but "betting" on the cricket team. It is further alleged that online fantasy sports games are games of chance, thereby constituting illegal act of gambling/ betting.

Issues:

- Whether online fantasy sports games offered by Dream11 amounts to gambling/betting.
- Classification of the online fantasy sports games offered by Dream11.

Held:

The Hon'ble HC, Rajasthan in **D. B. Civil Writ Petition No. 20779/2019 dated October 16, 2020** held as under:

- The result of the fantasy games offered by the Respondent is not determined merely by chance or accident, but the skill of the participant determine the result of the game having predominant influence on the outcome of the fantasy game. Whether any particular team in the real world match wins or loses, is also immaterial as the selection of virtual team by the participant involves choosing players from both the teams playing in the real world. It is clear that offering the fantasy games of Dream-11 involving substantial skills is a business activity and not wagering having protection granted by Article 19(1)(g) of the Constitution. The SLP filed against **Varun Gumber v. Union Territory of Chandigarh [2017 Cri LJ 3827]** was dismissed by the Hon'ble

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Supreme Court vide its order dated September 15, 2017. The Union of India has neither filed SLP against the said judgment of the Punjab & Haryana High Court nor filed any review of the order dated September 15, 2017 and have thus, accepted the findings contained therein. Therefore, the issue whether the fantasy games played on the platform of respondent are gambling/betting activities or not was closed and decided in favour of the respondent.

- Accepted the contention of the Respondent that the online fantasy games are not operating in total regulatory vacuum and on affidavit it has been submitted that they are subject to self-regulation by the industry body known as "Federation of Indian Fantasy Sports" ("**FIFS**") founded in 2017, of which Respondent is a member. The FIFS is a Section 8 Company incorporated under the Companies Act, 2013 for the purpose of self-regulation and promotion of best practices in online fantasy sports services and contests offered in India, which has issued a Charter for Online Fantasy Sports Platforms. The rules and regulations contained in the said Charter are to ensure that the games run by its members are 'games of skill' and are not in the form of any gambling/betting. The FIFS has also framed Ombudsman Rules, which mandate the Ombudsman to be a retired Judge of the Hon'ble Supreme Court or of a State High Court, to ensure that any disputes or grievances of the members of public who participate in the online fantasy games are redressed promptly and in a fair and transparent manner.
- The fantasy sports industry is regarded as the next sunshine industry of India which is growing exponentially and already contributing thousands of crores to the Government exchequer. They also contain safeguards to ensure that persons below 18 years of age are not allowed to participate and that the public is not being misled or cheated and that there is transparency in financial matters, prizes etc. The FIFS has also issued Self-Regulation Guidelines on Advertising Online Gaming by adopting IAMA Guidelines to ensure that the advertisements are fair, transparent and not misleading. The guidelines prohibit advertisements by members suggesting any gambling/betting activities and there is a penalty clause as well for violation.
- The Court also accepted the contention of the Respondent that the fantasy sports formats are globally recognized as a great tool for fan engagement, as they provide a platform to sports lovers to engage with their favorite sports along with their friends and family. This legitimate business activity having protection under Article 19(1)(g) of the Constitution contributes to Government Revenue not only vide GST and income

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tax payments, but also by contributing in increased viewership and higher sports fan engagement, thereby simultaneously promoting even the real world games.

- Since the result of fantasy game depends on skill of participant and not sheer chance, and winning or losing of virtual team created by the participant is also independent of outcome of the game or event in the real world, we hold that the format of online fantasy game offered by the Respondent is a game of mere skill and their business has protection under Article 19(1)(g) of the Constitution of India.
- Left the issue of classification of online fantasy sports for the GST authorities to consider in accordance with law.

Our comment:

Since online fantasy sports like Dream11 do not fall under the betting, platforms, they are not liable to pay GST @ 28% under Serial No. 229 of *Notification No. 1/2017- Integrated Tax (Rate) dated June 28, 2017* (Services Rate Notification).

Further, recently the Hon'ble AAAR, Maharashtra in ***Re: Vijay Baburao Shirke [Order No. MAH/AAAR/RS-SK/23/2020-21 dated June 4, 2020]*** set aside AAR order to hold that receipt of prize money from horse-race clubs (in the event horse wins the race) would not be subject to GST as no service has been provided by the horse owners to the racing clubs for the prize money/ stakes received from such clubs, as it is not in dispute that not all horse owners, who agree to provide their horses to such race organising clubs, get this consideration in the form of the said prize money/ stake from such clubs. Only those horse owners receive these considerations whose horses win the races organized by such clubs. Thus, there is no direct nexus between the activities carried out by the horse owners, viz. by providing thoroughbred horses to race clubs for organising horse race events, and the prize money received by such horse owners.

The above judgment also has persuasive value in similar kind of situations wherein prize money won at various competitions including played through apps like Cricketbuzz apps, Dream11, MPL etc. as no services are provided by the player to the owner of the app for receiving consideration in the form of prize money by the player. Further, only those players receive the prize money who wins the game. Thus, there is no direct link between the supply and consideration therefore, GST may not be charged on the prize money.

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