

GST is leviable on Lottery and gambling

The Hon'ble Supreme Court in ***Skill Lotto Solutions Pvt. Ltd. v. Union of India & Ors. [W.P. (C) No. 961 of 2018 dated December 3, 2020]*** held that lottery and gambling under GST's ambit is legally valid, upholding validity of tax imposition on lottery tickets and the prize money.

Facts:

Skill Lotto Solutions Pvt. Ltd. ("**Petitioner**"), an authorised agent for sale and distribution of lotteries organised by State of Punjab filed the writ petition impugning the definition of goods under Section 2(52) of the Central Goods and Services Tax Act, 2017 ("**CGST Act**") and consequential notifications to the extent it levies tax on lotteries.

The Petitioner seeks declaration that the levy of tax on lottery is discriminatory and violative of Article 14, 19(1)(g), 301 and 304 of the Constitution of India.

Petitioner's contentions:

- Lottery is not a goods and under CGST Act, GST is only levied on goods, hence levy of GST on lottery is ultra vires the Constitution of India. Further, Article 366(12) of the Constitution of India defines goods to include all materials, commodities and articles, thereby excluding actionable claim. Therefore, the definition of goods under Section 2(52) of the CGST Act is unconstitutional.
- Further, submitted that the Constitutional Bench of the Hon'ble Supreme Court in ***Sunrise Associates v. Government of NCT of Delhi and Ors. [2006] 5 SCC 603*** held that lottery is not a goods and therefore treating lottery as goods is contrary to the judgement of the Constitutional Bench in ***Sunrise Associates***. Furthermore, argued that observation made in ***Sunrise Associates*** that lotteries are actionable claims are only *obiter dicta* and cannot be treated as ratio of the judgement.
- The Parliament dose not enjoy an absolute power to make an inclusive definition of something to be taxed which is not taxable otherwise.
- GST is being levied on the face value of the lottery tickets which is impermissible since the face value of the tickets also include prize money to be reimbursed to the winners of the lottery tickets.
- Entry 6 of the Schedule III of the CGST Act states that actionable claim other than lottery, betting and gambling are to be treated as neither supply of goods nor

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services, this amounts to discrimination as it is taxing only lottery, betting and gambling whereas all other actionable claims have been left out.

Issues:

- Whether the writ petition is not maintainable under Article 32 of the Constitution of India since the writ petition relates to lottery, which is *res extra commercium* and the Petitioner cannot claim protection under Article 19(1)(g) of the Constitution of India?
- Whether inclusion of actionable claim in the definition of goods as given in Section 2(52) of the CGST Act is contrary to the legal meaning of goods and unconstitutional?
- Whether observation that lotteries are actionable claims, which are only *obiter dicta* in the case of ***Sunrise Associates (supra)***?
- Whether exclusion of lottery, betting and gambling from Entry 6 of the Schedule III of the CGST Act is hostile discrimination and violative of Article 14 of the Constitution of India?
- Whether determining the face value of the lottery tickets for levy of GST, prize money is to be excluded for the purpose of levy of GST?

Held:

The Hon'ble Supreme Court in ***W.P. (C) No. 961 of 2018 dated December 3, 2020*** held as under:

- The writ petition is challenging CGST Act insofar as it imposes tax on lottery on the ground that it violates Article 14 of the Constitution of India for being discriminatory. Therefore, the writ can be entertained under Article 32 of the Constitution of India. Further, the Court has previously entertained writ petitions regarding the matter of lottery under Article 32 of the Constitution of India.
- Stated that the Hon'ble Supreme Court in ***Sunrise Associates (supra)*** held that lottery is actionable claim. When Section 2(52) of the CGST Act expanded the definition of goods by including actionable claim, the said definition is in line with the Constitutional Bench pronouncement in ***Sunrise Associates (supra)*** and no

exceptions can be taken to the definition of the goods as occurring in Section 2(52) of the CGST Act.

- The definition of goods under Section 2(52) of the CGST Act does not conflict with Article 366(12) of the Constitution of India as the definition of goods under Article 366(12) is an inclusive definition. Further, the Parliament by Constitution (One Hundred and First Amendment) Act, 2016 inserted Article 246A, a special provision w.r.t. GST, fully empowering the Parliament to make laws w.r.t. GST.
- Article 246A of the Constitution of India begins with non-obstante clause- “*Notwithstanding anything contained in Article 246 and 254..*”, which confers wide power to make laws.
- Relying on the case of ***Sunrise Associates (supra)*** held that actionable claims are includable in the definition of goods and rejected the argument of the Petitioner that actionable claims have been artificially included in the definition of goods. Further, said that Constitutional Bench of Hon’ble Supreme Court in ***Sunrise Associates*** has laid down that lottery is an actionable claim as proposition of law. The observation cannot be said to be *obiter dicta*.
- Observed that lottery, betting and gambling are well known concepts and have been in practice in this country since before independence and were regulated and taxed by different legislations. When CGST Act defines the goods to include actionable claims and included only three categories of actionable claims, i.e., lottery, betting and gambling for purposes of levy of GST, it cannot be said that there was no rationale for including these three actionable claims for tax purposes. Regulation including taxation in one or other form on the activities namely lottery, betting and gambling has been in existence since last several decades. When the parliament has included above three for purpose of imposing GST and not taxed other actionable claims, it cannot be said that there is no rationale or reason for taxing above three and leaving others.
- Referred to Section 15 of the CGST Act read with Rule 31A of the CGST Rules for determining the value of the lottery. Held that when there are specific statutory provisions enumerating what should be included in the value of the supply and what shall not be included in the value of the supply, the Court cannot accept the submission of the Petitioner that prize money is to be abated for determining the value of taxable supply. What is the value of taxable supply is subject to the

statutory provision which clearly regulates, which provision has to be given its full effect and something which is not required to be excluded in the value of taxable supply cannot be added by judicial interpretation.

Relevant provisions:

Section 2(52) of the CGST Act:

“(52) “goods” means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;”

Article 366(12) of the Constitution of India:

“(12) goods includes all materials, commodities, and articles”

Article 246A of the Constitution of India:

“246A – (1) Notwithstanding anything contained in articles 246 and 254, Parliament, and, subject to clause (2), the Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State.

(2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

Explanation.—The provisions of this article, shall, in respect of goods and services tax referred to in clause (5) of article 279A, take effect from the date recommended by the Goods and Services Tax Council.”

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