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Lottery, Gambling, Betting Taxable under GST Act: SC

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Why in News

Recently, the **Supreme Court** (SC) has held that **lottery, gambling and betting** are **taxable** under the **Goods and Services Tax (GST) Act, 2017**.

Key Points

- **Background:**
 - The SC passed the order in a batch of pleas filed by various **lottery dealers** who argued that the **Central government** had **wrongfully classified lottery as goods**.
 - **Challenging Section 2 (52) of the 2017 Act** and notifications levying tax on lottery, petitioners contended that the law was **violative of the fundamental rights** and contrary to the SC judgment (*Sunrise Associates Vs. Government of NCT of Delhi 2006*) that held that lotteries were merely actionable claims and cannot be defined as 'goods'.
- **Judgement:**
 - Lottery, betting and gambling are **actionable claims** and **come within the definition of goods** under **Section 2 (52) of the Central Goods and Services Tax Act, 2017**.
 - The levy of GST on lotteries **does not amount to hostile discrimination**.
As per **Schedule III of CGST Act 2017**, actionable claims other than lottery, betting and gambling are neither treated as supply of goods nor a supply of services.
 - The **Parliament** has an **absolute power** to go for an **inclusive definition** of the term '**goods**' to include **actionable claims** like lottery, gambling and betting. **Article 246A** of the Constitution fully empowers the Parliament to make laws with respect to goods and services tax and expansive definition of goods given in Section 2 (52) cannot be said to be not in accord with the constitutional provisions.

Actionable Claim

- A **claim to any debt other than** a debt secured by mortgage of immovable property or hypothecation or pledge of movable property.
Hypothecation occurs when an asset is pledged as collateral to secure a loan.
- **Only activities relating to lottery, betting and gambling are subject to GST** and except these three, no actionable claim is covered under GST by virtue of Schedule III.
- Some examples of actionable claims:
 - Insurance Policy which is not secured by way of mortgage or hypothecation or pledge.
 - Claim for arrear of rent is actionable claim since it is not secured on anything.
 - Right to claim provident fund.
 - Claim for unsecured debt.
 - Claim in profit by a partner in a firm.

Central Laws Related to Lottery, Gambling and Betting

- **The Lotteries Regulation Act, 1998:**
Lottery is considered as **legal** in India. Lottery should be organized by the state government and the place of Draw should be in that particular state.
- **Indian Penal Code, 1860:**
 - The code has provisions for punishing anyone who to the annoyance of others does any obscene act in a public place or sings, recites or utters any obscene song, ballad or words, in or near any public place.
 - These provisions of the IPC may be attracted if any obscene matter is used for the purpose of advertising betting and gambling activities.
- **Prize Competitions Act, 1955:**
It defines Prize in Competitions.
- **Foreign Exchange Management Act, 1999:**
Remittance of the income generated from lottery winning, racing/riding is **prohibited** under this Act.
- **Information Technology Rules, 2011:**
Under these rules, any internet service provider, network service provider or any search engine will **not host any such content** which directly or indirectly **support Gambling.**
- **Income Tax Act, 1961:**
Under this Act, current taxation policy in India covers all types of Gambling industry directly and indirectly. Thus, it can be said that all regulated and legalized Gambling is supported in the **Gross Domestic Product (GDP)** of India.

Source:TH