Supreme Court Backs 28% GST and State Bans on Online Gaming

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Online Gaming Latest News

- Recently, the Supreme Court delivered two landmark rulings with major consequences for India's online real-money gaming industry. A bench of Justices J.B. Pardiwala and R. Mahadevan:
  - Upheld the constitutional validity of the Centre's retrospective 28% GST levy on online gaming companies.
  - Affirmed the validity of State laws banning real-money gaming platforms.
- These rulings come on top of an already difficult period for the industry, which has been reeling since the **Promotion and Regulation of Online Gaming Act, 2025** effectively prohibited real-money gaming in India.

Background: The Two Sets of Cases

- The two judgments arose from separate but related disputes.

Case 1: State Bans on Online Betting

- In 2021, Tamil Nadu and Karnataka enacted laws criminalising online betting, including penalties and imprisonment. Both the Madras and Karnataka High Courts struck down these laws.
- The state governments then appealed to the Supreme Court, arguing that:
    - betting and gambling are State subjects under **Entry 34 of List II** (State List) of the Seventh Schedule of the Constitution, and
    - that the restrictions were necessary to address addiction and social harm.

Case 2: The GST Dispute

- In August 2023, the GST Council clarified that all **online games involving bets or wagers** — whether skill-based or chance-based — would **attract 28% GST** on the full value of money staked by players.
- The Directorate General of GST Intelligence (DGGI) then issued tax demand notices — not just for the period after October 1, 2023 (when the amended rules came into force), but also retrospectively for earlier periods.
- The total tax demands ran into several lakh crore rupees.
- Gaming companies challenged this before the Bombay and Karnataka High Courts, which initially ruled in their favour. The Union government then appealed to the Supreme Court.

Why the Court Upheld the 28% GST

- The industry made two main arguments.
- First, GST should be levied only on the **platform's commission** — the fee it retains — not on the entire pool of money staked by players.
- Second, online games of skill deserve to be treated differently from gambling, and taxing them at 28% on the full stake was commercially unviable.

What the Court Said

- The Court rejected both arguments. It drew a clear distinction between a skill-based competition and an online gaming platform involving money stakes.
- In a genuine skill contest, a player pays an entry fee to compete.
- But online gaming platforms are structured around wagering — they encourage repeated participation through discounts and bonuses, making the activity fundamentally different.
- More importantly, the Court held that once money is staked on an uncertain outcome, the distinction between skill and chance becomes irrelevant for GST purposes.
- The Central GST Act already expressly includes actionable claims relating to lottery, betting, and gambling in the tax net.
- Parliament was therefore competent to levy GST on online gaming involving money stakes.
- On the retrospective nature of the demand, the Court held that the 2023 amendments did not create a fresh tax — they merely clarified and standardised what the law already said. That is why they could operate retrospectively.

Why the Court Upheld State Bans

- The Court's reasoning on State bans rested on a foundational legal principle.
- It held that betting and gambling are **res extra commercium** — a Latin phrase meaning activities that fall outside legitimate commerce.
- Because they sit outside normal trade and business, they do not enjoy the constitutional protections available to commercial activities.
- The Court further held that even if a game is skill-based, the introduction of money stakes imparts the character of wagering to it. Once it becomes a wagering activity, States have full legislative competence to regulate or ban it.
- On fantasy sports — a major segment of the online gaming industry that had long claimed protection as a "game of skill" — the Court was unpersuaded. It noted that even the most sophisticated predictive models cannot forecast sporting outcomes with certainty.
- The Court also made a broader sociological observation: the widespread availability of smartphones and digital payment systems has effectively turned every mobile phone into a virtual gambling house.
- States, it said, can draw legislative support not only from **Entry 34 (betting and gambling)** but also from **Entry 1 (public order)** to justify restrictions.

The Wider Implications: A New Constitutional Question

- The ruling has also created an unexpected complication for the Centre. The Supreme Court clearly held that betting and gambling are State subjects under Entry 34, and upheld State laws regulating them.
- But the Promotion and Regulation of Online Gaming Act, 2025 — a Central law — claims legislative competence **under Entry 52 of the Union List,** which allows Parliament to regulate industries in the public interest.
- There is now a direct tension: if online gaming is a State subject, can Parliament legislate on it under Entry 52?
- The validity of the 2025 Central law is likely to be challenged in court on exactly this ground.
- The outcome will determine whether India's online gaming regulation ultimately rests with the states or the Centre.

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