

**LEVY OF GOODS AND SERVICES TAX ON LOTTERY IS AN
ACTIONABLE CLAIM, PRIZE MONEY IS INCLUDED IN THE
TAXABLE VALUE: SUPREME COURT**

Overview:

The Hon'ble Supreme Court ("SC") in the case of *Skill Lotto solutions P. Ltd V Union of India*¹, ("Skill Lotto solutions") upheld levy of Goods and Services Tax ("GST") on sale and distribution of lotteries.

Facts:

Skill Lotto solutions P. Ltd ("The Petitioner") is an authorized agent, for sale and distribution of lotteries organized by State of Punjab. The petitioner has filed a Writ Petition before the single judge bench of Supreme Court challenging the levy of tax on lottery tickets, on the following grounds:-

- The SC has held in the case of *Sunrise Associates V Govt. of NCT of Delhi.*, [(2006) 5 SCC 603] ("Sunrise Associates") that lottery is not a "good". Since GST is levied on supply of goods, the levy of GST on lottery is ultra vires to the Constitution, and Parliament does not enjoy the powers to tax the same.
- Goods are defined in Article 366(12) of the Constitution of India ("the Constitution") as "all materials, commodities and articles". This definition excludes actionable claims from its purview. However, the definition of goods under section 2(52) of the Central Goods and Services Act, 2017 ("CGST Act") includes actionable claims. Therefore the definition of goods under CGST Act is ultra vires to the Constitution.
- GST is being levied on the face value of lottery tickets which is impermissible because the face value of tickets also include prize money to be reimbursed to the winners.
- There are only three actionable claims which are taxed, namely lottery, betting and gambling, and all the other actionable claims are left out of purview of taxation. Therefore, there is a hostile discrimination in levying the tax on "lottery" resulting in violation of Article 14 of the Constitution.

Findings of the court:

- The Parliament has plenary powers under Article 246A of the Constitution to make laws with respect to goods and services tax. These powers are very wide in nature and have to be construed liberally.

¹ TS-1042-SC-2020-ST

- An inclusive definition is always intended to enlarge the meaning of words or phrases, used in the definition and has to be viewed in an expansive manner. Definition of goods as occurring in Article 366(12) of the Constitution is inclusive in nature and does not specifically exclude actionable claim from its definition.
- It was noted by SC in the case of *Vikas Sales Corporation v Commissioner of Commercial Taxes* [AIR 1996 SC 2082] (“Vikas Sales Corporation”) that actionable claims are different from “goods” to the effect that the former cannot be freely transferred for a value. However, this distinction was overruled by the Supreme Court in the case of *Sunrise Associates* by observing that actionable claims can be assigned for value under section 130 of the Transfer of Property Act, 1882. Therefore, transferability for value cannot be a criterion to distinguish actionable claims from goods.
- The SC categorically observed in the case of *Sunrise Associates* that if a claim to the beneficial interest in a movable property is transferred by way of a sale; such sale shall not be treated as a sale of goods for the purposes of the sales tax laws. Lottery tickets evidence a right to participate in the draw of lots. This right to participate in the lottery guarantees the ticket holder a chance to win the prize. The chance to win the prize amount is only a claim to the beneficial interest. Therefore, any transfer of lottery tickets would only amount to a transfer of the claim of beneficial interest, and such transfer of lottery tickets cannot be taxed as goods, but as actionable claims.
- Moreover, it was noted by the SC in the abovementioned judgment that actionable claims have been specifically excluded from the statutory definitions of “goods” in all the State Sales Tax Laws. The need to exclude actionable claims arose because they were included in such definitions. Therefore, actionable claims are includible in the definition of goods.
- It was thereby held by the SC in the case of *Skill Lotto solutions* that the definition of goods as defined under section 2(52) of the CGST Act is in the line with the definition of goods in the Constitution.
- Since section 15 (1) and 15(5) of the CGST Act read with rule 31A of the CGST Rules do not exclude prize money from the purview of levy of GST, therefore, prize money shall be abated from the levy. What is the value of taxable supply is subject to the statutory provision, which 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.
- Lottery, Betting and Gambling are *res extra commercium* activities (a thing outside the usual scope of commerce). The transaction of lottery tickets cannot be raised to the status of trade,

commerce or intercourse. Hence, there is no hostile discrimination, or violation of Article 14 in taxing only these actionable claims.

Vaish Associates Advocates Comments:

- The judgment has affirmed that with respect to actionable claims, only three aspects namely lottery, betting and gambling would be taxable, and all other claims would be outside the ambit of GST.
- The decision comes as a setback for the businesses indulging in activities related to gambling, as the judgment acknowledges lottery, betting and gambling as a *res extra commercium* activity, thereby affirming legislature's intent to tax the said activities.
- The judgement fails to provide clarity over the rationale of inclusion of prize amount in the taxable amount therefore, leaving it open for interpretation.
- However, the liberty given to challenge notifications levying two different rates of tax on lottery is a welcome step, which shows the intent for a uniform rate of tax.

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