



Agenda for

47th GST Council Meeting

28-29 June 2022

Volume – 4



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Discussion on Agenda Items

Agenda Item 16: Report of the Group of Ministers (GoM) on Casinos, Race Courses and Online Gaming

GST Council in its 42nd meeting held on 5th and 12th October, 2020 recommended that a Group of Ministers (GoM) be constituted to look into the issues related to taxation of Casinos, Race Courses and Online Gaming.

2. Accordingly, as recommended by the GST Council, a Group of Ministers (GoM) on Casinos, Race courses and Online Gaming was constituted vide Office Memorandum dated 24.05.2021 (**Annexure A**) with following Terms of Reference (ToR) :

- a. To examine the issue of valuation of services provided by Casinos, Race courses and online gaming portals and taxability of certain transactions in a casino, with reference to the current legal provisions and orders of Courts on related matters.*
- b. To examine whether any change is required in the legal provisions to adopt any better means of valuation of these services.*
- c. To examine the administration of such valuation provisions if an alternative means of valuation is recommended.*
- d. To examine the impact on other similarly placed services like lottery.*

3. Further, GST Council in its 45th meeting held on the 17th September, 2021, deferred all the contentious issues, including relating to rates, involved in Casinos, Race Courses and online gaming viewing that the said GoM may also examine all such issues.

4. On 10th February 2022, GoM was reconstituted with Chief Minister of Meghalaya as Convener with the same Terms of Reference.

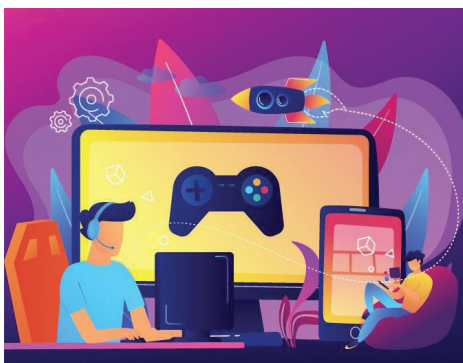
5. The GoM in its meetings on 2nd May, 2022 and 18th May, 2022 held in New Delhi deliberated on all the issues and has now submitted its report, which is enclosed as **Annexure B**. Final recommendations of the GoM are mentioned at para 12 of the enclosed report.

6. Accordingly, the report of the GoM is placed before the Council for consideration and taking a decision as appropriate.



सत्यमेव जयते

Report of Group of Ministers (GoM) on Casinos, Race Courses & Online Gaming



May, 2022

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1. Background:

1.1 Betting and gambling taxes have been subsumed in GST. Entry 62 of State List in the 7th Schedule of the Constitution which empowered the States to levy taxes on betting and gambling has been substituted by another entry by the 101st amendment Act to the Constitution. Subsuming of betting & gambling taxes along with VAT & other State levies and Services tax, as was imposed by Centre on service aspect of these activities, in GST, meant that entire gamut of these activities is subjected to GST.

1.2 Supply of actionable claims by way of both betting and gambling has been declared to be taxable in GST law. Goods have been defined to include actionable claims.

1.3 Accordingly, lottery, betting and gambling activities in casinos, horse racing and online gaming etc. have been subjected to GST. Certain issues have arisen as regards taxability, rate and valuation of these activities under GST. These issues have been widely litigated. Issues related to taxation of lottery have now been settled. Lottery which was earlier taxed at dual rates, depending on whether it was State-run or State-authorized, is now taxed at the single highest rate @ 28% on full face value as recommended by the earlier GoM on lottery. The challenge to levy of GST on lottery at full face value has been set aside by the Hon'ble Supreme Court in the case of Skill Lotto.

1.4 However, disputes remained in other arenas of betting and gambling. The questions raised by different sections of the stakeholders include whether a particular activity or game is an activity of skill or chance and whether it constitutes an actionable claim. If it is an actionable claim, whether it is a taxable actionable claim or outside the scope of GST or whether it is merely a supply of service. Related to these are the questions of their taxability, classification and the rates of GST applicable. The other major bone of contention is whether they should be taxed at full value of bets or wagers or only on the margin which the organizers get to retain after paying out the prizes to the participating players. It has been argued that these activities should be taxed on Gross Gaming Revenue (GGR) or margin instead of imposition of tax on the entire bet value (which is inclusive of Prize Money/pool). These matters have been extensively litigated.

1.5 It is in this background that the GST Council recommended in the 42nd meeting that a new GoM be constituted to look into the issues related to taxation of casinos, horse racing and online gaming.

2. Constitution & Terms of Reference of GoM on Casinos, Race courses and Online Gaming:

2.1 As recommended by the GST Council in its 42nd meeting held on 5th and 12th October, 2020, a Group of Ministers (GoM) on Casinos, Race courses and Online Gaming was constituted vide Office Memorandum dated 24.05.2021 [**Annexure-A**] with following Terms of Reference:

- a. To examine the issue of valuation of services provided by Casinos, Race courses and online gaming portals and taxability of certain transactions in a casino, with reference to the current legal provisions and orders of Courts on related matters.
- b. To examine whether any change is required in the legal provisions to adopt any better means of valuation of these services.
- c. To examine the administration of such valuation provisions if an alternative means of valuation is recommended.
- d. To examine the impact on other similarly placed services like lottery.

2.2 In the 45th meeting of the GST Council, held on the 17th September, 2021, the Council viewed that the said GoM may examine all contentious issues, including around rates, involved in online gaming, horse racing and casinos.

2.3 On 10th February 2022, GoM has been reconstituted [**Annexure-B**] with Chief Minister of Meghalaya as Convener with the same Terms of Reference. The reconstituted membership of the GoM is as follows:

Table 1: Members of reconstituted GoM

Sl. No.	Name	Designation and State	Details
1	Shri Conrad K. Sangma	Chief Minister, Meghalaya	Convener
2	Shri Ajit Pawar	Deputy Chief Minister, Govt. of Maharashtra	Member
3	Smt. Chandrima Bhattacharya	Minister for Finance, Govt. of West Bengal	Member
4	Shri Kanubhai Desai	Minister for Finance, Govt. of Gujarat	Member
5	Shri Mauvin Godinho	Minister for Panchayat Raj, Transport, Animal Husbandry & Veterinary Services, Protocol & Legislative Affairs, Govt. of Goa	Member
6	Dr. Palanivel Thiaga Rajan	Minister for Finance, Govt. of Tamil Nadu	Member
7	Shri Suresh Kumar Khanna	Minister for Finance, Parliamentary Affairs and Medical Education Departments, Govt. of Uttar Pradesh	Member
8	Shri Thanneeru Harish Rao	Minister for Finance, Telangana	Member

3. Issues before GoM:

3.1 The GoM observed that the following issues are referred to the GoM for consideration:

- i. Valuation, that is, whether the tax should be levied on entire amount charged for betting/gambling/online gaming or only on the commission or earnings of the service provider or platform fee.
- ii. Rate of tax that should apply on such activities.
- iii. Impact of adopting different valuation methods for taxing casinos, horse racing and online gaming, on other activities, particularly, lottery.
- iv. Legal provisions, that is, whether the recommendations of GoM satisfy the legal framework or not?

4. Statutory and legal framework:

4.1 **Relevant Acts:** The relevant Acts are the Central Goods & Services Act, 2017, Integrated Goods and Services Tax Act, 2017 and the corresponding State/UT GST Acts.

4.2 Statutory provisions relating to Actionable claim:

4.2.1 Actionable claims have been treated as goods in GST. Goods have been defined to include actionable claims:

“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. [Section 2(52) of the CGST Act, 2017]

4.2.2 “Actionable claims” have been defined in section 2(1) of the CGST Act/SGST Acts, 2017 as below:

“Actionable claim shall have the same meaning as assigned to it in section 3 of the Transfer of Property Act, 1882;”

[Section 3 of Transfer of Property Act 1882 reads as below:

“actionable claim” means a claim to any debt, other than a debt secured by mortgage of immoveable property or by hypothecation or pledge of moveable property, or to any beneficial interest in moveable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent;”

4.2.3 Further, Schedule III of the CGST Act, 2017 and respective SGST Acts enlists the activities which are considered neither as a supply of goods nor as a supply of service.

“Schedule III: ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES

.....

6. Actionable claims, other than lottery, betting and gambling.”

Accordingly, the actionable claim with respect to lottery, betting and gambling is taxable.

4.3 Services involved in these activities:

4.3.1 Besides actionable claim, these activities entail supply of services; say by way of organising, distribution, facilitation, conducting etc. While in activities like horse racing, casino, lottery etc., there is absolute clarity as regards classification of these services, certain doubts remain as regards classification of services involved in online gaming, i.e., heading 9996 vs 9984 of Service Accounting Code (SAC). This classification has bearing to the rates that would apply to the corresponding activities. For example, online gaming supplier sites claim that their services are of operating the portal, and hence online content/information technology classifiable under heading 9984 of S.A.C. (Telecommunications, broadcasting and information supply services). Competing SAC code is 9996, which, *inter alia* covers recreational and sporting services. The scope of these two SAC codes is given as below:

4.3.2 Explanatory notes to the relevant S.A.C.:

I. Heading 9996: Recreational, cultural and sporting activities

Explanatory Note to 9996:

- 999692 : *Gambling and betting services including similar online services*

This service code includes:

- i. on-line gambling services*
- ii. on-line games involving betting/gambling*
- iii. off-track betting*
- iv. casino and gambling house services*
- v. gambling slot machine services*
- vi. other similar services*

- 999694: *Lottery services*

This service code includes organization, distribution and selling services of lotteries, lottos and other similar items.

Thus, sub-heading 999692 includes gambling and betting services including similar online services. Online gaming involving betting services is specifically included in this sub-heading as is evident from Explanatory Notes to SAC.

II. Heading 9984: Telecommunications, broadcasting and information supply services

99843 : online content services

998439 : Other on-line contents nowhere else classified

Explanatory Notes to SAC 998439: Other on-line content n.e.c.

This service code includes games that are intended to be played on the Internet such as role-playing games (RPGs), strategy games, action games, card games, children's games; software that is intended to be executed on-line, except game software; mature theme, sexually explicit content published or broadcast over the Internet including graphics, live feeds, interactive performances and virtual activities; content provided on web search portals, i.e. extensive databases of Internet addresses and content in an easily searchable format; statistics or other information, including streamed news; other on-line content not included above such as greeting cards, jokes, cartoons, graphics, maps

Note: Payment may be by subscription, membership fee, pay-per-play or pay-per-view.

This service code does not include:

- software downloads, cf. 998434
- on-line gambling services, cf. 999692
- adult content in on-line newspapers, periodicals, books, directories, cf. 998431

4.4 GST Rate structure:

Table 2: Actionable claim (Goods)

Notification No. and Date	Schedule	S.No. of Notfn.	Chapter / Heading/ Sub-Heading/ Tariff item	Description of Goods	Rate (CGST+ SGST)
1/2017-Central Tax (Rate) dated 28th June, 2017	IV	228	Any Chapter	Lottery	28%
		229	Any Chapter	Actionable claim in the form of chance to win in betting, gambling, or horse racing in race club	28%

Table 3: Services involved in these activities
[Both SACs 9996 and 9984 are discussed below in view of doubts raised regarding classification of services in online gaming]

Notification No. and Date	Sl. No.	Chapter, Section or Heading	Description of Service	Rate (CGST+SGST)
11/2017-Central Tax (Rate) dated 28th June, 2017	34	Heading 9996 (Recreational, cultural and sporting services)	(iia) Services by way of admission to (a) casinos or race clubs or any place having casino or race clubs or (b) sporting events like Indian Premier League	28%
			(iv) Services provided by a race club by way of totalisator or a license to bookmaker in such club	28%
			(v) Gambling	28%
	22	9984 (Telecommunications, broadcasting and information supply services)	(i) Supply consisting only of e-book	5%
			Telecommunications, broadcasting and information supply services other than (i) above	18%

4.5 Valuation of supplies of these activities:

4.5.1 Valuation of taxable supplies is governed by section 15 of the CGST Act, 2017. As per section 15(1), the valuation of a supply shall be transaction value i.e., price actually paid or payable for the said supply. Relevant provisions are reproduced for ready reference as follows:

“Section 15: Value of Taxable Supply.-

- (1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.*
- (2) The value of supply shall include –*
 - (a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;*
 - (b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;*

(c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;

(d) interest or late fee or penalty for delayed payment of any consideration for any supply; and

(e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

Explanation.—For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.

(3) The value of the supply shall not include any discount which is given

(a) before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and

(b) after the supply has been effected, if-

(i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and

(ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

(4) where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed.

(5) Notwithstanding anything contained in sub-section (1) or sub-section (4), the value of such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed.”

4.5.2 Section 15(5) confers power on the Government to provide that value of such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed. Accordingly, in exercise of this power, rule 31A of CGST/SGST Rules has been prescribed as below:

Rule 31A. Value of supply in case of lottery, betting, gambling and horse racing.-

(1) Notwithstanding anything contained in the provisions of this Chapter, the value in respect of supplies specified below shall be determined in the manner provided hereinafter.

(2) The value of supply of lottery shall be deemed to be 100/128 of the face value of ticket or of the price as notified in the Official Gazette by the Organising State, whichever is higher.

Explanation:- For the purposes of this sub-rule, the expression “Organising State” has the same meaning as assigned to it in clause (f) of sub-rule (1) of rule 2 of the Lotteries (Regulation) Rules, 2010.

(3) The value of supply of actionable claim in the form of chance to win in betting, gambling or horse racing in a race club shall be 100% of the face value of the bet or the amount paid into the totalisator.

4.6 Earlier clarifications issued in the matter:

4.6.1 Circular 27/01/2018 – GST dated 04.01.2018 has been issued clarifying *inter-alia* on valuation of services by horse racing club and casinos as follows:

- *GST at the rate of 28% would apply on entry to casinos as well as on betting/gambling services being provided by casinos on the transaction value of betting, that is, the total bet value in addition to GST levy on any other services being provided by the casinos (such as services by way of supply of food/drinks etc. at the casinos). Betting, in pre-GST regime, was subjected to betting tax, on full bet value.*
- *Further, GST would be leviable on entire bet value, that is, total of face value of any or all bets paid into the totalisator or placed with licensed bookmakers, as the case may be. Illustration: If entire bet value is Rs 100/-, GST leviable will be Rs. 28/-.*

5. Jurisprudence & Court Cases:

5.1 Issues raised in respect of lottery, race course, gambling, betting, online gaming are intertwined. The Courts have examined these issues in detail and certain issues have been finally settled while a few continue to be the subject matter of litigation. Some of the relevant cases are:

- Sunrise Associates Vs Govt. of NCT of Delhi & Ors- (2006) 5 SCC 603(SC): In this case, the issue before the Hon'ble Court was- whether the lottery tickets were goods and were liable to sales tax as decided by the Hon'ble High Court considering the aspect that two rights involved in lottery (i) the right to participate in the lottery draw, and (ii) the right to win the prize, are separable rights.

The Constitution bench of the Hon'ble Supreme Court held that *right to participate* and *right to win prize* are inseparable rights conferred on a lottery buyer and *entire* consideration is paid for the chance to win.

- Skill Lotto Solutions Pvt Ltd Vs Union of India- 2020 (43) G.S.T.L. 289 (S.C.):

The issues before the Hon'ble Court in the writ Petition (Civil) No. 961 of 2018, (decided on 3-12-2020) , *inter alia*, were- whether the inclusion of actionable claim in the definition of goods is contrary to the legal

meaning of goods and unconstitutional; whether the judgment of the Hon'ble Supreme Court in case of Sunrise Associates that *lottery is an actionable claim* is proposition of law; and whether while determining the face value of the lottery tickets for levy of GST, prize money is to be excluded for purposes of levy of GST.

The Hon'ble Supreme Court held that-

"78.....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 we can not 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.

...

80. The value of taxable supply is a matter of statutory regulation and when the value is to be transaction value which is to be determined as per Section 15 it is not permissible to compute the value of taxable supply by excluding prize which has been contemplated in the statutory scheme. When prize paid by the distributor/agent is not contemplated to be excluded from the value of taxable supply, we are not persuaded to accept the submission of the petitioner that prize money should be excluded for computing the taxable value of supply the prize money should be excluded. We, thus, conclude that while determining the taxable value of supply the prize money is not to be excluded for the purpose of levy of GST."

Thus, in this case, the Hon'ble Supreme Court upheld the validity of statutory provisions on valuation including rule 31A for valuation holding that GST is payable on 100% of the face value of bet or money as provided for in the legislation.

- Gurdeep Singh Sachar v/s Union of India- 2019 (30) G.S.T.L. 441 (Bom.)(Dream 11 case): The issues before the Hon'ble Bombay High Court in the criminal Public Interest Litigation Stamp No. 22 of 2019, (decided on 30-4-2019) were whether the activities of Dream11 amount to 'Gambling'/'Betting' and whether there is any merit in the allegation of violation of rule 31A(3) of CGST Rules, 2018 and erroneous classification. While deciding the issue at hand, the Hon'ble Court, also looked at GST levy, and observed as follows:

"It can be seen that success in Dream 11's fantasy sports depends upon user's exercise of skill based on superior knowledge, judgment and attention, and the result thereof is not dependent on the winning or losing

of a particular team in the real world game on any particular day. It is undoubtedly a game of skill and not a game of chance.”

“... Therefore, this activity or transaction pertaining to such actionable claim can neither be considered as supply of goods nor supply of services, and is thus clearly exempted from levy of any GST.”

In this way, the Hon’ble Court observed that the activities of Dream11 (online gaming) are ‘game of skill’ and thus, actionable claim (prize pool) in online gaming is not an actionable claim as intended to be taxed in GST (Entry 6 of the Schedule III refers). Hence, the Hon’ble Court observed that prize pool is exempt from levy of any GST.

Special Leave Petition (SLP) was filed against this order [SLP (Crl.) Diary No. 42282 of 2019]. Vide order dated 06.03.2020, operation of impugned judgment and order passed by the Bombay High Court has been stayed by the Hon’ble Supreme Court.

- Bangalore Turf Club before the Hon’ble Karnataka High Court 2021 (51) G.S.T.L. 228 (Kar.): The issues before the Hon’ble Bangalore High Court in the writ Petition Nos. 11168 & 11167 of 2018 (T-RES), decided on 2-6-2021 were whether rule 31A(3) of the CGST Rules is *ultra vires* the CGST Act and whether the Turf Club is liable to pay GST on the commission set apart or on the total amount collected in the totalisator.

The Hon’ble Court held that the commission held by the Club can only be subjected to GST, not the entire bet value. The relevant extract of the judgment is as follows:

“Rule 31A(3) completely wipes out the distinction between the bookmakers and a totalisator by making the petitioners liable to pay tax on 100% of the bet value. It is the bookmakers who indulge in betting and receiving consideration depending on the outcome of the race, irrespective of the result. In contrast, the race club provides totalisator service and receives commission for providing such service. Therefore, there is no supply of goods/bets by the petitioners as defined under the Act.

.....

Rule 31A(3) travels beyond what is conferred upon the Rule making authority under Section 9 which is the charging section, by way of an amendment to the Rule. The totalisator is brought under a taxable event without it being so defined under the Act nor power being conferred in terms of the charging section which renders the Rule being made beyond the provisions of the Act.”

The decision in the case has been stayed by the Divisional bench of the Hon'ble Karnataka High Court [Union of India v. Bangalore Turf Club Limited - 2021 (55) G.S.T.L. J125 (Kar)].

6. International Practice:

6.1 There is no uniform international practice. If there is any uniformity, it is in that most countries levy multiple taxes on betting and gambling and the cumulative incidence of taxes on them is quite high. They subject these activities to GST, VAT or Sales Tax as well as several kinds of betting, gambling and sweepstakes duty and taxes such as Betting Tax, Stamp Duty [which may be charged on winnings too], Gaming Tax, Pool Betting Duty, Casino Duty etc.

6.2 While GST or VAT is levied on supply of goods and services elements in these activities, the bets, wagers & stakes are subjected to multiple betting and gambling taxes. In some of the jurisdictions, bets and wagers have been expressly excluded from the scope of VAT or GST by law and thus in those countries, GST or VAT cannot be levied on the value of bets and wagers. They have to be excluded from the taxable value of supplies by casinos, race courses, online gaming etc. The betting and gambling taxes, on the other hand, are levied on GGR or on full value of bets, wagers or stakes in varying practice. These taxes cascade on each other. Where these are levied on GGR or net value, the incidence on such GGR is kept quite high in most cases as compared to taxation of normal supplies.

6.3 As far as taxation of actionable claims is concerned, India is uniquely placed. Actionable claims in the form of lottery, betting and gambling have been consciously brought in the fold of GST. Now, with the advent of GST, only a single levy of GST is applied in place of multitude of taxes in pre-GST regime ranging from entry tax, statutory entry fee collected by Government, surcharge thereon, VAT, entertainment tax, betting/gambling tax, services tax and embedded excise duty on inputs. Therefore, the international practice with regard to the levy of GST/VAT on these actionable claims has little relevance for India. The Hon'ble Supreme Court has also rightly held in Skill Lotto case that we will have to find answers to questions before us in our own statutes. The practice in other countries is guided by their own laws which are different from ours.

7. Pre-GST taxes on these activities:

As stated above, in pre-GST regime, multitude of taxes were imposed on these activities. For example:

- The taxation structure in horse racing was in a way to levy service tax and entertainment tax on entry ticket, service tax on tote commission and license fees charged from bookie and betting tax levied by the States on betting /wagering.
- In case of casinos, entertainment tax and luxury tax were levied. For example, Rs 1000/- per person visiting the casino plus 15% on sale of chips/coins or the receipts received by operators towards casino games were charged.
- Online gaming is a new phenomenon/activity, the contours of its taxation may not have been well established in pre-GST regime.

8. Discussion:

8.1 The GoM deliberated upon the questions entrusted to it at great length during the course of the two meetings held in New Delhi on 2nd May, 2022 and 18th May, 2022. The general view was that all these activities, because of their nature and negative externalities, should be levied a higher incidence of tax. The society at large is the biggest stakeholder in them. These activities involve element of financial risk and are addictive. Concerns were raised especially regarding online gaming, its adverse impact on the society at large and particularly the youth, due to its addictive nature which affects the financial and overall well-being of the players. It was pointed out that unlike casinos, and horse racing, the activity of online gaming is available 24 by 7, attracting the youth of this country into addictive activities. It was the unanimous decision of the GoM that the activities of casinos, race courses, and online gaming should be subjected to GST at the highest rate of 28%. It was also noted that there should be uniformity in rate of taxation on all actionable claims in any activity involving prize payouts/betting in anticipation of winning. In other words, online gaming, casino, horse racing and lottery etc. are to be similarly taxed.

8.2 As regards the question whether the activities of horse racing, casinos and online gaming are activities of games of skill or chance, the general view was that this should not be relevant for GST regime. In all probability, these may have some elements of both. So long as there is betting for monetary winnings, the activities should be similarly taxed, including actionable claims forming part of these activities.

8.3 It was observed that online gaming platforms have been paying 18% GST on platform fees alone and not on the full value including prize money. The argument of the industry is that the games are games of skill and not of chance as decided by various judicial pronouncements. For instance, in the Gurdeep Singh Sachar v/s Union of India- 2019 (30) G.S.T.L. 441 (Bom.) (Dream 11 case), the Hon'ble Bombay High Court observed that the activities of Dream11 (online gaming) will not fall under gambling but these activities are 'games of skill'. However, operation of this judgment has been stayed by the Hon'ble Supreme Court vide order dated 06.03.2020.

8.3.1 These online games are played with money at stake in anticipation of prize payouts/winnings such as fantasy sports (Dream 11), rummy, poker etc.

8.4 It was observed that while casinos pay full GST @ 28% on betting and gambling, online gaming sector, which has grown exponentially even during the COVID period, does not pay the same on the ground that online games are actionable claims other than betting and gambling. It was strongly felt that there should be uniformity in taxation. It was noticed that other gaming sectors have contested the payment of tax at lower rate by online gaming and that too only on platform fee though online gaming also involves betting/playing for winnings like any other activity such as in casinos. Therefore, online gaming should be taxed in the same way as casinos irrespective of whether these are games of chance or skill. The GoM was of the unanimous view that any such difference, if it exists in the GST law, differentiating the activities as games of chance or games of skill, be eliminated for application of uniform taxation on all these activities. The GoM, on detailed deliberation, referring to the discussion in GST Council on lottery, the statutory provisions and rules etc. and the law position that has been settled in lottery, was also of the view that the intention had been to apply 28% GST rate on all these activities.

8.5 Having taken a view on the basic issue of rate structure and uniformity of taxation, the questions that were to be decided by the GoM were:

- (i) whether the activities should be taxed on full value of bets/wagers or on GGR/margin?
- (ii) manner of taxation of associated activities, particularly the entry to a casino, wherein casino charges an amount for entry which is inclusive of entry fee, food coupon, boat ride to offshore casino and certain amount of chips for playing. This amount is to be paid by any person willing to have access to casino.

8.6 **Discussion on valuation:** There was broad agreement that mechanism of valuation should be simple and easy to calculate, in conformity with law and at the same time should not render the industry unviable. However, the opinion on how to achieve these objectives was divided. One view was that taxing these activities on full value of bets or wagers will make these activities unviable and may even lead to their closure. The other equally strong view was that they should be taxed on full value without reducing the prize pool or pay-out like lotteries as the same has been upheld by the Hon'ble Supreme Court in Skill Lotto. This question was more complex and needed a detailed examination of the legal provisions, international practice, judgments of the courts etc. It had also to be ensured that any decision with regard to valuation of the said activities does not have an implication for taxation of lottery which is now a settled issue.

8.7 The GoM directed the officers to examine the legal and financial implications of taxing these activities on GGR or net value and to come up with a mechanism of arriving at GGR or net value, for the GoM to take a holistic view on the matter. The GoM Secretariat invited inputs on these issues from the member States and a meeting of officers was held to discuss the issues on 13th May, 2022.

8.8 The issues which were discussed, its analysis and emerging views in the officers' meeting were presented before the GoM by the Secretariat in detail. The submissions placed before the GoM as arising out of deliberation in Officers Committee, *inter alia* included,-

(i) All the three issues, as above in para 8.7, are inter mingled and inter-related. They cannot be decided independently of each other. While an argument has been put forth by the trade in various forums that if betting and gambling are taxed on full value, the organisers will have to pay from their pockets, this view is not correct. GST being a pass-through tax, the incidence of entire GST has to be borne by the players, and its incidence does not fall on the suppliers involved in these activities.

(ii) However, if share of taxes increases in the bet amount, the prize pool amount shrinks, and therefore, winning amounts becomes lesser. Therefore, this may discourage the players which may impact the trade in terms of volumes of trade. Further, imposition of tax on full value may push certain activities to grey market.

(iii) It was felt though that the argument of substitution and shifting (including to the grey market) is valid for any supply, particularly those which attract higher duties and meant for consumption of items, like tobacco, cigarettes, bidi, or even items like auto parts or for that matter any supply

meant for consumers. The general philosophy in GST has been that the items with negative externalities are to be taxed at the highest rate.

(iv) As regards the international tax regimes, India's GST regime is somewhat unique in so far as it taxes actionable claims. Actionable claims are taxable under GST. Further, in India, GST is the only tax that supply of these activities bear. Other countries may tax the activities differently, based on the ambit and objectives of their respective tax regimes. Illustratively, a country may choose to apply GST/VAT on service element leaving aside the prize pool from the scope of GST/VAT, but may simultaneously impose betting tax, which may again be on gross gaming revenue or on the full bet value. In addition, in varying prevailing practices, countries opt to impose pool tax, gaming tax, stamp duty, casino tax, local duties and other taxes. Beside this, certain countries impose flat tax on winning amount (in addition to tax on incomes). Such taxes cascade on each other and the cumulative incidence of tax on betting and gambling is quite high.

(v) In pre-GST regime, India's tax regime was also fragmented with multitude of taxes on these activities. The State levies were also attracted on full face value, entire consideration, chip sales value in most cases.

(vi) While GGR may be a measure of service element in activities for the purposes of GST/VAT (with other levies side by side); in India, the collective decision of the Union and the States was that actionable claim will also be taxed under GST. Unlike Service Tax where only service component was taxable, in GST it has been decided to tax supply of actionable claims also. By removing the prize payouts from the value of bets, it will result in effectively removing actionable claims from the value of supply, defeating the very legislative intent of bringing actionable claims within the purview of GST. If the tax has to be levied only on the platform fee, then it will amount to taxing only the service component of the supply. Supply of actionable claims will remain untaxed.

(vii) Applying GST only on platform fee for online gaming, GGR for casino etc. on the ground that tax should only be levied on the consideration accruing to service provider (thus leaving the prize pool out) will have wider implication for other services as well. For example, in case of manpower supply agencies, where agencies argue that they get only commission, while the salary goes directly to the manpower deployed. Persons supplying the manpower to the manpower agency are below the threshold limit. However, GST is charged on entire value including the amount passed on by the agency to manpower as salary. E-commerce service providers like Ola, Uber also claim themselves to be platform service providers. However, tax is chargeable as prescribed in the law. It was also discussed that in case of the activities

under consideration, the full amount of bet or wagers represents the consideration paid by a person for supply of the actionable claim in the form of chance to win. The prizes paid to others do not have any bearing on the value of the supply made to a person who may or may not win.

8.9 Written inputs/comments were received from the Hon'ble Finance Minister, Tamil Nadu. He suggested that a potential methodology could be developed which would bridge the seemingly irreconcilable conflicts between maintaining consistency with the Hon'ble Supreme Court's ruling on Lotteries; holding firm to the principle of not making Chance/Skill distinctions while keeping GST revenues buoyant, and giving the gaming industry relief by taxing only GGR, thereby improving the attractiveness of formal channels of betting and enabling growth in volumes. Accordingly, he proposed to tax the full-face value of each betting stake/ticket or total value of Chips/Credits purchased at ENTRY/PER DAY at 28 % and for every winner, rebate the actual GST paid on the purchase of the ticket/chips/credits at entry to certain limit.

9. The legal framework, as detailed above was examined and debated by the GoM at length.

9.1 The GoM examined the essential question as to whether actionable claim could be left out of tax under GST. Definition of goods includes actionable claims. Schedule III of CGST Act provides that actionable claim in the form of betting and gambling will be taxed. Therefore, in GST actionable claims involved in betting and gambling are taxable. The GoM observed that intention is clearly to impose GST on actionable claim.

9.2 The GoM also observed that the Lottery issue is well settled now. Lotteries attract GST on the face value. The entire actionable claim involved in lottery is thus taxed. This levy has been upheld by the Hon'ble Supreme Court in the Skill Lotto case. It was also observed that while in respect of lotteries too, it was argued that imposition of GST at 28% on face value would lead to shift to grey market (matka, chit etc.) and lottery industry would suffer which would have adverse implication on GST revenue. However, revenue from lottery has shown a healthy growth and certain States are earning good revenue from lottery with good growth, even in COVID period. It was reiterated by certain Members in the GoM that uniform taxation on all these activities would bring in parity between lottery and other activities under examination by the GoM. Any deviation from taxation of face value approach will create distortion where lottery traders would also seek similar treatment. This would not be desirable. Lottery taxation has been settled after prolonged discussions and litigation.

9.3 In this context, it was also observed by some members that if law requires taxation of actionable claim as supply of goods, the same should appropriately be subject to GST. Unless law is changed, it cannot remain un-taxed. Under present law, supply of actionable claim is taxable and according to GST law, it is applicable on entire value.

9.4 As regards the stand of online gaming industry that the actionable claims involved in their activity are outside betting and gambling and thus not taxable, it was stated that Schedule III declares not only gambling as taxable but also betting. Online gaming involves betting also. The legal implication of reducing the prize value or the prize pool from the taxable value would be that the actionable claims involved in betting and gambling, which the Union and the States had collectively decided to tax under GST as supply of goods, will remain un-taxed. This will defeat the purpose of subsuming betting and gambling taxes in GST.

9.5 As regards the argument that in case of skill-based online games, since platform owners have no right or title over the prize pool amount as it is sometimes held by custodian or third party, so prize pool does not form part of the value of supply of service, it was stated that what law envisages, in terms of provisions as stated above, is not only to tax the services provided by way of operating the platform but also the actionable claim involved in these activities. The modalities of maintenance or management of prize-pool does not have any bearing in this regard. Prize pool is envisaged to be taxed under GST as actionable claim. It was also observed by the members that the GST is to be ultimately borne by the player, being a pass-through tax.

10. Before coming to the issue of valuation of the activity of online gaming, horse racing and casinos (GGR vs full face value), the GoM examined certain related issues peculiar to Casino, which are as follows:

10.1 **Tax rate on entry fee in Casinos:** Tax rate on entry fee when such entry fee consists of charges towards bouquet of supplies clubbed with the supply by way of entry to casinos.

CCT Goa informed that casinos offer a bundle/bouquet of goods and services. The activities in a casino therefore are rendered complex due to this bundling. There are further complexities as casinos engage in a physical activity. The consideration charged by the casinos for entry into the casinos may also include complementary food, liquor, accommodation etc. Few of the practices/models being followed by casinos which were discussed are explained below:

Model I - The casinos charge a fixed fee for entry to the casinos and supply food and drinks as complimentary. In other words, the price of food and drinks are included in the entry fee. GST is paid on the entire amount at 28%. The chips or coins for betting and gambling need to be purchased separately. The guest is not given a choice to choose which services he wants to avail and which he does not want to avail.

Model II - The casinos charge a fixed fee for entry to the casinos and supply food and drinks as complimentary. At the time of paying the taxes, the casinos split the entry fee charged into different components such as entry to the entertainment venue, food, liquor, ferry services, sale of non-redeemable coins etc. In this case, the casino pays different GST on different services. In this model also, the guest is not given any choice.

Model III - The casinos charge separate amounts for entry to the casinos, for drinks and liquor and ferry services from jetty to the off-shore casinos. They pay GST @ 28% on the amount charged for the entry to casinos and at 5% on restaurant services. The ferry services are treated as transport of passengers by inland waterway which is claimed to be exempt. In this case, the guest is at liberty to choose which services to avail and which to forego.

10.2 On this issue, there was general agreement that admission to casinos attracts GST @28%. Therefore GST @ 28% should be charged on the price charged for the entry ticket to casinos. Where a single fixed price or fee is charged for entry to the casino and supply of food and drinks or other goods or services such as transportation from jetty to the off-shore casino or certain amount of chips is complimentary or included in the price of entry ticket, it is a case of mixed supply and GST @ 28% must be charged on the entire amount charged for entry. Similarly, where the entry to a casino is allowed against a price subject to the condition that the guest or the customer will have to buy a certain minimum amount of food, liquor or other services or goods, the amount charged for entry plus the amount charged for such minimum compulsory purchases constitutes the consideration for the mixed supply and must be charged to GST @28%. Supplies made independently of the entry ticket shall be taxed at the rates as applicable on them. The same principle will apply to admission to race courses and other similar events.

10.3 GST on subsequent rounds of betting in Casinos: Another important question related to casinos examined by the GOM was whether the tax should be levied on value of bet placed in every round of betting and gambling played in the casino including the rounds played with winnings of the previous games. On this issue, the GoM felt that it has to be mindful of the need to maintain a balance between revenue collection and the viability of the casino industry. Taxing each round, once tax is collected at entry on the purchase of chips, is neither feasible nor desirable. This will make the casinos unviable.

It was also felt that the right to play with the winnings of the previous game was inherent in the rights acquired by the players against the price paid for the chips/tokens purchased from the casinos.

10.4 In view of the above, a consensus emerged that the tax should be levied only on the value of chips/coins purchased from the casino. The bets or wagers placed in subsequent rounds of betting with the chips or tokens won in the previous rounds should not form part of the taxable value of betting and gambling in the casinos and should not be subject to tax.

11. During the discussion, following aspects were specifically deliberated by the GoM:-

- i. Legal implications if net value is adopted;
- ii. Financial implication if net value is adopted;
- iii. Possibility of determination of net value.

11.1 Legal implications if net value is adopted:

Law envisages taxation of services associated with lottery, betting and gambling and also the actionable claims supplied in the form of chance to win in the lottery, betting and gambling. The legislative intent is clear and it seeks to tax these actionable claims as expressed in Entry 6 of Schedule III to the CGST Act, 2017. Taxing net value effectively means not taxing actionable claims. Net value represents the value of services alone. Thus, taxing betting and gambling on net value will defeat the purpose of subsuming of taxes/duties on betting and gambling in GST and render the legislative intent to tax actionable claim in GST ineffective. The law [provisions as stated above in para 4.5] also requires levy of GST on full value of the bets placed. Net value taxation would be a deviation from the present law position.

11.1.1 Any decision on reducing the value of prize payouts or prize pool from the taxable value of betting and gambling in casino, online gaming, and horse racing will have implications on similar activities, particularly lottery. The provisions related to actionable claims are common to all such activities. The implications may be two-fold, namely, (a) Litigation in lottery, and (b) Substitution.

11.1.2 In this regard, the issue pertaining to valuation of supply of lottery on its face value (cum-value basis) was settled after extensive deliberation and discussions in GST Council and has been upheld by way of judicial pronouncements by the Hon'ble Supreme Court. The GST Council

raised the GST rate on state-run lottery from 12% to 28% and affirmed it on the face value. Further, there were apprehensions regarding revenue loss and viability of lottery business, when decision was taken to tax lottery at face value. However, lottery has continued to grow despite stiff competition from online gaming etc. and revenue has increased even during COVID times. For instance, revenue from lottery as reported by West Bengal has steadily increased, from about Rs 3000 cr in 2019-20 to about Rs 4000 cr in 2021-22.

11.1.3 Therefore, one view was that unless law is amended, it may not be feasible to impose tax on net value. However, if law is changed, it may not be desirable to keep lottery on a different footing to tax on face value while others on net value. Lottery has already yielded good revenue to the States (on face value taxation); hence lottery need not be touched.

11.1.4 A view was also expressed, in the context of legal and other implications, as to whether distinction needs to be made between online gaming on the one hand and casinos & horse racing on the other, which are performed in a physical setting and are integral to other sectors of the economy such as travel and tourism, hotel accommodation etc. While it may be alright to tax online gaming on full value, the possibility of prescribing a different method of valuation of the activities in casinos, horse racing may be considered. However, it was decided that the recommendations regarding valuation would be made in conformity with the statutory & legal framework and the judgment of the Hon'ble Supreme Court since it is the law of the land.

11.1.5 A relevant consideration, however, was the impact of 28% on face value in case of casino, horse racing and online gaming. Whether such high taxation would impact the existence of these industries? There were divergent views on this aspect, as discussed later in the report.

11.2 Financial Implications if net value is adopted:

11.2.1 In pre-GST regime, tax incidence on betting and gambling in race courses and casinos was higher. Entertainment tax was levied on the entry to race courses at the weighted average of 29% approx. and 15% service tax was levied on the service by way of allowing access to the race course. In addition to this, 15% service tax was levied on tote commission and license fee, and there were various other embedded duties and taxes in the form of State VAT, Central excise duty, service tax etc. on inputs and input services, credit of which was not available. Rate of Betting Tax alone was in the range of 8 - 26.25 % and it was levied on face value of bet by States such as West Bengal and Maharashtra.

Table 4: Rate of Betting Tax levied in pre-GST regime in India

Clubs	State	Rate of Betting tax
Royal Western India Turf Club	Maharashtra	20%
Delhi Race Club	New Delhi	20%
Madras Race Club	Tamil Nadu	26.25%
Royal Calcutta Turf Club	West Bengal	10%
Hyderabad Turf Club	Telengana	15%
Bangalore Turf Club	Karnataka	8%

11.2.2 Similarly, in the case of casinos, multiple taxes were levied. Illustratively, entry tax of Rs 1000 per person; 15% surcharge on entry tax; 15% tax on sale of chips/coins; VAT on food and beverages; 15% service tax on commission, wherever applicable; 15% service tax on license fee were charged and there were other embedded taxes in the form of excise duty, service tax, VAT etc. on input goods and services, credit of which was not available.

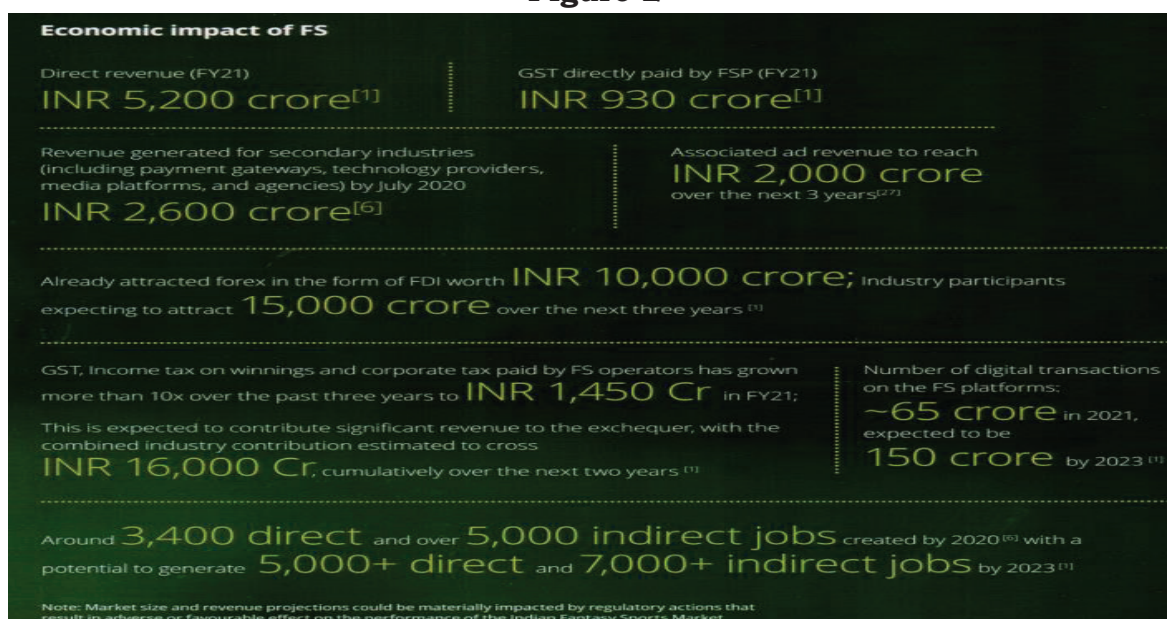
11.2.3 With the introduction of GST, a simple tax regime has been introduced, subsuming most of the taxes levied by the States. The rates of GST are prescribed on the recommendations of the GST Council.

11.2.4 The online gaming sector is growing at a fast pace and has high revenue potential. Considering its huge market share and prominent revenue projections, it has larger financial implications. Details as provided by Federation of Indian Fantasy Sports (FIFS) are depicted as follows:

Figure 1

Source: Federation of Indian Fantasy Sports (FIFS)

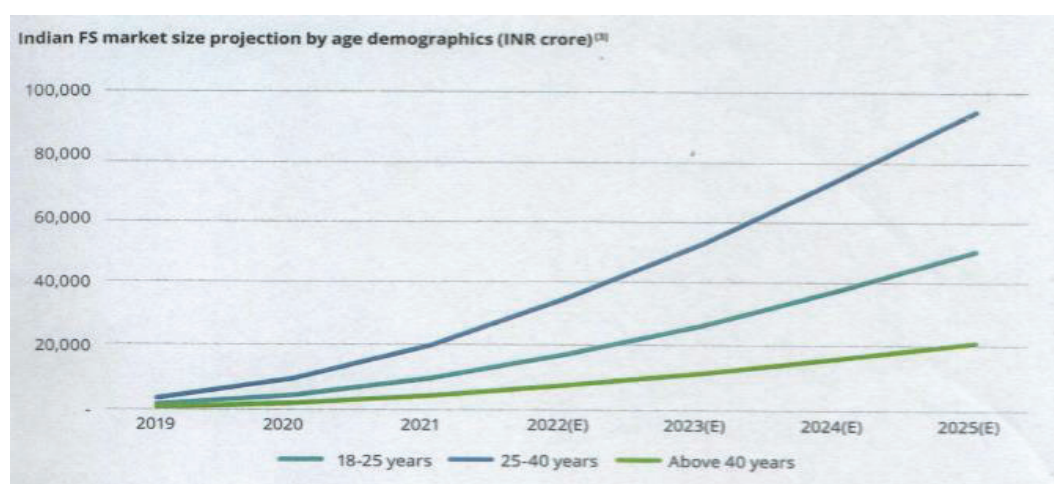
Figure 2



Source: Federation of Indian Fantasy Sports (FIFS)

11.2.5 As estimated by FIFS, India's cost of internet data is 15% of the world's average. [Rs 51/GB in India vs Global average of Rs 316/GB as reported by Fantasy Sports Association]. Thus, a huge competitive advantage exists for Online Gaming in India on this parameter. In addition, there is a huge base to be tapped that provides enormous potential to grow. The significant influence on the younger population is shown by the following graph:

Figure 3



Source: Federation of Indian Fantasy Sports (FIFS)

11.2.6 Revenue indication of GST on face value and on net value is illustrated below.

Illustration: GST @ 28%: on face value Vs on GGR

- On procurement of chip/coupon, bet amount of Rs 1000 (if inclusive of GST), the GST liability would be Rs 218.75. The play amount would be Rs 781.25. Similarly, online gaming ticket of average price of Rs 30 will have GST of Rs 6.5 and play amount of Rs 23.5. Thus, tax incidence is exactly same as on lottery or on an actual game of IPL/sports league or any other items at 28%.
- Whereas, if GST @ 28% is levied on GGR, [industry estimate of 4% to 20% of face value] in online gaming then on an average, the GST on online gaming ticket of Rs 30 @ 28% of GGR would be Rs 0.8. In case of casinos, as reported, the casino edge may be lower to the extent of 1.8% to 4% approx.
- Thus, financial implications of subjecting GST on GGR, (as per industry estimates) are substantial. Taxation of online gaming or casino at GGR creates huge distortion in terms of tax differential between lottery (face value taxation) and these activities.
- Besides having implications for lottery, a similarly placed activity, this will also have implication for revenue, in terms of calculations as illustrated above.

11.3 Possibility of determination of net value:

11.3.1 It was stated by the members that there is a need to formalise the activity of betting/gambling and bring it out of the grey market. This could be possible by incentivising the players by providing a rebate of GST after it has been collected.

11.3.2 In this context, the GoM also considered other potential methodologies as were recommended, if net value is to be determined, with the view that proposed methodology should be such that it bridges the seemingly irreconcilable conflicts between maintaining consistency with the Hon'ble Supreme Court's ruling on Lotteries; holding firm to the principle of not making Chance/Skill distinctions while keeping GST Revenues buoyant, and giving the gaming industry relief by taxing only GGR, thereby improving the attractiveness of formal channels of betting and enabling growth in volumes. The proposed methodology included abating GST to a player on winnings when such wins were below a certain limit, while ensuring that the

amount of GST abated is not more than what was paid by a player in the first instance while paying GST on face value.

11.3.3 The essential idea behind this proposition is that since EVERY bettor places their bets with the expectation of winning, such a design will remove the reluctance to place wagers or play games through formal channels (relative to informal ones). Proposal of determining GGR on the basis of net sale, purchase and holding of chips in casino was also considered by the GoM i.e., net amount of total chips issued during the trading day minus chips encashed, minus chips holding).

11.3.4 After detailed deliberation, it was felt that GGR is a complex concept, and envisioned methodology though for improvement over GGR, may add to complexities in the tax administration. It was reiterated that the recommendations regarding valuation would be made in conformity with the statutory & legal framework and the judgment of the Hon'ble Supreme Court since it is the law of the land.

11.4 Implication of GST on full value: Discussion regarding implication of imposition of GST on the full face value for the Industry, i.e., casino, horse racing and online gaming and the concluding view of the GoM on valuation aspect is as follows:

11.4.1 It was generally felt that decision on valuation of these activities should be such that it achieves a balance between the competing interests of all the three main stakeholders involved, namely the society at large, the Government (Revenue) and the Trade. Though the activities in casino, race courses and online gaming appear to be diverse, their essential nature is the same and the issue of valuation is fundamental to the entire matter.

11.4.2 It was argued that taxation should not be such that it impacts the very existence of the Industry. There were two views on this aspect. One, as made by Hon'ble Finance Minister from Goa that their main concern in taxing the casinos on full value was that of decrease in the footfall in tourism and viability of the casino industry. He stated that at present, Goa is booming with activities, flights are full and tourists are flocking to Goa owing to casinos in the State. Consequently, substantial economic activity is being created for artisans and suppliers of other goods and services in travel and tourism, hotel accommodation, entertainment etc. His apprehension was that any excessive taxation on casino would impact the tourism adversely. He also mentioned that the practice followed in India deviates from the global practice of taxing on GGR. He further stated that comparing betting and gambling with Ola and Uber is like comparing oranges and apples. Including the prize money in

taxable value may lead to further litigation. He stated that ultimately, revenue should increase and these activities should be discouraged, but at the same time, the industry should also survive. If the industry closes down, there will be no revenue. Therefore, a good policy of taxing casinos based on GGR or net value should be evolved.

11.4.3 The competing views were that similar narrative was created by the industry, when the issue of taxation of lottery was decided. However, lottery industry has been doing very well even after imposition of GST at the rate of 28% on the face value. 28% tax is reasonable on such activities. Even in pre-GST regime, there was overall high taxation on all these activities, if all taxes are considered. Global regime also suggests that these industries survive even with higher taxation. It was also felt that these are not essential services. Anyone visiting a casino or horse racing for entertainment can afford a GST levy of 28%. Normally a person goes there for enjoyment and not for making a living out of this earning. So, quantum of winning may not even be significant criterion for a visitor to visit casino or horse racing. 28% levy may not impact the sentiments adversely. It was further argued that once a view is taken to have a uniform taxation regime for all these activities, including lottery, the tax should apply on actionable claim in each of these activities. In case, it is decided to tax casinos, horse racing and online gaming on GGR or net value, new cases will be filed by the lottery organisers. Differential treatment for casinos will impact the already settled matter of lottery. Many states earning substantial revenues from lottery will be impacted. Pre-GST regime also was having significant taxes and in most instances of horse racing and casino, these taxes were on the face value. In such circumstances, there may not be much merit for adopting GGR- based taxation only for casino.

11.4.4 In case of casinos, the issue was further debated on, while the GoM could easily reach consensus on horse racing and online gaming.

11.4.5 In horse racing, the GoM overwhelmingly reached the conclusion that the GST be levied on face value of the bet at 28%. The States in which horse racing is prevalent observed that in Pre-GST regime, state taxes were levied on face value. In addition, there were certain other taxes like service tax; hence considering the nature of activity, there is no reason for imposition of tax on GGR. Thus, it was agreed to by all members to tax horse racing on full bet value. The GoM, accordingly, finalised its view on valuation of horse racing.

11.4.6 On online gaming too, after examination of all the above aspects and based on the above deliberations, the GoM concluded that in view of the nature of this activity, there does not appear to be a reason for not taxing it on full bet value. The industry is growing at a phenomenal pace. 28% rate on face value is reasonable. Lottery is already bearing such tax and has only been

growing. There is no reason to assume that existence of the industry would be threatened by such a reasonable levy. The tax would be borne by the player and not by the online gaming site. Any lower tax on such activity with negative externality will send a wrong message. Taking into account all these aspects, and also financial, legal and other implications, as detailed above, the GOM unanimously agreed that online gaming should be subjected to GST at the rate of 28% on the full value of the amount paid. The GoM finalised its view with consensus to tax online gaming at the rate of 28% on the full value.

11.4.6.1 During discussion, it was also felt by the members, that in case the law requires any change, the same may also be carried out, including insertion of an Explanation to Entry 6 of Schedule III to the CGST Act, 2017, so as to explicitly clarify that all these activities are taxed uniformly.

11.4.7 On casinos, the Hon'ble Minister from Goa reiterated that this issue is specific to his state and Sikkim. In future, few more States may have casinos. However, as he had mentioned earlier, this issue has wider implications. Therefore, the GoM may like to consider it in further detail, considering the apprehension that it may impact Goa's economic activity. The other Members of the GoM explained their views in detail, many of them reiterating that by very nature, such supplies should be taxed at 28% on the value of chips. While the GoM was of the view that what happens inside the Casino, i.e., each bet or playing of game in casino with winnings etc. should not be taxed, as customer only pays consideration at the time of buying of chips, to say that GST be abated on chips returned to casino after playing for whole day may not be a fair preposition, as the entire activity of going inside the casino, playing, getting entertained, winning or losing, is what constitutes the whole supply. It cannot be argued that a player going inside with 10 chips, playing for whole day with those chips and returning at the end of the day all 10 or more chips did not receive any supply from the casino. Refund of GST on such return of chips would mean that despite playing in casino for whole day, and also getting entertained in the process, there was no value associated with the supply made to him by the casino. It was felt that if lottery, online gaming and horse racing attract GST on the face value, then same treatment needs to be given to the Casinos. If casinos are uniformly taxed across the country, Goa does not get any disadvantage vis-a-vis other states. It was also reiterated that a person going to Casino could afford this tax, which is reasonable and not many people go there with the sole objective of winning. Lottery has survived and thrived with 28% tax on face value regime, so should other activities of similar nature. As such, intention in law is also to tax such supplies. Once, it is decided that each bet inside the casino is not taxed, this will provide a relief and taxing purchase of chips at face value is reasonable tax as borne by other activities and many other supplies as well. The Hon'ble Minister, Goa, in view of overall broader agreement in the GoM, agreed with

some reluctance to this decision, in the larger interest of making a consensus on the issue, stating that he would like to go with the spirit of taking decisions by consensus and of settling the issue after such detailed discussions and deliberations.

11.4.8 Accordingly, a consensus emerged that betting and gambling in casinos may continue to be taxed at the full value of bets placed and not on GGR/net value. GST should be levied on the value of chips/coins purchased from the casino. The bets or wagers placed in subsequent rounds of betting with the chips or tokens won in the previous rounds shall not form part of the taxable value of betting and gambling in the casinos. It was felt that this would be an appropriate approach which will be in conformity with law and legislative intent and at the same time will not make the casino industry unviable.

12. Recommendations:

- I. Imposition of GST on these activities namely, casinos, race courses, online gaming and lottery should be uniform (in terms of rate and valuation).
- II. For the purpose of levy of GST, no distinction should be made in these activities merely on the ground that an activity is a game of skill or of chance or both.
- III. **Rate of GST:** GST may be levied at the rate of 28% on all activities namely Casinos, Race Courses and Online Gaming.
- IV. **Valuation:**
 - a) In case of online gaming, the activities be taxed at 28% on the full value of the consideration, by whatever name such consideration may be called including contest entry fee, paid by the player for participation in such games without making a distinction such as games of skill or chance etc.
 - b) In case of Race Courses, GST continue to be levied at the rate of 28% on the full value of bets pooled in the totalisator and placed with the bookmakers.
 - c) In case of Casinos, GST be applied at the rate of 28% on full face value of the chips/coins purchased from casino by a player.
 - d) In case of casinos, once GST is levied on purchase of chips/coins (on face value), no further GST to apply on the

value of bets placed in each round of betting including those played with winnings of previous rounds.

- V. **Entry fee to casinos:** GST at the rate of 28 % is leviable on the services by way of access/entry to Casinos on payment of consideration/entry fee which compulsorily includes price of one or more other supplies such as food, beverages etc.; this being a mixed supply. However, optional supplies made independently of the entry ticket shall be taxed at the rates as applicable on such supplies.

13. Annexures:

**Annexure A: Office Memorandum dated 24.05.2021 regarding
initial constitution of GoM and its Terms of Reference**

S-31011/12/2021-DIR(NC)-DOR
Government of India
Ministry of Finance
Department of Revenue

New Delhi, dated 24th May, 2021

OFFICE MEMORANDUM

Subject: Constitution of Group of Ministers (GoM) on Casinos, Race Courses and Online Gaming - reg.

In pursuance of the decision of the GST Council a Group of Ministers (GoM) on Casinos, Race Courses and Online Gaming has been constituted. The GoM shall consist of the following members:

Sl. No.	Name	Designation and State	
1.	Sh. Nitin Patel	Deputy Chief Minister, Gujarat	Convener
2.	Sh. Ajit Pawar	Deputy Chief Minister, Maharashtra	Member
3.	Sh. Chowna Mein	Deputy Chief Minister, Arunachal Pradesh	Member
4.	Sh. Mauvin Godinho	Minister for Transport, Goa	Member
5.	Sh. Basavaraj Bommai	Minister for Home Affairs, Karnataka	Member
6.	Sh. P Thiagarajan	Minister for Finance, Tamil Nadu	Member
7.	Dr. Amit Mitra	Minister for Finance, West Bengal	Member

2. The terms of reference (ToR) for the GoM on Casinos, Race Courses and Online Gaming shall be as follows:

- a. To examine the issue of valuation of services provided by Casinos, Race Courses and online gaming portals and taxability of certain transactions in a casino, with reference to the current legal provisions and orders of Courts on related matters.
- b. To examine whether any change is required in the legal provisions to adopt any better means of valuation of these services.
- c. To examine the administration of such valuation provision if an alternative means of valuation is recommended.
- d. To examine impact on other similarly placed services like lottery.

3. The GoM on Casinos, Race Course and Online Gaming shall be assisted by a Committee of officers from Centre and States as convened by the GoM.
4. The secretarial assistance to this GoM will be provided by Joint Secretary (TRU-II) CBIC.
5. The GoM shall submit its recommendation to the Council within six month for consideration of the GST Council.


(Dinesh Singh)
Director
Tel.011-23092686

To,

1. All Members of GoM and Officers
2. Revenue Secretary, North Block, New Delhi
3. Chairperson, CBIC, North Block, New Delhi
4. Joint Secretary TRU-II, Department of Revenue, North Block, New Delhi
5. GST Council Secretariat, New Delhi
6. PS to Hon'ble Minister of Finance, Government of India, North Block, New Delhi
7. PS to Hon'ble Minister of State (Finance), Government of India, North Block, New Delhi.

**Annexure B: Office Memorandum dated 10.02.2021 regarding
re-constitution of GoM**

S-31011/12/2021-DIR(NC)-DOR
Government of India
Ministry of Finance
Department of Revenue

New Delhi, dated 10th February, 2022

OFFICE MEMORANDUM

Subject: Constitution of Group of Ministers (GoM) on Casinos, Race Courses and Online Gaming - reg.

In partial modification to the OM of even number dated 24.05.2021 & 11.06.2021 on the subject cited above, it is stated that reconstituted membership of the GoM is as follows: -

S. No.	Name	Designation and State	
1.	Shri Conrad Sangma	Chief Minister, Meghalaya	Convener
2.	Shri Ajit Pawar	Deputy Chief Minister, Maharashtra	Member
3.	Smt. Chandrima Bhattacharya	Minister for Finance, West Bengal	Member
4.	Shri Kanubhai Desai	Minister for Finance, Gujarat	Member
5.	Shri Mauvin Godinho	Minister for Panchayat Raj, Transport, Animal Husbandry & Veterinary Services, Protocol & Legislative Affairs, Goa	Member
6.	Dr. Palanivel Thiaga Rajan	Minister for Finance, Tamil Nadu	Member
7.	Shri Suresh Kumar Khanna	Minister for Finance, Parliamentary Affairs and Medical Education Departments, Uttar Pradesh	Member
8.	Shri Thanneeru Harish Rao	Minister for Finance, Telangana	Member

2. The other terms of reference (ToR) for the GoM on Casinos, Race Courses and Online Gaming shall remain unchanged.

3. This issues with the approval of competent authority.


(Dr. N Gandhi Kumar)
(Director)
Tel. 011-23092613

To,

1. All Members of GoM and Officers
2. Revenue Secretary, North Block, New Delhi
3. Chairperson, CBIC, North Block, New Delhi
4. Joint Secretary TRU-II, Department of Revenue, North Block, New Delhi
5. GST Council Secretariat, New Delhi
6. PS to Hon'ble Minister of Finance, Government of India, North Block, New Delhi
7. PS to Hon'ble Minister of State (Finance), Government of India, North Block, New Delhi.