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3. Retrospective 28% GST On Online Gaming Companies – Economy

The Supreme Court has upheld the constitutional validity of the government's retrospective 28% Goods and Services Tax (GST) levy on online gaming companies. The ruling sided with the government's interpretation treating 2023 GST amendments as clarificatory rather than substantive, enabling retrospective application. This judgment has significant implications for tax policy, compliance certainty, and the regulation of India's rapidly growing online gaming sector.

1.About the Supreme Court Judgment

Government's Position

1. The gaming sector argued that the 28% GST on online gaming should apply only prospectively, from 2023, after amendments approved by the GST Council came into effect.
2. The sector contended that retrospective taxation violated principles of fairness and predictability in tax administration.

Supreme Court's Ruling

1. However, the SC sided with the government's interpretation and treated the 2023 GST amendments as clarificatory rather than substantive changes.
2. By characterizing amendments as clarifications of existing law rather than new policy, the Court allowed retrospective application for periods before 2023.
3. This legal interpretation upheld the government's authority to collect taxes retroactively based on clarified understandings of existing law.

2.Online Gaming Sector Overview

Market Size and Growth Projections

1. The Indian market generated INR 232 billion in 2024, with 77% of this revenue coming from transaction-based games.
2. The sector is projected to grow at a CAGR of 11%, reaching INR 316 billion by 2027.
3. Growth drivers include smartphone penetration, affordable internet, and increasing disposable incomes.

Sector Segmentation

1. Esports – Refers to competitive digital sports as part of multi-sports events where teams or individuals participate in organized tournaments. Success in esports requires strategy, coordination, and advanced decision-making skills.
2. Online Social Games – Casual games forming part of everyday recreation, primarily skill-based and designed for entertainment, learning, or social interaction. These games are generally considered safe.
3. Online Money Games – This segment includes games involving financial stakes based on chance, skill, or both. These platforms have raised serious concerns due to reports of addiction, financial losses, money laundering, and even suicides.

Concerns with Online Money Games

1. It is estimated that around 45 crore people have been affected by online money gaming platforms, with losses exceeding Rs. 20,000 crores.

2. Exploitation includes predatory game design, manipulative reward mechanics, and targeting of vulnerable populations.
3. Social costs include family breakdown, mental health crises, and suicides linked to gaming losses.

Promotion and Regulation of Online Gaming (PROG) Act, 2025

Comprehensive Regulatory Framework

1. The Act imposes a complete ban on all forms of online money games, applying to games of chance, games of skill, and any combination thereof.
2. It allows only "online social games" and e-sports, establishing a clear legal distinction between regulated and prohibited gaming.

Online Gaming Authority of India (OGAI)

1. Proposes the creation of the Online Gaming Authority of India (OGAI) as a dedicated regulator to oversee online gaming.
2. The authority will have quasi-judicial powers, including summoning individuals, examining evidence, and issuing binding orders.
3. Composition – Chairperson and 5 members from different ministries ensuring multisectoral representation.
4. Functions include determining whether a game is an "online money game," registering online games, imposing penalties, and cancelling registrations if games change models to involve betting.

Registration and Compliance Requirements

1. Both e-sports and social games will require compulsory registration with the authority.
2. A certificate of registration will be valid for up to five years, requiring periodic renewal.
3. Companies must register their games with the Authority and provide details of revenue models and user safety features.
4. Proof is required that revenue comes from ads, subscriptions, or access fees—not from wagers or stakes.

Penalties and Offences

1. Offering online money gaming services may attract up to three years' imprisonment and fines of up to ₹1 crore.
2. Advertising such platforms could lead to two years' imprisonment and fines up to ₹50 lakh.
3. Violations are non-bailable offences and entire company staff can be held liable for facilitating breaches.
4. Penalties depend on the gain from violation, loss to users, and repetition of offence.

Three-Tiered Grievance Redressal Mechanism

1. Internal mechanism of the game company provides first-level complaints review.
2. Grievance Appellate Committee (GAC) under IT Rules, 2021 offers second-level appeal.
3. The Online Gaming Authority of India holds final appellate authority, providing independent oversight.

Regulatory Authority Distribution

1. E-sports will fall under the Ministry of Youth Affairs and Sports regulatory oversight.
2. Social games will be regulated by the Ministry of Information & Broadcasting.
3. MeitY (Ministry of Electronics and Information Technology) will hold overall regulatory responsibility.
4. The Ministry of Information & Broadcasting (I&B) will issue codes of practice and guidelines for classifying online social games (recreational, educational, skill-based, etc.).

Need for the Regulatory Framework

Market Development Without Legal Framework

1. It aims to bring transparency, accountability, and consumer protection in India's fast-growing online gaming sector.
2. The lack of a legal framework has hindered the sector's structured development and the promotion of responsible gaming practices, requiring urgent policy intervention and support mechanisms.

Major Concerns

1. The proliferation of online money games through mobile phones, computers, and the internet offering monetary returns has led to serious social, financial, psychological, and public health harms.
2. Predatory game design targets vulnerable populations including youth and economically disadvantaged groups.

Significance of PROG Act, 2025

Uniform Legal Framework

1. It will establish a uniform and national-level legal framework in the public interest, preventing regulatory arbitrage and jurisdictional inconsistencies.
2. Clear rules reduce legal uncertainty for legitimate businesses.

Youth Protection

1. It will protect the country's youth from predatory online Real Money Gaming apps which manipulate them through misleading monetary return promises.
2. Age-verification mechanisms and marketing restrictions protect minors.

Comprehensive Harm Prevention

1. It seeks to curb gambling, addiction, and financial risks while promoting ethical, skill-based gaming.
2. Consumer protection provisions address disclosure, fair play, and responsible gaming features.

5.Way Forward

1. **Transparent Implementation** - Ensure OGAI operates with transparency in licensing, rule enforcement, and complaint resolution to maintain public confidence.
2. **Consumer Education** - Launch awareness campaigns educating citizens about online gaming risks, identifying predatory platforms, and accessing support services for addiction.
3. **Technology-Based Safeguards** - Mandate advanced age-verification, spending-limit tools, and real-time monitoring systems to prevent exploitation.
4. **Stakeholder Coordination** - Establish regular coordination between OGAI, law enforcement, health departments, and financial regulators to address gaming-related harms comprehensively.
5. **International Cooperation** - Develop bilateral agreements with other nations to address cross-border gaming platforms and money laundering through gaming.
6. **Continuous Evaluation** - Conduct periodic reviews of PROG Act implementation, collect stakeholder feedback, and refine regulations based on emerging challenges.

Source - <https://economictimes.indiatimes.com/news/economy/policy/sc-upholds-govt-retrospective-28-gst-levy-on-online-gaming-companies/articleshow/131346516.cms?from=mdr>