GST on Games of Skill

What is the issue?

The Group of Ministers appointed by the GST Council are to contemplate on what should be the rate and incidence of imposing GST on lotteries, horse racing and online gaming.

What is market overview of skill gaming in India?

> *India has more than 560 million internet users, making it the second-largest internet consumer base in the world.*

- Skill gaming refers to pay-to-play online games, including fantasy sports (Dream 11 and MPL fantasy cricket), casual games, and card games (Rummy or Poker) which require some use of skill.
- While India's gaming market is currently smaller than the US and China, it is worth about US$1.5 billion and is expected to triple in size to reach US$5 billion by 2025.
- According to Statista, the market value of the Indian skill gaming sector was around INR 79 billion in the financial year 2021-22.
- **Reasons for popularity of gaming in India**
    - Young consumer base
    - Rising disposable incomes
    - Introduction of new sophisticated gaming genres with easier learning curves
    - Internet affordability
    - Rapidly increasing number of smartphone and tablet users
    - The growth of the influencer economy
    - Lifestyle changes due to the COVID-19 pandemic

How online skill gaming is regulated in India?

- At present, there is no uniform federal law regulating the skill gaming industry in India.
- The Public Gambling Act, 1867 and Prize Competitions Act, 1955 currently govern India's online gaming industry at the federal level while varying legislation in different Indian states supersede these Acts.
- The Public Gambling Act and Supreme Court decisions have excluded games of skill from the ambit of gambling.
- State governments in India are empowered by the constitution to legislate on gambling.
- **Tamil Nadu**
    - **Madras Gambling Act, 1930**- The Act excludes skill gaming from its ambit.
    - **Tamil Nadu Gaming and Police Laws (Amendment) Ordinance, 2020**- The ordinance expands the 1930 law and recognizes online gaming platforms as a mode of gambling and provides exception to skill gaming.
- **Meghalaya**

    - **Meghalaya Regulating of Gaming Ordinance 2021-** The ordinance seeks to regulate games of skill and games of chance within the state by envisaging a licensing regime for all forms of gaming.
    - The law also creates a progressive independent regulatory body called the Meghalaya Gaming Commission to monitor all gaming activities in the state.
- **Kerala-** In 2021, the Kerala state government issued a notification making online rummy illegal when played for stakes.
- **Supreme Court observation-** The Supreme Court, in the case of Chamarbaugwala, has laid the test of preponderance of skill to determine whether the game offered falls in the category of banned or restricted game of chance or is a game of skill.
- **High court verdicts**- Several states such as Kerala, Tamil Nadu, Madhya Pradesh, and Karnataka have attempted to impose bans on online gaming with monetary stakes.
- However, the respective local bans were struck off by the state high courts as unconstitutional.

All India Gaming Federation (AIGF) a self-regulatory apex industry body for online skill gaming in India was founded in 2016.

What about levying GST on skill gaming in India?

- For the purpose of levying GST, the federal government set up a panel of state finance ministers in 2021 for better valuation of the three services – online gaming portals, casinos and race courses.
- At present, online gaming attracts 18% GST in India.
- However, the panel has unanimously decided to hike the GST on all three services to 28%.

What are the issues in this aspect?

- **Entire gaming industry as gambling**- The GoM considers the entire gaming industry as gambling, which is not only against the established jurisprudence but may also fall foul of the CGST Act 2017 itself.
- **Betting and gambling**- Under the CGST Act, actionable claims are sought to be excluded from the ambit of GST, except for lotteries, betting and gambling.
- 'Betting and gambling' must be interpreted as betting on a game of chance and not staking or betting on a game of skill.
- **Equating all games of skill under one umbrella**- Even within the games of skill, all the games cannot be equated.
    - For instance, staking on horse racing through the tote is facilitated by the race clubs (non-profit entities) which rely on the commission to fund the horses, jockeys, breeders, livestocks amongst others.
- **Online games of skill vs. Casino games**- It is extremely difficult to distinguish between incidence of taxation on casino games with some games of skill like rummy and poker, which are played both online and on the casino floors.
- **Offends Article 14**- It offends the fundamental principle that 'equals are to be treated equally and unequals are to be treated unequally' and falls foul of Article 14 of the Constitution of India.
- **Non adherence to global standards**- If the rate and incidence of taxation are not as per the global standard, there will be an exodus of users to illegal operators and unregulated foreign portals.

- As a result, the government’s revenue will fall, dubious persons will have a new mode of funding their operations and there will be a large foreign outflow of Indian funds.

References

1. https://www.thehindubusinessline.com/opinion/levying-gst-on-games-of-skill-can-be-tricky/article65624518.ece
2. https://www.india-briefing.com/news/indias-skill-gaming-industry-investment-outlook-regulatory-landscape-24879.html/
3. https://www.financialexpress.com/brandwagon/online-gaming-and-gambling-stand-at-loggerheads-on-gst/2580817/

