GST on Online Gambling

Why in news?

The GST Council has said that the government will impose a goods and service tax of 28% on the turnover of online gaming companies, horse racing and casinos.

What is the market overview of gaming in India?

- **Online gaming market** - The revenue of the Indian mobile gaming industry is expected to exceed *1.5 billion dollar in 2022*, and is estimated to reach 5 billion dollar in 2025.
- While India's gaming market is currently *smaller than the US and China*, it is worth about US 1.5 dollar billion and is expected to triple in size to reach US 5 billion dollar by 2025.
- India's percentage of *new paying users (NPUs)* in gaming has been the *fastest growing* in the world.
- **Types of Online game -** Games of skill and Games of chance
    1. **A game of skill** – It is the one in which a player's superior knowledge, training, attention, experience, personal traits, and abilities are crucial to success.
    2. Example - Fantasy sports (Dream 11 and MPL fantasy cricket), casual games, and card games (Rummy or Poker)
    3. **A game of chance** – It is the one in which chance rather than skill determines the outcome.
    4. Example - Playing cards, roulette, rolling a dice, or even picking a numbered ball are reflected upon as chance-based games.

What is the decision of GST meeting?

- The latest provision means that tax will be levied on the *entry bet at 28%* rather than the earlier tax which is levied on the *Gross Gaming Revenue (GGR) at 18%.*
- It is considered to do away with the distinction between game of skill and game of chance, thus, treating all games as demerit goods, thereby attracting a 28% GST rate.
- The government will bring amendments to the GST-related laws to include online gaming and horse racing in *Schedule III as taxable actionable claims.*
- As per GST, an actionable claim is defined as goods under the Central Goods and Services Tax Act, 2017.
- It is a claim to an unsecured debt or a claim to any beneficial interest in movable property that is not in the possession of the claimant.
- So far, lottery, betting, and gambling were classified as actionable claims. Now, horse racing and online gaming will be added.

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

What are the advantages of the move?

- **Transparency -** The move will simplify the mechanism, eradicate complexity and imbibe transparency.
- **Check on addiction**- The Government quoted that the increase in taxation would reduce children addiction to online gaming.
- **Tax payments** - The move would result in a 55% increase in GST payments.

What are the issues in this aspect?

- **Entire gaming industry as gambling-** The Government 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.
- Even within the games of skill, all the games *cannot be equated.*
- **Impact on online gambling companies-** It will increase the *tax burden* where the tax exceeds the revenue and boost the growth of illegal gambling platforms.
- **Game of chance vs Game of skill-** 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.*
- **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.
- **Against judgements-** Various Court judgements have reaffirmed the states of online skill-based games as legitimate business activity protected as fundamental right under the Constitution.
- **Increase in black market activities** - The tax could hinder the Digital India Initiative, leading to an increase in black market activities and criminal offences, due to a 400-500% increase in the GST burden.
- **Benefit offshore gambling sites** - The change may benefit offshore gambling sites, leading to a significant tax loss for the government and exposing Indian gamers to unregulated websites.
- **Deter foreign investment** - The industry also fears that the change could deter foreign investment.

References

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