

Rajasthan HC: Dream11's 'online fantasy games' not 'betting'; GST-authorities to adjudicate on 'classification'

Ravindra Singh Chaudhary vs. UOI & Ors.

Rajasthan HC dismisses a PIL alleging that the online fantasy sports games being offered on Dream 11 platform are betting/gambling, and that Dream 11 was wrongly classifying its virtual online game under the wrong entry, to evade GST, however, leaves it for GST authorities to decide on the issue of classification; Relies heavily on Bombay HC judgment in Gurdeep Singh Sachar affirming the view that online fantasy cricket of Dream 11 is a game of mere skill, as distinguished from a game of chance and hence, does not amount to gambling/betting; Upholds Dream 11's submission that fantasy sports formats like that of Dream 11 are globally recognized as a great tool for fan engagement, as they provide a platform to sports lovers to engage with their favorite sports along with their friends and family; HC remarks that, "The fantasy sports industry is regarded as the next sunshine industry of India which is growing exponentially and already contributing thousands of crores to the Government exchequer."; Further, highlighting that since the result of the fantasy game depends on a participant's skill and not sheer chance, and winning or losing of virtual team created by the participant is also independent of outcome of the game or event in the real world, HC holds that the format of online fantasy game offered by Dream 11 is a game of mere skill: Rajasthan HC (Jaipur)

Summary:

The present PIL was filed alleging that Dream 11 Fantasy Private Ltd. provides a platform to its users for playing sports and games on a virtual platform, such as fantasy cricket, football, kabaddi, basketball and hockey. The Petitioner submitted that the said virtual platform, namely Dream 11, allows its users to register and play various games, to form their own teams made up of real players for cricket, football, kabaddi and NBA with a maximum budget of Rs. 100 Cr. Users initially have to pay an amount of Rs.100/-, out of which 20% is retained by Dream 11, whereas 80% of the remaining balance is transferred towards the winning amount for the game. Petitioner alleged that the games being played on the aforesaid platform is nothing else but "betting" on the cricket team. Petitioner further contended that online fantasy sports games are games of chance, thereby constituting illegal act of gambling/ betting and despite it being so, Revenue was not prohibiting this illegal act.

HC perused the common definition of "gambling/betting" as provided in Section 65(B) (15) of the Finance Act, 1994. Further, HC noted that Punjab & Haryana High Court in Varun Gumber Vs. Union Territory of Chandigarh, 2017 Cri LJ 3827, analyzed the business model of Dream 11 in detail and held that the same did not amount to gambling because it was a game of mere skill as opposed to a game of chance.

Perusing P&H HC's findings, HC deduced that the result of the fantasy games offered by Dream 11 is not determined merely by chance or accident, but it's the skill of the participant that determines the result of the game having predominant influence on the outcome of the

fantasy game. Whether any particular team in the real world match wins or loses, is also immaterial as the selection of virtual team by the participant involves choosing players from both the teams playing in the real world. HC further stated that it was also clear that offering the fantasy games of Dream 11 involving substantial skills is a business activity and not wagering having protection granted by Article 19(1)(g) of the Constitution. HC also noted that the SLP filed by Varun Gumber against the P&H HC judgment was dismissed by SC, and further highlighted that the Union of India has neither filed SLP against the HC judgment, nor has it filed for review of the order and has thus, accepted the findings contained therein.

Therefore, HC took a view that the issue whether the fantasy games played on the platform of Dream 11 are or are not gambling/betting activities was thus closed and decided in favour of Dream 11.

HC noted that in the case of Gurdeep Singh Sachar, the Bombay HC [TS-496-HC-2019(BOM)-NT] dealt with both the issues raised in the present PIL i.e.:

- Whether online fantasy sports games offered on Dream 11 platform are "gambling/betting"?
- Whether Dream-11 is wrongly classifying its virtual online game under the wrong entry for GST and, therefore, violating Rule 31(A) (3) of the CGST Rules, 2018 in order to evade GST?

HC noted that Bombay HC dismissed the PIL holding that the online fantasy cricket of Dream 11 was a game of mere skill, as distinguished from a game of chance, and that the Dream 11 fantasy game does not involve risking money or playing stakes on the result of a game or an event, hence, the same did not amount to gambling/betting. The Bombay HC also held that Dream 11 is correctly paying 18% GST by classifying its services under entry 998439 and is not liable to pay GST @ 28% as applicable to 'online gambling services' under entry 999692 and that Rule 31-A(3) of the CGST Rules, 2018 was not applicable as the said actionable claim as per Schedule III and Section 7(2) of the Act, are not considered as 'supply of goods' or 'supply of services' and, therefore, the authorities have rightly not taken steps against Dream-11

Pertinently, HC noted that The Law Commission Report No.276, in paragraph 3.13 has opined that fantasy games such as "fantasy football" falls within "gaming", as distinguished from "betting". Further, perusing the rules and regulations in the Federation of Indian Fantasy Sports (FIFS), 2017 Charter and noting that it was to ensure that the games run by its members are 'games of skill' and are not in the form of any gambling/betting, HC opined that since Dream 11 being a Member of FIFS has also submitted its regulations and charter of FIFS, no public interest element survives for the online gaming formats offered by them. HC clarified that the findings are for the format of online fantasy games offered by Dream 11 being compliant with

the Charter of FIFS, and may not be applicable if the stipulations contained in the Charter of FIFS are not followed in letter and spirit.

HC agreeing with the submissions of Dream 11 that the fantasy sports formats like that of Dream 11 are globally recognized as a great tool for fan engagement, as they provide a platform to sports lovers to engage with their favorite sports along with their friends and family. HC remarked, “The fantasy sports industry is regarded as the next sunshine industry of India which is growing exponentially and already contributing thousands of crores to the Government exchequer.” and held that legitimate business activity having protection under Article 19(1)(g) of the Constitution contributes to Government Revenue not only vide GST and income tax payments, but also by contributing in increased viewership and higher sports fan engagement, thereby simultaneously promoting even the real world games.

Expressing its independent view based on the Charter of FIFS, of which Dream 11 is a Member, HC stated that a participant of online fantasy sports platforms offered by the Dream 11 App, who enrolls in an online fantasy sport game and puts monetary stakes therein, performs a role similar to that of a real life team manager/selector, which requires use of substantial knowledge, strategy, skill, and adroitness against other participants. A participant is actually playing an online sport and not gambling betting or wagering on the outcome of any game or an event inasmuch as the result achieved by a player of online fantasy sports on completion of the corresponding real life match, is wholly independent of the final result or outcome of such real life match / game / event.

Therefore, highlighting that since the result of fantasy game depends on skill of participant and not sheer chance, and winning or losing of virtual team created by the participant is also independent of outcome of the game or event in the real world, HC held that the format of online fantasy game offered by Dream 11 is a game of mere skill and their business has protection under Article 19(1)(g) of the Constitution of India, as repeatedly held by various Courts and affirmed by the Supreme Court.

However, in light of the findings on the issue of gambling/betting, HC deemed it appropriate to leave the second issue, as to whether Dream 11 was wrongly classifying its virtual online games under wrong entry for GST and is also violating Rule 31A (3) of CGST Rules, 2018 to evade GST, for the GST authorities to consider in accordance with law.

In conclusion, HC thus opined that the PIL had been filed without any real public interest, without disclosing the relevant facts and without proper research. Pointing out that various judgments in respect of Dream 11 had not even been referred in the PIL, HC dismissed the PIL, finding it to be misconceived.