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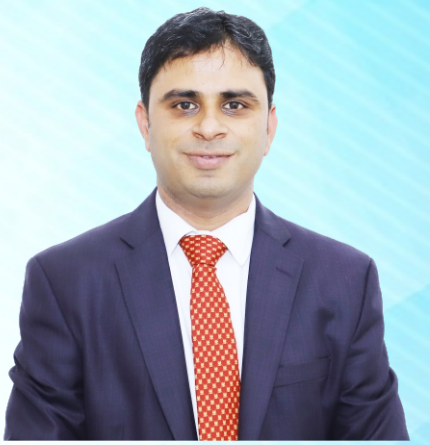
Chairman's Communique



"श्लोकेन वा तदर्धेन तदर्धार्धाक्षरेण वा। अबन्ध्यं दिवसं कुर्याद्वानाध्ययनकर्मभिः ॥

"Even a small amount of learning each day can contribute to one's intellectual and spiritual development. It also underscores the significance of giving back to society through acts of charity and fostering a sense of empathy and compassion. As chartered accountants, we play a vital role in driving economic growth, fostering financial stability, and promoting sustainable development. Our profession goes beyond number crunching and financial reporting; it encompasses a broader responsibility to contribute to the well-being of society as a whole.

One of the key ways we fulfill this premise is by providing accurate and reliable financial information. Our expertise in financial management, auditing, and reporting ensures that businesses and organizations can make informed decisions, attract investment, and maintain the trust of stakeholders.

By upholding the highest standards of integrity, transparency, and ethical conduct, we foster confidence in the financial systems that underpin economic progress Following activities done during the month During the month we conducted seminars Recent amendment in PMLA Act. Speaker- CA. Rajesh Singhvi, Two days' national conference jointly organized with AIFPT and Tax Practitioner Association, The new age CA Code of Ethics and Changes in ITR forms 2023-24. Speakers- CA. Sarthak Jain &; CA. Deepak Maheshwari respectively.CA IPL organized by branch in which more than 150 players auctioned happened, Owner are also CAs. after many close matches SSG warriors won the tournament.

CA Olympics organized at Abhay Prashal. Our members played Chess, Badminton, Carrom, Table Tanis, Tennis, Swimming, Squash On 29th May 2023, Blood Donation camp jointly with Tax practitioners Association and Income Tax Department. Convocation of Newly qualified CA on 27th May 2023 conducted by Indore branch . Total 574 Members registered for this convocation and more than 1000 parents and family members see this program in Brilliant convention centre. We are organizing the Students National Conference on 17th and 18th June at Ravindra Natyagrah ,Indore. We request you all to inspire and motivate your articles and known ones to join this mega conference.

I am sure that such type of conference will be very fruitful for the students as well as their principle. We will be entering the momentous milestone of the 75th anniversary of the Institute of Chartered Accountants of India (ICAI). This significant occasion presents us with a remarkable opportunity to reflect on our journey, celebrate our achievements, and chart a path forward for the future.

As we strive for excellence, we must always uphold the highest level of integrity. Trust is the bedrock of our profession, and it is built upon ethical conduct, transparency, and accountability. Let us embrace the responsibility we carry as Chartered Accountants to continuously learn, adapt, and uphold the highest ethical standards. Lifelong learning and adaptability are the keys to our success in this ever-changing landscape. By doing so, we not only elevate our own professional growth but also contribute to the advancement and credibility of the financial system and the economic progress of our nation.

JAI HIND JAI ICAI

Yours truly,

CA Mausam Rathi

Chairman-Indore Branch of ICAI

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Dominant Intension Test still holds well in GST regime for hybrid contracts!

CA. Ankit Karanpuria

There are various hybrid contracts where there involves an element of both service and goods. In the pre-GST regime, the state government intended to levy VAT/Sales tax treating the transaction as sale of goods whereas the Central government intended to levy service tax treating the transaction as service. This had led to huge litigation in the pre-gst regime.

In the present article, an effort has been made to understand how the courts have decided the taxability of such hybrid contracts in the pre-gst era. Further, this article also intends to analyse the impact of such rulings in the GST law in light of the provision of composite supply under GST regime.

Gannon Dunkerley and the Test of Dominant Intention

The test of dominant intension was derived by the Hon'ble Supreme Court in the case of **State of Madras v/s Gannon Dunkerley and Co. (Madras) Ltd. (1958) 9 STC 353**. It was observed by the Hon'ble SC that in order to determine whether a contract was indeed a sale and therefore, could be taxed as such - the relevant test would be of the dominant intention of the parties Hon'ble SC observed that in case of building construction contract the property in goods passes to the buyer by the theory of accretion as and when the goods are embedded into the earth. The property in goods does not pass as chattel pursuant to the agreement of sale and therefore it is not sale as per the Sale of Goods Act, 1930. In a building construction contract the contract is for getting the building constructed and not for sale of goods used in the course of construction of contract.

Thus it was held that the State legislatures did not have the competence to impose sales tax on the goods element of a construction contract.

The 46th Constitutional Amendment was effected to overcome the judgement of the Supreme Court in the case of Gannon Dunkerley and Co. (supra). Article 366(29A) of the Constitution was introduced whereby the transfer of property in goods (whether as goods or in some other form) involved in the course of execution of works contract was deemed to be sales.

Thus the State legislatures were conferred with the power to impose tax on the goods element of a works contract.

Survival of the Dominant Intension test after 46th Constitutional Amendment

Hon'ble SC in case of BHARAT SANCHAR NIGAM LTD & ANR vs UNION OF INDIA & ORS 2006-TIOL-15-SC-ST-LB remarks that if there is an instrument of contract which may be composite in form in any case other than the exceptions in Article 366(29-A), unless the transaction in truth represents two distinct and separate contracts and is discernible as such, then the State would not have the power to separate the agreement to sell from the agreement to render service, and impose tax on the sale. The test therefore for composite contracts other than those mentioned in Article 366 (29A) continues to be - did the parties have in mind or intend separate rights arising out of the sale of goods. If there was no such intention there is no sale even if the contract could be disintegrated. The test for deciding whether a contract falls into one category or the other is to as what is the substance of the contract.

In view of the above, a reference can be drawn that the dominant intention test would still be relevant in all

the cases other than Article 366(29-A). Following the decision of the BSNL (Supra), Hon'ble SC in case of COMMISSIONER OF CUSTOMS, CENTRAL EXCISE & SERVICE TAX Versus M/S SUZLON ENERGY LTD. TS-145-SC2023-ST has held that the "Engineering Design & Drawings" prepared and supplied by sister company would be treated as design services in terms of the provisions of Finance Act 1994.

It was observed that merely because "Engineering Design & Drawings" prepared and supplied by sister company were shown as 'goods' under the Customs Act and in the bill of entry, by that itself cannot be a ground to take such services out of the definition of "design services" under the Finance Act, 1994. Hon'ble SC arrived on such conclusion based upon following observations:

- There is a distinction between the sale of goods and a contract of service. What is relevant is the intention of the contracting parties and whether the contracting parties intend transfer of both goods and services, either separately or in an indivisible manner or in a composite manner.
- It was observed that there can be two different taxes/levies under different heads by applying the aspect theory. As per the settled position of law now, the same activity can be taxed as 'goods' and 'services' provided the contract is indivisible and on the aspect of services there may be levy of service tax.

Thus, in view of the above a reference can be drawn that the in order to decide whether a hybrid indivisible contracts (other than those covered under article 366(29A) is to be taxed as sale of goods or service, the dominant intention of the contracting parties would be relevant.

Position under GST law

In the GST law, the government has introduced a concept of composite supply. In terms of the provisions of Section 2(30) of the Central Goods And Services Act 2017, "composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply.

Further, Section 2(90) "principal supply" means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary. Further, as per the provisions of Section 8 of the CGST Act 2017 a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply. On perusal of the definition of the principal supply a reference can be drawn that the GST law inherently incorporates the concept of dominant intension test in itself.

In GST regime, services in relation to for building, construction wherein transfer of property in goods is involved is only treated as works contract. Further, works contracts are treated as supply of services in term of the provisions of schedule II to Section 7 of the CGST Act.

Therefore, to that extent there is contradiction in the provision of GST law with respect to works contract with provisions of article 366(29A) of the constitution. Article 366(29A) creates a legal fiction to include the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract as tax on the sale or purchase of goods whereas GST law treats the works contracts as supply of service.

Under the GST law in case of a hybrid contracts (other than works contract) which involves two or more taxable supplies of goods or services or both, in order to decide the levy of GST treating the transaction as supply of service or goods would depend upon the intention of the parties. If the predominant intent of the contract is the supply of service then entire contract would be taxable at the rate of tax applicable to service even if some goods are transferred along with supply of such service.

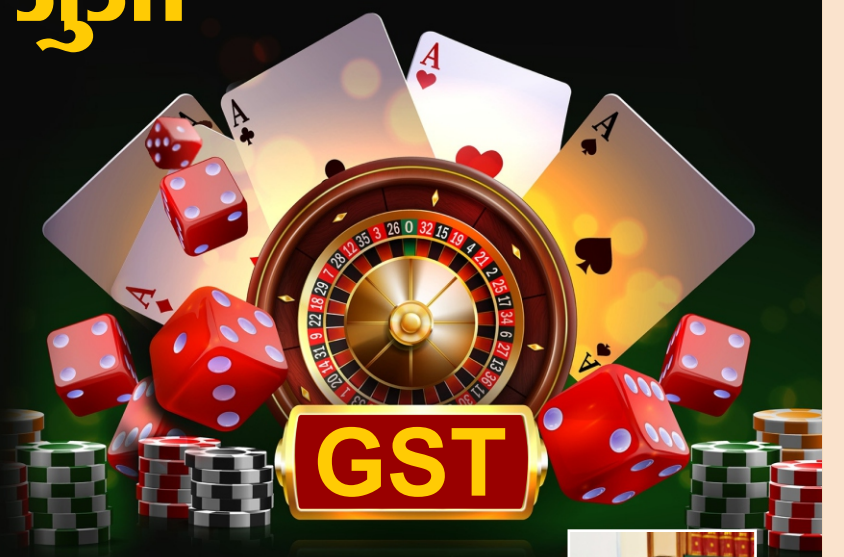
Let us analyse certain transaction under GST law to understand the concept of composite supply.

Transaction	CBIC clarification	Author's comments
Food supplied to the patients: Health care services provided by the clinical establishments will include food supplied to the patients	Food supplied to the in-patients as advised by the doctor/nutritionists is a part of composite supply of healthcare & not separately taxable. Other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are taxable. Circular No. 32/06/2018-GST 12th Feb. 2018	Clarification of CBIC is in line with concept of Composite supply.
How is servicing of cars involving both supply of goods (spare parts) and services (labour), where the value of goods and services are shown separately, to be treated under GST?	2.1 The taxability of supply would have to be determined on a case to case basis looking at the facts and circumstances of each case. 2.2 Where a supply involves supply of both goods and services and the value of such goods and services supplied are shown separately, the goods and services would be liable to tax at the rates as applicable to such goods and services separately. Circular No. 47/21/2018-GST Dated the 8th June, 2018	In my view, the CBIC circular is not in line with the provisions of Composite Supply. The only test to decide taxability is the pre- dominant nature of supply and the intention of the parties. Here in case of car servicing the dominant intension is to provide the services of car repair which may involve supply of some goods during provision of repair services. Therefore, such transaction should be taxable as supply of service irrespective of the fact that the value of goods is separately mentioned in the invoice.
Where certain specified goods inter-alia Bio-gas plant, solar power based devices, wind mills etc., the value of goods would be 70 % of the contract price and remaining 30 % would be the value of services. Accordingly rate of tax as applicable to goods and services has to be applied.	Explanations to Entry no. 201A of the GST Rate Schedule for Goods and Entry 38 of GST Rate Schedule	Such explanation requiring splitting of the contract value as supply of service and goods in fictional ratios is against the concept of 'composite supplies' as also the rulemaking power u/s 15 of the Act. Solar & Wind Power Developer has already challenged 70:30 valuation provisions in the Hon'ble Andhra Pradesh High Court.

In view of the above discussions, a reference may be drawn that even in the GST regime the concept of the dominant intention test will prevail by way of composite supply. In order to decide the levy of GST, one has to determine the element of pre-dominant supply and intention of the contracting parties under composite contract (other than works contract). Accordingly, the tax would be leviable at the rate of tax as applicable to the principal supply under a composite supply contract. In order to levy tax on supply of services and supply of goods separately, the government cannot separate a composite contract by specifying the fictional value of goods and services.

ये जीएसटी एक जुआ

क्या आप एक ऐसे परिदृश्य की कल्पना कर पाएंगे जब भारत देश के तमाम बड़े वकील एक हाईकोर्ट में एक सिंगल मेंबर बेंच के सामने यूबी जिरह कर रहे हैं? कल्पना कर सकते हैं क्योंकि मामला भी तो बहुत बड़ा था 21000 करोड़ रुपए का. ऑनलाइन गेम पर जीएसटी लगाने की बात की गई थी. न्यायधीश ने अपने 325 पेज के वृहद निर्णय में ऑनलाइन गेम जैसे कि रम्मी आदि को गेम ऑफ स्किल माना और इसीलिए यह गैंबलिंग बिजनेस नहीं ऐसा बताया!



सीए नवीन खंडेलवाल

इसकी शुरुआत कहां से हुई

गेमस्क्राफ्ट टेक्नोलॉजी प्राइवेट लिमिटेड ऑनलाइन इंटरमीडियरी कंपनी है जो 2017 में बनती है ,ऐसे टेक्नोलॉजी प्लेटफॉर्म चलाती है जहां पर वह अपने 10 लाख से अधिक यूज़र्स को स्किल पर आधारित गेम खेलने की अनुमति देती है कुछ राशि लेकर! कंपनी जीएसटी में रजिस्टर्ड थी बेंगलुरु में! यह पूरी तरह से लीगल कंप्लायंस करने में बिलीव करती है और सारे टैक्स और रिटर्न टाइम पर भरती है और जब से जीएसटी आया है 1600 करोड़ रुपए का टैक्स जीएसटी और इनकम टैक्स के तहत दे चुके।

नवंबर 2021 से लेकर के 13 नवंबर 2021 के बीच में जीएसटी अथॉरिटीज ने इनके यहां पर सर्च की और बहुत सारे दस्तावेज एवं सामान को जप्त किया तथा 17 नवंबर को एक अटैचमेंट आर्डर भी जारी कर दिया! धारा 83के तहत बैंक अकाउंट अटैच कर दिया। जिसके विरोध के पश्चात फाइनल कन्फर्मेशन ऑर्डर भी 30 नवंबर 2021 को पास कर दिया। जीटीपीएल ने इस आर्डर को चैलेंज किया 3 दिसंबर 2021 को कर्नाटका हाई कोर्ट ने एक अंतरिम ऑर्डर पास करके अपना बैंक अकाउंट चालू रखने की इजाजत दी, स्टे के साथ।

जीएसटी अधिकारियों ने इसी बीच जीटीपीएल के कर्मचारियों को सम्मन देकर बुलवाया उनके स्टेटमेंट रिकॉर्ड किए जो कि अगस्त 2022 तकचला।

एक सुनवाई में काउंसिल ने यह गुजारिश की कि जिस डिपार्टमेंट के जॉब अधिकारियों द्वारा जो अनावश्यक रूप से परेशान किया जा रहा है और प्रताड़ना की जा रही है वह रुकवाया जाए।
क्योंकि उन्हें बार-बार जीएसटी के ऑफिस बुलाया जाता है हर किसी समय पर या फिर वो खुद ही आ धमकते हैं!

इस संबंध में कर्नाटका हाई कोर्ट ने आदेश दिया कि किसी भी तरह से जीटीपीएल के अधिकारियों एवं कर्मचारियों पर कोई भी गलत अथवा प्रताड़ना वाली कार्यवाही ना की जाए! अगर चाहे तो ऑफिस कार्य समय में में स्टेटमेंट रिकॉर्ड कर सकते हैं!

8 सितंबर 2022 को डिपार्टमेंट ने एक इंटीमेशन नोटिस सेक्शन 74 में जारी किया जिसमें उसने जीटीपीएल के अधिकारियों को 20989 करोड़ 31 लाख 31 हजार 501 ₹ इंटरेस्ट एवं पेनल्टी के साथ 16 सितंबर 2022 तक भरने के लिए कहा!

इसके तुरंत बाद ही सेक्शन 74 में डिपार्टमेंट ने शो कौज़ नोटिस जारी कर दिया जीटीपीएल कंपनी उसके फाउंडर उसके चीफ एग्जीक्यूटिव ऑफीसर और चीफ फाइनेंशियल ऑफीसर के खिलाफ।
जिन्होंने फिर बाद में इस हाई कोर्ट में रिट पिटिशन दायर की!

हाई कोर्ट के ऑब्जरवेशन निम्न प्रकार रहे...

कंसेप्ट ऑफ सप्लाई

पुराने इनडायरेक्ट टैक्स के समय में कई प्रकार की एक्टिविटी पर टैक्स लगाए जाते थे, मैन्युफैक्चरिंग सेल, गुड्स का इंपोर्ट, सर्विस करना शामिल होता था !

1 जुलाई 2017 से जीएसटी आने के बाद सिर्फ सप्लाई पर ही जीएसटी लगता है! संविधान के आर्टिकल 366(12) के तहत एक सौ एक नंबर का अमेंडमेंट 2016 में पास किया गया था गुड्स एवं सर्विसेज पर टैक्स लगाने की बात की गई थी।

अर्थात गुड्स अथवा सर्विस अथवा दोनों पर टैक्स लगेगा जिसमें मानवीय उपभोग हेतु लिकर शामिल नहीं है ! जीएसटी कानून की धारा 7(1)(र)स्पेसिफिकली ऐसे गुड्स अथवा सर्विस के सप्लाइ मैं ऐसे प्रकारों को शामिल करती है जिसमें सेल, ट्रांसफर, बॉर्टर एक्सचेंज, लाइसेंस, रेंटल ,लीज,डिस्पोजल सभी आ जाते हैं! जिन्हें किसी कंसीडरेशन के बदले में किसी बिजनेस को करने अथवा उसको बढ़ाने के दौरान किया जाता है!

बिजनेस की डेफिनेशन में गैंबलिंग अथवा बेटिंग शामिल है! क्योंकि बिजनेस की परिभाषा में वेजर अथवा ऐसी कोई समान गतिविधि को भी शामिल किया जाता है! इसलिए जीएसटी के परपस से बिजनेस में बैटिंग, गैंबलिंग, लॉटरी इत्यादि शामिल है।

जो रमी का खेल होता है वह वैसा नहीं है जिसमें परिणाम क्या होगा इसका अनुमान लगाया जा सके बल्कि यह तो ऐसा खेल है जहां पर बुद्धि कौशल का उपयोग करके जो आउटकम अथवा परिणाम है उस पर नियंत्रण किया जाता है, और ना ही यह ऐसा खेल है जिसमें कोई ऐसी फोरकास्टिंग की जा सकती है जिसमें किसी का जवाब मिल जाए अथवा कौन विजेता होगा इस बात का दावा किया जा सके।

यह तो वैसा खेल है जहां पर महत्वपूर्ण तरीके से कौशल का उपयोग करते हुए खिलाड़ी द्वारा जो एक्टिविटी की जाती है और यही बुद्धि कौशल खेल के परिणाम पर पूरा नियंत्रण करता है।

यह कोई चांस की बात नहीं है और जब बुद्धि अथवा कौशल के उपयोग का किसी खेल में बहुत ज्यादा महत्व है बजाय किसी अवसर अथवा चांस के तो ऐसी स्थिति में वह खेल बैटिंग अथवा गैंबलिंग नहीं कहलाएगा

वैसे तो हर खेल में कोई ना कोई चांस की बात भी होती ही है और कौशल के गेम में तो निश्चित रूप से सही कौशल का ही रोल रहेगा ऐसा जरूरी भी नहीं है, लेकिन फिर भी यह सेटल्ड पोजीशन है कि कानून की ऐसी कोई गतिविधि जहां पर कौशल की एक्सरसाइज करने की जरूरत पड़ती है और वह बुद्धि कौशल इस तरह से उपयोग होती है कि वह चांस वाली बात को खत्म कर सके और उस कौशल के बिना खेल कंप्लीट ना किया जा सके।

जो रमी का खेल होता है उसमें दांव लगाने वाले लोग अपने कौशल के आधार पर एसेसमेंट करते हैं। इसीलिए खेल खेलते समय दांव लगाने वाले लोग अपने जजमेंट का उपयोग करते हुए अपने बुद्धि कौशल के आधार पर खेल के परिणाम का निर्धारण करते हैं। इसलिए इसे फोरकास्टिंग कहना या कोई हिडन टारगेट कहना गलत होगा

गैंबलिंग गेम ऑफ चांस जरूर है लेकिन रम्मी का गेम गेमबिलिंग नहीं है। गैंबलिंग, गेम ऑफ चांस, गेम ऑफि स्किल विगत वर्षों में विकसित हुई टर्मिनोलॉजिस है जिनको हम सालों साल यूज़ करते हैं लेकिन हमें इन्हें संदर्भ की बजाय नो मेन जूरिस के सिद्धांत का उपयोग करते हुए
लीगल संदर्भ में देखना होगा क्योंकि टैक्सेशन का आधार वहीं बनेगा।

जहां तक गैंबलिंग और गेम ऑफ चांस का संदर्भ है वहां पर चांस अथवा अवसर या भाग्य की प्रॉमिनेंस उपस्थिति होती है।
और जहां तक कौशल का कोई खेल है तो वहां पर कभी भी कौशल का अंश कम नहीं आंका जा सकता है।

ऐसे खेलों में चांस होकर भी नहीं रहता बल्कि वह बुद्धि कौशल का हिस्सा या उसका सेवक बन जाता है

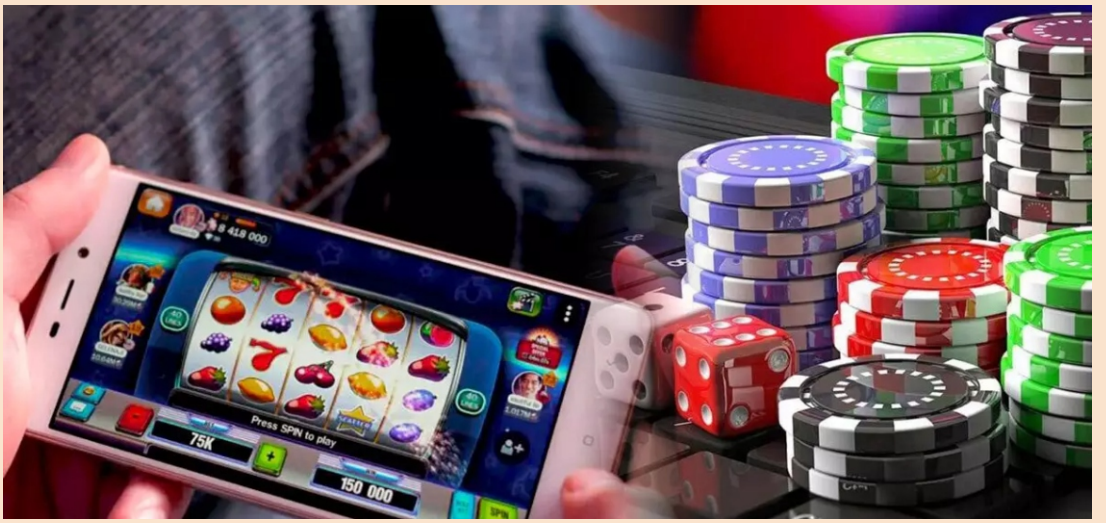
क्योंकि रम्मी जैसे खेल में भी बुद्धि कौशल का उपयोग अधिकाधिक होता है, क्योंकि कौन से पत्ते गिर रहे हैं कौन से पत्ते उठाए जा रहे हैं इसका निर्धारण करते हुए किन पत्तों के गिरने या उठने की आगे संभावना है इसका बुद्धि के माध्यम से ही निर्धारण किया जाता है।

क्योंकि कौन से पत्ते फेंकना है और कौन से पत्ते उठाना है इसमें दिमाग तो लगता ही है इसीलिए रम्मी का खेल दिमाग और कौशल का खेल है! न कि कोई चांस का खेल।

जीएसटी के संदर्भ में बेटिंग एवं गैंबलिंग का क्या अर्थ जिस दृष्टि से शेड्यूल 3 के क्लाज सिक्स में गैंबलिंग और बैटिंग को शामिल किया गया है उसके अंतर्गत स्किल वाले गेम्स को शामिल नहीं किया जा सकता।

जो शो कॉज नोटिस विचाराधीन है जो कंटेंशन और सबमिशन रेस्पोंडेंट द्वारा बताए गए हैं अथवा सबमिट किए गए हैं उससे यह स्पष्ट रूप से इंगित होता है कि यह विभाग द्वारा एक बेकार की और आधारहीन कोशिश थी कि वह विभिन्न प्रकार के हाई कोर्ट और सुप्रीम कोर्ट के निर्णय में से अपनी मनमर्जी से कुछ भी वाक्य या वाक्यांश को उठाकर उसके आधार पर कोई केस बना दें जिसका कोई अस्तित्व ही नहीं, कोई कारण नहीं, कोई तर्क नहीं।

और यह ठीक इस प्रकार की बात हुई कि हवा में बालों को उछाल दो और कैची चलाकर उसे काटने की कोशिश करो। कानून की दृष्टि में यह सर्वथा ही अनुचित रहेगा



निष्कर्ष हाईकोर्ट ने यह निष्कर्ष दिया

गेम ऑफ स्किल एवं गेम ऑफ चांस मैं बहुत ज्यादा स्पष्ट अंतर होता है और यहां पर प्री डोमिनेंस का टेस्ट अप्लाई किया जाएगा। जिसके आधार पर कहा जा सकता है कि चाहे पैसे लगाकर खेला जाए या बिना पैसे लगाए ऑफलाइन खेला जाएगा ऑनलाइन रमी जैसे गेम स्किल के गेम ही कहलाएंगे।

जीएसटी एक्ट की धारा 2 उप धारा 17 के अनुसार वेजरिंग के कॉन्ट्रैक्ट भी बिजनेस की परिभाषा में शामिल होंगे किंतु इसका मतलब यह नहीं हो जाता कि लॉटरी गैंबलिंग और बैटिंग सभी एक प्रकार के हैं और स्किल के गेम हैं।

इन तीनों का मीनिंग इस प्रकार निकाला जाना चाहिए कि जीएसटी एक्ट की शेड्यूल 3 के आइटम नंबर 6 के तहत कि इसमें गेम्स ऑफ स्किल शामिल नहीं होंगे। जैसा कि सुप्रीम कोर्ट ने भी कई दफा अपने निर्णय में कहा है

– यह स्पष्ट हो जाता है कि जीएसटी एक्ट की शेड्यूल 3 की आइटम नंबर 6 में जो एक्शनेबल क्लेम की एंट्री है गेम ऑफ स्किल पर भी लागू होगी और जीएसटी के दायरे से बाहर होगी ना कि वह और गेम ऑफ चांस जैसे कि लॉटरी बेटिंग एंड गैंबलिंग की तरह वह भी टैक्सेबल होगी

गेम्स ऑफ स्किल का टैक्सेशन धारा 7 की उप धारा दो के तहत सप्लाई की परिभाषा में शामिल नहीं होने की वजह से पेटीशनर द्वारा खिलाए जाने वाले रम्मी अथवा कोई भी गेम ऑफि स्किल जिसमें प्लेयर पैसा लगाते हैं या बिना पैसे के खेलते हैं वह गेबिलिंग नहीं है।

–ऐसा कोई गेम जिसमें स्किल और चांस दोनों की ही मिक्सिंग है और यदि उसमें चांस प्रीडोमिनेंट है मुखर है तो वह गैंबलिंग कहलायेगा।
कोई गेम जिसमें स्किल और चांस दोनों की मिक्सिंग है और उसमें यदि स्किल प्रीडोमिनेंट है ऐसी स्थिति में वह गेम्स ऑफ स्किल कहलाएगा न की गैंबलिंग।

रम्मी वहां सब्सटेंशियली और मुख्य रूप से स्किल का ही गेम है चांस का नहीं। रमी का जो खेल है वह अगर पैसा लगाकर खेली जाए या बिना पैसा लगाकर खेली जाए वह गैंबलिंग नहीं है।

रम्मी का खेल ऑफलाइन हो फिजिकल हो ऑनलाइन हो इलेक्ट्रॉनिकली हो या डिजिटल हो इससे कोई अंतर नहीं पड़ता। वह हमेशा गेम्स ऑफ स्किल रहेगी न की गेम्स ऑफ चांस।

इसी प्रकार से अन्य कोई भी ऑनलाइन गेम जो कि मुख्य रूप से या प्रमुख रूप से स्किल के गेम है यानी कि जिसमें बुद्धि कौशल का उपयोग होता है वह भी स्किल के गेम होंगे चांस के नहीं और इसीलिए गैंबलिंग नहीं कहलाएंगे।

अतः यह स्पष्ट हो जाता है कि

जीएसटी कानून के अंतर्गत ऑनलाइन रमी के गेम अथवा इसी प्रकार के अन्य गेम जो कि स्किल के हैं, चांस के नहीं वह गैंबलिंग और बैटिंग की परिभाषा में शामिल नहीं होते।

जैसे कि शेड्यूल 3 के एंट्री नंबर 6 में दिया गया है और इसीलिए उस पर जीएसटी नहीं लग सकता इसलिए डिपार्टमेंट द्वारा जो भी आरोप लगाए गए हैं अतः जो शो कॉज नोटिस है 23 सितंबर 2022 का है वह गलत है गैर कानूनी है, क्षेत्राधिकार के बाहर है आर्बिट्रेरी है इसीलिए वह शो कॉज नोटिस निरस्त किया जाता है।

निर्णय के उपरांत कुछ नवीन प्रश्न

यह शो कॉज नोटिस जारी किया गया क्या यह भी एक प्रकार का जुआ नहीं खेला गया है?

जीएसटी किस तरीके से बिना तैयारी के साथ लाया गया और प्रतिदिन तमाम तरह के अमेंडमेंट हो रहे हैं नोटिफिकेशन आ रहे हैं कोर्ट के डिसीजन आ रहे हैं क्या यह भी एक प्रकार से जुआ नहीं खेला गया देश की अर्थव्यवस्था के साथ!

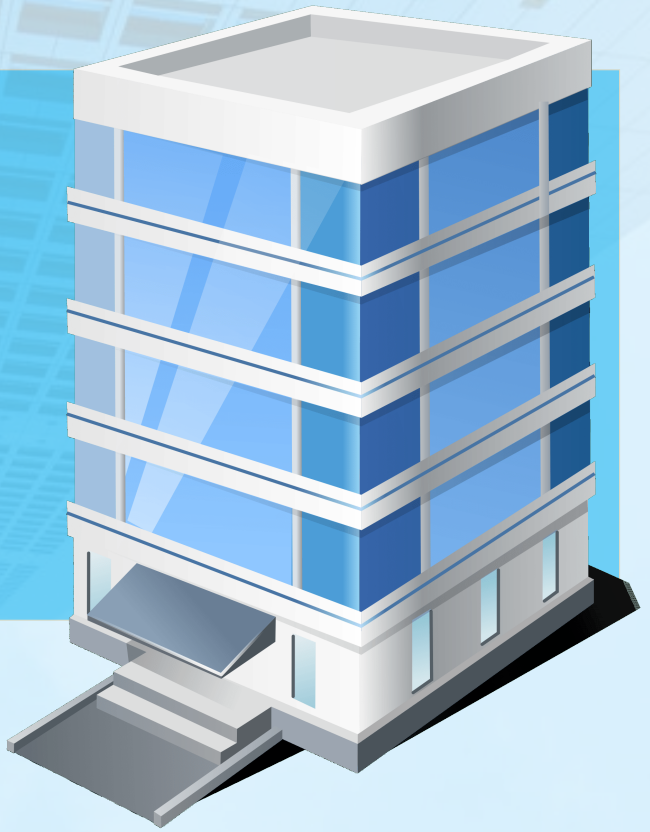
सिंगल मेंबर बेंच ने यह डिसीजन दिया है, डिपार्टमेंट अवश्य रिव्यू पिटिशन फाइल करेगा क्या जुवां जारी नहीं रहेगा?

बड़े–बड़े वकील पैसों के बड़े–बड़े मामलों में ही अपीयर हो रहे हैं जबकि मुद्दे का कोई आधार ही नहीं था। क्या यह भी एक प्रकार से न्यायिक व्यवस्था के प्रति जुआ खेलना नहीं हो गया?

नोटिस जारी करने वाले में कोई स्किल नहीं थी या उसने बाई चांस सोचा कि शायद रिकवरी हो जाए?

क्या इस केस की लड़ाई में कोई स्किल का यूज हुआ! या फिर यह चांस की बात है कि डिसीजन टैक्सफेयर के फेवर में आ गया!

Consequences of not maintaining the Registered Office of the Company



CA. Mayank Sharma

In the present regulatory environment compliances are increasing day by day and also the ministry of corporate affairs is in no mood to tolerate any of such non-compliance. The ministry is actively initiating proceeding to reduce activity of bogus/shell companies and making genuine & ethical corporate environment.

During past few period registrar of companies have encountered some instances where companies with bogus address got registered with them. Against which registrars have initiated penal proceedings.

Let's Look at the statutory requirements:

According to the provision of section 12 of the company act, 2013 every company must have a registered office and all the correspondence to the company shall be addressed to it.

Section-12. Registered office of company:

1. A company shall, on and from the thirtieth day of its incorporation & at all times thereafter, have a registered office capable of receiving & acknowledging all communications and notices as may be addressed to it.

2. The company shall furnish to the Registrar verification of its registered office within a period of thirty days of its incorporation in such manner as may be prescribed.

3. Every company shall—

a. Paint or affix its name, and the address of its registered office, and keep the same painted or affixed, on the outside of every office or place in which its business is carried on, in a conspicuous position, in legible letters, and if the characters employed therefor are not those of the language or of one of the languages in general use in that locality, also in the characters of that language or of one of those languages;

b. Have its name engraved in legible characters on its seal, if any;

c. Get its name, address of its registered office and the Corporate Identity Number along with telephone number, fax number, if any, e-mail & website addresses, if any, printed in all its business letters, billheads, letter papers and in all its notices and other official publications; and

d. Have its name printed on hundies, promissory notes, bills of exchange and such other documents as may be prescribed:

Provided that where a company has changed its name or names during the last two years, it shall paint or affix or print, as the case may be, along with its name, the former name or names so changed during the last two years as required under clauses (a) and ©:

Provided further that the words "One Person Company''shall be mentioned in brackets below the name of such company, wherever its name is printed, affixed or engraved.

Consequence of non-compliance :

For non-compliance of any of the provision of the section 12 of the Act order of penalty, under section 454 of Companies Act 2013 read with Companies (Adjudication of Penalties) Rules, May be passed by adjudicating authority.

The same is being passed by the Regional Director (Southern Region) Chennai on 3rd March 2022 bearing no. ADJ/15/RD (SR)/2021-22 in the matter of Kovai Medical Center and Hospital Limited under section 454(7) of the Companies Act, 2013.

The readers may like to read the complete details of the order the relevant website is https://www.mca.gov.in/content/mca/global/en/ data-and-reports/rd-roc-info/rd-adjudication-orders.html

Insights

It is clearly understood that the company needs to have a physical official address in real which could be found by the stakeholders of the company and also by the general public and regulators in terms of section 12 of the Companies Act 2013 as the section clearly provide to have a physical address for registration / incorporation of a company.

The provisions of the Companies Act spells out that the company need to have a full address i.e. Door No / House No with road name etc.

Non-complying the provisions relating to maintaining the registered office of the company in terms of section 12 of the company could invite penal action as seen in this case where the Registrar of Companies levied penalty to the company, its directors and KMPs

Compliance is imperative and therefore, the directors /KMPs and other officers of the company are required to ensure the compliance in terms of the company Act and Rules for the company.

TAXATION ON VIRTUAL DIGITAL ASSETS (CRYPTO-CURRENCY) IN INDIA

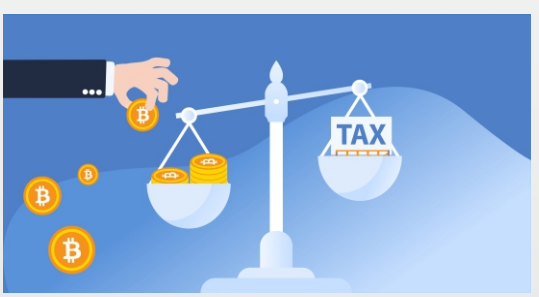
CA. PRADHUMN PATHAK

Digital assets, including cryptocurrencies, are still in the early stages in India and have a long way to go in terms of adoption and acceptance. The Indian government has been cautious in its approach towards digital assets, and there is still regulatory uncertainty surrounding their status and usage in India.

Before we discuss the implications of the recent developments in TDS provisions & taxation policy for Virtual Digital Assets (VDAs), let's understand the meaning of VDAs.

A Virtual Digital Asset is a type of digital asset that exists solely in digital form and is typically represented by a unique code or token on a blockchain or other distributed ledger technology. These assets are often designed to be used as a medium of exchange or a store of value, similar to traditional currencies or commodities .In the Budget 2022, The government has officially termed digital assets including crypto assets under “Virtual Digital Assets”. These comprise all the cryptos such as Bitcoin, Ethereum, etc, and other digital assets such as Non-fungible token (NFTs).

TDS on VDAs and Cryptocurrencies



Any person buying VDAs or Cryptocurrency must deduct a TDS of 1% of the total amount paid to the seller, according to section 194S of the Income Tax Act. The government has specified a certain limit, beyond which all transactions will attract TDS at the time of credit of the said payment.

In case of non-availability of the seller's PAN, the tax will be deducted at source (TDS) at 20%.

As per Section 206AB of the Income-Tax Act, 1961, if the individual has not filed their prior year's IT return and the aggregate of TDS and TCS of that year is more than Rs 50,000/-, TDS will be charged at 5%.

Conditions under which TDS will apply

-The total amount of transfer of VDAs by the specified person during the financial year exceeds Rs 50,000.
-The total amount of transfer of VDAs by anyone other than the specified person during the financial year crosses Rs 10,000.

Crypto currency tax laws define 'specified person' as:

-An individual or Hindu Undivided Family (HUF) that has no income under the head profit and gains from business or profession
-An individual or HUF having income under the head profit and gains from business or profession whose:
- Total sales/receipts/turnover from business is not more than Rs 1 crore in the financial year immediately preceding the financial year in which the VDA is transferred
- Total income from profession is not more than Rs 50 lakh in the financial year immediately preceding the financial year in which the VDA is transferred.

Other tax implications upon taxable event while transacting in VDAs

- No deduction, except the cost of acquisition, will be allowed while reporting income from the transfer of digital assets.
- Loss from digital assets cannot be set off against any other income.
- The gifting of digital assets will attract tax in the hands of the receiver.
- Losses incurred from one virtual digital currency cannot be set off against income from another digital currency.

According to 115BBH section of the Finance Bill, a taxable event is defined as:

1. Conversion of any digital assets to INR or any other fiat currency.
2. Conversion of one type of virtual digital asset to another type; which may include crypto-to-crypto trading, or trading in stable coins.
3. Paying for goods and services using a virtual digital asset.

Any profits that will or has been incurred from the above transactions are subjected to a 30% tax, which is equivalent to India's highest income tax bracket. Furthermore, if the transaction exceeds INR 10,000, it will be taxed by an additional 1%.

However, not all of the crypto transactions are subjected to the 30% tax. Activities which are the likes of gifting crypto, staking rewards, receiving payments, airdrops, mining coins and other DeFi (decentralized finance) transactions are put under the lens to be viewed as "income." When such incidents takes place, taxes are calculated as per the recipient's income tax rate.

However, if one wishes to hold the assets and sell them later, they will be liable to pay a 30% tax on any appreciation in asset market value.

CONCLUSION: The government's primary objective for enabling the cryptocurrency tax in India is to bring about regulation in the crypto market that will deter casual investors from dabbling in the field without the required knowledge or research. Besides, by introducing TDS on every transaction beyond a certain limit, the government can keep track of every crypto or VDA transaction and maintain records of the same.

Overall, while digital assets are in their early stages in India, the government's intervention in terms of tax policies and regulatory frameworks will play a crucial role in shaping their adoption and usage in the country.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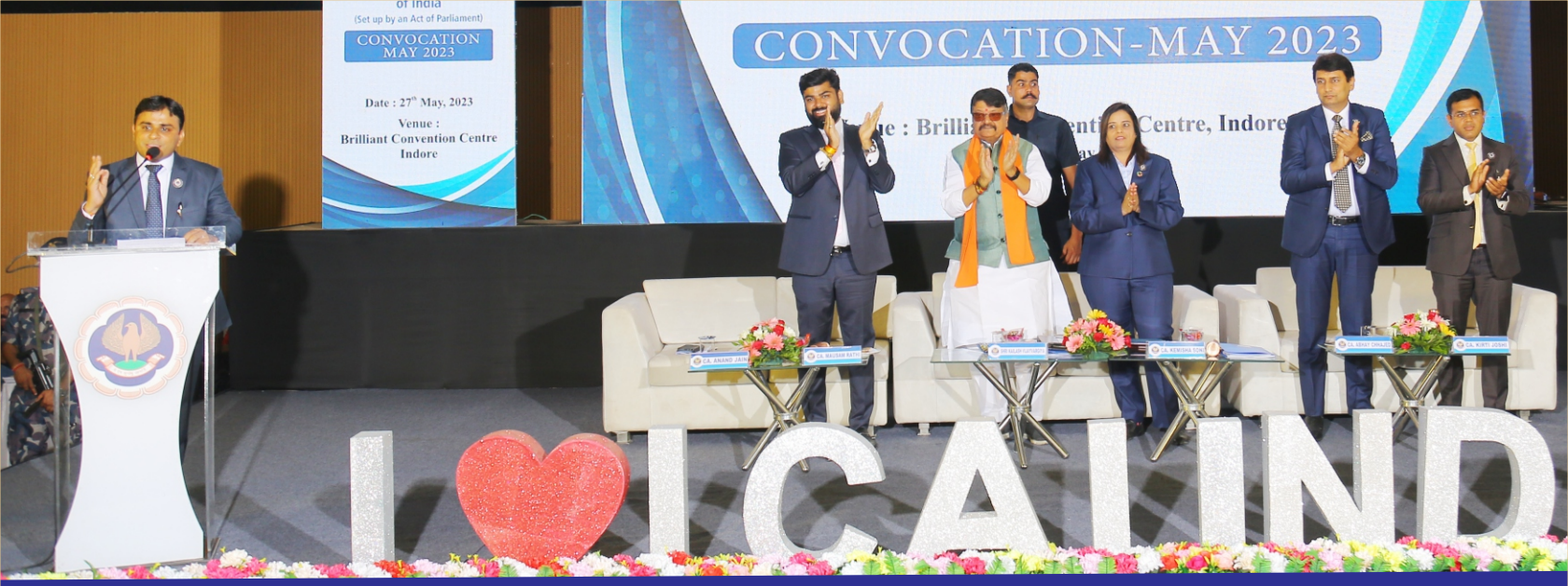

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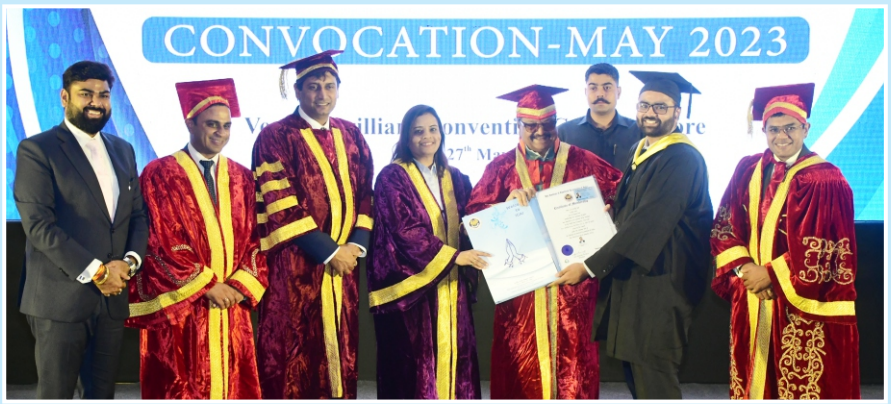

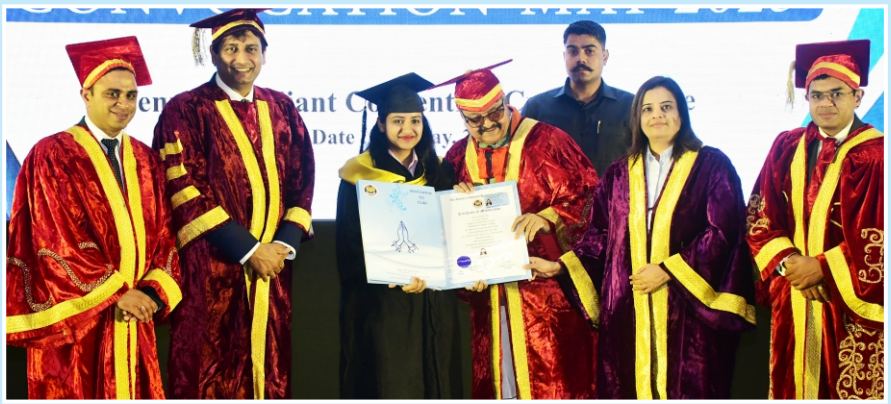

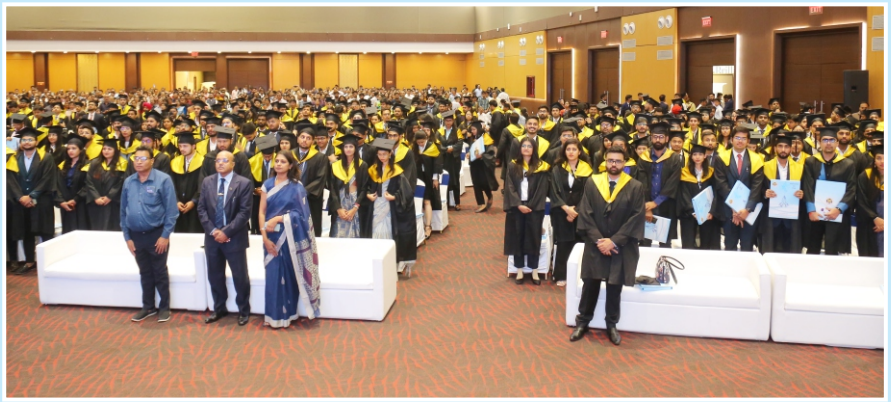

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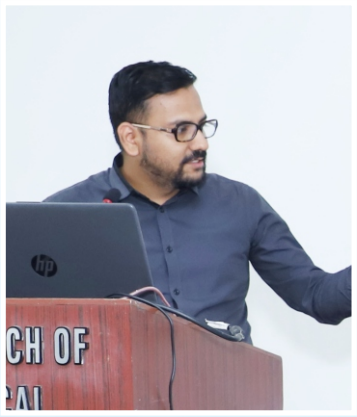

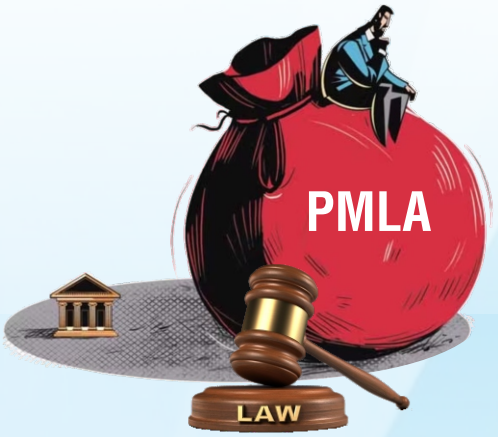

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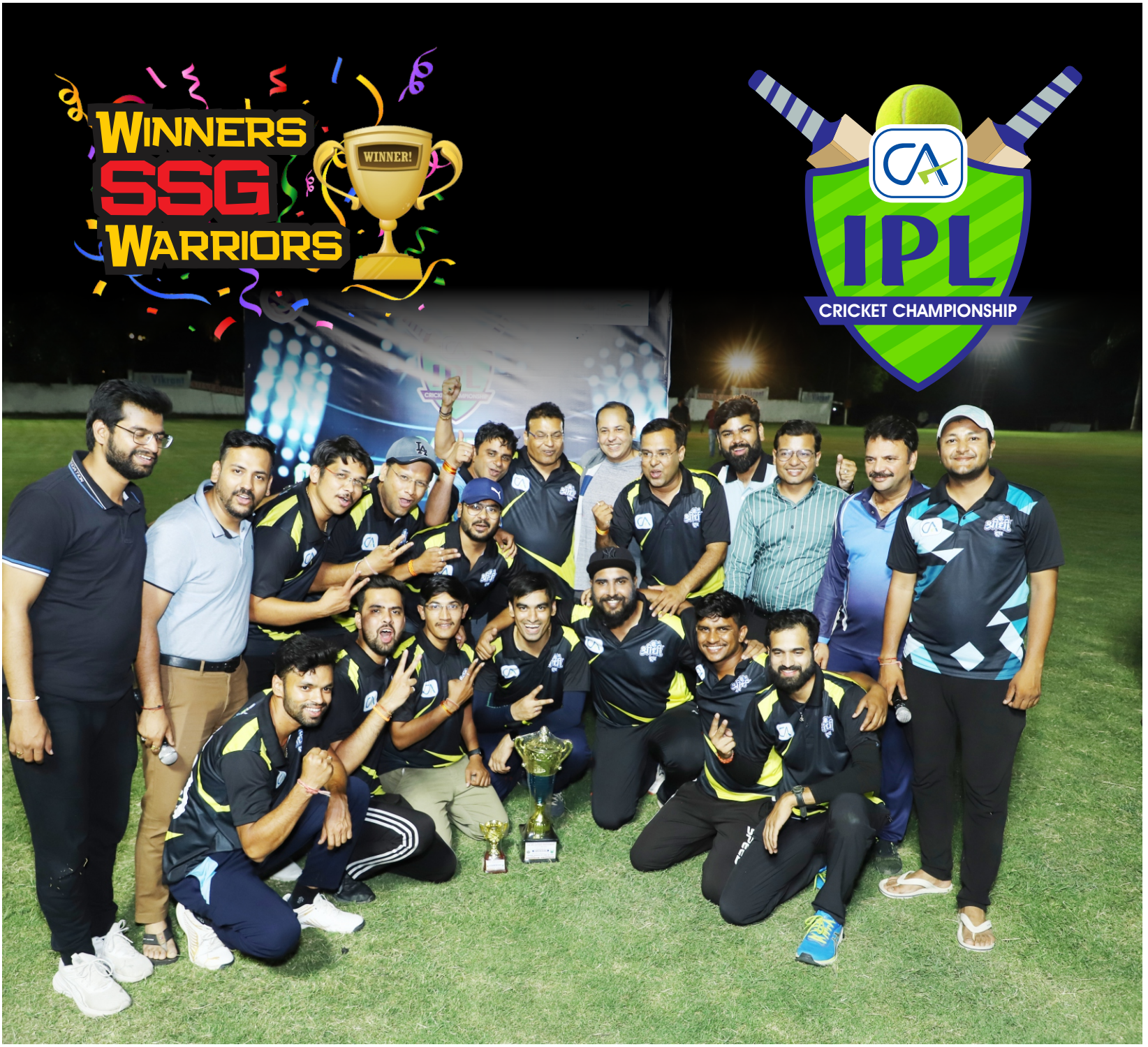

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