

Daily Orders for Case WP 18304/2022

Sl. No	Judge(s) Name	Date of Order	Daily Order
1	S.R.KRISHNA KUMAR	13/09/2022	Re-list on 14.09.2022.
2	S.R.KRISHNA KUMAR	14/09/2022	Re-list on 15.09.2022
3	S.R.KRISHNA KUMAR	15/09/2022	On 14.09.2022, after hearing the learned Senior counsel for the petitioner and the learned ASG for the respondents, this Court adjourned the matter to 21.09.2022 indicating that the main petition would be disposed of on that day. However, subsequently having realized that due to paucity of time and the narrow interval between 14.09.2022 and 21.09.2022, it was not possible to dispose of the main petition, the matter was directed to be re-listed on 15.09.2022, on which day, both sides were informed by this Court that due to paucity of time, it was not possible to dispose of the main petition on 21.09.2022 and that the prayer for interim relief sought for by the petitioner would be considered by this Court by dictating/ pronouncing orders on 21.09.2022. Learned Senior counsel for the petitioner submitted that since the matter was being adjourned to 21.09.2022 for passing orders on the prayer for interim relief sought for by the petitioner, both parties are to be directed to maintain status-quo as on today till passing of orders on the prayer for interim relief. Though learned ASG for the respondents opposes the same, having regard to the aforesaid facts and circumstances and since the matter is being adjourned to 21.09.2022 for passing orders/dictating orders on the prayer of interim relief sought for by the petitioner, without prejudice to the rights and contentions of parties, I deem it appropriate to direct both the parties to maintain status-quo as on today, till the next date of hearing. Re-list on 21.09.2022 at 2.30 p.m. for pronouncing / dictating orders on the prayer of interim relief sought for by the petitioner. The respondents have filed an affidavit and the same is received on record. Liberty is reserved in favour of the petitioner to file a counter affidavit. Both sides are also reserved liberty to file written synopsis on or before 20.09.2022.
4	S.R.KRISHNA KUMAR	21/09/2022	Due to paucity of time, re-list on 23/09/2022 at 2:30pm for pronouncement of orders on the prayer for interim relief. Interim order granted earlier is extended till the next date of hearing
5	S.R.KRISHNA KUMAR	23/09/2022	ORDER Orders on Interim prayers In this petition, petitioner has sought for the following reliefs:- (a) Issue a writ of certiorari or any other writ in the nature of certiorari thereby quashing and setting aside the Intimation Notice issued in Form GST DRC -01A bearing Case ID: 413 / INT / DGGI / HQ / 2021 / 943 dated 8 September 2022; AND (b) Issue a writ of prohibition or any other writ in the nature of prohibition thereby restraining the Respondents from levying GST at the rate of 28% on the activity of the Petitioner ; AND (c) Any other order or direction as may be deemed fit by this Hon'ble Court in the facts and circumstances of the case. The petitioner has also sought for the following interim reliefs:- (a) Stay the Intimation Notice issued in Form GST DRC-01A bearing Case ID: 413 / INT / DGGI / HQ / 2021 / 943 dated 8 September 2022 and issue directions to the Respondents to not act on the same; AND (b) Issue directions to the Respondents to not take any coercive or precipitative measures against the Petitioner including but not limited to attachment of properties, bank accounts, any other measures that impact the running of the Petitioners business in ordinary course etc., till the pendency of the writ petition; AND (c) Issue a direction to the Respondents restraining them from proceeding further with the matter in any manner whatsoever; AND / OR (d) Pass any other order as it may deem fit in the facts and circumstances of the case. 2. Heard Sri.Udaya Holla, learned Senior Counsel appearing for the petitioner and Sri.N.Venkataraman, learned ASG for the respondents – Revenue and perused the material on record. 3. In addition to reiterating the various contentions urged in the petition and referring to the material on record, learned Senior counsel for the petitioner has made the following submissions:- (i) That the petitioner is a company headquartered in Karnataka and is involved in hosting of skill based online games on its platform as an intermediary and that the game of Rummy constitutes more than 96% of the games played on the petitioner's platforms and that Rummy is declared and held

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			<p>as being a game of skill and not a game of chance by the Apex Court and several High Courts including this Court. (ii) That the petitioner has paid more than INR 1,500 crores as taxes to the Government exchequer (as Income tax and GST) till June, 2022. (iii) The impugned Intimation is without jurisdiction or authority of law; (iv) The impugned intimation alleging that the petitioner is involved in the supply of an actionable claim which is contrary to the material on record which establishes that there was no such actionable claim and that any actionable claim was only between the players in respect of which, the petitioner did not have any claim or beneficial interest. (v) Even an actionable claim was not taxable under the provisions of CGST Act and that the same would become taxable only if they relate to betting, gambling or lottery, all of which were not being done by the petitioner. (vi) The games being played on the petitioner's platform have already been held to be games of skill and not games of chance by the Division Bench of this Court in the case of All India Gaming Federation and others vs. State of Karnataka and others – 2022 SCC Online KAR 435, to which the petitioner was a party and even in the petitions filed before the Apex Court challenging the said judgment, there is no order of stay or any other interim order and consequently, the said judgment of the Hon'ble Division Bench continues to remain in force in favour of the writ petitioners in the said petitions including the petitioner herein and as such, the impugned Intimation which proceeds on the basis that the activity being carried on by the petitioner is betting and a game of chance deserves to be quashed. (vii) The impugned Intimation notice invokes Rule 31A of the CGST Rules, the validity of which is seized and sub - judice before the Division Bench of this Court. (viii) That the impugned notice suffers from lack of jurisdiction since it was not been issued by the proper officer as is required under law and in contravention of Section 3 of the CGST Act. (ix) That the impugned notice is vitiated with malice, both on facts and law and is arbitrary and violative of Articles 14, 19 and 21 of the Constitution of India, particularly having regard to the earlier round of litigation in W.P.No.22010/2021 pending before this Court. (x) The total GST demanded in the impugned Intimation notice is closed to INR 21,000 Crores (plus interest and penalty) as against the total income earned by the petitioner from 2017-2022 which is little more than only INR 4,000 crores and if the demand is enforced, not only would the petitioner suffer loss of business and reputation but also lead to irreparable injury and hardship to the petitioner and justice would suffer. (xi) The impugned intimation is in violation of the interim order dated 02.08.2022 passed by this Court in W.P.Bo.22010/2021 which has been reserved for pronouncement of orders. (xii) The impugned notice is contrary to the proceedings of the respondents who have referred the issue regarding taxability of online gaming to the GST Council which has not taken any decision in this regard so far. (xiii) Learned Senior counsel also made several other submissions and invited my attention to the written submissions and the judgments relied upon by him in this regard. (xiv) It was submitted that having regard to the nature of reliefs sought for by the petitioner in the petition, if the interim reliefs sought for are not granted, petition would be rendered infructuous, resulting in great prejudice and loss to the petitioner. It was therefore submitted that the petitioner is entitled to the interim reliefs sought for in the petition. 4. Per contra, learned ASG for the respondents – Revenue would oppose the grant of interim prayer sought for by the petitioner and make the following submissions:- (i) The petitioner cannot seek to scuttle the due process of law initiated by the respondents against the petitioner and any interim order passed against the respondents would result in preventing them from proceeding against the petitioner in accordance with law and as such, petitioner is not entitled to any interim reliefs sought for in the present petition. (ii) The petition is not maintainable against an intimation which was merely an option for the petitioner to exercise payment of tax, interest and 15% of penalty and as such, the petition is premature and liable to be dismissed. (iii) The respondents have already filed an Affidavit on 15.09.2022 that the impugned intimation is discretionary and there was no statutory compulsion for the respondents to issue the same and the same having been served upon the petitioner, the impugned intimation has served its purpose and stood exhausted and consequently, nothing further remains for adjudication in the present petition which is liable to be dismissed. (iv) Since the final relief and interim relief are one and the same, there is no need for any</p>

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			<p>separate interim order and on this score also, petitioner is not entitled to any interim relief as sought for in the petition. (v) The contention regarding lack of jurisdiction on the part of the Officer is incorrect in view of the notification dated 01.07.2017 and Corrigendum dated 28.07.2019 issued by the respondents and as such, the said contention is liable to be rejected. (vi) Merely because the GST Council has not taken any decision, in the absence of any recommendation by the Council, no reliance can be placed upon the same by the petitioner, who is not entitled to any interim relief in the present petition. (vii) The decision of the Hon'ble Division Bench of this Court in All India Gaming Federation's case has been challenged and is pending adjudication before the Apex Court apart from the fact that the same issue arising out of the Madras High Court and Bombay High Court are also pending before the Apex Court, who is seized of the said issue and consequently, no reliance can be placed upon the said decision by the petitioner. It was also submitted that pursuant to liberty granted by the Apex Court, the issue of online gaming being game of chance or a game of skill in the context of GST is also pending adjudication before the Bombay High Court and since, no finality has been reached on this issue, there is no merit in the contention of the petitioner. (viii) It was submitted that if an interim order is passed in favour of the petitioner against the respondents, the same would prevent the respondents from proceeding further against the petitioner under Section 74 of the GST Act or any other provision and on this ground also, petitioner is not entitled to any interim relief in the present petition. (ix) Learned ASG would also controvert the various contentions put forth on behalf of the petitioner and submit that there is no merit in the petition and that the same is liable to be dismissed. 5. Both sides have filed written submissions and placed reliance upon several decisions in support of their contentions. 6. After having heard both sides and upon perusal of the material on record, I am of the considered opinion that there are several contentious issues and complicated / disputed questions that arise for consideration in the present petition, which would necessarily have to be adjudicated upon at the time of final disposal of the petition. Further, though the petitioner has sought for various reliefs and interim reliefs, in my considered opinion, since the issue with regard to legality, validity and correctness of the impugned Intimation at Annexure-A dated 08.09.2022 would have to be decided at the time of final disposal of the petition, if the same is not stayed, the petition would be rendered infructuous and as such, I deem it just and appropriate to stay the impugned Intimation pending disposal of this petition. 7. Insofar as the contention of the respondents that any interim order will prevent the respondents from proceeding against the petitioner in accordance with law is concerned, it is necessary to state that this interim order is restricted and limited to the impugned Intimation at Annexure-A dated 08.09.2022 and without prejudice to the rights and contentions of the parties in any other matter, pending or otherwise which are neither germane nor material or relevant to adjudicate upon the impugned Intimation and consequently, and no opinion is expressed on the merits / demerits of the rival contentions and the same are kept open to be dealt with and decided in an appropriate matter in accordance with law. 8. In the result, I pass the following:- ORDER (i) Pending disposal of the petition, the impugned intimation at Annexure-A dated 08.09.2022 is hereby stayed until further orders. (ii) It is made clear that this interim order is restricted and limited to the impugned Intimation at Annexure-A dated 08.09.2022 and without prejudice to the rights and contentions of the parties in any other matter, pending or otherwise and also without expressing any opinion on the merits / demerits of the rival contentions and the same are kept open. List after Dasara Vacation, 2022.</p>