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**Actionable Claim u/s 2(1) of the CGST Act, 2017**

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## **Actionable Claim u/s 2(1) of the CGST Act, 2017**

### **How is actionable claim defined under the GST Act?**

Reference has been drawn to the Transfer of Property Act, 1882. Section 2(1) of the CGST Act, 2017 defines actionable claim as:

*“actionable claim shall have the same meaning as assigned to it in section 3 of the Transfer of Property Act, 1882”*

### **Section 3 of Transfer of Property Act, 1882**

Section 3 of the Transfer of Property Act (TPA) provides that:

*“actionable claim means a **claim to any debt**, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to **any beneficial interest in movable property** not in the possession, either actual or constructive, of the claimant, **which the civil courts recognize as affording grounds for relief**, whether such debt or beneficial interest be existent, accruing, conditional or contingent”*

### **To simplify we can say that according to Section 3 of the TPA**

1. Only unsecured debt is an actionable claim i.e. where the debt is given by one person to another without any security. Debt may further be an existing debt, accruing debt, conditional debt or a contingent debt.
2. Right of a person to take possession (claimant) of movable property from the other person is actionable claim of that person if the claimant has a beneficial interest in the movable property. It becomes important here to note that the claim must be of certain movable property and be in possession of the other person at the time of claim. Further, the claimant’s beneficial right must be recognised by the courts.

**Examples of actionable claim:** Right to get back the purchase consideration when the sale is set aside, lottery tickets, dividend shares, insurance claims.

**Examples of not an actionable claim:** A decree of debt.

### **Whether actionable claim is a supply under GST?**

The Term 'Supply' has not been defined in the GST Law, however Section 7 of the CGST Act, 2017 provides the scope of supply to include all form of supply of goods and services.

Further the section provides that Schedule III activities/transactions which shall be treated neither as a supply of goods nor a supply of services. According to item six (6) of the schedule actionable claims other than lottery, betting and gambling shall be treated neither as a supply of goods nor a supply of services.

### **Whether actionable claim is a good or service?**

Supply of 'Goods' has been defined under section 2(52) of the CGST Act, 2017 as follows:

***“goods means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.”***

Therefore, it can be drawn that actionable claim relating to lottery, betting and gambling alone shall be regarded as goods and all other actionable claims shall not be treated as supplies.

### **Time of Supply**

Time of supply for goods is the earlier of the following:

1. The date of issue of invoice by the Supplier; or
2. The last date on which the taxpayer should issue the invoice with respect to the supply; or
3. The date on which the Supplier receives the payment with respect to the supply.

### **Court Judgments and advance ruling**

#### ***1. Lottery is an actionable claim***

H. Anraj v. Govt. of Tamil Nadu

Sunrise Associates v. Govt. of NCT

Teesta Distributors & Ors vs Union of India & Ors on 10 October, 2018 [High Court of Calcutta]

2. ***Gurdeep Sing Sanchar v. Union of India [High Court of Bombay]*** - Fantasy sports gaming is not gambling. GST will be applicable on pooled amounts.
  
3. ***Loyalty Solutions and Research Private Limited (Haryana) [HAR/HAAR/R/2017-18/4, dated 11.04.2018]*** - If the customer does not or is not able to redeem the rewards points, within their validity period of 36 months from the date of issue and the reward points are forfeited by the applicant then the amount of issuance fee retained/forfeited by LSRPL, would amount to consideration for actionable claims and will be subject to GST.
  
4. ***Venkatasamy Jagannathan (Tamil Nadu) [ORDER No.19 /AAR/2019 DATED: 21.05.2019]*** - The profit sharing agreement between the applicant and various shareholders of SHA is an actionable claim and not relating to lottery, betting and gambling and hence, is covered under schedule III of the GST Act as neither supply of goods nor supply of services.

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