

Govt mulls relief on retrospective GST on e-gaming

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New Delhi, May 7

THE GOVERNMENT IS considering granting relief to the online gaming industry by exempting it from paying the Goods and Services Tax (GST) at the rate of 28% on the full face value of bets for the pre-October 1, 2023 period, official sources privy to matter told *FE*, on condition of anonymity.

This would mean that the highly contentious "retrospective levy" of the tax would be annulled, irrespective of the outcome of the Supreme Court case in this regard.

"At the moment, the matter is lying with the Supreme Court, so the government is going to wait for the apex court's ruling. After the judgement, the government would take appropriate steps," the source said. "This would, however, require a decision from the GST Council," the person added.

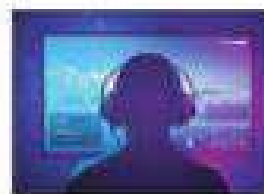
In February, revenue secretary Sanjay Malhotra had told *FE*: "The matter (28% GST of full face value of bets for pre-October 1 period) is in the court. The courts and, if need be, the GST Council will decide this matter. The judiciary and the council always take a prudent, balanced view of issues."

The Supreme Court on Friday said it would hear several petitions contesting tax demand notices requiring online gaming firms to remit 28% GST on the full face value of bets. These petitions include a batch of 30 cases filed by online real money gaming enterprises. They have challenged retrospective GST notifications that demand payment amounting to thousands of crores, calculated

CASE UPDATE

28% GST rate applicable on full face value of bets for pre-October 1, 2023 period

■ Matter lying with Supreme Court at present; govt likely to wait for SC ruling



30 cases filed by online real money gaming enterprises challenging tax notices

71 show-cause notices issued to online gaming firms alleging GST evasion of **₹1.12 trn.** just for FY23 and FY24

at a rate of 28% based on the face value of bets. These cases are currently awaiting adjudication by the Supreme Court.

The retrospective tax imposition of 28% on the full face value of bets has created havoc in the online gaming industry, in view of the sheer magnitude of the tax demands involved.

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AS MANY AS 71 show-cause notices issued to the online gaming companies have alleged GST evasion of ₹1.12 trillion, just for FY23 and FY24 (till October 2023), minister of state for finance Pankaj Chaudhary had said in December. As per experts, the sum total of tax demands after adding up the interest and penalties that may be levied could probably exceed ₹2.3 trillion, way more than the total valuation of the online gaming firms.

Online gaming companies are mandated to pay GST at 28% on the entire face value of bets placed. Though a notification to this effect came into effect only on October 1 following the GST Council decision in July, the government maintains that such tax liability existed even before it. The industry, however, argues that the GST laws until the October 2023 amendment provided for only an 18% tax on gross gaming revenue or GGR (platform fee).

Experts say the entire statutory framework for levying GST at 28% on online gaming as a taxable event has been introduced for the first time by amendment of the GST laws with effect from October 2023; even the term 'online money gaming' has been introduced for the first time from October 2023. These amendments recognise that online games can be a 'game of skill' or a 'game of chance' and specifically removes that distinction for the purpose of levying GST from October 2023. Before October



2023, GST laws did not envisage levy of GST at 28% on 'games of skill' played online; that was only applicable for 'betting and gambling'.

"It has been repeatedly clarified from the government side that these amendments are not retrospective in nature — that being the case, it is difficult to understand how GST at 28% on the entire amounts deposited by players can be demanded prior to October 2023," said Sudipta Bhattacharjee, partner at Khaitan & Co. Yogesh Kale, executive director, Nangia Andersen India, said the retrospective levy has created a lot of uncertainty regarding the basic existence of some online gaming startups, let alone their future growth. "Interestingly, the CBIC notification levying 28% GST on online gaming and the minutes of the relevant meeting of the GST Council do not mention anything about

retrospective applicability," he said. Since FY19, the industry has consistently approached the GST Council to seek clarity regarding the definition of 'value of supply' concerning online gaming, say reports. The term pertains to the monetary value of goods or services exchanged between a supplier and a recipient, crucial for determining GST liabilities on transactions.

The online gaming sector has been filing returns since 2017, paying GST at an 18% rate, with the GST Council being cognisant of this. Legal rulings, from Bombay High Court, Karnataka High Court, and Madras High Court have made a clear distinction between online "skill gaming" and "betting or gambling", preventing the industry from categorising itself under the latter for tax purposes.

In 2022, the Karnataka High

Court had revoked a GST show-cause notice issued to Gameskraft over an alleged evasion of ₹21,000 crore, and had said that rummy was a "game of skill". But the order was later, in 2023, stayed by the Supreme Court.

Among the major online gaming companies, Dream Sports, the parent company of Dream 11, has reportedly been served a GST liability notice of ₹25,000 crore. Delta Corp has been served a notice of ₹1,140 crore. "Dropping the proposed retrospective levy of GST on online gaming will provide a lot of certainty to the online gaming companies, particularly the startups. The companies would get some breathing time to evolve a suitable business model," a source said.

Khaitan & Co's Bhattacharjee said the government can grant relief technically by way of a 'removal of difficulties' order or a 'special order' exempting payment of GST for the pre-October 2023 period by online gaming companies. "Any such relief will require a recommendation from the GST Council," he said.

In August 2023, the GST Council had notified that it would review its levy of 28% GST on casinos, online gaming and horse racing in six months' time, but it's now likely to happen only in July.

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