

# Finance Bill boosts hopes of GST relief for e-gaming

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**THE CENTRE HAS** proposed to remove the “retrospective” nature of the higher Goods and Services Tax (GST) levy on the online gaming industry, by inserting an enabling provision in the Finance Bill, 2024. The provision seeks to empower the Centre, via an amendment to Section 11A of the Central GST Act, to declare any retrospective levy of GST null and void.

The move signals the Centre’s intent to give relief to the thriving sector, which has been facing a viability crisis, due to a flurry of hefty tax demands. Though the GST laws were amended to jack up the levies only in October, 2023, tax notices with the same interpretations had been issued to e-gaming firms in previous months. According to official data, as many as 71 show-cause notices had been issued to online gaming companies, flagging GST evasion of ₹1.12 trillion in FY23 and FY24 (till October 2023).

So, the removal of the retrospective validity of the tax would amount to a huge breather for the firms even as the matter is sub-judice.

The relevant Finance Bill section says that the government can regularise “non-levy”, or “short-levy”, of GST due to any “general prac-

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■ The proposed change will empower the Centre to declare any retrospective levy of GST null and void



■ The previous amendment to GST laws was interpreted differently by the government and industry

tice prevalent in trade.” Simply put, the government could choose to not collect any tax for any particular period, where in the industry as a whole was interpreting the law in a manner different from what the government intended.

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While non-levy means no tax is levied, a short-levy is when it isn't applied as per applicable rates, or intended base.

However, to enforce the amendment, a recommendation from the GST Council would be required, experts in tax laws said. The GST Council is still divided on the issue.

FE had reported earlier that the government was considering granting relief to the online gaming industry by exempting them from paying GST at the rate of 28% on the full face value of bets for the pre-October 1, 2023 period.

The October 2023 notification had "clarified" that a 28% GST is applicable for the online gaming, on the full face value

of bets. It also removed the distinction between "games of skill" and "games of chance" (betting/gambling).

The government maintains that such tax liability for the industry had existed even before. The industry, however, argues that the GST laws until the October 2023 amendment provided for 18% tax on gross gaming revenue or GGR (platform fee) on for "games of skill" and 28% on "games of chance" (gambling/betting). GGR constitutes a much lower base than "full face value of bets."

Industry cites the entire statutory framework for levying GST at 28% on online gaming as a taxable event was introduced for the first time

via the October 2023 notification. Even the term 'online money gaming' was first used only with this rule, they reckon.

At present, the Supreme Court is hearing the petitions of about 30 online gaming firms, including Dream11, Delta Corp and Gameskraft, for relief from the retrospective tax levy.

Earlier, revenue secretary Sanjay Malhotra had told FE: "The matter 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."

Tanushree Roy, director-indirect tax, Nangia Andersen India, said that the proposed

change to Section 11A of the CGST Act aims to reduce litigation in cases where industry at large was adopting a different viewpoint than what the legislation intended, by granting one-time regularisation for earlier short levy or non-levy of GST. This would allow the Centre to recognise the 18% GST

payment on platform fee, as an industry practice by issuance of a notification and dispense with the payment of additional GST being demanded by the authorities, said Onkar Sharma, partner, Khaitan & Co.

Mahesh Jaising, partner, Deloitte India, said, "This is an industry-friendly move and will promote ease of doing business."