

GST Council likely to address retro tax on online gaming

Move may give relief to firms facing ₹1.12 trn in tax demands

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New Delhi, 18 June

The Goods and Services Tax (GST) Council, at its meeting on Saturday, is expected to take up a key amendment that has the potential to resolve the vexatious issue of retrospective taxation for online gaming companies.

According to officials familiar with the development, this amendment to the central GST (CGST) Act, if implemented, will give both the Centre and states the power to waive GST dues that have not been paid due to legal ambiguity or on account of “general practices” consistently followed by businesses.

The proposed amendment, if implemented, may provide relief to online gaming companies facing ₹1.12 trillion in tax demands through over 70 notices. The proposal implies that online gaming companies could receive a waiver on the tax levied on gross gaming revenue prior to October 1, 2023, provided they have not paid those taxes. This also means any pre-deposits by these companies will not be refundable.

The issue originated in August when the GST Council amended the law to enforce a 28 per cent tax on the ‘full face value’ of bets or entry amounts in online games, effective from October 2023. This issue was scheduled for review after six months, which ended on March 30.

The proposal has been vetted and recommended by the law committee. The proposal is in line with practices already followed in the central excise regime and the Customs Act.

Currently, there is no specific provision under GST law empowering the central/state governments to refrain from recovering GST not levied or short-levied due to any ambiguity or general practice.

To make this effective, the law committee has

ON AGENDA

■ In August last year, the GST Council amended the law to enforce 28% tax on “full face value” of bets or entry amounts in online games

■ GST Council may approve amendments to the CGST Act empowering Centre and states to waive tax dues

■ Inserting Section 11A in the CGST Act to not to recover dues on account of “general practices” consistently followed by businesses

■ Proposal underlines that governments need not refund any tax paid by these businesses in the past



recommended the insertion of Section 11A in the CGST Act to grant power under the GST Acts.

Notably, changes in the CGST Act are binding on state GST (SGST) Acts.

The law committee met on May 30 and emphasised that regularisation was necessitated due to ambiguity in law provisions, overlapping entries of notifications, and divergent practices being followed in businesses.

Gaming companies argue that the 28 per cent tax should apply only from October 1, but the government contends that the revision clarified an existing law, thus its demand for tax dues was not retrospective.

Meanwhile, the firms moved the Supreme Court, which consolidated several pleas. “Since GST is a transaction-based business tax, it is essential to align the legal provisions with the practices prevalent in specific businesses. This will avoid interpretation issues that sometimes arise due to lack of congruence between trade practices and legal provisions,” said M S Mani, partner at Deloitte.

appliance major Whirlpool divested a 24 per cent stake in Whirlpool of India for ₹3,881 crore. In March, BAT Plc sold a 3.5 per cent stake in ITC to raise ₹17,485 crore.

GST Council...

The law committee recom-

mended that a provision may be incorporated in GST laws (CGST Act, SGST Act, integrated GST Act, Union Territory GST Act, and Compensation Cess Act) empowering the central and state governments to regularise cases where such non-levy or under-levy was a result of general practice in the trade or a section of trade.