



Karnataka State Chartered Accountants Association (R)



CA. Vijaykumar M Patel
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To,
Smt. Nirmala Sitharaman,
Hon. Union Minister of Finance and Corporate Affairs,
Government of India

Date: Monday, 28 July 2025

Ref No: 018/2024-25

SUBJECT: REPRESENTATION ON ENABLING ITC RECLAIM WHERE TAX IS PAID/RECLAIMED OUTSIDE GSTR-3B FRAMEWORK

The Karnataka State Chartered Accountants Association (R) (hereinafter referred to as “KSCAA”) is a representative body of Chartered Accountants formed with the objective of supporting and facilitating the accounting profession and stakeholders across Karnataka and India. We work actively to assist the profession and the business community through advocacy, awareness programs, and representations.

In recent months, we have received several inputs from professionals and corporates highlighting practical challenges concerning compliance of Rule 37A of the GST Rules - pertaining to the reversal and reclaim of Input Tax Credit (ITC) where suppliers default, despite tax eventually being paid or recovered. Through this representation, we seek to bring to your attention certain urgent issues and to propose feasible resolutions.

BACKGROUND

Under Section 16(2)(c) of the CGST Act, the recipient’s eligibility to claim ITC is subject to the supplier having paid tax to the government. However, if the supplier fails to file returns or pay tax, the recipient is forced to reverse the ITC, even after having paid the GST amount to the supplier in good faith. Presently, Rule 37A permits re-availing of ITC only when the supplier files GSTR-3B. Unfortunately, it does not account for scenarios where the supplier pays tax through DRC-03 or when recovery is effected by the authorities through enforcement.

This creates an anomalous situation where the tax is eventually received by the exchequer, yet the recipient remains permanently denied credit—a consequence wholly unjust for a compliant taxpayer.



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LEGAL AND PRACTICAL IMPLICATIONS**1. Section 16(2)(c)**

Mandates ITC availment only if tax is paid to the government. It does not provide a remedy where tax is recovered post-ITC reversal, through non-GSTR-3B modes.

2. Rule 37A: A Limited Remedy

Though well-intentioned, its applicability is narrowly limited to GSTR-3B compliance, ignoring tax paid via DRC-03 or recovery proceedings.

3. Section 41 Read with Rule 37A

Section 41 provides a sufficiently broad enabling framework for such re-credit mechanisms. However, the operational rules do not reflect this flexibility.

4. Recipient's Predicament

- Tax is paid to supplier but not remitted by them.
- Recipient is compelled to reverse ITC or pay again.
- Later, tax is recovered or paid via DRC-03—but the recipient remains without remedy.

(Please refer to **Annexure A** for an illustration of this issue.)

OUR SUGGESTIONS**1. Expand Rule 37A**

- Recognize tax payments via DRC-03 or other modes.
- Include tax recovered by authorities from suppliers.

2. GST Portal Enhancements

- Enable tracking of supplier tax payments across all modes.
- Allow conditional re-availment of ITC supported by documentary evidence.

3. Automation & Verification

- Adopt a credit reinstatement mechanism akin to the e-TDS credit in income tax.
- Integrate enforcement and recovery data to streamline verification.

4. Timelines for Re-availment

- Permit re-availment up to the relevant annual return (GSTR-9) or within a reasonable time window after payment/recovery confirmation.

5. Documentation

- Permit claim based on recovery notices or DRC-03 acknowledgments until portal upgrades are in place.

BENEFITS OF THE PROPOSED SOLUTION

- **Protects the Honest:** Shields compliant taxpayers from bearing double burden due to supplier non-compliance.
- **Reduces Litigation:** Avoids avoidable disputes, easing pressure on adjudicating bodies.
- **Prevents Unjust Enrichment:** Ensures government doesn't collect tax twice for the same supply.
- **Improves Cash Flow:** Protects working capital of recipients, especially MSMEs.
- **Encourages Compliance:** Incentivizes suppliers to regularize dues if recipient ITC is at stake.

CONCLUSION

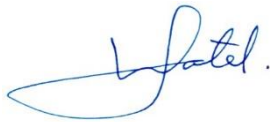
At its heart, this issue reflects a classic asymmetry in a system that otherwise aims for seamless credit flow. It's neither just nor economically sound to expect recipients to pay the price for someone else's failure—especially when the government has ultimately received the tax. This contradiction erodes trust and discourages voluntary compliance. The current setup fails the very taxpayers who uphold the law.

It is in the long-term interest of the GST system to correct this misalignment, both legislatively and procedurally. As professionals and stakeholders, we appeal not only in the interest of equity, but to preserve the credibility and effectiveness of our indirect tax framework.

We would be privileged to assist further in developing a workable solution.

Yours sincerely,

For Karnataka State Chartered Accountants Association ®



CA Vijaykumar M Patel
President



CA Praveen S Shettar
Secretary



CA Babitha G
Chairperson,
Representation Committee

Cc to:

1. Shri Pankaj Chaudhary, Union Minister of State, Finance
2. Shri Sanjay Kumar Agarwal, Chairman, Central Board of Indirect Taxes and Customs
3. Shri Pramod Kumar Agarwal, Principal Chief Commissioner of Central Taxes, Karnataka, Government of India
4. Shri Vipul Bansal, Commissioner of Commercial Taxes, Government of Karnataka

Annexure A – Illustration of ITC Reversal Issue**Scenario:**

- **Supplier Default:** Supplier B supplies goods worth ₹1,00,000 + ₹18,000 GST to Recipient A. Recipient pays ₹1,18,000 in full.
- **Non-compliance:** Supplier B fails to remit the ₹18,000 GST.
- **Recipient Impact:** Recipient A is required to reverse ITC of ₹18,000 or repay the amount to authorities.
- **Later Compliance:** Supplier pays the tax via DRC-03 or the department recovers it through enforcement.
- **Final Situation:** Recipient A is left without any means to reclaim the ₹18,000, although the government has received the tax.

Conclusion: Despite being compliant and bearing the cost, Recipient A suffers a permanent loss, with no provision to reclaim the ITC.