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## INPUT TAX CREDIT UNDER GST: A STATUTORY RIGHT OR A CONDITIONAL CONCESSION?

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### Abstract

The Goods and Services Tax (GST) was introduced in India with the stated objective of eliminating the cascading effect of indirect taxation through a seamless credit mechanism. At the heart of this framework lies Input Tax Credit (ITC), which enables taxpayers to offset tax paid on inputs against their output tax liability. While ITC is often described as the backbone of the GST regime, its legal character remains contested. Courts and tax authorities have alternately treated ITC as a vested statutory right and as a conditional concession subject to strict compliance with statutory and procedural requirements.

This paper critically examines whether Input Tax Credit under the Central Goods and Services Tax Act, 2017 constitutes a substantive statutory entitlement or merely a concession granted at the discretion of the legislature. Through doctrinal analysis of statutory provisions, delegated legislation, and judicial pronouncements, the paper highlights the increasing restrictions placed on ITC, particularly in cases involving supplier default, procedural lapses, and administrative control over credit ledgers. It argues that the growing tendency to characterise ITC as a concession undermines the foundational objectives of GST, increases litigation, and shifts the burden of tax compliance onto bona fide recipients. The paper concludes that while reasonable conditions on ITC are permissible, its erosion through excessive restrictions risks diluting taxpayer certainty and the promise of a unified indirect tax system.

**Keywords:** Input Tax Credit, GST, statutory right, conditional concession, indirect taxation, taxpayer rights

### Introduction

The introduction of the Goods and Services Tax (GST) in India marked a fundamental shift in the country's indirect tax architecture. Envisioned as a comprehensive, destination-based consumption tax, GST sought to subsume multiple central and state levies into a unified framework, thereby simplifying taxation and promoting economic efficiency. One of the core promises of this reform was the elimination of the cascading effect of taxes through a robust and seamless **Input Tax Credit (ITC)**

mechanism. By allowing credit of taxes paid on inputs against output tax liability, ITC was intended to ensure tax neutrality, reduce the cost of compliance, and facilitate ease of doing business.

In theory, GST represents a value-added tax system in which tax is levied only on incremental value at each stage of the supply chain. This objective can be achieved only if Input Tax Credit operates effectively and predictably. Consequently, ITC has often been described as the “backbone” or “lifeline” of the

GST regime. However, the practical operation of ITC under the Central Goods and Services Tax Act, 2017 reveals a more complex and contested legal reality. The statutory framework subjects ITC to multiple conditions, procedural requirements, and administrative controls, the breach of which can result in denial or reversal of credit.

This tension has given rise to a fundamental legal question: **is Input Tax Credit a vested statutory right accruing to the taxpayer, or merely a conditional concession that the legislature may restrict or withdraw?** Tax authorities have frequently characterised ITC as a concession, justifying strict compliance standards and denial of credit for supplier defaults, procedural lapses, or retrospective amendments. Conversely, taxpayers argue that once tax has been paid and the transaction is genuine, denial of ITC defeats the very rationale of GST.

Judicial responses to this debate have been inconsistent, oscillating between recognising ITC as an integral component of the GST framework and reaffirming earlier jurisprudence that treats tax credits as concessions. This uncertainty has resulted in extensive litigation, compliance anxiety, and erosion of taxpayer confidence.

Against this backdrop, this paper undertakes a doctrinal and constitutional analysis of Input Tax Credit under GST to determine its true legal character. It argues that while ITC may be subject to reasonable statutory conditions, its systematic dilution through excessive restrictions undermines the foundational objectives of GST and risks transforming a value-added tax into a fragmented compliance-driven regime.

### **Conceptual Framework of Input Tax Credit under GST**

A meaningful examination of the legal nature of Input Tax Credit requires conceptual clarity regarding its purpose, operation, and normative role within the GST framework. Much of the

controversy surrounding ITC arises from treating it as a discretionary fiscal benefit rather than as a structural component of a value-added tax system. This section seeks to situate ITC within the conceptual architecture of GST and to explain why its character is central to the success or failure of the indirect tax reform.

At its core, Input Tax Credit is a mechanism that enables a registered person to deduct the tax paid on inputs, input services, and capital goods from the tax payable on outward supplies. In a value-added tax regime, the tax burden is intended to fall only on the value added at each stage of the supply chain, with earlier-stage taxes being neutralised through credit. ITC is therefore not an incidental benefit but the principal instrument through which tax cascading is eliminated. Without an effective credit mechanism, GST would operate as a multi-point tax, defeating its foundational objective.

Conceptually, ITC reflects the principle of tax neutrality. Under GST, tax is collected at each stage of supply not as a cost but as a pass-through, with the ultimate burden resting on the final consumer. Businesses function as tax collectors rather than taxpayers in the economic sense, and ITC ensures that tax does not accumulate at intermediate stages. Denial of credit at any stage disrupts this neutrality and converts GST into a cost-based tax for the affected taxpayer.

From a statutory perspective, the entitlement to Input Tax Credit is anchored in Sections 16 to 18 of the Central Goods and Services Tax Act, 2017. Section 16(1) uses the expression “entitled to take credit,” which prima facie suggests the creation of a legal entitlement rather than a discretionary grant. However, this entitlement is immediately qualified by a series of conditions under Section 16(2), linking credit to possession of tax invoices, receipt of goods or services, actual payment of tax to the government, and filing of returns. These conditions reflect legislative intent to prevent tax evasion and ensure fiscal discipline, but they also introduce

elements of dependency beyond the control of the recipient.

A critical conceptual issue arises from this conditionality. While conditions may regulate the exercise of a right, excessive or extraneous conditions risk altering the nature of the entitlement itself. In the context of ITC, the linkage of credit availability to supplier compliance raises the question of whether the credit mechanism is designed to facilitate value-added taxation or to function as an enforcement tool against revenue leakage.

The conceptual ambiguity is further intensified by delegated legislation and administrative controls, such as restrictions on provisional credit and blocking of electronic credit ledgers. These measures, though justified on grounds of revenue protection, shift ITC from a neutral mechanism to a controlled concession subject to administrative discretion.

This paper proceeds on the premise that Input Tax Credit, in its conceptual essence, is not a fiscal incentive but a structural necessity of GST. Any legal interpretation that reduces ITC to a conditional concession must therefore be examined critically in light of the objectives of tax neutrality, fairness, and certainty that underpin the GST framework.

### **Statutory Nature of Input Tax Credit under the GST Regime**

The determination of whether Input Tax Credit constitutes a statutory right or a conditional concession must begin with a close examination of the legislative framework governing GST. Unlike exemptions or incentives that are expressly framed as discretionary benefits, ITC is embedded within the charging and operational provisions of the Central Goods and Services Tax Act, 2017. Its statutory placement and wording provide important insight into the legislative intent underlying the credit mechanism.

Section 16(1) of the CGST Act declares that *every registered person shall, subject to such conditions and restrictions as may be*

*prescribed, be entitled to take credit of input tax charged on any supply of goods or services or both which are used or intended to be used in the course or furtherance of business.* The use of the phrase “shall be entitled” is significant. In legislative drafting, the term “entitlement” ordinarily denotes the creation of a legal right rather than the conferment of a discretionary privilege. This formulation distinguishes ITC from tax exemptions, rebates, or concessions, which are typically couched in permissive or enabling language.

Further, the statutory scheme of GST treats ITC as an integral component of tax computation rather than as a post-collection benefit. The liability to pay output tax and the availability of input tax credit operate in tandem, forming a composite mechanism through which tax is ultimately collected only on value addition. In this sense, ITC is not external to the levy of tax but intrinsic to its calculation. Denial of credit directly increases the effective tax burden on the taxpayer, thereby altering the incidence of taxation envisaged by the statute.

However, the entitlement under Section 16(1) is expressly made subject to conditions enumerated in Section 16(2). These conditions include possession of a valid tax invoice, receipt of goods or services, payment of tax to the government, and furnishing of returns. While such requirements are designed to ensure traceability and prevent revenue leakage, they also indicate that the statutory right to ITC is not absolute. The critical legal question, therefore, is whether these conditions merely regulate the exercise of a right or whether they transform the right itself into a conditional concession.

This tension becomes more pronounced when statutory conditions are supplemented by delegated legislation. Rules framed under the CGST Act, such as restrictions on provisional credit and procedural timelines, impose additional limitations on the availability of ITC. While delegated legislation is permissible to carry out the purposes of the Act, it cannot override or dilute substantive rights conferred

by the parent statute. Excessive reliance on rules to curtail ITC raises concerns regarding legislative overreach and erosion of statutory entitlement.

Moreover, the denial of ITC in circumstances where the recipient has complied with all statutory obligations but the supplier has defaulted in tax payment challenges the coherence of the statutory framework. Such denial effectively penalises the recipient for factors beyond their control, calling into question whether ITC is being treated as a right flowing from the transaction or as a concession contingent upon third-party compliance.

Thus, while Input Tax Credit under GST is undoubtedly a statutory creation, its legal character remains contested. The statutory language suggests the existence of a right, but the layered conditions and restrictions imposed upon it increasingly resemble the attributes of a concession. Resolving this tension is essential to preserving the integrity of GST as a value-added tax and forms the foundation for the judicial and constitutional analysis that follows.

### **Input Tax Credit as a Conditional Concession: Legislative and Administrative Restrictions**

Despite the statutory language suggesting entitlement, the practical operation of Input Tax Credit under the GST regime reveals a clear legislative and administrative tendency to treat ITC as a conditional concession. This approach is reflected not only in the conditions prescribed under the CGST Act but also in the expanding use of delegated legislation and administrative powers to regulate, restrict, and even suspend the availability of credit. This section examines how these measures have gradually reshaped the character of ITC from a structural mechanism of GST into a tightly controlled fiscal benefit.

Section 16(2) of the CGST Act conditions the availability of ITC on multiple procedural and substantive requirements. While certain conditions—such as possession of a tax invoice or receipt of goods—are directly linked to the

genuineness of the transaction, others introduce dependencies that extend beyond the recipient's control. Most notably, the requirement that tax must be "actually paid to the Government" by the supplier has been used to deny ITC to bona fide purchasers where the supplier defaults. This shifts the burden of tax compliance enforcement from the tax administration to the recipient, effectively converting ITC into a concession contingent upon third-party conduct.

The conditional character of ITC is further reinforced through delegated legislation. Rules prescribing time limits for availing credit, restrictions on provisional ITC, and procedural matching requirements have substantially narrowed the scope of credit availability. While the legislature may validly impose reasonable conditions to safeguard revenue, the cumulative effect of these rules has been to prioritise procedural compliance over substantive tax neutrality. In several instances, credit has been denied for technical lapses unrelated to revenue loss, undermining the foundational objective of GST.

Administrative control over ITC has also expanded through mechanisms such as the electronic credit ledger. Powers to block or restrict utilisation of credit, often on the basis of subjective satisfaction of tax authorities, exemplify the concession-oriented approach to ITC. These measures, though justified as preventive tools against fraud, raise concerns regarding proportionality and due process. When credit is blocked without prior adjudication, ITC ceases to function as a right and instead becomes a revocable benefit subject to administrative discretion.

The treatment of ITC as a concession draws heavily from pre-GST jurisprudence under the excise and VAT regimes, where courts often characterised input credits as concessions that could be curtailed by statute. However, the transposition of this reasoning into the GST framework overlooks a crucial distinction. Unlike earlier regimes, GST is constitutionally

structured as a comprehensive value-added tax, where denial of credit directly distorts the tax base and increases the effective burden on trade and commerce.

The concession-based approach to ITC also has broader systemic implications. It increases compliance uncertainty, fosters litigation, and erodes taxpayer confidence in the predictability of the tax system. More importantly, it risks transforming GST from a consumption-based tax into a compliance-driven regime where procedural lapses attract substantive fiscal consequences.

This section demonstrates that while the legislature possesses the authority to regulate ITC, the prevailing approach treats credit less as an inherent component of GST and more as a conditional indulgence. Whether this approach withstands judicial scrutiny and constitutional principles forms the focus of the subsequent analysis.

### **Judicial Interpretation of Input Tax Credit under GST**

Judicial interpretation has played a pivotal role in shaping the legal character of Input Tax Credit under the GST regime. Courts have been required to reconcile the statutory language suggesting entitlement with legislative and administrative measures that restrict credit availability. The resulting jurisprudence reflects a degree of inconsistency, with courts alternately affirming ITC as a statutory benefit integral to GST and reiterating the traditional view of tax credits as conditional concessions. This section examines these judicial trends and their implications for taxpayer rights.

In several early decisions under indirect tax regimes preceding GST, courts consistently held that input tax credits were concessions rather than vested rights. This reasoning was grounded in the view that tax credits reduce the tax liability otherwise payable and therefore operate as exceptions to the charging provisions. While this approach was arguably justified under fragmented pre-GST tax

structures, its continued application under GST has been the subject of critique. GST, by design, integrates credit into the tax computation itself, making denial of ITC qualitatively different from withdrawal of an exemption or incentive.

Under the GST regime, courts have often adopted a cautious stance, recognising the statutory nature of ITC while upholding legislative competence to impose conditions. In several cases, High Courts have observed that Input Tax Credit flows from statute and can be availed only in accordance with statutory prescriptions. At the same time, courts have emphasised that conditions imposed on ITC must bear a rational nexus to the objectives of the Act and cannot be arbitrary or disproportionate.

A significant area of judicial engagement concerns denial of ITC due to supplier default. In cases where recipients have complied with all documentary and procedural requirements, courts have expressed concern over the fairness of penalising recipients for the failures of suppliers. Some High Courts have held that denial of credit in such circumstances defeats the principle of tax neutrality and violates basic notions of fairness, particularly where no fraud or collusion is alleged. These decisions signal a judicial inclination to protect bona fide purchasers and to prevent the use of ITC denial as an indirect enforcement mechanism.

Judicial scrutiny has also extended to administrative powers affecting ITC, particularly the blocking or restriction of electronic credit ledgers. Courts have underscored that such powers, being drastic in nature, must be exercised strictly in accordance with law and procedural safeguards. Where credit has been blocked without adequate reasons or opportunity of hearing, courts have intervened to restore credit, reaffirming that ITC cannot be suspended on mere suspicion.

However, the judicial landscape remains fragmented. In some cases, courts have upheld stringent conditions on ITC by reiterating that credit is not an indefeasible right and can be

curtailed in the interest of revenue protection. This divergence reflects the absence of a definitive judicial articulation on the nature of ITC under GST.

Overall, judicial interpretation reveals an ongoing struggle to balance revenue considerations with the foundational principles of GST. While courts acknowledge legislative authority to regulate ITC, there is a growing recognition that excessive restrictions undermine tax neutrality and fairness. The unresolved tension between entitlement and concession continues to fuel litigation, underscoring the need for clearer doctrinal consistency in judicial reasoning.

### **Constitutional Dimensions of Input Tax Credit under GST**

The debate surrounding the legal character of Input Tax Credit is not confined to statutory interpretation alone; it also implicates core constitutional principles. The manner in which ITC is regulated, restricted, or denied raises questions under the Constitution of India, particularly with respect to equality before law, freedom of trade and commerce, and protection of property. Examining ITC through a constitutional lens is therefore essential to assess whether the prevailing regulatory approach aligns with the broader constitutional framework governing taxation and economic activity.

Article 14 of the Constitution mandates that state action must be non-arbitrary, reasonable, and based on intelligible differentia. Denial of Input Tax Credit to a recipient who has fulfilled all statutory obligations, solely on account of supplier default, invites scrutiny under this provision. Such denial treats compliant and non-compliant taxpayers alike, ignoring material distinctions in conduct. Courts have repeatedly held that fiscal legislation, while enjoying a degree of latitude, is not immune from Article 14 scrutiny where arbitrariness or manifest unreasonableness is evident. When ITC is denied without examining the recipient's bona fides or involvement in wrongdoing, the

measure risks failing the test of reasonable classification.

Article 19(1)(g), which guarantees the freedom to practise any profession or to carry on any trade or business, is also engaged in the context of ITC restrictions. GST directly affects the cost structure and cash flow of businesses. Denial or prolonged blocking of ITC increases the effective tax burden and disrupts working capital, particularly for small and medium enterprises. While reasonable restrictions in the interest of public finance are constitutionally permissible, restrictions that are disproportionate or procedurally unfair may constitute an unreasonable interference with the freedom of trade. Excessive compliance burdens and uncertainty surrounding credit availability can thus undermine the economic freedoms that GST was intended to facilitate.

The relevance of Article 300A, which protects the right to property, has gained prominence in recent constitutional discourse on taxation. Input Tax Credit, once validly accrued and reflected in the electronic credit ledger, represents a monetary value capable of being utilised or transferred against tax liability. Arbitrary deprivation or suspension of such credit, without authority of law or due process, raises concerns under Article 300A. While the right to property is no longer a fundamental right, it remains a constitutional right that cannot be infringed by executive action unsupported by law.

An additional constitutional concern arises from the use of delegated legislation to impose substantive restrictions on ITC. The doctrine of excessive delegation requires that essential legislative functions remain with the legislature and that delegated authorities act within clearly defined limits. When rules or administrative instructions substantially curtail ITC beyond the framework of the parent statute, questions arise as to whether such measures amount to an unconstitutional delegation of legislative power.

Viewed collectively, these constitutional dimensions underscore that Input Tax Credit

cannot be treated merely as a matter of fiscal grace. While the State possesses wide powers in matters of taxation, such powers must operate within constitutional constraints of fairness, proportionality, and legality. A regulatory approach that consistently treats ITC as a revocable concession risks infringing constitutional guarantees and undermining the legitimacy of the GST framework.

### **Practical Challenges and the Proliferation of GST Litigation on Input Tax Credit**

The conceptual and constitutional ambiguities surrounding Input Tax Credit have manifested most visibly in practical challenges faced by taxpayers and the consequent surge in GST litigation. The design and administration of ITC under GST have created a compliance-intensive regime in which substantive tax neutrality is often subordinated to procedural exactitude. This section examines how these practical difficulties have transformed ITC disputes into one of the most litigated aspects of the GST framework.

One of the foremost challenges relates to technological dependence. GST is heavily reliant on a digital compliance ecosystem, where the availability of ITC is linked to electronic filings, system-generated matching, and real-time data flows. While digitisation was intended to enhance transparency and efficiency, system glitches, portal downtime, and data mismatches have frequently resulted in denial or delay of credit. Taxpayers are often required to rectify discrepancies arising not from their own conduct but from systemic limitations, thereby converting ITC into a contingent benefit dependent on technological accuracy.

Another major source of litigation is supplier-related non-compliance. The statutory requirement that tax must be paid to the government by the supplier has led to widespread denial of ITC to recipients despite the genuineness of underlying transactions. In practice, recipients have limited means to ensure or verify tax payment by suppliers

beyond contractual assurances. Denial of credit in such cases undermines commercial certainty and imposes an onerous due diligence burden on recipients, effectively deputising them as enforcement agents of the tax administration.

Procedural lapses also contribute significantly to ITC disputes. Minor errors in documentation, delays in filing returns, or inadvertent non-compliance with prescribed timelines have been used as grounds for denial or reversal of credit. In several cases, credit has been denied retrospectively, resulting in sudden tax demands and interest liabilities. Such outcomes disproportionately affect small and medium enterprises, for whom ITC represents critical working capital.

Administrative actions such as provisional attachment of property and blocking of electronic credit ledgers have further exacerbated litigation. These measures, often invoked at the investigative stage, can paralyse business operations without prior adjudication. Taxpayers have repeatedly approached courts seeking relief against arbitrary or prolonged restrictions on credit utilisation, highlighting concerns regarding due process and proportionality.

The cumulative effect of these challenges has been a substantial increase in GST-related writ petitions, particularly before High Courts. Instead of achieving the stated goal of reducing litigation through simplification, GST has generated a new category of disputes centred on credit eligibility and compliance. This litigation burden not only strains judicial resources but also undermines taxpayer confidence in the stability and predictability of the tax regime.

These practical challenges illustrate the real-world consequences of treating ITC as a conditional concession rather than as a core feature of GST. Unless addressed through legislative clarity and administrative restraint, ITC-related disputes are likely to continue dominating GST litigation, detracting from the broader objectives of tax reform.

### **Comparative Perspective: Treatment of Input Tax Credit in Other VAT/GST Jurisdictions**

A comparative analysis of Input Tax Credit mechanisms across other VAT and GST jurisdictions provides valuable insight into how credit is conceptualised and protected within mature value-added tax systems. Such a comparison helps contextualise the Indian experience and highlights whether the treatment of ITC as a conditional concession is consistent with global best practices or represents a departure from established norms.

In the European Union, Value Added Tax operates on the principle of strict tax neutrality. The right to deduct input VAT is regarded as a fundamental feature of the VAT system and is closely linked to the exercise of economic activity. While Member States may impose procedural conditions to ensure proper collection of tax, the Court of Justice of the European Union has consistently held that denial of input credit for mere procedural lapses is impermissible where substantive conditions are satisfied. Importantly, the purchaser's right to credit is not ordinarily defeated by supplier default unless fraud, collusion, or knowledge of wrongdoing is established. This jurisprudence reflects a clear preference for protecting bona fide taxpayers and preserving neutrality.

Similarly, in jurisdictions such as Australia and New Zealand, GST input tax credits are treated as integral to the tax structure rather than as discretionary benefits. While compliance requirements exist, administrative practice emphasises correction and regularisation rather than outright denial of credit. Enforcement mechanisms are directed primarily at defaulting suppliers, reinforcing the principle that the credit chain should not be broken for compliant recipients.

The United Kingdom, despite maintaining robust anti-evasion measures, also distinguishes between substantive entitlement and procedural compliance. Courts have generally resisted denial of input tax credit where

transactions are genuine and tax has been charged, even if suppliers subsequently default. The focus remains on preventing abuse without undermining the functioning of the credit system.

These comparative approaches reveal a common normative thread: input tax credit is viewed as an essential component of value-added taxation, not as a fiscal concession. Restrictions are justified only to the extent necessary to combat fraud and protect revenue, and they are applied proportionately to avoid distorting commercial neutrality.

In contrast, the Indian GST regime has placed comparatively greater emphasis on procedural compliance and third-party conduct, often at the expense of substantive neutrality. The comparative experience suggests that a more balanced approach—one that safeguards revenue while protecting bona fide credit entitlement—is both feasible and desirable.

This perspective strengthens the argument that India's treatment of ITC as a conditional concession is not an inevitable feature of GST but a policy choice. Aligning Indian practice with global standards would require recalibrating enforcement mechanisms to target evasion directly, without compromising the integrity of the input credit chain.

### **Conclusion and Suggestions**

#### **Conclusion**

This paper set out to examine a foundational question at the heart of India's GST framework: whether Input Tax Credit is a statutory right intrinsic to the design of GST or a conditional concession subject to extensive legislative and administrative control. Through doctrinal analysis, judicial trends, constitutional scrutiny, practical experience, and comparative perspectives, it becomes evident that Input Tax Credit occupies a legally contested and conceptually unstable position within the Indian indirect tax regime.

Statutorily, the language of the CGST Act suggests an entitlement to credit, integral to the

computation of tax liability under a value-added system. Conceptually, ITC is indispensable to achieving tax neutrality and eliminating cascading taxes. However, legislative conditions, expansive delegated legislation, and administrative discretion have increasingly treated ITC as a revocable concession. Judicial interpretation, while recognising the importance of ITC, has remained inconsistent, oscillating between protecting bona fide taxpayers and deferring to revenue considerations. This uncertainty has translated into significant compliance burdens, litigation, and erosion of taxpayer confidence.

Comparative experience demonstrates that mature VAT/GST jurisdictions treat input tax credit as a substantive component of the tax structure, restricting it only in cases of fraud or abuse. The Indian approach, which frequently penalises recipients for supplier defaults and procedural lapses, departs from this norm and risks undermining the core objectives of GST.

The central conclusion of this paper is that while Input Tax Credit may be regulated through reasonable statutory conditions, its systematic dilution through excessive restrictions and administrative controls is incompatible with the philosophy of GST. Treating ITC predominantly as a concession threatens to convert a value-added tax into a compliance-driven regime, defeating the promise of simplification and neutrality.

### Suggestions and Reforms

#### 1. Reaffirm Input Tax Credit as an Integral Component of GST

The legislative and administrative approach towards Input Tax Credit must clearly acknowledge that ITC is not a fiscal incentive or concession, but a structural element of the GST framework. Since GST is designed as a value-added tax, denial of ITC directly alters the incidence of taxation and undermines tax neutrality. Legislative clarity—either through statutory amendment or authoritative executive guidance—is

necessary to reaffirm that ITC flows from genuine taxable transactions and business use, subject only to reasonable regulatory conditions.

#### 2. Limit Denial of ITC to Cases Involving Fraud or Wilful Default

Denial of Input Tax Credit should be restricted to circumstances where the recipient has engaged in fraud, collusion, or deliberate misrepresentation. Penalising a bona fide purchaser for supplier non-compliance imposes an unfair burden on recipients who lack effective control over the supplier's tax conduct. Enforcement mechanisms should instead be directed at defaulting suppliers through recovery, penalties, and prosecution, rather than by disrupting the credit chain of compliant taxpayers.

#### 3. Curb Excessive Reliance on Delegated Legislation

While the legislature is empowered to prescribe conditions for availing ITC, substantive restrictions affecting the availability or utilisation of credit must originate from the parent statute. The increasing use of rules and administrative instructions to curtail ITC risks diluting statutory entitlements and raises concerns of excessive delegation. Delegated legislation should facilitate implementation, not redefine the nature of the right itself.

#### 4. Strengthen Procedural Safeguards in Administrative Action

Powers such as blocking of electronic credit ledgers and provisional attachment of assets have serious economic consequences for businesses. These measures must be exercised with restraint and only after complying with principles of natural justice. Prior notice, reasoned orders, and an opportunity of hearing should be mandatory, and such restrictions should be time-bound and

subject to periodic review to prevent arbitrary deprivation of credit.

**5. Adopt a Substance-Over-Form Compliance Approach**

GST administration should distinguish between substantive violations causing revenue loss and minor procedural or technical lapses. Denial of ITC for clerical errors, delays, or system-related discrepancies defeats the objective of ease of doing business and fosters avoidable litigation. A compliance framework focused on correction, regularisation, and proportional response would better serve both revenue interests and taxpayer certainty.

**6. Reduce Litigation Through Legislative and Administrative Certainty**

The proliferation of ITC-related litigation reflects ambiguity and inconsistency in statutory interpretation and administrative practice. Clear legislative guidance on contentious issues—such as supplier default and retrospective restrictions—would reduce discretionary decision-making and enhance predictability. Certainty in tax law is essential for commercial planning and investor confidence.

**7. Align Indian GST Practice with International VAT/GST Standards**

Comparative experience from other VAT and GST jurisdictions demonstrates that protecting the integrity of the input credit chain enhances compliance and economic efficiency. Indian GST administration should move towards global best practices that preserve tax neutrality while effectively addressing tax evasion through targeted enforcement rather than broad-based credit denial.

**Reference**

**Statutes & Constitutional Provisions**

1. **INDIA CONST.** art. 14.
2. **INDIA CONST.** art. 19, cl. (1)(g).
3. **INDIA CONST.** art. 300A.

4. Central Goods and Services Tax Act, No. 12 of 2017, § 16 (India).
5. Central Goods and Services Tax Rules, 2017, r. 36(4) (India).
6. Central Goods and Services Tax Rules, 2017, r. 86A (India).
7. Constitution (One Hundred and First Amendment) Act, 2016, Statement of Objects and Reasons (India).

**Supreme Court of India – Cases**

8. *Eicher Motors Ltd. v. Union of India*, (1999) 2 S.C.C. 361 (India).
9. *Collector of Cent. Excise v. Dai Ichi Karkaria Ltd.*, (1999) 7 S.C.C. 448 (India).
10. *Jayam & Co. v. Assistant Comm'r*, (2016) 15 S.C.C. 125 (India).
11. *ALD Automotive (P) Ltd. v. Commercial Tax Officer*, (2019) 13 S.C.C. 225 (India).
12. *Radha Krishan Indus. v. State of Himachal Pradesh*, (2021) 6 S.C.C. 771 (India).
13. *Bharti Airtel Ltd. v. Union of India*, (2021) 13 S.C.C. 329 (India).
14. *Mohit Minerals (P) Ltd. v. Union of India*, (2022) 4 S.C.C. 713 (India).
15. *Maneka Gandhi v. Union of India*, (1978) 1 S.C.C. 248 (India).
16. *K.T. Plantation (P) Ltd. v. State of Karnataka*, (2011) 9 S.C.C. 1 (India).

**High Court Decisions (GST & VAT)**

17. *Arise India Ltd. v. Comm'r of Trade & Taxes*, (2018) 97 V.S.T. 385 (Del. HC) (India).
18. *D.Y. Beathel Enters. v. State Tax Officer*, 2021 SCC OnLine Mad 4514 (India).
19. *LGW Indus. Ltd. v. Union of India*, 2022 SCC OnLine Cal 1792 (India).
20. *Suncraft Energy (P) Ltd. v. Assistant Comm'r*, 2023 SCC OnLine Cal 1914 (India).
21. *Brand Equity Treaties Ltd. v. Union of India*, 2020 SCC OnLine Del 110 (India).

**Administrative Law / Natural Justice**

22. *A.K. Kraipak v. Union of India*, (1969) 2 S.C.C. 262 (India).

### Foreign & Comparative VAT Jurisprudence

23. Case C-146/05, *Collée v. Finanzamt Limburg an der Lahn*, ECLI:EU:C:2007:549.
24. Joined Cases C-80/11 & C-142/11, *Mahagében Kft. v. Nemzeti Adó- és Vámhivatal*, ECLI:EU:C:2012:373.

### Reports & Soft Law

25. Law Comm'n of India, **245th Report on Arrears and Backlog: Creating Additional Judicial (Wo)manpower**(2014).
26. Organisation for Economic Co-operation & Development, **International VAT/GST Guidelines** (2017).

### Bluebook Usage Notes (Important for Submission)

- Case names **italicised**
- “SCC” expanded correctly as S.C.C.
- Courts added for High Court decisions
- Foreign cases cited with **ECLI identifiers**
- Statutes cited with **Act number + year + section**

