GST ARTICLE

When Technology Dictates Tax Law: A Constitutional Critique of GSTN's Expanding Role and Legislation by Software

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A. Introduction: When Technology Begins to Command the Law

Just when the year was drawing to a close-amid hurried deadlines, reconciliations, and the familiar rush of last-minute annual GST compliances for tax professionals and finance teams-**the Goods and Services Tax Network (GSTN)** dropped its latest salvo: an advisory aimed squarely at the credit ecosystem. Much like **drone warfare**, the strike was swift, remote, and algorithmic-capable of inflicting immediate and far-reaching fiscal consequences on unsuspecting taxpayers.

On 29 December 2025, the GSTN issued an advisory concerning the Electronic Credit Reversal and Re-claimed Statement and the RCM Liability/ITC Statement, declaring that the GST portal would shortly **block the filing of GSTR-3B** where Input Tax Credit (ITC) is reclaimed or availed beyond balances reflected in these electronic statements.

At a superficial level, the advisory is portrayed as a compliance-facilitating measure intended to prevent clerical errors and enforce discipline in reporting. However, on a closer constitutional and statutory examination, the advisory represents a **serious departure from the framework of parliamentary taxation**, where technology ceases to be a facilitator of law and instead begins to **operate as a source of law**. This raises foundational issues touching upon

legislative competence, executive authority, ultra vires action, and the constitutional prohibition against unauthorised tax collection.

B. Section 16 and the Statutory Scheme of ITC: Conditions Exist Only for First Availment

Section 16 of the CGST Act is the principal and exhaustive provision governing the conditions and restrictions for availment of Input Tax Credit. A plain and textual reading of the provision makes it clear that all the conditions enumerated therein relate exclusively to the **initial availment** of credit. The section does not regulate, restrict, or even refer to the subsequent **re-availment or reclaim** of credit that was earlier reversed temporarily for any reason.

This legislative design is consistent with commercial realities under GST. Re-availment of ITC is a routine and inevitable occurrence arising from multiple practical contingencies-such as timing mismatches between receipt of goods and reflection of invoices in GSTR-2B, reconciliation errors, temporary reversals for non-payment within 180 days followed by later payment, or supplier-side non-compliance later cured. In all these situations, the law does not impose any fresh substantive condition beyond satisfaction of the original eligibility under Section 16.

The absence of statutory restriction on re-availment is therefore intentional and meaningful, and any attempt to regulate re-availment through portal-level mechanisms amounts to **adding words to the statute**, which is impermissible in law.

C. Section 39, Rule 61, Rules 37 and 37A: Re-availment Is Through GSTR-3B Alone

The statutory position becomes clearer when Section 16 is read with Section 39 of the CGST Act, which governs furnishing of returns, and Rule 61 of the CGST Rules, which recognises GSTR-3B as the return under Section 39. The entire

statutory framework proceeds on the basis that availment, reversal, and re-availment of ITC are to be disclosed only through the **return**.

Even **Rules 37 and 37A**, which specifically deal with reversal and subsequent re-availment of ITC in defined circumstances, do not contemplate the filing of any additional declaration, statement, or electronic ledger. These rules merely prescribe the circumstances under which reversal is required and when re-availment becomes permissible. The compliance mechanism remains confined to reporting in GSTR-3B.

The Electronic Credit Reversal and Re-claimed Statement introduced by GSTN, and the conditioning of return filing upon conformity with such a statement, therefore finds **no support in the Act or the Rules**. It represents a **portal-created obligation without statutory pedigree**.

D. Express Legislative Mandate on Restriction of Returns: Section 39(10) and Rule 59(6)

It is a settled principle of statutory interpretation that where the legislature intends to restrict a statutory right, it does so expressly. The CGST Act is a textbook illustration of this principle.

Section 39(10) of the CGST Act specifically provides that a registered person shall not be allowed to furnish GSTR-3B for a tax period if the return for the preceding period has not been furnished. Further, the newly introduced sub-section (11) in section 39 further provides that GSTR-3B cannot be filed after the prescribed limit of three years. These are the only restrictions imposed by Parliament on the filing of GSTR-3B.

Similarly, Rule 59(6) of the CGST Rules restricts the filing of statement in form GSTR-1 in specified circumstances of default. These provisions demonstrate a clear legislative intent: **restrictions** on filing returns and statements are **matters of substantive law** and must be expressly enacted.

Significantly, there is **no provision** anywhere in the CGST Act or Rules that authorises restriction of filing GSTR-3B on account of negative ledger balances, ITC mismatches, or non-compliance with a portal-generated statement. When Parliament has consciously limited the circumstances in which GSTR-3B can be blocked, any additional restriction imposed by GSTN is directly contrary to the legislative mandate and therefore hit by the doctrine of **ultra vires**.

E. Article 265, Ultra Vires Action, and the Constitutional Prohibition on Unauthorised Tax Collection

The constitutional validity of the impugned GSTN advisory must be tested against **Article 265 of the Constitution**, which mandates in unequivocal terms that *"no tax shall be levied or collected except by authority of law."* This provision is not a mere procedural safeguard; it is **a substantive limitation on fiscal power**, requiring that every levy, collection, or compulsory exaction must trace its origin to a validly enacted law.

The Supreme Court has consistently held that constitutional restrictions on taxing power are implicit in every taxation statute, even if not expressly stated. In **Bharat Kala Bhandar (P) Ltd. v. Municipal Committee** (AIR 1966 SC 249), the Court held that limitations contained in Articles 276, 285, and 286 cannot be bypassed either directly or indirectly, and must necessarily be read into all taxing enactments. Applying this principle, any mechanism that results in compulsory reversal of ITC, artificial creation of tax liability, or forced payment of tax must have clear statutory authority.

In **Lord Krishna Sugar Mills v. Union of India** (AIR 1959 SC 1124), the Supreme Court struck down a levy sought to be imposed through an executive scheme without parliamentary sanction, holding that the Government cannot, by executive action or policy, impose a tax which has not been authorised by Parliament.

The GSTN advisory operates in precisely this prohibited zone. By blocking the filing of GSTR-3B, compelling reversals of ITC, and indirectly forcing payment of tax as a pre-condition for statutory compliance, it **achieves indirectly what Article 265 forbids directly**-namely, collection of tax without authority of law. Such an action is therefore clearly ultra vires the Constitution and the CGST Act.

What makes the infirmity more glaring is that the advisory is not even traceable to any executive decision of the Central Government or the States, nor does it flow from any circular issued by the Board under Section 168 of the CGST Act. It is a **purely portal-driven mandate**, unsupported by statute, rules, notification, circular, or constitutional recommendation.

F. GSTN's Legal Status and the Constitutional Impropriety of "Legislation by Software"

Under Section 146 of the CGST Act read with Notification No. 4/2017 - Central Tax, the common portal is notified only as a **facilitating platform**. The explanation to the notification clarifies that the portal is managed by GSTN, a Section 8 company incorporated under the Companies Act, 2013.

GSTN is not a legislature. It is not an executive authority. It is not even a statutory regulator. It has not been delegated any power under the CGST Act to prescribe conditions, impose restrictions, or enforce fiscal consequences. Yet, through the present advisory, GSTN has effectively assumed the role of a **super-legislature** so to say, rewriting the conditions for re-availment of ITC and imposing return-blocking consequences that Parliament has consciously not enacted.

Such assumption of power is constitutionally impermissible. The Supreme Court in **In re: Delhi Laws Act** (MANU/SC/0010/1951) held that essential legislative functions cannot be delegated. What is worse here is not delegation, but **self-**

assumption of legislative power by a non-sovereign entity through software architecture.

G. Conclusion: The Rule of Law Cannot Yield to the Rule of Code

The GST framework, like any other tax law, was designed as a legislative tax system enacted by Parliament and States under Article 246A and implemented through technology, and that too on the recommendations of the GST Council. It was never and cannot be ever envisaged as a technology-driven regime where software dictates fiscal outcomes.

The advisory dated **29 December 2025** represents a dangerous constitutional deviation. A **private technology platform** has sought to impose restrictions, compel reversals, and indirectly collect tax **without legislative mandate, without executive authority, and significantly, without even a recommendation of the GST Council**, the constitutionally empowered body under **Article 279A** entrusted with making recommendations on *all* aspects of GST, including levy, collection, input tax credit, and administration.

Even the GST Council-often described as the most powerful fiscal coordination body in India's constitutional architecture-has not recommended any such restriction on filing of GSTR-3B or any portal-level mechanism for compulsory reversal of ITC. When such far-reaching fiscal consequences are sought to be imposed without parliamentary enactment, without executive instruction, and without GST Council recommendation, the action stands completely outside the constitutional framework of GST.

In a constitutional democracy governed by **Articles 265, 246A**, **269A, etc.,** taxation is an incident of sovereignty exercised by the legislature, coordinated through the GST Council, and administered by the executive strictly in accordance with law. There is no constitutional space for taxation by error message, recovery by portal validation, or restriction by backend logic.

If such practices are permitted to persist, the gravest risk is not administrative inconvenience but a **systemic erosion of parliamentary supremacy and constitutional federalism**, where statutory rights yield not to enacted law or even collective fiscal wisdom of the GST Council, but to software design and system architecture.

Technology may assist the law. It may streamline compliance. But it cannot replace the Constitution. The moment software begins to levy, collect, or compel tax without authority of law and without constitutional recommendation, the **rule of law gives way to the rule of code**-a transformation that our constitutional framework does not, and cannot, permit.

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