

Hard Locking Without the Key: The Missing Legislative framework behind the GSTR-3B ITC Lock

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This piece is prompted by the discussion building around the coming hard-locking of GSTR-3B, and of the ITC data within it in particular the portal ceasing to let a taxpayer edit these figures himself, and channelling every correction instead through the GSTR-1/1A route, read with the flow of invoices into IMS and, from there, into GSTR-2B. At first blush the idea is difficult to argue with: a recipient, in principle, should not be claiming credit over and above what his supplier has actually reported. Put that way, the proposal sounds less like a restriction and more like common sense finally being enforced. But common sense at the level of principle and workability at the level of practice are two different things, and this idea, however tidy it looks on a policy note, is close to utopian once measured against the realities of how business is actually transacted i.e., credit notes disputes, invoices amended, vendors delayed, and genuine claims left stranded because someone else's compliance was late or wrong. And whatever the merit of the underlying objective, a change of this magnitude cannot, and should not, be brought about without express legislative backing, a backing that on the record as it presently stands, is simply missing.

1. The Statutory Architecture of ITC and Self-Assessment

It may be recalled that input tax credit does not arrive in GSTR-3B as a single, self-contained idea it is assembled across two chapters of the Act that were drafted to work in tandem. While **Chapter V** contains [Section 16](#) which is the

grundnorm of the credit regime as it sets out what may be claimed and how, folding in the conditions and restrictions that run from reporting, to the time limit for availment, to payment to the vendor within the prescribed period, to the filing of the return, right up to the corresponding payment of tax by the supplier to the government. [Section 17](#) carves out what may never be claimed at all i.e., blocked credits. [Section 18](#) deals with credit in special circumstances such as a merger or a change in constitution. [Section 19](#) governs credit on goods sent for job work, and [Section 20](#) governs credit distributed by an Input Service Distributor.

The procedure sits in **Chapter IX** starting with [Section 37](#) which requires the taxpayer to furnish details of outward supply. [Section 38](#) provides for the communication of details of inward supply to the recipient. [Section 39](#) is the return itself i.e., GSTR-3B in which liability and ITC is declared and discharged. And sitting quietly between them is [Section 41](#), a provision that does not get nearly the attention its wording deserves: it provides that every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to avail the credit of eligible input tax as **self-assessed** in his return. Availment of ITC, in other words, is not something the portal computes and hands down. It is something the taxpayer self-assesses, exactly as Section 59 requires him to self-assess the taxes he owes. Section 41 has to be read with **Chapter XII** and, in particular, with [Section 59](#) itself, which mandates self-assessment for every tax period. It is worth adding that [Section 2\(11\)](#) defines *assessment* to expressly include self-assessment so that whatever legal consequence the Act, or the courts, attach to an assessment attaches with equal force to a self-assessment made under Section 59 or Section 41. The credit side and the liability side of GSTR-3B are, on the text, both acts of self-assessment performed by the taxpayer.

2. Assessment as a Vested Right

The vested-right line of authority

It is settled law, running back decades, that an assessment which will include self-assessment, once Section 2(11) is read into the picture, creates a vested right in favour of the assessee. In **CED v. M.A. Merchant**, 1989 Supp (1) SCC 499 : 1989 SCC (Tax) 404, the Supreme Court held that assessment creates a vested right, and that an assessee cannot be subjected to reassessment unless a provision to that effect, inserted by amendment, is either expressly or by necessary implication retrospective. Later a Constitution Bench of the Supreme Court returned to it and applied it afresh in **Commissioner of Income Tax (Central)-I, New Delhi v. Vatika Township Private Limited**, [2014-VIL-29-SC](#), reaffirming that a right accruing on assessment is not one a subordinate instrument, applied retrospectively, may simply take away.

Bharti Airtel: the facilitator cannot outrank the source

Read that vested-right line together with what the Court had already said about the mechanics of GST self-assessment in **Union of India v. Bharti Airtel Ltd.**, [2021-VIL-87-SC](#) and the picture completes itself. The Court therein held that self-assessment under Section 59 is, and ought to be, carried out on the strength of the taxpayer's own books of account, with the common portal serving merely as a facilitator through which information is fed and retrieved. A regime in which the portal's auto-populated figure becomes final, and the books become irrelevant to what is finally paid, does not implement *Bharti Airtel's* books-first ratio. Read with *M.A. Merchant* and *Vatika Township*, it also runs into the further difficulty that a self-assessment, once made, has already created a vested right that a portal configuration unsupported by any amendment, retrospective or otherwise has no lawful means of disturbing it.

3. Why the GSTR-2B-Only Restriction Has No Rule Behind It

There is, as of today, no rule anywhere in the CGST Rules made under any authorised rule-making power in the Act that confines ITC to what flows from GSTR-2B of that particular month only. That absence is not a drafting oversight; it reflects the fact that the return itself is not designed for a strict, month-to-

month, one-to-one correlation between books and GSTR-2B. The format of GSTR-3B itself clears this picture. **Table 4**, the ITC table, carries a specific field at **4(D)(1)** for declaration of ITC reclaimed which was reversed in an earlier period, and a separate field at **4(B)(2)** for ITC reversed on a temporary basis, precisely so that it can be reclaimed later. A form that builds in fields for credit moving across months is a form that assumes correlation will not always be contemporaneous and a form that assumes that cannot, at the same time, be read as authorising a lock that permits only what a single month's GSTR-2B happens to show.

The point sharpens further once **Section 16(2)(b)** is brought into the picture, since receipt of goods is one of the express conditions for availing credit. It is entirely ordinary, at the turn of a month, for goods to still be in transit say from one State to another which is invoiced by the supplier in Month-1 but received, and therefore eligible, only in Month-2 as credit. The supplier reports the invoice in Month-1 whereas the recipient, in that same Month-1 GSTR-3B, merely avails and immediately reverses the credit, in **Table 4(A)(5)** and **Table 4(B)(2)** respectively, before reclaiming it properly once the goods actually arrive. This is not an exceptional case but a routine feature of business and trade, and it alone is enough to show that GSTR-2B of a given month and the ITC a recipient is lawfully entitled to claim in that month were never meant to be identical and rightly so.

4. The Plethora of Adjustments Hard-Locking Cannot Accommodate

The in-transit scenario is only the most common of several routine adjustments the current return architecture is built to absorb, and none of them survives a strict, portal-enforced correlation with GSTR-2B. Credit reversed under the 180-day rule for non-payment to the vendor is reclaimed the moment payment is actually made, often months after the original invoice period. Credit reversed because a supplier has not filed his own GSTR-3B is reclaimed once that supplier's compliance catches up as per Rule 37A. Many times the credit a

recipient reverses on his own initiative because of a genuine commercial dispute with the supplier, is reclaimed once the dispute is resolved. And a credit note the supplier issues in a later month, against goods the recipient had already received and on which he had already reversed credit suo motu at the time of receipt, produces an adjustment that again extends to more than one tax period. Each of these is a lawful, everyday feature of how ITC actually moves through a business over time. A hard lock tied strictly to a given month's GSTR-3B and GSTR-2B has no field, and no rule, that tells it how to treat any of them as of now.

5. IMS: An Optional Functionality Wearing a Mandatory Face

It is also worth being clear about what IMS is, as things presently stand, rather than what the advisories assume it will become. The Invoice Management System is till today, an optional functionality, and the data flowing from it into GSTR-2B is described by GSTN itself as intended to reduce errors in claiming input tax credit and to improve reconciliation between the credit availed in GSTR-3B and the credit reflected in GSTR-2B. Making IMS mandatory through advisories and treating its output as the ceiling on what a taxpayer may claim, is a considerably larger step, and on the text of the Act it requires amendments to at least the CGST Rules, 2017 to give IMS a legal framework. Thus, an optional functionality cannot, without that legal framework, be quietly converted into a mandatory ceiling on credit.

6. Conclusion

The objective behind hard-locking GSTR-3B is understandable. Greater discipline, cleaner reconciliations, and a reduction in fraudulent ITC claims are legitimate policy goals. But good policy cannot substitute good law. The GST framework, as it presently stands, continues to recognise ITC as a matter of statutory self-assessment under Sections 41 and 59, supported by a return architecture that consciously accommodates commercial realities through reclaims, reversals and cross-period adjustments. A portal cannot eliminate

what the statute continues to permit. If the Government genuinely intends to move towards a system where GSTR-3B becomes entirely system-driven and GSTR-2B becomes the exclusive source of ITC, the solution is not to hard-lock the portal first and search for legal authority later.

The "key" to such a lock lies in GST Council and the delegated legislative framework. It would require suitable amendments to the CGST Act and the CGST Rules, a statutory framework for IMS, and perhaps even a redesigned GSTR-3B and GSTR-2B with dedicated reporting tables capable of capturing the numerous business situations that arise in the ordinary course of trade like goods in transit, Rule 37 and [Rule 37A](#) reclaims, 180-day payment reversals, commercial disputes, credit note adjustments, and other legitimate timing differences. Until those legislative and structural changes are made, hard-locking GSTR-3B would not merely be a technological upgrade but it would risk replacing statutory self-assessment with software-driven assessment something the GST law, and the Supreme Court's jurisprudence, do not presently contemplate.

This debate, therefore, is not about whether technology should assist tax administration but whether technology can become the source of law instead of its instrument' In a constitutional democracy governed by the rule of law, the answer must remain the same: the law should programme the portal, not the portal redefine the law.

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(The views expressed in this article are strictly personal.)