 Gujarat HC Upholds S.16(2)(c)... But Here's the **Practical Survival Blueprint** Every Business Must Understand

May 2026 – Gujarat HC

Maruti Enterprise: S.16(2)(c) survives constitutional scrutiny

Jan 2026 – Tripura HC

Sahil Enterprises: Read down S.16(2)(c) to protect bona fide buyers absent fraud or collusion

Core Question: Where does a genuine buyer really stand?

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Law in Theory vs. Reality

Section 16(2)(c) in Theory

"No ITC unless tax collected by seller reaches Govt."

- ✓ Anti-fraud objective
- ✓ Revenue protection

(Read down to be applicable in fraud/collusion cases or in exceptional cases only by Hon'ble Tripura HC under GST; &

SC in various judgements under Delhi Vat Act)

In Practice

A buyer may:

- ✓ Buy genuine goods
- ✓ Pay GST fully
- ✓ Fulfil all obligations

- ✗ Yet loses ITC if supplier fails to pay tax; ITC reversal of buyer is by default and automatic

The **Fundamental Inequity** in GST ITC Framework

Logical Dispute Should Be

Govt ↔ Seller

Current Practical Burden

Govt → Buyer

⚠ Why should a bona fide buyer become the first
recovery target by default?

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MYTH BUSTING



The **GSTR-2B Myth** That's Costing Businesses Crores

⊗ **Biggest GST Myth: "GSTR-2B = Safe ITC"**

GSTR-2B Only Confirms



- Seller filed GSTR-1

GSTR-2B Does NOT Confirm ✗

- GSTR-3B filing
- Actual tax payment
- DRC-03 compliance
- Recovery by Govt

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The **Dangerous Asymmetry** Hidden in Plain Sight

ITC in 2B \neq Tax Paid

Reflection in GSTR-2B does not guarantee actual remittance of tax to the government.

ITC Not in 2B = Presumed Seller Default

But non-reflection may also mean: Wrong GSTIN · B2C/B2B error · Clerical mistake · Technical glitch · Missed amendment

 Yet under S. 155, the **buyer bears the entire burden of proof** – regardless of the actual reason for non-reflection.

The "Re-Avail Later" Illusion

S.41(2) / Rule 37A

Theoretical re-credit mechanism exists on paper

Practical Problem: Seller May...

- Stop filing returns
- Cancel GSTIN
- Disappear entirely
- Become insolvent
- Never regularise

Govt

Protected

Buyer

Stranded

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The **Double Whammy** — When Both Sides Lose & Govt takes More

Buyer's Burden

- ITC reversal
- 24% interest
- Penalty

Seller's Burden

- Tax demand
- 18% interest
- Penalties

⊗ ✗ No automatic visibility to buyer on seller-side recovery proceedings

Govt May Get Tax

Recovery from seller proceeds independently

Buyer Still Loses Credit

Even after seller pays, buyer's ITC is not automatically restored

Cascading Effect Returns

The very evil GST was designed to eliminate comes back through the back door

The **Survival Blueprint** — Don't Defend Passively, Force Seller Recovery

Tax Evasion Petition

File petition to adjudicating officer against defaulting seller

Commissioner Complaint

Escalate formally to the jurisdictional Commissioner

RTI to CBIC

Seek information on seller's tax payment and recovery status

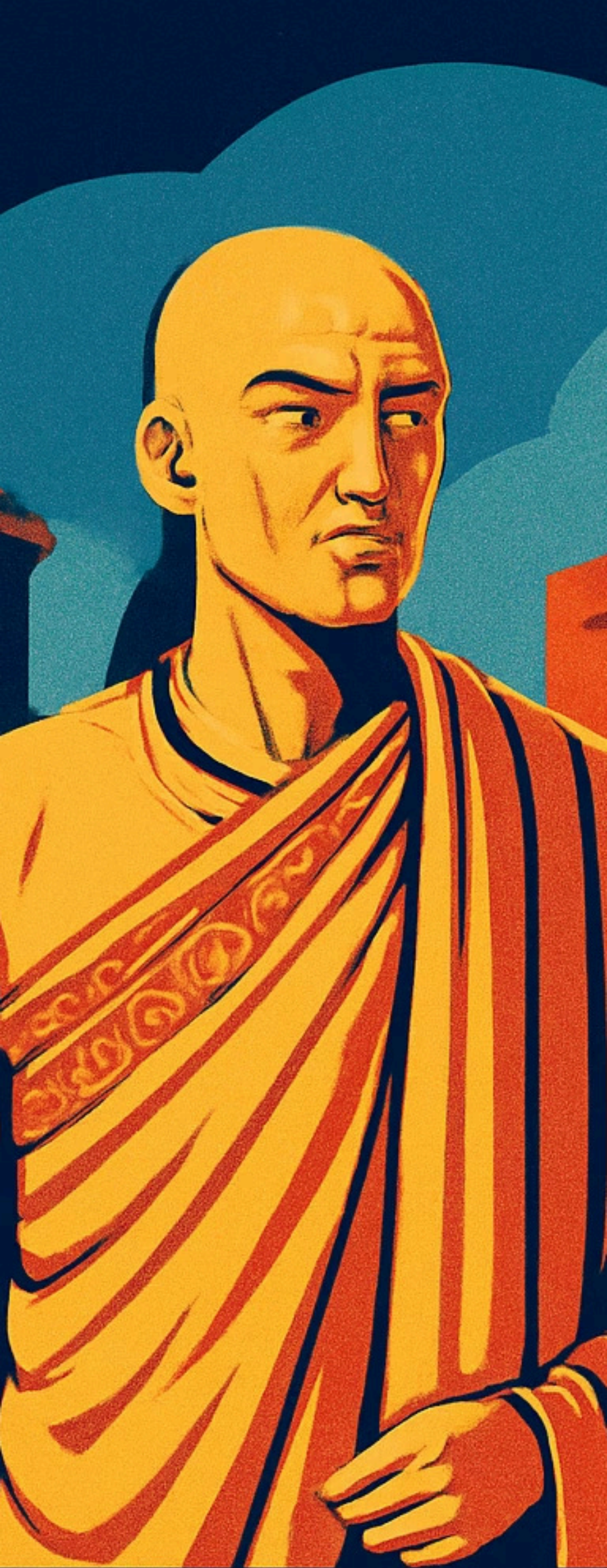
PMO / CPGRAMS Grievance

Escalate to highest level through official grievance portal

BNS S.318 Fraud Complaint

File criminal fraud complaint against seller where applicable

✔️ Shift pressure back to seller through enforcing State machinery & recovery mechanism. Make seller recovery the default, not the buyer suffering.



CONCLUSION

Kautilya's Arthashastra — A Timeless Reminder

"A king should collect taxes as a bee gathers nectar without harming the flower."

- 📌 It's high time the GST Council/Courts deeply introspects & interpret S.16(2)(c) as an anti-fraud exception... not a by-default anti-trade weapon damaging the trade & eco-system that contributes **Rs. 2.40L Crore each month** to fuel the development needs of our beloved Bharat!

What more safeguards can CAs/Consultants collectively build to protect bona fide buyers?

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