

# LAW WINDOW

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CASE No. 47 dated 16.01.2025

Particulars	Details
Name of Petitioner	Shiv Construction Company
Name of Respondent	The Additional Commissioner (Appeals)
Case No.	R/Special Civil Application No. 14194 of 2024
High Court	Gujarat High Court
Date of Judgement	11.12.2024
Decision	Petition allowed by way of remand

## **Remand of GST Dispute: Applicability of Newly Inserted Section 16(5) in CGST Act**

In this case, the petitioner challenged the dismissal of their appeal under Article 227 of the Constitution of India, seeking to quash the order dated 12.08.2024 passed by the Commissioner (Appeals) under the GST Act.

**1. Fact of the case:** The petitioner, a firm registered under the GST Act since 13.02.2020, filed its returns under Section 39 on 30.11.2021. The original adjudicating authority issued an order dated 21.11.2023 under Section 73 of the GST Act for availing ineligible Input Tax Credit (ITC) in violation of Section 16(4).

The Commissioner (Appeals) upheld this decision, citing clear contraventions of GST provisions.

An amendment in Section 16 of the GST Act (Finance Act No. 2, 2024) introduced sub-section (5), effective from 01.07.2017. This provision allows ITC claims for financial years 2017-2021 if the returns were filed by 30.11.2021. The petitioner met this condition.

## **2. Petitioner's Submission:**

The petitioner argued that the amendment nullifies the alleged default, and the case should be re-examined under the new provision.

## **3. Respondent's Submission:** The respondent's counsel did not contest this argument, given the retrospective effect of the amendment.

## **4. Court's Analysis and Decision:**

The court found merit in the petitioner's claim and quashed the orders dated 21.11.2023 and 12.08.2024.

It remanded the matter back to the Adjudicating Authority to pass a fresh de novo order after considering Section 16(5) and verifying the facts.

The authority was directed to complete the process within 12 weeks of receiving the order. The petition was disposed of, and the respondent was directed to grant a fresh hearing to the petitioner.

Regards,

**Minakshi Jain, Advocate**

**Author and founder of Law Window**

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