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Telecom Towers Stand Tall, being Movable for ITC as Supreme Court Shuts the Door on Revenue's Review Petition

The Hon'ble Supreme Court in **Commissioner, CGST Appeal-1, Delhi Etc. v. Bharti Airtel Limited Etc. [Review Petition (Civil) Diary No. 10915 of 2026 in Special Leave Petition (Civil) Nos. 22060-22062 of 2025 dated August 19, 2026]** dismissed the review petitions filed by the Revenue against the order dated August 08, 2025, whereby the Special Leave Petitions challenging the judgment of the Hon'ble Delhi High Court holding that telecommunication towers are movable property and are outside the sweep of Section 17(5)(d) of the Central Goods and Services Tax Act, 2017 ("**the CGST Act**") had been dismissed, and held that there is no error apparent on the face of the record in the order impugned that would justify its reconsideration, thereby bringing finality to the entitlement of telecom operators and infrastructure providers to avail Input Tax Credit ("**ITC**") on inputs and input services used for setting up passive infrastructure such as telecommunication towers.

Facts:

- M/s Bharti Airtel Limited, Indus Towers Limited and Elevar Digital Infrastructure Pvt. Ltd. (earlier known as ATC Telecom Infrastructure Pvt. Ltd.) (collectively "**the Respondents**") are engaged in providing telecommunication services and passive infrastructure services to telecom operators, for which telecommunication towers, pre-fabricated shelters and allied equipment are installed on land or rooftops.
- The Commissioner, CGST Appeal-1, Delhi and others ("**the Petitioner**" or "**the Revenue**") sought to deny ITC on inputs and input services used for setting up such passive infrastructure on the ground that the same were used in the construction of telecommunication towers which, being fixed to the earth by foundation or structural support, constituted immovable property and, therefore, fell within the blocked credit under Section 17(5)(d) of the CGST Act. In the case of Bharti Airtel, the Order-in-Original

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dated March 24, 2023 was affirmed by the Commissioner (Appeals)-1, Delhi vide order dated May 31, 2024, whereas Indus Towers and Elevar Digitel were issued Show Cause Notices dated July 25, 2024 under Section 74 of the CGST Act. The notice issued to Indus Towers alone covered the period July 01, 2017 to March 31, 2024 in respect of 48 GST registrations across India.

- Before the Hon'ble Delhi High Court, the Respondents contended that towers are movable items of equipment which are supplied in CKD/SKD condition, assembled at site and merely fastened to a concrete base with nuts and bolts to keep them stable and wobble-free, and which can be dismantled and relocated without any damage. It was urged that the question was no longer *res integra* in view of the decision of the Hon'ble Supreme Court in *Bharti Airtel Ltd. v. Commissioner of Central Excise, Pune* [2024 SCC OnLine SC 3374], which affirmed the view taken by the Hon'ble Delhi High Court in *Vodafone Mobile Services Ltd. v. Commissioner of Service Tax, Delhi* [2018 SCC OnLine Del 12302] under the CENVAT Credit Rules, 2004.
- The Revenue did not dispute the conclusions in those decisions but sought to distinguish them on the ground that the Explanation appended to Section 17 of the CGST Act specifically excludes "telecommunication towers" from the expression "plant and machinery", and that the legislative scheme under GST, therefore, itself contemplates towers as immovable property.
- The Hon'ble Delhi High Court, vide common judgment dated December 12, 2024 in *W.P.(C) 13211/2024 & Ors.*, rejected the Revenue's contention and held that telecommunication towers are movable property; that a tower must independently qualify as "immovable property" as a pre-condition for Section 17(5)(d) to apply; and that the exclusion of towers from "plant and machinery" cannot lead to the conclusion that the statute envisages them as immovable. The orders dated March 24, 2023 and

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May 31, 2024 as well as the Show Cause Notices dated July 25, 2024 were accordingly quashed.

- The Revenue's *Special Leave Petitions [SLP (Civil) Nos. 22060-22062 of 2025]* were dismissed by the Hon'ble Supreme Court vide order dated August 08, 2025, after condoning a delay of 105 days and hearing counsel for both sides, on the ground that these were not fit cases for exercise of discretion under Article 136 of the Constitution of India.
- Aggrieved, the Revenue filed the present review petitions along with an application for condonation of delay, seeking reconsideration of the order dated August 08, 2025.

Issues:

- Whether the order dated August 08, 2025 dismissing the Revenue's Special Leave Petitions suffers from any error apparent on the face of the record so as to warrant its reconsideration in exercise of review jurisdiction?
- Whether the specific exclusion of "telecommunication towers" from the definition of "plant and machinery" in the Explanation to Section 17 of the CGST Act renders such towers immovable property so as to block ITC under Section 17(5)(d) of the CGST Act?

Held:

The Hon'ble Supreme Court in ***Review Petition (Civil) Diary No. 10915 of 2026 in Special Leave Petition (Civil) Nos. 22060-22062 of 2025*** held as under:

- **Observed that**, the delay in filing the review petitions stood condoned, and the Court had carefully considered the review petitions as well as the grounds set out therein.

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- **Noted that**, having examined the impugned order in light of the grounds raised, there is no error apparent on the face of the record in the order impugned that would justify its reconsideration.
- **Held that**, the review petitions are devoid of merit and shall stand dismissed accordingly, and pending applications, if any, stand disposed of.
- **Consequently**, the order dated August 08, 2025 declining to interfere with the judgment of the Hon'ble Delhi High Court remains undisturbed, and the position that telecommunication towers are movable property outside the sweep of Section 17(5)(d) of the CGST Act, and that ITC on inputs and input services used for setting up such towers cannot be denied on the ground of immovability, attains finality.

Our Comments:

Relevant statutory provisions

Section 16(1) of the CGST Act entitles every registered person to take credit of input tax charged on any supply of goods or services or both used or intended to be used in the course or furtherance of business. Section 17(5) of the CGST Act opens with a *non-obstante* clause and enumerates the categories of blocked credit. Clause (c) thereof blocks ITC on works contract services when supplied for construction of an immovable property (other than plant and machinery), and clause (d) blocks ITC on goods or services or both received by a taxable person for construction of an immovable property (other than plant and machinery) on his own account, including when such goods or services are used in the course or furtherance of business. The Explanation to Section 17 defines “plant and machinery” to mean apparatus, equipment and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both, and includes such foundation and structural supports, but excludes (i) land, building or any other civil structures, (ii) telecommunication towers, and (iii) pipelines laid outside the factory premises. It is pertinent

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to note that Section 119 of the Finance Act, 2025 has retrospectively substituted the words “plant or machinery” in clause (d) with “plant and machinery” with effect from July 01, 2017, thereby aligning clause (d) with the Explanation.

The CGST Act does not define “immovable property”. Section 2(52) of the CGST Act defines “goods” as every kind of movable property, and recourse is, therefore, to be had to Section 3(26) of the General Clauses Act, 1897, which includes within “immovable property” things attached to the earth or permanently fastened to anything attached to the earth, and to Section 3 of the Transfer of Property Act, 1882, which explains “attached to the earth” as meaning (a) rooted in the earth, (b) imbedded in the earth, or (c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached.

Immovability is the gateway to Section 17(5)(d)

The Revenue’s entire case rested on reading the exclusion of “telecommunication towers” from “plant and machinery” as a legislative declaration that towers are immovable property. The Hon’ble Delhi High Court rightly rejected this inversion of the statutory scheme. Clause (d) is attracted only where goods or services are received for construction of an “immovable property”; the bracketed words “other than plant and machinery” merely carve out an exception from that bar, and the exclusions in the Explanation only narrow that carve-out. An item which is not immovable at all never enters clause (d), and, consequently, the question whether it is excluded from “plant and machinery” does not arise. The exclusion of towers in the Explanation would bite only where a tower is, on facts, found to be immovable property. This reasoning has now been left undisturbed by the Hon’ble Supreme Court twice over, first by declining special leave and now by dismissing the review.

The finding on movability itself rests on the authoritative pronouncement of the Hon’ble Supreme Court in *Bharti Airtel Ltd. v. Commissioner of Central Excise, Pune* (supra), which, after surveying the entire body of precedent on immovable property, distilled six tests, namely, nature of annexation, object of annexation, intendment of the parties, functionality,

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permanency and marketability, and held that towers and pre-fabricated buildings, which are bought in CKD/SKD condition, assembled at site, fastened to the foundation by nuts and bolts only to keep the antenna stable and wobble-free, and which can be unbolted, relocated and resold without any change in their character, are movable property and, hence, “goods”. Although rendered in the context of the CENVAT Credit Rules, 2004, that determination concerns the intrinsic character of the asset under the general law of property and is regime-neutral. The Hon’ble Delhi High Court was, therefore, right in applying it to Section 17(5)(d) of the CGST Act, and the Revenue’s attempt to draw a distinction between the service tax regime and the GST regime on the strength of the Explanation has not found favour at any stage.

Precedential status of the Supreme Court orders

Two aspects merit attention. First, the order dated August 08, 2025 was a non-speaking dismissal of the Special Leave Petitions at the threshold. In terms of the settled law in *Kunhayammed v. State of Kerala* [(2000) 6 SCC 359] and *Khoday Distilleries Ltd. v. Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd.* [(2019) 4 SCC 376], such a dismissal neither attracts the doctrine of merger nor amounts to a declaration of law under Article 141 of the Constitution of India. The binding force, therefore, flows from the judgment of the Hon’ble Delhi High Court, which is in turn founded on the judgment of the Hon’ble Supreme Court in *Bharti Airtel Ltd.* (supra), which is law declared under Article 141.

Second, review jurisdiction under Article 137 of the Constitution of India read with Order XLVII of the Supreme Court Rules, 2013 is confined to an error apparent on the face of the record and cannot be invoked as an appeal in disguise, as reiterated in *Kamlesh Verma v. Mayawati* [(2013) 8 SCC 320] and *Lily Thomas v. Union of India* [(2000) 6 SCC 224]. The dismissal of the review, after condoning the delay and examining the grounds, signals that the Revenue’s challenge did not disclose any such error. For all practical purposes, the controversy stands closed.

Pari materia judgments

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- *Vodafone Mobile Services Ltd. v. Commissioner of Service Tax, Delhi* [2018 SCC OnLine Del 12302]: Towers and pre-fabricated shelters are not immovable property; they are capital goods and inputs eligible for CENVAT credit. This view stands affirmed by the Hon'ble Supreme Court in *Bharti Airtel Ltd.* (supra).
- *Commissioner of Central Excise, Ahmedabad v. Solid & Correct Engineering Works* [(2010) 5 SCC 122]: Asphalt drum/hot-mix plants fixed by nuts and bolts to a foundation merely to ensure wobble-free operation are not “attached to the earth” and remain movable.
- *Sirpur Paper Mills Ltd. v. Collector of Central Excise, Hyderabad* [(1998) 1 SCC 400]: A paper-making machine embedded in a concrete base for operational efficiency does not become immovable; the test is whether it can be sold in the market.
- *Municipal Corporation of Greater Bombay v. Indian Oil Corporation Ltd.* [1991 Supp (2) SCC 18]: Laid down the test of permanency, i.e., whether the chattel is movable to another place of use in the same position or is liable to be dismantled and re-erected at the later place.
- *Chief Commissioner of CGST v. Safari Retreats Pvt. Ltd.* [2024 SCC OnLine SC 2744]: Applied a functionality test to determine whether a building is a “plant” for the purposes of Section 17(5)(d); the Revenue’s review petition was dismissed vide order dated May 21, 2025. Notably, the retrospective substitution of “plant or machinery” with “plant and machinery” by the Finance Act, 2025, which was aimed at neutralising *Safari Retreats*, has no bearing on the towers controversy, since the towers route to ITC rests on the asset not being immovable at all, rather than on its being a “plant”.

Contrary and distinguishable judgments

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- *Bharti Airtel Ltd. v. Commissioner of Central Excise, Pune* [2014 (35) S.T.R. 865 (Bom.)] and the Larger Bench of the Tribunal in *Tower Vision India Pvt. Ltd. v. Commissioner of Central Excise (Adj.), Delhi* [2016 (42) S.T.R. 249 (Tri.-LB)] had held towers to be immovable property and ineligible for credit. These decisions stand overruled by the Hon'ble Supreme Court in *Bharti Airtel Ltd.* (supra).
- *Triveni Engineering & Industries Ltd. v. Commissioner of Central Excise* [(2000) 7 SCC 29], *Quality Steel Tubes (P) Ltd. v. Collector of Central Excise, U.P.* [(1995) 2 SCC 372], *Mittal Engineering Works (P) Ltd. v. Collector of Central Excise, Meerut* [(1997) 1 SCC 203] and *Duncans Industries Ltd. v. State of U.P.* [(2000) 1 SCC 633]: Where a plant is erected at site, permanently embedded and cannot be removed without dismantling it into its components and losing its identity, it is immovable property. These decisions mark the boundary of the movability principle and continue to hold the field on their own facts.

Practical implications

- Telecom operators and infrastructure providers can avail ITC on towers, shelters and allied inputs and input services. Show Cause Notices and orders premised on towers being immovable property are unsustainable, and the trilogy of the Delhi High Court judgment dated December 12, 2024, the SLP dismissal dated August 08, 2025 and the review dismissal dated August 19, 2026 may be cited in all pending proceedings across jurisdictions.
- The civil foundation on which the tower rests stands on a different footing. The petitioners themselves acknowledged before the High Court that only the concrete structure could be treated as an immovable element, and the Explanation excludes "land, building or any other civil structures" from "plant and machinery". ITC on civil works may, therefore, continue to be contested under Section 17(5)(c) and (d), and

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taxpayers would be well advised to segregate the cost of the civil foundation from the tower and equipment in their contracts, invoices and books of account.

- Taxpayers who reversed ITC or made payments during investigation may pursue refund under Section 54 of the CGST Act, keeping in mind the limitation of two years from the relevant date and the entitlement to interest under Section 56. However, ITC which was never availed in earlier periods cannot now be availed afresh in view of the time limit under Section 16(4), save for the relaxation for FY 2017-18 to FY 2020-21 under Section 16(5) of the CGST Act.
- The reasoning is not confined to telecommunication towers. The tests of functionality, permanency and marketability apply equally to other equipment fastened to foundations for stability, such as DG sets, solar module mounting structures, pre-fabricated shelters and industrial plants bolted to concrete bases. Each case will nonetheless turn on its facts, and contemporaneous evidence of CKD/SKD procurement, dismantlability, relocation history and resale value will be decisive in sustaining the claim.

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