

M/s. Bharti Airtel Limited v. Commissioner, CGST Appeals-1 Delhi; with Indus Towers Limited and Elevar Digital Infrastructure Pvt Ltd v. Union of India and Others

Case number: W.P.(C) 13211/2024, W.P.(C) 14710/2024 and W.P.(C) 16477/2024 (common judgment)

Citation: 2024:DHC:9681-DB

Decision date: 12 December 2024

Movable telecom towers: Section 17(5)(d) immovable-property threshold and blocked ITC

Court: Delhi High Court at New Delhi

Bench: Hon'ble Mr. Justice Yashwant Varma and Hon'ble Mr. Justice Girish Kathpalia

Decision stage: Final High Court merits disposal: Airtel's adjudication and appellate orders and the connected show-cause notices quashed, without remand. Subsequent special-leave and review petitions dismissed.

01 Facts of case and issues

Three petitions challenged GST credit denial premised on telecommunication towers being immovable property. Airtel challenged its Order-in-Original of 24 March 2023 and the affirming appellate order of 31 May 2024. Indus Towers and Elevar Digital Infrastructure, formerly ATC Telecom Infrastructure, challenged show-cause notices. The Court described Indus Towers' passive-infrastructure business and its Section 74 notice covering 1 July 2017–31 March 2024 across 48 GST registrations. That period and registration count should not be attributed automatically to all petitioners.

The challenged notices treated inputs and input services used to establish passive infrastructure as construction of immovable property under Section 17(5)(d). Petitioners relied on dismantlability and the Supreme Court's 2024 CENVAT decision. Revenue relied on the express exclusion of telecom towers from the statutory definition of plant and machinery.

Pinpoint: Official PDF paragraphs 1–8, physical pp. 2–8; connected identities: caption, pp. 1–2; Indus-specific facts: paragraph 3, p. 3.

02 Discussion by Hon'ble Court

The Court applied the general property-law principles in *Bharti Airtel Ltd. v. Commissioner of Central Excise, Pune*, 2024 INSC 880, decided 20 November 2024. That predecessor concerned CENVAT credit under the 2004 Rules. Its findings on movable towers and prefabricated shelters were reproduced; its classification of them as CENVAT capital goods or inputs was not a separate interpretation of GST's plant-and-machinery definition.

The relevant tests examine annexation, its object, intended permanence, functionality and marketability. Towers assembled from transportable components can be unbolted, relocated and sold without damage to the tower itself. Attachment supplies stability for efficient antenna operation rather than permanent beneficial enjoyment of the land or building. Possible damage to connecting cables does not establish

02 Discussion by Hon'ble Court

destruction of the tower. These principles, including the cited shelter discussion, supported rejection of Revenue's immovable-tower premise.

The decisive GST reasoning appears in paragraphs 17–19: exclusion from the definition of plant and machinery does not itself turn a tower into immovable property. Immovability is an antecedent requirement of Section 17(5)(d). Since the towers were movable, the challenged credit denial could not survive. The judgment does not hold that telecom towers are included in that defined expression. Nor does its reproduction of CENVAT shelter reasoning certify every shelter, concrete foundation or civil-work expenditure under GST.

Pinpoint: Official PDF paragraphs 10–16, physical pp. 8–18; quoted Supreme Court paragraphs 11.8.1 and 11.9.1–11.9.9, pp. 10–14; CENVAT conclusions reproduced in paragraph 14, pp. 14–15; independent GST ratio: paragraphs 17–19, pp. 18–19.

03 Judicial decision and operative relief

The Court allowed Airtel's W.P.(C) 13211/2024 and quashed the orders dated 24 March 2023 and 31 May 2024. It also allowed W.P.(C) 14710/2024 and W.P.(C) 16477/2024, quashing SCN No. 67/2024-25 and SCN No. 68/2024-25 respectively, both dated 25 July 2024. There was no remand. The operative paragraphs do not direct a refund, quantify recoverable credit, impose a payment deadline or award costs.

Pinpoint: Official PDF paragraphs 20–22, physical p. 19.

04 In favour of

The taxpayers: Airtel obtained final merits quashing of the adjudication and appellate orders; Indus Towers and Elevar obtained final quashing of the challenged notices on the immovability issue.

This is substantive High Court relief on the legal premise of the challenged proceedings, including relief at notice stage for two petitioners. It does not determine every invoice's eligibility or grant a quantified refund. The later Supreme Court orders leave this result undisturbed but should be described by their actual procedural terms.

Pinpoint: Official PDF paragraphs 19–22, physical p. 19; Supreme Court order of 8 August 2025, paragraphs 2–4, p. 2; review order of 19 August 2026, paragraphs 2–5, pp. 1–2.

05 AKHB REVIEW POINT

AKHB analysis: Preserve engineering drawings, installation contracts, component invoices, relocation records and evidence of marketability. Separate movable tower equipment and comparable prefabricated shelters from permanent civil works; independently test the remaining Section 16 and blocked-credit conditions. A business-use assertion alone does not resolve asset character or invoice eligibility.

Update the statutory quotation before advising. Finance Act, 2025, Section 124 substituted plant and machinery for plant or machinery with deemed effect from 1 July 2017 and inserted overriding Explanation 2. Notification 16/2025-Central Tax brought Section 124 into force on 1 October 2025. The substitution changes the exception's wording; it does not expressly deem movable towers immovable. The HC's threshold reasoning therefore remains analytically distinct, but neither later Supreme Court order expressly decides the amendment's application.

Keep the four proceedings distinct: the 2024 CENVAT judgment supplies property-law reasoning; this December 2024 judgment applies it under GST; the 2025 special-leave dismissal and 2026 review dismissal record subsequent challenges. The separate Supreme Court Bharti Airtel decision of 28 October 2021 concerning GST returns is not this tower dispute. Check the installation facts, statutory version and current docket before relying on the note.

Pinpoint: AKHB commentary based on official PDF paragraphs 5 and 10–22; Finance Act, 2025 Section 124; Notification 16/2025-Central Tax dated 17 September 2025; identified Supreme Court orders. Recommendations and amendment implications are analysis, not findings in the 2024 judgment.

Sources and limitations

Relevant provisions

CGST Act Sections 16(1), 17(5)(d), Section 17's plant-and-machinery Explanation and Section 74. Section 17(5)(c) and other blocked-credit provisions are reproduced, not separately adjudicated. Transfer of Property Act Section 3 and General Clauses Act Section 3(36) inform property character. CENVAT Credit Rules, 2004 Rules 2(a)(A), 2(k) and 3 appear through predecessor authorities.

Statutory note

The judgment quotes the then-existing plant or machinery wording. Finance Act, 2025 Section 124 commenced on 1 October 2025 under Notification 16/2025-Central Tax, with the substitution deemed effective from 1 July 2017 and overriding Explanation 2. This note identifies that material amendment; it is not a complete current-law consolidation or a ruling on its validity.

Treatment note

Primary-source check on 12 October 2026: the Supreme Court, Pankaj Mithal and Prasanna B. Varale JJ., condoned the 105-day filing delay and dismissed the Article 136 petitions on 8 August 2025 (Diary 35416/2025). Its short order did not give a substantive GST merits analysis. On 19 August 2026, Vikram Nath and Prasanna B. Varale JJ. dismissed review Diary 10915/2026 in SLP(C) 22060–22062/2025, finding no apparent error. That review concerns the 2025 GST special-leave order, not review of 2024 INSC 880. A bounded search did not verify an order altering the 2024 CENVAT predecessor. This is not a full citator, complete appellate-history search or certification that no further challenge exists.

Scope of source review

All 19 physical source pages, including caption, ancillary applications, reproduced statutes and authorities, paragraphs 1–22 and signed operative ending, read fully and individually visually inspected. The two-page 2025 SLP order and three-page 2026 review order were also read fully. Only relevant passages of the separate 76-page 2024 Supreme Court predecessor were checked.

Source notes

Neutral citation 2024:DHC:9681-DB is visible beside the QR code on the official PDF. The judgment date is 12 December 2024; displayed signing date is 17 December 2024. Signed judgment bench is Yashwant Varma and Girish Kathpalia; a same-day supplementary cause list names Dharmesh Sharma instead of Girish Kathpalia and does not override the signed judgment. Digital-signature artwork is present; cryptographic trust was not validated. No demand amount is invented.

Primary source

Source description: Complete issuing-court judgment PDF, preserved exactly as downloaded from the Delhi High Court.

Official source: [Open source document](#)

Source pages: 19

Outcome type: final high court merits

Additional source

Supreme Court: Bharti Airtel Ltd. v. Commissioner of Central Excise, Pune, 2024 INSC 880, 20 November 2024

Official source: [Open source document](#)

Pinpoint: Paragraphs 11.8.1, 11.9.9, 11.11.12, 11.12.6 and 11.13–11.14; physical pp. 50–56, 69–70, 75–76. Predecessor CENVAT case, not an appeal from this GST judgment.

Supreme Court: Commissioner, CGST Appeal-1, Delhi Etc. v. M/s Bharti Airtel Limited Etc., 8 August 2025

Official source: [Open source document](#)

Pinpoint: Diary 35416/2025; caption, p. 1, expressly identifies all three HC petitions; paragraphs 1–4, p. 2.

Supreme Court: Commissioner, CGST Appeal 1, Delhi Etc. v. Bharti Airtel Limited Etc., review order, 19 August 2026

Official source: [Open source document](#)

Pinpoint: Review Diary 10915/2026 in SLP(C) 22060–22062/2025; paragraphs 1–5, pp. 1–2, and matching Record of Proceedings, p. 3.

Finance Act, 2025, Section 124: amendment of CGST Section 17

Official source: [Open source document](#)

Pinpoint: Section 124(i)–(ii), official Government of India statutory text.

Notification 16/2025-Central Tax, 17 September 2025, S.O. 4206(E)

Official source: [Open source document](#)

Pinpoint: Gazette p. 4: Section 124 commences 1 October 2025; commencement also corroborated by the official GST Council September 2025 newsletter, p. 7.

GST Council September 2025 newsletter: Notification 16/2025-Central Tax

Official source: [Open source document](#)

Pinpoint: Physical p. 7, Notification 16/2025-Central Tax summary: Section 124 commencement and retrospective substitution.

Disclosures and source rights

AI disclosure: Prepared with AI assistance from the complete official High Court judgment and identified primary sources. No human legal review is claimed.

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Source checked: 12 October 2026