



Tax alert: Supreme Court dismisses Revenue SLPs against eligibility of input tax credit on mobile towers

12 August 2025

The Supreme Court (SC) has dismissed the Revenue's special leave petitions (SLPs) challenging the Delhi High Court (HC) judgment which had held mobile towers to be in nature of 'movable property' and eligible for input tax credit (ITC).

In a nutshell



Delhi HC had ruled that mobile towers are movable property relying on SC judgement in taxpayer's own case in erstwhile regime.



HC had observed ITC cannot be denied under provisions blocking ITC in respect of construction of immovable property.



The Revenue had filed SLPs before the SC challenging the HC judgement.



SC dismissed the petitions observing that these are unfit cases to exercise its discretion under the Constitution of India.



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Background

- The Delhi High Court (HC), in the case of respondent¹, ruled that telecommunication towers are movable property and do not fall within the ambit of provisions under GST law restricting input tax credit in respect of construction of immovable property. Thus, ITC was held to be eligible.
- The HC had extensively relied on the Supreme Court's verdict in the Bharti Airtel² case under the erstwhile indirect tax regime, which concluded that telecommunication towers do not meet the criteria for immovable property.
- The HC had emphasized that the exclusion of telecommunication towers from the definition of "plant and machinery" in the GST law does not imply they are immovable property.
- The Revenue had filed special leave petitions before the Supreme Court (SC) challenging the HC judgement.

Observations of the Supreme Court

- The delay in filing the petitions has been condoned in the facts and circumstances of the case.
- After hearing both the sides, the SC dismissed the petitions observing that these are not fit cases to exercise discretion to grant special leave under the Constitution of India.

Deloitte comments

With the dismissal of the petitions by the SC, the Delhi HC judgement conclusion that mobile towers are movable property and that ITC shall be eligible, attains finality. As the SC has dismissed the SLPs, the HC order does not get merged into the SC order.

¹ Commissioner v. M/s. Bharti Airtel Limited Special Leave Petition (Civil) Diary No. 35416/2025

² M/s. Bharti Airtel Ltd. v. The Commissioner of Central Excise 2024-VIL-49-SC-CE

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