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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 17137/2024 & CM APPL. 72763/2024,**
MS SHIVALIK EXIM PVT LTD & ANR.Petitioners
Through: Mr AR Madhav Rao, Mr Krishna
Rao, Advs. (M: 9873686316)
versus
UNION OF INDIA & ORS.Respondents
Through: Mr. Harpreet Singh, SSC with Ms.
Suhani Mahur, Advocate.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE AMIT SHARMA

ORDER
% **11.12.2024**

1. This hearing has been done through hybrid mode.

CM APPL. 72764/2024 (Exemption)

2. Allowed, subject to all just exceptions. Application is disposed of.

W.P.(C) 17137/2024 & CM APPL. 72763/2024

3. The present petition under Articles 226 and 227 of the Constitution of India has been filed by the Petitioner seeking the following prayers: -

“a. That this Hon’ble Court be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari or any other appropriate Writ, Order or direction, to quash Para 7 and Para 11 (insofar as this para and the sub paras contained therein pertain to denying ITC to the petitioner amounting to Rs. 2,74,64,860/-) of Show Cause Notice No. 59/2024-25 dated 30.07.2024 and the related paras namely 7.1, 7.2, 7.3, 7.4, 7.5, 11.1, 11.2, 11.3, 11.4, 11.5, 18(5), 18(9), 21(5) and 21(9) issued by the Additional Commissioner Central Goods and Services Tax, Audit II Delhi.

b. That this Hon’ble Court be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari or any other appropriate Writ, Order or direction, to declare as constitutionally invalid, the second proviso to Section 16(2)(d) of the Central Goods and Services Tax,



Act 2017 as being arbitrary and hence violative of Article 14 and Article 19(1)(g) of the Constitution of India;

c. That this Hon'ble Court be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari or any other appropriate Writ, Order or direction, to declare as constitutionally invalid, Rule 37 of the Central Goods and Services Rules, Act 2017 as being arbitrary and hence violative of Article 14 and Article 19(1)(g) of the Constitution of India;

d. pass such further orders and grant such other reliefs, including costs of this Petition, as this Hon'ble Court may deem fit and proper in the nature and circumstances of the case."

4. Ld. Counsel appearing on behalf of the Petitioners submits that the present case raises a similar issue as raised in ***Bharti Airtel Limited v. UOI, W.P.(C) 6914/2020***.
5. In view thereof, issue notice.
6. Let a reply be filed within 4 weeks from today. Rejoinder, thereto, if any, be filed within 2 weeks thereafter.
7. List before the Joint Registrar for completion of pleadings on 10th January, 2025.
8. List the application seeking stay/interim reliefs, being ***CM APPL. 72763/2024*** before this Court on 23rd January, 2025. The pleadings in the aforesaid application shall be completed by then.
9. List the main matter before the Court on 19th February, 2025 along with ***W.P.(C) 6914/2020***.

PRATHIBA M. SINGH, J.

AMIT SHARMA, J.

DECEMBER 11, 2024/bsr/pr