

**A VERY IMPORTANT JUDGMENT OF DELHI HIGH COURT
THOUGH INTERIM ORDER**

CGST - Writ petition challenging the inquiry letter and subsequent proceedings thereunder, as also the legality of Explanation to Section 17(5)(d) of the CGST Act, 2017 to the extent it excludes 'telecommunication towers' from the meaning of the term 'Plant and Machinery'. Petitioner further seeks to challenge Section 17(5)(d) of the CGST Act, to the extent it debars Input Tax Credit on construction of Immovable Property - **HELD - the Court is not inclined to interfere with the inquiry letter as well as the proceedings initiated under the said letter. However, the Court shall examine the legality and validity of Explanation to Section 17(5)(d) of the CGST Act along with similar writ petitions - there shall be no stay of the letter issued by respondent - List on 20th November, 2020**

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 5817/2020

Date: 31.08.2020

M/s BHARTI AIRTEL LIMITED

Vs

UNION OF INDIA & ORS.

**Petitioner Through: Mr. Sujit Ghosh, Advocate with Ms. Pragya Awasthi,
Advocate**

Respondents Through: Mr. Ravi Prakash, Advocate for R-1/UOI.

Mr. Harpreet Popli, Advocate for R-2.

Mr. Harpreet Singh, Advocate for respondents No.3 and 4.

CORAM

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

C.M.Nos.21044-21045/2020

Exemption allowed, subject to all just exception.

Accordingly, the applications stand disposed of.

W.P. (C) 5817/2020 & C.M.No.21043/2020

The petition has been listed before this Bench by the Registry in view of the urgency expressed therein. The same has been heard by way of video conferencing.

Present writ petition has been filed challenging the inquiry letter dated 29th July, 2019 issued by respondent no.3 and subsequent proceedings thereunder, as also the legality of Explanation to [Section 17\(5\)\(d\)](#) of the Central Goods and Services Tax Act, 2017 (for short 'CGST Act') to the extent it excludes 'telecommunication towers' from the meaning of the term 'Plant and Machinery'. Petitioner further seeks to challenge Section 17(5)(d) of the CGST Act, to the extent it debars Input Tax Credit on construction of Immovable Property.

After extensive hearing, this Court is not inclined to interfere with the inquiry letter dated 29th July, 2019 as well as the proceedings initiated under the said letter. However, this Court shall examine the legality and validity of Explanation to Section 17(5)(d) of the CGST Act along with similar writ petitions, i.e. ***Riveria Commercial Developers v. UOI W.P.(C) 11633 of 2019, Bamboo Hotel & Global Centre (Delhi) Pvt Ltd v. UOI W.P.(C) 5457 of 2019*** and ***Delhi International Airport Ltd v. UOI and others W.P.(C) 4683 of 2020***. It is clarified that there is no stay of the letter dated 29th July, 2019.

Issue notice.

Mr.Ravi Prakash, Advocate accepts notice on behalf of respondent no.1, Mr.Harpreet Popli, Advocate accepts notice on behalf of respondent no.2 and Mr.Harpreet Singh, Advocate accepts notice on behalf of respondent nos.3 & 4. They pray for and are permitted to file their counter-affidavits within a period of four weeks. Rejoinder-affidavits, if any, be filed before the next date of hearing.

List on 20th November, 2020.

The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.