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# THE GAUHATI HIGH COURT
## (HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

**Case No. : WP(C)/6028/2026**

M/S G.M. COKE INDUSTRIES
A PARTNERSHIP FIRM REGISTERED UNDER THE GOODS AND SERVICES TAX LAWS BEARING GSTIN 18AAFFG7194N1ZO, HAVING ITS PRINCIPAL PLACE OF BUSINESS AT 15TH MILE, G.S. ROAD, BARNI, KAMRUP, ASSAM 781102, REPRESENTED BY ITS PARTNER SHRI SHIV KUMAR MITTAL, S/O LATE RAMESHWAR DASS AGARWAL, RESIDENT OF BABA PCO, TAMBULBARI, TRUCK STAND, TINSUKIA 78125, ASSAM.

VERSUS

UNION OF INDIA AND 5 ORS
REPRESENTED BY THE SECRETARY, MINISTRY OF FINANCE, DEPARTMENT OF REVENUE, GOVERNMENT OF INDIA, NORTH BLOCK, NEW DELHI 110001. BEING THE AUTHORITY RESPONSIBLE FOR ADMINISTRATION OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017.

2:THE JOINT DIRECTOR
DIRECTORATE GENERAL OF GST INTELLIGENCE
GUWAHATI ZONAL UNIT
HAVIING ITS OFFICE AT HOUSE NO. 77
RUPKONWAR JYOTI PRASAD AGARWALA ROAD
OPPOSITE SRIMANTA SANKARDEVA KALAKSHETRA
P.O. PANJABARI
GUWAHATI 781037

3:THE ADDITIONAL / JOINT COMMISSIONER OF CENTRAL GST
GUWAHATI COMMISSIONERATE
HAVIING ITS OFFICE AT GST BHAWAN
KEDAR ROAD
MACHKHOWA
GUWAHATI 781001
ASSAM.

4:THE PRINCIPAL COMMISSIONER
GST BHAWAN
KEDAR ROAD
MACHKHOWA
FANCY BAZAR / MACHKHOWA
GUWAHATI
ASSAM 781001

5:THE COMMISSIONER OF TAXES
COMMISSIONERATE OF TAXES
GOVERNMENT OF ASSAM
KAR BHAWAN
GANESHGURI
GUWAHATI
ASSAM 781006.

6:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF ASSAM
FINANCE (TAXATION) DEPARTMENT
DISPUR
GUWAHATI 781006
ASSAM

**Advocate for the Petitioner** : DR. ASHOK SARAF, MR. N N DUTTA,MR P BARUAH,MR P K BORA,MR. A. KAUSHIK
**Advocate for the Respondent** : DY.S.G.I., SC, FINANCE AND TAXATION,SC, GST

**BEFORE**
**HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

**ORDER**

**04.11.2026**

Heard Dr. A. Saraf, learned senior counsel assisted by Mr. A. Kausik. Also heard Mrs. R. Devi, learned counsel for respondent No.1, Mr. S.C. Keyal, Senior counsel, assisted by Mr. K. Jain appearing for respondent No.2 Mr. S. Chetia, learned counsel for respondent Nos. 3 and 4 and Mr. H. Boruah for respondent Nos. 5 and 6.

2. The petitioner before this Court is a partnership firm engaged in the

manufacture of Coke classifiable under HSN 2704 and having its principal place of business in Barni in the district of Kamrup.

3. Petitioner is registered under the GST having GST No.18AAFFG7194N1ZO with effect from 01.07.2017. Petitioner before this court is aggrieved by the issuance of the impugned Demand-cum-Show Cause notice dated 30.09.2026 issued by the Joint Director, Directorate General of GST Intelligence, Guwahati Zonal Unit.

4. Dr. Saraf, learned senior counsel addressing the Court pointed out that the show-cause notice issued contains a clause for imposition of penalty under Section 122 of the CGST Act, 2017. The primary allegation against the petitioner is that the petitioner had purportedly availed the Input Tax Credit (ITC) under the cover of invoices and corresponding E-Way bills from 17 suppliers without actually the same being received by the taxpayer. Consequently, the benefit of Input Tax Credit amounting to Rs.16,21,12,454/- which was availed of by the petitioner is proposed to be recovered.

5. The learned senior counsel for the petitioner further submits that the show-cause notice also seeks to impose penalty under Section 122(1)(VIII),CGST and Section 122(2)(b) of the CGST and corresponding provisions of the Assam GST Act, 2017 read with the provisions of IGST Act, 2017.

6. Dr. Saraf has referred to the circular number 171/03/2022 GST issued by the Principal Commissioner, GST circulating the clarifications issued by the Central Board of Indirect Taxes. As per the said circular, in so far as utilization of ITC on the basis of tax invoices without receiving the goods or services or both in contraventions of the relevant provisions of the CGST although demand and recovery with penal action under the provisions of section 74 of the CGST Act

along with interest etc. can be proceeded with against the SSC, however, no penalty for the same can be imposed under any provisions of CGST including under section 122.

7. The learned senior counsel submits that this clarification having been issued by the Central Board of Indirect Taxes is binding on the Revenue Authorities and in support of his contentions he has referred to a judgment of the Apex Court rendered in *Commissioner of Customs versus Indian Oil Corporation, reported in ITR volume 267, page 272.*

8. It is therefore submitted that since the show-cause notice itself is issued contrary to the clarifications issued by the Central Board of Indirect Taxes and which could not have been done by the Revenue Authorities as the decisions and the clarifications issued by the Board are binding on the Revenue Authorities as have been held by the Apex Court. The impugned show-cause notice requires interference by this Court and upon causes being shown by the respondents and upon examination by this Court, appropriate orders be issued for interference and setting aside with the impugned show-cause notice. He further submits that adequate interim order be granted protecting the petitioner during the pendency of the writ petition.

9. Mrs. R. Devi, learned counsel appearing for respondent No.1, Mr. S.C. Keyal, appearing for respondent No.2 Mr. S. Chetia, learned counsel for respondent Nos. 3 and 4 and Mr. H. Boruah for respondent Nos. 5 and 6 submits that at this stage they would like to complete their instructions. Mr. Keyal submitted that since it is a show-cause notice, the petitioner may respond to the show-cause notices as the Authorities are yet to take a decision for recovery and which decision will be taken only upon the furnishing of the response.

10. The counsel for the parties have been heard. The averments made in the writ petition have been perused. The circular dated 06.07.2022 and the judgment of the Apex Court placed before the Court have also been carefully taken note of.

11. It is clear from the submissions made and also from the circular number 171/03/2022 GST issued by the commissioner, Principal Commissioner GST that the Central Board of Indirect Taxes being the supreme authority of the Revenue Department has taken a decision that in cases where Input Tax Credit benefits are availed of or utilized without receiving the goods or services or both, recovery proceedings may be initiated under Section 74 along with interest under Section 50. However, no penalty for the same Act can be imposed under any provisions of CGST, including section 122.

12. Perusal of the show-cause notice reflects that the show-cause notice proposes to recover the amount utilized by the petitioner as an Input Tax Credit and calling upon the petitioner to show cause within a period of 30 days as to why the recovery should not be proceeded with. The show cause notice reflects at clauses 25.1. VII and VIII that the Department also proposes to impose penalty equivalent to the ITC amount availed and utilized by the petitioner under section 122 (1)(VIII),CGST and section 122(2)(b) of the CGST and corresponding provisions of the Assam GST Act, 2017 read with the provisions of IGST Act, 2017.

13. From the perusal of the show cause notice it is clear that the show cause notice reflects that the Department proposes to impose penalty under section 122 which is in clear conflict of the circular number 171/03/2022 GST issued by the Principal Commissioner of GST.

14. The Apex Court in the said judgment rendered in *Commissioner of Customs (supra)* upon examination of the earlier precedents had held that show cause notice or demand contrary to existing circulars of the Board are *void ab initio*. The circulars issued by the Central Board of Indirect Taxes although not binding on the Court or on the assessee, however, they are binding on the revenue and the revenue cannot take any step or any action expressly prohibited under the circular.

15. Under such circumstances, this Court is of the view that the matter requires examination by the Court. Considering the prayer made by the respondents to complete their instructions, this Court considers it proper to issue notice at this stage.

16. Issue notice, returnable in 4 (four) weeks.

17. Since the respondents are duly represented by their respective counsel, notices are waived. Extra copies be furnished within a period of one week from today. The respondents may complete their instructions and file necessary affidavit.

18. Issue notice on the interim prayer returnable on 9.12.2026.

19. Till the next returnable date, the respondents will not initiate any further action in terms of the show cause notice.

**JUDGE**

**Comparing Assistant**