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

Case No. : WP(C)/6027/2026

SHRI SHIV KUMAR MITTAL
S/O LATE RAMESHWAR DASS AGARWAL, AGED ABOUT 48 YEARS,
RESIDENT OF BABA PCO, TAMBULBARI TRUCK STAND, TINSUKIA,
ASSAM-786125, BEING THE PARTNER OF M/S G.M. COKE INDUSTRIES,
GSTIN 18AAFFG7194N1ZO.

VERSUS

UNION OF INDIA
REPRESENTED BY THE SECRETARY, MINISTRY OF FINANCE,
DEPARTMENT OF REVENUE, GOVERNMENT OF INDIA, NORTH BLOCK,
NEW DELHI-110001.

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

3:THE ADDITIONAL JOINT COMMISSIONER OF CENTRAL GST
GUWAHATI COMMISSIONERATE
GST BHAWAN
KEDAR ROAD
MACHKHOWA
GUWAHATI-781001
ASSAM.

4:THE PRINCIPAL COMMISSIONER

GST BHAWAN
KEDAR ROAD
MACHKHOWA
FANCY BAZAR / MACHKHOWA
GUWAHATI-781001
ASSAM

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

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. A. KAUSHIK,MR P K BORA,MR. N N DUTTA,MR P BARUAH

Advocate for the Respondent : DY.S.G.I., MR B GOGOI,SC, FINANCE AND TAXATION,MR. S CHETIA,SC, GST

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

04.11.2026

1. Heard Dr. A. Saraf, learned senior counsel assisted by Mr. K. 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. Petitioner is the partner of M/S G. M. Coke Industries the other partner of

the firm is his wife Smt. Shikha Mittal. He is aggrieved by the show-cause notice dated 30.09.2026 whereby the Department has proceeded to impose penalty under Section 122(1)(A) on the ground that the firm, namely, GM Coke Industries had availed of Input Tax Credit without having received the benefits of goods and services of both.

3. Petitioner is registered under the 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. 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 counsel for the petitioner submits that the ITC benefits were availed of by the firm, namely M/S GM Coke Industries and Show-Cause notice had already been issued for recovery of the said ITC. However, there is no reason per se for the revenue to proceed for imposition of the penalty under Section 122(1)(A) of the GST Act on the petitioner solely on the ground that he is a partner of the M/S GM Coke Industries.

6. The learned counsel representing the petitioner by referring to the judgment rendered by the Apex Court in *Dhanasihgh Prabhu vs Chandrasekar*

and Ors in (Criminal) No. 5706 of 2024 submits that unlike a company the partners of a firm are not distinct from the partnership firm. Liability of the partnership firm would automatically extend jointly and severally to the partners.

7. Under such circumstances, where the show-cause notice has already been issued against the partnership firm and penalty sought to be imposed on the partnership firm there is no occasion for the Revenue Authorities to proceed individually against one of the partners by imposition of the Show-Cause notice. He further submits that assuming, although not admitting the benefit if at all were wrongly availed of, that this benefit was availed of by the partnership firm and not by the petitioner individually and the partnership firm being proceeded against by the respondent authorities, no separate proceedings are required to be initiated against the partners by issuing the Show-Cause notice and seeking to impose penalty under Section 122(1)(A). Being aggrieved the present writ petition is filed

8. The learned counsel for the petitioner submits that the impugned Show-Cause notice requires interference by the Court and upon showing causes by the respondents, appropriate orders and directions be issued by the Court for interference of the show-cause notice. During the pendency, the ad-interim orders be granted.

9. Having considered the submissions made and having examined the pleadings and the judgments placed it is seen that the proceedings initiated by the respondents against M/S GM Coke Industries which appears to be a partnership, further proceedings in respect of the one of the partners individually for the benefits purportedly wrongly claimed by the partnership firm towards ITC sought to be recovered and for which proceedings are sought to be

initiated including imposition of penalty, separate proceedings against one of the partners for such benefits purportedly stated to be wrongly claimed by the partnership firm does not appear to have been necessary in the view of the Court.

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

11. 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.

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

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

14. List the matter again on 9.12.2026.

JUDGE

Comparing Assistant