

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH,
COURT NO. I

EXCISE APPEAL NO. 51753 OF 2023

[Arising out of the Order-in-Original No. 116/Commr/Delhi East/AP/2022 dated 26/09/2022 passed by Commissioner of Central Tax, GST Delhi East, New Delhi-110002.]

M/s Gahoi Tobacco Products Pvt. Ltd.Appellant
C/o Aslam Khan, Bawan Payega,
Gwalior – 474 001 (M.P.).

Versus

Commissioner of Central Tax,Respondent
GST Delhi East,
C.R. Building, I.P Estate,
New Delhi – 110 002.

AND

EXCISE APPEAL NO. 51754 OF 2023

[Arising out of the Order-in-Original No. 116/Commr/Delhi East/AP/2022 dated 26/09/2022 passed by Commissioner of Central Tax, GST Delhi East, New Delhi-110002.]

Shri Sriram Gupta, Ex. Managing Director of
M/s Gahoi Tobacco Products Pvt. Ltd.Appellant
C/o Aslam Khan, Bawan Payega,
Gwalior – 474 001 (M.P.).

Versus

Commissioner of Central Tax,Respondent
GST Delhi East,
C.R. Building, I.P Estate,
New Delhi – 110 002.

APPEARANCE:

Shri Prashant Shukla, Advocate for the appellant.
Shri Din Dayal Mangal, Authorized Representative for the
Department

CORAM:

HON'BLE JUSTICE MR. DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 50205-50206/2026

DATE OF HEARING : 28.11.2025
DATE OF DECISION: 04.02.2026

P.V. SUBBA RAO

M/s Gahoi Tobacco Products Pvt. Ltd.¹ and its ex-managing director Shri Sriram Gupta² filed these two appeals to assail the order dated 26.09.2022³ passed by the Commissioner of Central Tax in *denovo* proceedings deciding the proposals made in the show cause notice⁴ dated 11.4.2011.

2. The assessee manufactures gutka and was registered with the central excise department. The preventive branch of the central excise division acted on specific intelligence and intercepted a three wheeler No. DL-1-LH 1510 when it was coming out of the assessee's factory. Its contents were examined and 13 bags of goods were found as per the Bills and additionally, another 7 bags of goods were found without bills in the vehicle which were seized. Some more goods were seized from the premises of the transporters and the premises of the assessee. All these seizures culminated in the issue of a SCN dated 3.12.2007 which was adjudicated by the Additional Commissioner by an order dated 30.1.2019 which order was upheld by the Commissioner (Appeals) by an order dated 29.3.2014 and on appeal, this Tribunal, by Final Order dated 5.4.2018, remanded the matter to the adjudicating authority

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1. Assessee
 2. Sriram
 3. impugned order
 4. SCN

who has yet to pass an order. These seizures are not part of the present appeal.

3. Another SCN dated 11.4.2011 (which culminated in the order impugned in this appeal) was issued by the department alleging clandestine removal of goods by the assessee during the period 1.4.2007 to 30.6.2007 based on various statements and other documents. This SCN was sent to the appellant's old address and the postal department returned it with remarks 'left'. Thereafter, it was affixed on the notice board of the respondent and the matter was adjudicated by the impugned order.

4. While several submissions were advanced by both sides, learned counsel for the appellant made a fundamental submission that the SCN was served on the appellants only on 24.7.2012 (after the issue of the OIO) and its Annexures were served only on 16.7.2019 and the Relied upon documents were served only on 29.12.2022. Thus, the complete SCN was served on the appellants only on 29.12.2022 which is well beyond the extended period of limitation of five years from 30.6.2007.

5. Learned authorized representative for the Revenue submitted that the appellants were 'in possession of the SCN through the impugned order in original'.

6. We have considered this preliminary issue first. Demand of duty can be made by serving an SCN under section 11A of the Central Excise Act, 1944⁵ within the normal time of two years and can be made within the extended period of limitation of five years if the non-payment or short payment of duty is due to fraud or collusion or wilful mis-statement or suppression of facts or violation of Act or Rules with an intent to evade payment of duty. No demand can be made by serving an SCN beyond five years even if duty is not paid by reason of fraud, etc.

7. The undisputed position is that the appellant had changed its address and intimated the change to the department but the SCN was sent to the old address and when it was returned by the postal department, it was pasted on the notice board of the office of the department. This cannot be termed service of notice. After the order was passed, the appellant sought the SCN and it was served on 24.7.2012 beyond the period of five years from the relevant period. The Annexures to the SCN and the relied upon documents were served even later. Thus, the SCN was clearly time barred and the impugned order deciding the proposals therein cannot be sustained.

8. The submission of the learned authorized representative is that since the impugned order contained the allegations in

5 Act

the SCN, the appellant should be treated as having been served the SCN. This submission deserves to be rejected. The SCN must be served before issuing the order and not after the order has been issued. The very purpose of issuing an SCN is to give the noticees an opportunity to show cause which cannot be served if the order is passed without serving the SCN.

9. In view of the above, we find that the impugned order cannot be sustained because the SCN was served beyond the extended period of limitation of five years. It is, therefore, not necessary for us to consider the other submissions made by both sides.

10. The impugned order is set aside and both appeals are allowed with consequential relief to the appellants.

(Order pronounced in open court on 04/02/2026.)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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