CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – II

Excise Appeal No. 50882 of 2024

[Arising out of Order-in-Appeal No. IND-EXCUS-000-APP-36-2023-24 dated 08.05.2023 passed by the Commissioner of CGST, Customs & Central Excise (Appeals), Indore]

M/s. Vasu Paints Pvt. Ltd. **...Appellant**
Shade-B, Plot No. 32, R.R. Industrial
Area Bhavrasala, Sanwer Road, Indore (M.P.)

VERSUS

Commissioner of Central Excise &
CGST – Indore **...Respondent**
Manik Bhagh Palace,
Indore, Madhya Pradesh - 452014

APPEARANCE:
Shri Abhishek Jaju, Advocate for the Appellant
Shri Anuj Kumar Neeraj, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)

DATE OF HEARING: 24.09.2025
DATE OF DECISION: 24.09.2025

FINAL ORDER NO. 51511/2025

ASHOK JINDAL

The appellant is in appeal against the impugned order wherein the demand on account of denial of Cenvat credit was confirmed along with the interest and equivalent amount of penalty was also imposed.

2. The facts of the case are that the appellant is manufacturer of "Oil paint and varnish, Primer, Epoxide Resin, Putti and Sealing compound". The appellant is registered manufacturer and availing Cenvat credit on capital goods, inputs as well as on input services and paid central excise duty at normal rate after availing full exemption of 150 Lakhs dated 01.03.2003 as amended and filing their ER-3 returns regularly.

3. During the course of audit and examination of ER-3 returns filed by the appellant for the quarter January 2017 to March 2017 and April 2017 to June 2017, it was found that appellant opted to avail benefit of full exemption of 150 Lakhs up to the month of February 2017 as provided under SSI exemption notification dated 01.03.2003 as amended and thereafter they opted to avail Cenvat credit on various inputs as well as on capital goods and started payment of central excise duty through Cenvat credit account on the clearance made w.e.f. 01.03.2017. On further scrutiny of ER-3 returns filed by the appellant for the period April 2017 to June 2017, it has been observe that the closing balance of Cenvat credit (lying unutilized at the end of Financial Year 2016-17) has been carried forward in the next Financial Year i.e. Financial Year 2017-18 and taken the same opening balance in ER-3 returns submitted by them for the quarter April 2017 to 2017. On the said basis, the show cause notice was issued to deny Cenvat credit to the appellant and recovery thereof along with the interest and to impose penalty on 15.06.2021 by invoking extended period of limitation. The matter was adjudicated. Demand as proposed in the show cause notice was confirmed along with the interest and equal amount of penalty was also imposed. Aggrieved from the said order, the appellant is before me.

4. Learned counsel for the appellant submits that as appellant were filling their ER-3 retuns regularly and show cause notice has been issued to them on the basis of audit and examination of ER-3 returns, in that circumstances extended period is not invokable. It is a submission that show cause notice has been issued by invoking

extended period of limitation, in view of that the demand is barred by limitation as held by this Tribunal in M/s. **M.D. Industries Vs. Commissioner (Appeals), Central Excise & CGST, Indore, Final Order No. 50272/2025 dated 04.02.205.** He also relied upon the decision of this Tribunal in the case of **M/s. Nalwa Steel and Power Ltd. Vs. CCE & ST, Raipur reported in 2016 (8) TMI 632 CESTAT New Delhi.**

5. On the other hand, learned Departmental Representative supported the impugned order and submitted that as show cause notice has been issued on the basis of audit conducted in the Year 2020, therefore the limitation of 5 years is applicable to the facts of the case.

6. Hear both the parties and considered the submissions.

7. It is a fact on record that appellant is registered with the Central Excise Department and filing their ER-3 returns regularly showing availment of Cenvat credit in their returns and the audit and scrutiny of ER-1 return was done in the Year 2020 and on that basis, a show cause notice has been issued to the appellant by invoking extended period of limitation. The said show cause notice is barred by limitation as held by this Tribunal in the case of **MD Industries Limited (supra),** wherein this Tribunal observed as under:

> *8. In view of this by relying of decision in the case of **M/s Nalwa Steel and Power Ltd**. (supra)where in this case, observed as under:*
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> > *"1.The short point in this appeal is the eligibility of the appellant for service tax credit in respect of service tax paid on transit insurance premium w.r.t.*

> *transport of goods from the factory gate to the buyers premises. It is the claim of the appellant that such transit insurance is necessary for safety of the goods and is part of their business expenditure of manufacture and sale of final products, as such eligible for credit. The learned Counsel appearing for the appellant submitted that irrespective of the merit, the demand is clearly hit by time bar. The period involved is April 2009 to September 2010 and the notice has been issued on 12/3/2014 after scrutiny of the records by the audit officers. The appellants have maintained all the relevant records, entered these credits and shown the credits in their statutory ER-1 returns filed with the Department regularly. The fact that the ineligibility of credit was raised by the audit officers based on the records maintained by the appellant itself will show that there is no suppression of fact and the credit is bonafidely taken in terms of their understanding of the legal provision. She also relied on certain decided cases to support the claim that any detection by routine audit cannot result in demand for invoking extended period alleging fraud etc.*
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> *3. Heard both the sides and examined the appeal records. Examining the question of time bar it is seen that the appellants availed the disputed credits during April 2009 to September 2010. These credits were reflected in all their records and statutory returns filed with the Department. The credit was found to be ineligible upon scrutiny by the officers of audit. The allegation of fraud, suppression, wilfull misstatement with intend to evade payment of duty has to have some positive act on the part of the appellant to sustain the same. Para 4 of the show cause notice made allegation to this effect without any elaboration of evidence or basis. The Tribunal in CCE, Jaipur -I vs. Pushp Enterprises reported in 2011 (22) S.T.R. 299 (Tri. - Del.) held to the effect that when the ER-1 returns containing the details credit were filed regularly extended period demand cannot be raised later in case it was found that certain credits are not eligible to the assessee."*

> *I hold that the demand pertaining to extended period of limitation except for the period April 2017 to June 2017 is not sustainable. Therefore, the appellant is liable to reverse the ineligible Cenvat credit for the period April 2015 to June 2017 along with interest.*

8. In view of the above observations, I hold that the show cause notice issued to the appellant is barred by limitation. Accordingly,

the impugned demand is set aside and resultantly, the appeal is allowed with consequential relief, if any.

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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