IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 54 of 2011

(Arising out of Order-in-Appeal No. 87/CE(A)/GHY/07 dated 09.10.2007 passed by the Commissioner of Customs and Central Excise (Appeals), Udyog Bikash Bhawan, Bhangagarh, Guwahati – 781 005)

M/s. Prag Bosimi Synthetics Limited **: Appellant**
House No. 4, Nilgiri Path, Near Doordarshan Kendra,
R.G. Baruah Road, Guwahati – 781 024 (Assam)

VERSUS

Commissioner of Central Excise **: Respondent**
Guwahati Commissionerate
Udyog Bikash Bhawan, Bhangagarh,
Guwahati – 781 005 (Assam)

APPEARANCE:

Shri Harendra Kr. Pandey, Advocate for the Appellant

Shri K. Chaudhuri, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 76196 / 2024

DATE OF HEARING / DECISION: 28.06.2024

ORDER: [PER SHRI ASHOK JINDAL]

The appellant is in appeal against the impugned order for demanding NCCD from the appellant.

2. The facts of the case are that the appellant is located in the State of Assam and opted for provisional assessment during the period July 2005 to October 2005. On finalization of the provisional assessment, the ld. adjudicating authority confirmed the demand on account of short-payment of CENVAT Credit of Rs.7,77,187/-, Education Cess of Rs.16,493/- and NCCD duty of Rs.23,23,961/-. The appellant was aggrieved from the adjudication order demanding

Education Cess and NCCD from the appellant. The Ld. Commissioner (Appeals) confirmed the order of the ld. adjudicating authority vide the impugned order. Aggrieved from the said order, the appellant is before us.

3. The Ld. Counsel appearing on behalf of the appellant submits that CENVAT Credit can be utilized for payment of NCCD, as held by this Tribunal in their own case for an earlier period vide *Final Order No. M-234/A-899/KOL/07 dated 15.05.2007 in Excise Appeal EDM – 648/06 (CESTAT, Kolkata)* wherein it has been held that the appellant can utilize CENVAT Credit for payment of NCCD. Therefore, it is his submission that the said demand is not sustainable.

4. Heard the parties.

5. Considering the fact that it has been held by the Tribunal that the appellant can utilize CENVAT Credit for payment of NCCD in their own case (*supra*), therefore, we allow the CENVAT Credit to be utilized for payment of NCCD.

5.1. There is a short-payment of Rs.16,493/-, which has already been appropriated post filing of the appeal.

6. Therefore, nothing survives in this case.

7. Accordingly, the appeal is disposed of.

(Dictated and pronounced in the open court)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd