IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. I

Excise Appeal No. 54318/2014

[Arising out of Order-in-Original No. 21/2014 dated 30.05.14/ 2.06.2014 passed by the Commissioner of Central Excise, Delhi I]

Shri Vikas Gupta **Appellant**

Vs.

Commissioner of Central Excise **Respondent**
Delhi I

Appearance:

None for the Appellants
Shri Shravan Bansal, AR for the Respondent

CORAM:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Date of Hearing/ Decision: 21.07.2017

FINAL ORDER NO. 55614 /2017

Per: Justice (Dr.) Satish Chandra:

The present appeal is filed against Order-in-Original No. 21/2014 dated 2.06. 2014.

2. In response to the notice of hearing, learned advocate has sent written submissions and made a request that the appeal may be decided on merits.

3. From the written submissions, it appears that present appeals is part of the bunch of appeals, where all the appeals have already been decided by Final Order No. A/53554 -53574/2017 dated 17.5.2017. The Tribunal has passed the following order:

> *" In these batch of appeals, Central Excise duty liability was confirmed and penalties imposed on the appellants by classifying Henna Powder and Henna Paste under Chapter Heading 3304 as against the classification done by the appellants under Chapter 1404 of the Central Excise Tariff Act, 1985.*
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> *2. Heard both sides and perused the records.*
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> *3. During the course of hearing, Shri S. Sunil, ld. Advocate appearing for the appellants has referred to the Notification No.11/2017- CE (N.T.) dated 24.04.2017 issued by the Government of India, Ministry of Finance (Department of Revenue) under Section 11C of the Central Excise Act, 1944, wherein it has been held that the whole of duty of excise payable on Henna Powder and Paste under Section 3 ibid shall not be required to be paid during the period commencing from 1st day of January, 2007 to 1st day of March, 2013. Thus, the ld. Advocate submits that since the disputed period, in all the appeals, falls between the said dates mentioned in the Notification, all the appeals are required to be allowed and the impugned orders are liable to be set aside.*
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> *4. Section 11C ibid empowers the Central Government for issuance of Notification, in directing not to recover duty of excise not levied or short-levied as a result of general practice. In*

exercise of the powers conferred under Section 11 C ibid, the Central Government has issued the above referred Notification, directing that the Central Excise duty payable under Section 3 ibid shall not be payable in respect of the excisable goods namely, Henna Powder and Paste, falling under Chapter 33 ibid during the period 01.01.2007 to 01.03.2013.

5. In view of the above referred Notification, the appellant is not required to pay any Central Excise Duty on manufacture of Henna Powder and Paste. Therefore, the Central Excise Duty confirmed by the Department in the impugned orders is liable to be set aside. On perusal of the Notification dated 24.04.2017, we find that no classification has been furnished by the Central Government with regard to the goods in question i.e. whether it should be classified under Chapter 33 as claimed by the Department, as against the claim of the appellants under Chapter 14 ibid. Thus, we are not expressing any opinion with regard to the classification of the disputed goods at this juncture.

6. Therefore, the impugned orders are set aside and the appeals are allowed to the extent of the adjudged demands confirmed therein."

3. When the facts and circumstances are identical, we allow the appeal by following our earlier order (supra).

(Dictated and pronounced in the open Court)

(V. Padmanabhan)	**(Justice (Dr.) Satish Chandra)**
Member (Technical)	**President**

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