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

**Application No. C/COD/50004/2017**
**Application No. C/STAY/50003/2017**
**Appeal No. C/50008/2017-CU(DB)**

[Arising out of Order-in-Appeal No. 344/SVS/GGN/2014 dated 26.08.2014, by the Commissioner of Customs, Central Excise & Service Tax (Appeals), New Delhi].

**C.C. New Delhi** **....Applicants**

**Vs.**

**M/s. EMD Locomotive Technologies Pvt. Ltd.** **....Respondent**

**Appearance**:

Shri Govind Dixit, DR for the Appellant
Shri Sanjeev Sachdeva & Ms. Neha Gulati, Advocate for the Respondent

**CORAM**:
**Hon'ble Ms. Archana Wadhwa, Member (Judicial)**
**Hon'ble Shri B. Ravichandran, Member (Technical)**

**Date of Hearing: 28.02.2017**
**Date of Pronouncement: 27.03.2017**

**FINAL ORDER NO. 52569/2017-CU(DB)**

**Per Archana Wadhwa:**

The application stands filed by the Revenue for condoning the delay of 749 days in filing the appeal against the order in appeal dated 26.08.2014 passed by Commissioner (A).

2. Before we deal with the reasons of delay, we would like to advert to the factual position involved in the present appeal. The appellants are importers of "Traction Control Cabinets (herein after referred to as TCC) and at the time of filing Bill of Entry they

classified the same under heading 8537. However, Revenue was of the view that the goods are properly classifiable under heading 8504 4010 pertaining to electric inverters. Accordingly, matter was taken up for adjudication and the original adjudicating authority vide his order in original dated 12.09.2013, accepted the Revenue's stand of classification under heading 8504 4010. The said order of the original adjudicating authority was challenged by the assessee before the Commissioner (A), who upheld the same and rejected the Appellant's appeal by his impugned order in appeal dated 26.08.2014.

3. As is seen from above, the classification adopted by the Revenue stands upheld by both the authorities below. After the order of Commissioner (A), the assesssee chose not to challenge the same and started classifying its imports under heading 8504 4010.

4. Though the said orders have accepted the revenue's stand of classification of the imported goods under heading 8504 4010, the present appeal stands filed by the Revenue by reversing its stand that the proper classification would be 8537 i.e. which the assessee was claiming initially. Accordingly, the present appeal stands filed with a delay of 749 days, with a request to condone the same. On being questioned as to why there is a change in the Revenue's stand and how the Revenue can be said to be aggrieved by the impugned orders of the authorities below when the original adjudicating authority as also the Commissioner (A) has held against the assessee by accepting the Revenue's classification.

Ld. DR appearing for the revenue draws our attention to the fact that subsequent to the passing of the impugned orders, an independent investigation was taken up by the Revenue in 2016 wherein statement of various persons were recorded, communications were received from the railways; invoices were recovered from the appellants premises along with certain emails which led the revenue to believe that the goods were properly classifiable under heading 8537. He also submitted that subsequently there was a notification which exempted the goods falling under heading 8504 4010 from the whole of the basic customs duty and as such the impugned orders have resulted in loss of revenue, in respect of the subsequent imports. As regards, the delay in filing the present appeal, he submits that though the impugned order was received by the jurisdictional central excise authorities having control over the appellant's factory but in as much as there was restructuring of the Commissionerates, the order was sent to the new Commissionerate. Further, he fairly agrees that the even under the new Commissionerate the said order was received on 18.11.2014, but the appeal could not be filed well within the period of limitation on account of logistic issues as also on account of the fact that Revenue has decided to file the appeal based upon the investigations conducted in 2016.

5. We really fail to understand the above stand of the Revenue. When the assessee claimed the classification under chapter heading 8537, Revenue insisted that the same would fall under 8504. Additional Commissioner accepted the said stand of Revenue. No

appeal was filed by the Revenue against the said order of Additional Commissioner and it was only the assesse who challenged the same before Commissioner (A).

6. The appellate authority also upheld the Revenue's stand and rejected the assessee's appeal. When the Revenue's view stand accepted by both the authorities below, we really fail to understand as to how the Revenue can be aggrieved with the said orders. Merely, because subsequently the basic customs duty was nil in respect of 8504 heading, the Revenue cannot be given liberty to file the appeal on the ground that the adoption of classification under heading 8504 has resulted in Revenue's loss. It may not be out of place to mention here that the first order of the Additional Commissioner was not challenged by the Revenue, in which case they cannot challenge the order of the Commissioner (A) passed on the assessee's appeal. Further, the classification is the legal issue and the entire exercise should be to arrive at the correct classification, without linking the same with the amount of Revenue involved. Taking a hypothetical situation that the basic customs duty becomes higher, in future in respect of chapter heading 8537, Revenue cannot be permitted to again reverse its stand. Even at the cost of repetition we would like to observe that the order in original having not been challenged by the Revenue and both the impugned orders being in favour of the Revenue, they cannot be held to be aggrieved party so as to challenge the same.

7. Otherwise also, we find that even if the Revenue's stand that the impugned order was received by the new Commissionerate only

on 18.11.2014, is taken into account, the appeal stands filed with a delay of 749 days, which is a huge delay. No reasonable cause and plausible explanation stand shown to us for condoning such a huge delay. Ld. DR has drawn our attention to various decision of the Hon'ble Supreme Court that the Government is not to be thrown out on the ground of some delay. Reference is made to the Hon'ble Supreme Court decision in the case of ***State of UP Vs. Bahadur Singh & Ors. AIR 1983 SC 845***. Reliance also placed on Hon'ble Supreme Court decision in the case of ***Esha Bhatacharjee Vs. Management Committee of Raghunathpur Nafar Academy and others in civil no. 8183-8184 of 2013*** wherein by relying upon the precedent decision of the Hon'ble Apex Court in the case of ***Collector, Land Acquisition, Anantnag,*** it was held that adoption of liberal approach while dealing with the application for condonation of delay, is required to be adopted and the cause of substantial justices deserves to be preferred over the technical consideration.

Whereas there can be no quarrel about the legal issue that the reasonable delays should be condoned in the public interest and substantial justice is to be preferred over the technical issue but as already observed in the present case that the Revenue has not explained huge delay of 749 days at all and the only reason advanced by the Revenue is that the change of view has occurred on account of investigation conducted in the year 2016 and the change in rate of duty. This fact cannot be considered as a reasonable explanation for delay especially when the Revenue's stand has been upheld by the lower authorities and cannot be made the basis for condoning the delay.

8. As such, we find no reasons to condone the inordinate delay of 749 days. The COD application is accordingly rejected.

9. Consequently, the appeal filed by the Revenue is dismissed being barred by limitation.

[Pronounced in the open Court on 27.03.2017]

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| **(B. Ravichandran)**<br>**Member (Technical)** | **(Archana Wadhwa)**<br>**Member (Judicial)** |

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