

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 1

**Customs Misc. Application No. 20433 of 2025
in
Customs Appeal No.20216 of 2016**

(Arising out of Order-in-Original No. COC-CUSM-000-COM-037-15-15 dated 17.11.2015 passed by the Commissioner of Customs, Cochin.)

M/s. Babin Technologies

Kinfra Techno Industrial Park,
Kakkanchery, Malappuram District.
Kerala

Appellant(s)

VERSUS

The Commissioner of Customs

Customs House,
Cochin - 682 009.

Respondent(s)

WITH

Customs Appeal No. 20251 of 2016

(Arising out of Order-in-Original No. COC-CUSM-000-COM-037-15-15 dated 17.11.2015 passed by the Commissioner of Customs, Cochin.)

The Commissioner of Customs

Customs House,
Cochin - 682 009.

Appellant(s)

VERSUS

M/s. Babin Technologies

Kinfra Techno Industrial Park,
Kakkanchery, Malappuram District.
Kerala

Respondent(s)

AND

Customs Appeal No. 21914 of 2014

(Arising out of Order-in-Original No.COC-CUSTM-000-APP-068-12-13 dated 31.01.2014 passed by the Commissioner of Customs, Cochin.)

The Commissioner of Customs

Customs House,
Cochin - 682 009.

Appellant(s)

VERSUS

M/s. Babin Technologies

Kinfra Techno Industrial Park,
Kakkanchery, Malappuram District.
Kerala

Respondent(s)

APPEARANCE:

Shri Anil Kumar. B Advocate for the Assessee.

Shri Maneesh Akhoury, Asst. Commissioner (AR) for the Revenue.

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)

HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

FINAL ORDER NO. 22014 - 22016 / 2025

DATE OF HEARING: 29.08.2025

DATE OF DECISION: 17.12.2025

PER: R. BHAGYA DEVI

The first two appeals have been filed, one by the assessee M/s. Babin Technologies and another appeal by the Revenue against Order-in-Original No. COC-CUSM-000-COM-037-15-15 dated 17.11.2015 passed by the Commissioner of Customs, Cochin; and the third appeal is filed by the Revenue against Order-in-Original No.COC-CUSTOM-000-APP-068-12-13 dated 31.01.2014.

2. Briefly the facts are the assessee had imported 3100 induction cookers vide Bill of Entry No. 9341819 dated 18.02.2013. The Commissioner in the impugned order observing that the induction cookers are covered under Notification No. 49/2008 CE(NT) dated 24.12.2008, wherein it was specified that all the goods listed at Sl.No.86 of the Notification were to be assessed under Section 4A of the Central Excise Act, 1944. Accordingly, the Commissioner held that the valuation of such goods should be deemed to be such retail price declared on the packages. Aggrieved by this order, the assessee is in appeal before us. Revenue is in appeal against the same impugned order for non-consideration/non-incorporation of duty, fine and penalty on the mis-declared imported goods.

3. The Learned Counsel on behalf of the assessee submitted that they had imported induction cookers and paid the basic customs duty, Countervailing Duty (CVD) based on the Maximum Retail Price (MRP) fixed on the packages and cleared the goods. Later, the goods were bundled and offered to the customer after revising the MRP of the imported goods. Revenue demanded differential duty on this revised MRP which is not in order. It is submitted that if at all a demand has to be made, it has to be only by the Central Excise officer who can issue the notice demanding duty on the activity of manufacture and not the Customs Officers. Secondly, it is submitted that the product in question, is not covered by the Notification 49/2008 C.E. (NT) dated 24.12.2008 in as much as the induction cookers which are electromagnetic appliances cannot be classified as Electro thermic appliances. It is further stated that a write-up from Center for Development of Advanced Computing had certified that there is a difference between electrothermic and electromagnetic and the goods which are electromagnetic are not covered by the Notification and hence, cannot be valued under Section 4A of the Central Excise Act, 1944. Further, it is submitted that the Commissioner has not confirmed the duty, interest and redemption fine or imposed any penalty.

4. The Learned Authorised Representative (AR) for the Revenue submits that the issue to be decided is whether the products are to be valued under Section 4A of the Central Excise Act, 1944 and in as much as the Notification 49/2008 C.E. (NT) dated 24.12.2008 clearly covers all the items falling under Customs Tariff Heading (CTH) 8516 the Commissioner has rightly upheld the valuation under Section 4A of the Central Excise Act, 1944. It is further stated that the Commissioner should have also confirmed the demand along with interest and impose penalties on the appellant which has not been done. On this ground, the Revenue has filed an appeal for remanding the

matter to the Commissioner for confirmation of duty, interest and imposition of penalty; and also, to consider their grounds filed against the original order which was remanded based on the appeal filed by the assessee without considering the appeal filed by the Revenue against the same order.

5. Heard both sides. To understand the present issue of valuation of the impugned goods, it is necessary to examine the background of the case. Initially show-cause notice was issued to the appellant dated 12.08.2013 asking him to propose as to why:

- i. The declared retail sale price of the goods imported by themshould not be rejected.
- ii. The retail sale price (MRP) of the goods imported should not be redetermined.
- iii. The differential amount of duty Rs.75,38,926/- should not be demanded.....
- iv. Goods imported undershall not held liable for confiscation.
- v. The 3100 numbers of induction cookers imported should be held liable for confiscation under
- vi. Penalty should not be imposed on him under Section 112(a), 114A and 114AA of the Customs Act, 1962.
- vii. The amount of Rs.20 lakh paid by him under demandshall not be adjusted towards the duty demanded.

The appellant had contested the show-cause notice on the ground that that the MRP based on which the goods were cleared from the customs was revised since the induction cookers were cleared not 'as such' but as a bundled offer of various other items, hence, the question of paying differential duty on the revised MRP does not arise.

6. The Commissioner adjudicated the above show-cause notice vide Order-in-Original dated 03.02.2014 confirming the demand of Rs.75,38,926/- and imposing penalty equivalent to

duty. This order was appealed against by the appellant and this Tribunal vide Final Order No. 21268/2015 dated 15.06.2015 held as follows:

“The lower authority, vide his impugned order has confirmed the customs duty to the tune of Rs. 75,38,926/- In respect of Import of Induction cookers, multi-function food processors, commercial blenders etc. Imported by the appellant. At the time of import of the said goods, the appellant paid countervailing duty on the MRP declared by them. However, subsequently it was found that the MRP of the product is on the higher side in terms of the stickers affixed by the assessee on the said goods. Accordingly, proceedings were initiated against them which resulted in passing of the present Impugned order.

2. The contention of the learned advocate appearing for the appellant is that the induction cooker was not covered by Notification No. 49/2008 on account of being classifiable under Chapter 8516 60 00. However, they have paid the duty on the said Induction cookers also at the time of Import and the Commissioner has also confirmed the differential CVD In respect of induction cookers. It is his contention that if induction cookers are taken out of the present proceedings, the duty required to be paid in respect of balance Items would be to the extent of Rs. 6,00,000/- only. They have already deposited an amount of Rs. 20,00,000/-.

3. In view of the above, we dispense with the condition of the predeposit of the balance amount of duty and proceed to decide the appeal itself Inasmuch as the present legal issue being raised before us was never contested by the appellant before the original adjudicating authority. As such, we deem it fit to set aside the impugned order and remand the matter to Commissioner for re-examining the appellant's claim that induction cooker being out of the purview of Notification No. 49/2008. It is made clear that the learned advocate is admitting confirmation of demand of duty in respect of other items Imported by them. As such, the only point required to be reconsidered by the adjudicating authority is in respect of Induction cookers. Stay petition as also appeal gets disposed of in above manner. Miscellaneous application for additional evidence also gets disposed of”.

7. The assessee had admitted the liability to the extent of Rs.6,00,000/- on all other items other than induction cookers but disputed on the ground that the levy of differential duty on induction cookers does not fall under the purview of Notification No.49/2008 C.E. (NT) dated 24.12.2008.

8. As per the above remand order of the Tribunal, the Commissioner in the *de novo* proceedings had to re-examine the assessee's claim that induction cooker being out of the purview of Notification 49/2008 C.E. (NT) dated 24.12.2008. The Commissioner in the impugned order observes that the impugned products under the Notification 49/2008 C.E. (NT) dated 24.12.2008. Let's examine the Notification vis-à-vis Customs Tariff Heading:

8516 Electric Instantaneous or Storage Water Heaters and Immersion Heaters; Electric Space Heating Apparatus and Soil Heating Apparatus; Electro-Thermic Hair-Dressing Apparatus (For Example, Hair Dryers, Hair Curlers, Curling Tong Heaters) and Hand Dryers; Electric Smoothing Irons; Other Electro-Thermic Appliances of a kind used for Domestic Purposes; Electric Heating Resistors, Other than those of Heading 8545

8516 10 10 - Electric instantaneous or storage water heaters and immersion heaters

- Electric space heating apparatus and electric soil heating apparatus:

8516 21 00 --Storage heating radiators

8516 29 00 -- Other

-Electro-thermic hair-dressing or hand drying apparatus :

8516 31 00-- Hair dryers

8516 32 00 -- Other hair-dressing apparatus

8516 33 00 -- Hand-drying apparatus

8516 40 00 - Electric smoothing irons

8516 50 00 - Microwave ovens

8516 60 00 - Other ovens; cookers, cooking plates, boiling rings, grillers and roasters

- Other electro-thermic appliances:

8516 71 00 -- Coffee or tea makers

8516 72 00 -- Toasters

8516 79 -- Other:
 8516 79 10 --- Electro-thermic fluid heaters
 8516 79 20---Electrical or electronic devices for repelling insects (for example, mosquitoes or other similar kind of insects)
 8516 79 90 --- Other
 8516 80 00 - Electric heating resistors
 8516 90 00 - Parts

Notification No. 49/2008-C.E. (N.T.), dated 24-12-2008]

MRP based valuation — Abatement percentage reduced across the board

In exercise of the powers conferred by sub-sections (1) and (2) of section 4A of the Central Excise Act, 1944 (1 of 1944) the Central Government, in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 14/2008-Central Excise (N.T.), dated the 1st March, 2008, published in the Gazette of India Extraordinary, vide number G.S.R. 147(E) of the same date, except as respects things done or omitted to be done before such supersession, **hereby specifies the goods mentioned in Column (3) of the Table below and falling under Chapter or heading or sub-heading or tariff item of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) mentioned in the corresponding entry in column (2) of the said Table, as the goods to which the provisions of sub-section (2) of said section 4A shall apply, and allows as abatement the percentage of retail sale price mentioned in the corresponding entry in column (4) of the said Table.**

TABLE

S. No.	Chapter, heading, sub-heading or tariff item	Description of goods	Abatement as a percentage of retail sale price
(1)	(2)	(3)	(4)
86.	8516	Electric instantaneous or storage water heaters and immersion heaters; electric space heating apparatus and soil heating apparatus; electro-thermic hairdressing apparatus (for example, hair dryers, hair curlers, curling tong heaters) and hand dryers; electric smoothing irons; other electro-thermic appliances of a kind used for domestic purposes.	35

From the above, Chapter Heading at 8516 as compared to the Sl.No. 86 of the Notification No. 49/2008 CE (NT) dated 24.12.2008, we find that the entire Chapter Heading of 8516 is reproduced in the notification. There is no dispute that 8516 6000 where the appellant would like to classify their products is also part of the chapter heading 8516. Therefore, the question of induction cookers falling under chapter heading 8516 6000 also forms part of Sl.No. 86 of the above notification. Hence, the Commissioner's observation that 'a plain reading of the notification along with the relevant CETH would indicate that the provisions of said notification are applicable to all goods falling under the said tariff head except 'electric heating resistors' cannot be ignored. It is also an admitted fact that the induction cookers do not fall under the excluded category i.e.'electric heating resistors'.

Further it is undisputed fact that the remand proceedings was limited to examine as to whether the impugned products fall under the Sl.No. 86 of the Notification No.49/2008 CE(NT). In view of the above, the impugned order is upheld to the extent that the impugned products are to be valued based on the MRP value in terms of the above notification. Other additional submissions of the appellant on valuation cannot be considered at this stage since in the second round of litigation the Commissioner was limited only to the extent of examine the applicability of the said notification and therefore the challenge before us is also only to the extent of the remand proceedings. Accordingly, the additional submissions filed by the appellant are rejected on the ground that it is beyond the scope of the remand proceedings of this Tribunal's Final Order No. 21268/2015 dated 15.06.2015.

9. The second appeal No. C/20251/2016 filed by the Revenue is against the present impugned order. The Revenue is in appeal

on the ground that the Commissioner has not confirmed the quantum of duty, interest, fine and penalty. It is also submitted that earlier Department had filed an appeal against the original impugned order which has now become infructuous as it was not considered at the time of disposing of the appeal filed by the appellant. Hence, it is submitted that the Commissioner ought to have also considered the proposal in the show-cause notice for confiscation of goods and imposition of penalty under Section 114(A) and 112a of the Customs Act, 1962.

10. We find that the Tribunal vide Final Order No.21268/2015 dated 15.06.2015 had categorically held that if induction cookers are taken out, then the duty required to be paid in respect of balance would be to the extent of Rs.6,00,000/- only. It also noted that the learned advocate admitted confirmation of demand of duty in respect of other items imported by them. Since the Order-in-Original No. 68/12-13 dated 31.01.2014 was set aside and in view of the above, the Commissioner in the *de novo* proceedings taking into consideration the above facts should have redetermined the duty on induction cookers along with interest. Since the Department is also in appeal on the ground of non-determination of duty fine and penalty, we have no other choice but to remand the matter to the Commissioner for redetermination of duty in terms of Notification No. 49/2008 CE(NT) dated 24.12.2008 along with the interest. Since the assessee has already paid a differential duty of Rs.20,00,000/- as mentioned by the Tribunal in the first round of litigation, it is necessary to redetermine the duty and depending upon the liability, the question of imposition of penalty arises.

10. Appeal No.C/21914/2014 filed by the Revenue against Order-in-Original dated 03/02/2014 stands disposed of by this Tribunal vide Final Order No.21268/2015 dated 15.06.2015, hence, this appeal becomes infructuous.

11. In the result, Appeal No. C/21914/2014 is dismissed as infructuous and Appeal No.C/20216/2016 & C/20251/2016 stands remanded for determination of differential duty.

(Order pronounced in Open Court on 17.12.2025.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

rv