Circular No. 57 /2003 - Customs
27th June, 2003

F. NO. - 528/2/2003 - CUS(T.U.)
Government of India
Ministry of Finance
Department of Revenue
Tariff Unit

Subject: Eligibility of Fixed Wireless Telephones & Fixed Wireless Terminals working on cellular technology under notification No. 21/2002-Cus. Sl. 313 dated 1.3.2002.

I am directed to refer to the subject mentioned above and to say that a doubt has been raised whether Fixed Wireless Telephones & Fixed Wireless Terminals which are meant to provide basic telephone services without line telephony, are eligible for benefit of notification No. 21/2002-Cus. Sl. 313 or not . Unlike the mobile handsets working on cellular technology, the Fixed Wireless Telephones & Fixed Wireless Terminals are fixed or stationery instruments, though the technology used to transmit the signals to and from these terminals is cellular technology. While the Fixed Wireless Telephones are self-contained instruments having all the features of a telephone instrument like receiver, transmitter, dial pad, switch and bell or buzzer, Fixed Wireless Terminals are essentially transreceivers which are required to be connected to a telephone instrument for providing basic telephone services without line telephony. The Fixed Wireless Terminals can also be connected to a fax or computer for data communication.

2. The matter regarding eligibility of Fixed Wireless Telephones & Fixed Wireless Terminals under notification No. 21/2002-Cus., Sl. 313, dated 1.3.2003, has been examined. The notification 21/2002-Cus., Sl. 313 covers `cellular phones and radio trunking terminals" falling under sub-heading 8525.20. The notification entry does not define the term cellular phone.

3. It is a settled law that where a taxing statute does not define a term, it has to be interpreted according to its meaning in common trade parlance .The term cellular phone, in common parlance, refers to mobile phones. The HSN Notes also equate cellular phones with mobile phones. Thus a telephone will not be considered as a "cellular phone" merely because it works on "cellular technology". It may be noted that the relevant entry in the notification is "cellular phones" and not "phones based on cellular technology".

4. The technology used could either be GSM (Global System for Mobile Communication) used by Airtel, Hutch etc., or FDMA (Frequency Division Multiple Access), or CDMA (Code Division Multiple Access) being used by WLL-Reliance & WLL-Tata. The application of cellular technology for providing basic telephone services through Fixed Wireless Telephones & Fixed Wireless Terminals is a recent development. The term "cellular phone" traditionally and commercially refers to hand held mobile phones only.

5. Further, notification No. 21/2002-Cus., has been amended vide notification No. 26/2003-Cus., dated 1.3.2003 to include Fixed Wireless Terminals also under Sl. 427 of the notification. (It may be ensured that fixed wireless telephones are not misrepresented as "fixed wireless terminals" to avail of this exemption)

6. Therefore, it is clarified that the term "Cellular Phone" in notification no. 21/2002 Cus(Sl. 313) dated 1.3.2002 covers only hand held mobile phones working on cellular technology. This notification does not cover either fixed wireless terminals or fixed wireless telephones working on cellular technology.

7. Receipt of this circular may be acknowledged.

8. Hindi version will follow.

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