Circular No.12/2009-Customs

F.No.528/10/2009-Cus.(TU)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs

12th March, 2009.

Subject: Clarification on levy of National Calamity Contingent Duty (NCCD) on Cellular / mobile Phones on the basis of MRP / Retail Sale Price - regarding.

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MediaGuide

It has been brought to the notice of the Board that some of the Customs field formations are not charging the levy of National Calamity Contingent Duty (NCCD) on the basis of Maximum Retail Price (MRP) / Retail Sale Price (RSP) of the Cellular / Mobile phones.

2. In this regard, your attention is also invited to the entry at Serial No.87 of the Notification No.14/2008-CE(NT) dated 1.3.2008 and Notification No.49/2008-CE(NT) dated 24.12.2008 issued in supersession of the former notification. In the aforesaid entry, *'Telephone sets including telephones with cordless handsets; videophones'* have been specified for the purpose of charging excise duty on MRP basis. Doubts have been raised by the trade and field formations on whether 'telephone sets for cellular network or other wireless network' are covered by the description of goods specified under the aforesaid Serial No.87 of the said notification.

3. The matter has been examined in the Board. In terms of section 3 of the Customs Tariff Act, 1975 read with section 136 of the Finance Act, 2001, imported goods are charged to NCCD in the same manner as the relevant provisions for levy and collection of the duty of Excise on such goods apply in terms of the Central Excise Act, 1944. Accordingly, in terms of proviso to sub section (2) of section 3 of the Customs Tariff Act, 1975, imported goods shall be charged to additional duty of Customs on the basis of MRP / RSP, if in case of imported article, the MRP / RSP is required to be declared under the Standards of Weights and Measures Act, 1976 or the rules made thereunder, and such product is listed under the Notification prescribing levy of Excise duty on MRP basis i.e. Notification No.49/2008-CE(NT) dated 24.12.2008.

4. From the point of classification, it is clarified that subsequent to changes made in the Harmonized System of Nomenclature (HSN) in 2007, the First Schedule to the Customs Tariff Act, 1975 was also revised so as to include both 'line telephones' and 'telephones for cellular networks or for other wireless networks' under heading 8517 as 'Telephone sets, including telephones for cellular networks or for other wireless networks'. Further, no changes have been made so as to remove cellular / mobile phones from the scope of MRP

based assessment. The entry 'cellular or mobile phones' found in earlier notifications under heading 8525 was deleted as there was no need to have separate entry for cellular / mobile phones as the present entry 'telephone sets' under heading 8517 covers both 'line telephones' as well as 'cellular / mobile phones'.

5. In view of the above, it is clarified that telephone sets for cellular networks or for other wireless networks are covered under the description 'Telephone sets' under Sl.No.87 of Notification No.49/2008-CE(NT) dated 24.12.2008 and therefore they would continue to be assessed for additional duties of customs on the basis of MRP / RSP. Consequently, NCCD, being a duty of excise, is also required to be collected on the basis of MRP / RSP, in the same manner as applicable to the levy of additional duty under section 3 (2) of the Customs Tariff Act,1975.

6. All pending assessments, if any, may be finalized accordingly.

7. The field formations as well as trade and industry may be suitably informed accordingly.

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Yours faithfully,

(M.M. Parthiban)
Director (Customs)