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Government of India

Ministry of Finance

Department of Revenue

Central Board of Excise & Customs

North Block, New Delhi.

Dated the 19th April, 2007.

Sub: Clarification in respect of classification of higher technology featured mobile / cellular handset or telephones - regarding.

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Board has received certain representations from the trade and industry regarding classification of higher technology featured mobile / cellular handsets or telephones, which contain GPS features apart from other functions like music, camera, voice recording, e-mail, internet and related editing features. Field formations have also requested to issue a clarification in the matter of classification of a hybrid product containing PDA, mobile phone with camera and GPS, which are being imported presently.

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2. It is represented that mobile, cellular handset / telephone has the essential characteristic of transmission and reception apparatus, such as aerial, display screen, keypad and that the same should be of small size so that it can be hand-held and is of lightweight for use as telephone instrument. The other functions such as radio receivers, music players, e-mail, net browsers, calculators, stopwatch, alarm, computing on software platform are subsidiary to the main function of transceiver.

3. The issue was examined in the Board. Telephones for cellular networks or other wireless networks are presently classified under sub-heading 8517 12 of the First Schedule of the Customs Tariff Act, 1975. This Act does not provide specific Chapter Note or Sub heading Note on this product. As per Harmonized Commodity Description and Coding System (HS in short) effective from 1.1.2007, 'telephones for cellular networks or for other wireless networks' are classified under heading 8517. Earlier, prior to HS changes 2007, cellular phones were classified under heading 8525. There is no mention of the mobile phones that also have features of word processing, e-mail, internet, Global Positioning System (GPS) Receiver, Personal Digital Assistant (PDA), Smart phone etc. in the HS Notes. Further, tariff Item 8526 91 90 covers 'other radio navigational aid apparatus', which, *inter alia*, includes Global Positioning System (GPS), radar apparatus. Similarly, sub-heading 8471 30 covers 'portable digital automatic data processing machines, weighing not more than 10 kg., consisting of at least a central processing unit, a keyboard and a display'. HS explanatory notes to sub-heading 8471 30 state that machines which are equipped with flat screen, capable of operating without an external source of electric power and having an acoustic modem for establishing a link via the switched network are classifiable under sub heading 8471 30. However, there is no exclusion or specific note for classification of mobile/cellular phones with other functions as described above, in the HS Notes. Therefore, field formations were experiencing difficulty in classifying a product having combination of characteristics of a Personal Digital Assistant (PDA) / Personal Computer, GPS receiver, Camera and cellular phone.

4. The First Schedule to the Customs Tariff Act, 1975 specifies the various categories of imported goods in a systematic and well-considered manner, in accordance with an international scheme of classification of internationally traded goods, i.e. 'Harmonized Commodity Description and Coding System (HS). Accordingly, goods are to be classified taking into consideration the scope of headings / sub-headings, related Section Notes, Chapter Notes and the General Rules for the Interpretation (GRI) of the First Schedule to the Customs Tariff Act, 1975. Rule 1 of the GRI provides that the classification of goods shall be determined according to the terms of the headings of the tariff and any relative Section notes or Chapter notes and thus gives precedence to this while classifying a product. Rules 2 to 6 provide the general guidelines for classification of goods under the appropriate sub heading. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining Rules 2 to 6 may then be applied in sequential order. Further, while classifying goods, the foremost consideration is the 'statutory definition', if any, provided in the Customs Tariff Act. In the absence of any statutory definition, or any guideline provided by HS explanatory

notes, the principle of how goods are known in 'common trade parlance' is adopted, giving due importance for the common dictionary meanings.

5. In terms of the First Schedule to the Customs Tariff, 'telephones for cellular networks or other wireless networks, push-button type or other', would be classifiable under sub-heading 8517 12. Similarly, 'portable automatic data processing machine weighing not more than 10 Kgs., consisting of at least a CPU, a key board and a display' would be classifiable under sub heading 8471 30; and 'radio navigational aid apparatus' would be classifiable under sub heading 8526 91. From the scope of the headings / sub-headings, Board found that all mobile or cellular telephones whether working on the Global System for Mobile Communications (GSM) standard, Code Division Multiple Access (CDMA) cellular systems, Wireless Local Loop (WLL) or any other Mobile technologies, principally used as communication device would get covered under sub-heading 8517 12. These are essentially communication devices working on the basis of towers and base stations arranged into a network of cells, which send and receive radio signals for the cellular / mobile phone for communication. In view of the above, Board clarifies that sub-heading 8517 12 will cover all types of telephones that work on cellular networking technology or other wireless network.

6. Further, such cellular / mobile phones may contain certain facilities such as storage of contact information such as phone numbers (dialed / received / missed call), names and addresses, to-do lists, notes, appointments, E-mail address, facility for Short Message Service (SMS) / Multimedia Messaging Service (MMS), calculator, alarm clock, calendar, games and other similar facilities as a standard feature. These facilities assist the user to make calls to desired person, identify the caller, keep track of his calls, send/receive messages and enhanced use of communication using any of the above facility. Hence, these features of cellular/ mobile phones do not change the principal function of such equipment i.e., 'telephony'.

7. Certain cellular/ mobile phones called as 'smart phones' may also have other additional features such as accessing the Internet, sending and receiving E-mails, video recording/camera, word processing, radio or audio capabilities with color screens, QWERTY keyboard, touch screen. It may also run application software and synchronize with PCs, function as Global Positioning System (GPS) receiver. These devices work on operating systems (software) like Symbian OS, Microsoft Windows Mobile OS, Linux OS, which are similar to the software used in desktop PC / laptop. All these functionalities grouped as PDA or pocket PC or camera or GPS receiver, contained in cellular/ mobile phones, though represent as composite machine, for the purpose of classification, it will be governed by the Customs Tariff Act and the General Rules for Interpretation (GRI) as explained in para 4 above. Accordingly, in terms of Section Note 3 to Section Note XVI when the goods satisfy the following conditions these would be characterized as transmission apparatus in cellular / wireless network rather than as an Automatic Data Processing (ADP) machine or camera or GPS receiver.

(i) use transmission of signals (representing speech, messages, data or pictures) by means of electro-magnetic waves which are transmitted through the ether without any line connection i.e., wireless, in any of the bandwidth allotted to mobile/cellular networks say 850 MHz to 1900 MHz; and

(ii) consist of transmission and reception hardware such as transceivers, antenna, microphone, speaker, battery, radio-frequency chip, basic band chip, power management chip, Subscriber Identity Module (SIM), International Mobile Equipment Identity (IMEI) or other unique identity for cellular/mobile phone as well as radio-frequency transmission software such as GSM, General Packet Radio Service (GPRS) and Enhanced Data rates for GSM Evolution (EDGE) etc.,

Hence, such cellular/ mobile phones remain classified in sub-heading 8517 12, as the principal function of these equipments remain as 'telephony'.

8. It is further explained that cellular / mobile phones can also be employed as data modems to form a wireless access point connecting apersonal computer to the Internet. In this use, the mobile phone is providing a gateway between the cellular service provider"s data network and PCs. In terms of chapter note 5 D (ii), it is made clear that such mobile phones shall not be classified under heading 8471 when they are presented separately. In other words, only when such phones are presented along with ADP machine or when composite machines consisting of ADP and mobile phones, where ADP is the principal function, these would be classified under heading 8471. Further, it is clarified that GPS receivers having phone function that does not operate through any of the cellular network or mobile technologies for the transmission or reception of signals, but operates exclusively through direct satellite connection or differential GPS (on the longwave radio frequencies

between say 285 kHz to 325 kHz) is however classifiable under sub-heading 8526 91 as other radio navigational aid apparatus.

9. In trade parlance too, it is noticed that the goods are sold as cellular or mobile phones with various additional facilities, the use of which is dependant on the cellular service provided. Further consumers purchase such cellular phones mainly because of their ability to transmit data in all situation and locations, and at all times, not just in specified places that offer Wireless / Wi-Fi access. In short, it is found that goods are marketed and consumers purchase a smart phone or other similar cellular/ mobile phone, because of the phone function with additional facilities and not for their PDA or GSM capabilities alone; as such these additional facilities will not become operational without subscribing to a cellular phone service plan. Hence, it is clarified that these instruments are to be categorized as mobile / cellular phones from the point of trade parlance.

10. Further, in terms of Note 5 (E), it is provided that machines incorporating or working in conjunction with an automatic data processing machine and performing a specific function other than data processing are to be classified in the headings appropriate to their respective functions or, failing that, in residual headings. In view of the above, it is clarified by the Board that the smart phones or cellular / mobile phones with the capability described above are machines performing a specific function i.e. 'telephony' and hence, even if they satisfy note 5 (C), in view of the Section Note 3 to Section XVI, Notes at 5 (D) (ii), and 5 (E) to chapter 84, such mobile phones would be classified in the headings appropriate to their respective function i.e., 'Telephones for cellular network or other wireless networks having the principal function of telephony' under sub heading 8517 12.

11. The above instructions may be brought to the notice of all concerned for effective implementation. Pending assessments, if any, may be finalized accordingly.

12. Please acknowledge receipt of this circular.

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Yours faithfully,

(Anupam Prakash)
Under Secretary (Customs Policy)

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