CIRCULAR No. 15 /2006-Cus.

20th April, 2006

F. No. 528/2/2003-Cus.(TU)

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

DEPARTMENT OF REVENUE

(TARIFF UNIT)

Subject: Eligibility for benefit of Exemption Notification No. 21/2002- Cus (Sl. No. 313 and 417) on the import of Fixed Wireless Telephone-reg.

I am directed to invite your attention to Board's Circular No. 57/2003 - Cus dated 27-06-2003 regarding eligibility of Fixed Wireless Telephones & Fixed Wireless Terminals working on cellular technology under notification No. 21/2002 -Cus dated 01-03-2002 S. No. 313. In the circular, it was clarified that the term 'Cellular Phone' in the notification No. 21/2002 -Cus (S.No. 313) dated 01-03-2002 covers only hand held mobile phones working on cellular technology. The entry does not cover either Fixed Wireless Terminals or Fixed Wireless Telephones working on cellular technologies.

2. You may be aware that the Board's aforesaid Circular no. 57/2003 - Customs dated 27-06-2003 had been temporarily suspended by the Hon'ble High Courts of Andhra Pradesh and the Panaji bench of Mumbai High Court with the direction for provisional assessment supported by bank guarantee for difference of duty as an interim relief. The Board had appealed against the decision of both the High Courts before the Hon'ble Supreme Court.

3. The Hon'ble Supreme Court has since decided the issue. The Apex Court vide order dated 13-12-2005 observed that "...*since there is no dispute*

that the technology used in the Fixed Wireless Telephone LSP 340 and the hand held mobile phone is the same, there is no warrant to limit either the tariff entry or the exemption notification to hand held cellular phones. Neither the range nor the size should make the difference." The order of the Hon'ble Supreme Court has been examined in the Board and it has been decided to accept the order as all relevant issues have been considered by the Apex Court.

4. In view of the above, it has therefore been decided to withdraw Board Circular No. 57/2003 dated 27-06-2003 and to restore *status-quo ante* prevailing prior to the issuance of the said circular. Consequently, the benefit of notification No. 21/2002 -Cus (S.No. 313) dated 01-03-2002 is available to all telephones(including Fixed Wireless Telephones) working on cellular technology.

5. Field formations may finalise the pending assessments, accordingly.