

F.NO. 6/5/2015 - CX.I  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise and Customs

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New Delhi, dated the 11<sup>th</sup> March, 2016

Principal Chief Commissioner of Central Excise/ Service Tax (All),  
Chief Commissioners of Central Excise/ Service Tax (All),  
Principal Commissioner of Central Excise/ Service Tax (All).

**Subject:- Valuation of imported Set top boxes under Section 4 of the Central Excise Act, 1944 reg**

**Madam/ Sir,**

Reference has been received in Board regarding assessment of CVD payable on set top boxes (STBs), when imported by a Direct to Home (DTH) broadcasting service provider and where STBs are provided free of cost to the consumers of DTH service. The issue is, in such conditions, should the value for the purposes of calculation of CVD be determined on the basis of Retail Sale Price (RSP) in terms of proviso to section 3(2) of the Customs Tariff Act, 1975.

2. The issue stands decided by Hon' ble Tribunal in case of M/s Bharti Telemedia Ltd. Vs Commissioner of Customs (Import), Nhava Sheva reported as [2016 (331) E.L.T. 138 (Tri.-Mumbai)] or [2015-TIOL-1863-CESTAT-MUM], wherein it has been held that one of the conditions to be met for CVD to be levied on Retail Sale Price is that under the Legal Metrology Act, there should be requirement to declare on the package, the retail sale price (RSP) of the goods. Hon' ble Tribunal in this case in paragraph 7 has inter alia held that-

".....

(k) " retail package " means the package which are intended for retail sale to the ultimate consumer for the purpose of consumption of the commodity contained therein and includes the imported packages:

*Provided that for the purpose of this clause, the expression 'ultimate consumer' shall not include industrial or institutional consumers;*

.....

(m) "retail sale price" means the maximum price at which the commodity in packaged form may be sold to the consumer and the price shall be printed on the package in the manner given below ;

.....

*The retail sale price is defined above as the maximum price at which retail package may be sold. And retail package means packages which are intended for retail sale to the ultimate consumer. In other words the retail price will be required to be declared on the package only if it is intended for retail sale ..... It is seen from the definition that there should be a transfer of property for any consideration or there should be a transfer on the hire-purchase system or by any system of payment by any instalments. We find in the present case that there is no transfer of property or hire-purchase system involved nor there is a system of payment by instalments. Thus there appears to be no sale in the use of the Set Top Box by the ultimate consumer*

3. After detailed analysis, Hon' ble Tribunal held that in the given circumstances CVD shall not be leviable on the basis of Retail Sale Price. In view of the above, it is clarified the judgement of Hon' ble Tribunal in case of M/s Bharti Telemedia Ltd (supra), may be followed for assessment of CVD on imported STBs, where the circumstances are identical.

4. Difficulty experienced, if any, in implementing the circular should be brought to the notice of the Board. Hindi version would follow.

(Santosh kumar Mishra)

Under Secretary to the Government of India