

## ERGO

*Analysing developments impacting business*

### UPWARD REVISIONS IN PROSECUTION AND ARREST THRESHOLDS FOR OFFENCES UNDER INDIAN CUSTOMS LAWS

19 August 2022 **Introduction**

The Customs Act, 1962 (Act) being a code within itself, specifically provides the Commissioner of Customs with powers of arrest and prosecution in case of acts defined as offences under the Act.

The Central Board for Indirect Taxes & Customs (CBIC) notified Circular No. 12/2022-Customs revising guidelines for launching of prosecution under the Act on 16.08.2022 (earlier issued vide Circular No. 27/2015-Customs dated 23.10.2015, as amended from time to time).

Similarly, the CBIC notified Circular No. 13/2022-Customs revising the guidelines for arrest and bail [earlier issued vide Circulars F. No. 394/71/97-Cus (AS) dated 22.06.1999, F. No. 394/68/2013-Cus (AS) dated 17.09.2013 and Circular No. 28/2015 - Customs dated 23.10.2015].

#### **Key revisions, in brief:**

Under the respective Circulars, for arrest and prosecution, the revised threshold limits are now:

- (i) INR 50,00,000 (Indian Rupees Fifty Lakhs) being market value of the goods in cases involving unauthorised importation as 'baggage' or cases involving Transfer of Residence Rules;
- (ii) INR 50,00,000 (Indian Rupees Fifty Lakhs) being market value of offending goods in cases involving outright smuggling of high-value goods such as precious metals, restricted items or prohibited items or goods notified under Section 123 of the Act or foreign currency;
- (iii) In appraising cases or cases involving commercial frauds, the revised threshold limit in cases relating to:
  - wilful mis-declaration in value/description (during importation and/or exportation);

- concealment of restricted goods or goods notified under Section 11 of the Act (during importation and/or exportation);
- fraudulent evasion or attempt at evasion of duty;
- fraudulent availment or attempt thereof of drawback or any exemption from duty in connection with export of goods or
- Obtaining an instrument from any authority by fraud, collusion, wilful misstatement or suppression of facts and utilization

Where the market value of the offending goods/amount of duty evasion/drawback or exemption is INR 2,00,00,000/- (Indian Rupees Two Crores) or more;

- (iv) Further, in respect of cases involving non-declaration of foreign currency by foreign nationals and NRIs (normally visiting India for travel/business trips etc.) detected at the time of departure from India, exceeding the threshold limit of INR 50 lakhs, the Circular clarifies that if it is claimed that the currency has been legally acquired and brought into India but not declared inadvertently, prosecution need not be considered as a matter of routine.

The threshold limits specified in the guidelines for arrest have now been further streamlined in accordance with the revision of threshold limits for launching of prosecution for offences punishable under the Act. With regard to the arrests, the Circular 13/2022 re-emphasises that the powers of arrest should be affected only in exceptional situations.

Pertinently, Circular 12/2022 clarifies that all cases where sanction for prosecution is accorded after the issuance of the Circular, the provisions relating to threshold limits will apply, irrespective of the date of the offense and even where the prosecution has been sanctioned but no complaint has been filed before the magistrate, the provisions of the Circular will be applicable.

However, the Circular 13/2022 clarifies that these revised threshold value criteria would not apply in cases involving offences relating to items viz-a-viz Fake Indian Currency Notes (FICN), arms, ammunitions and explosives, antiques, art treasures, wild-life items and endangered species of flora and fauna. In such cases, arrest, if required, on the basis of facts and circumstances of the case, may be considered irrespective of value of offending goods involved.

**Comments:**

The increase in threshold upto INR 2 crores (around USD 250,000) and INR 50 lakhs (around USD 60,000) was a much-needed step and will provide some relief to a large body of Indian importers and exporters (and traders), especially those in the MSME space.

With these circulars, one hopes that arbitrary exercise of powers of arrest (and threats thereof) under Customs laws would be mitigated to some extent. It would be critical to ensure that the field formations follow these circulars scrupulously.

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