



## Customs Alert August 2022

### Customs Alert

#### 1 Enhancement of Monetary Limits gives relief to Importers and Exporters from Arrest and Prosecution

Arrest and Prosecution are the most feared weapons in the armory of the Tax administrator. The recent guidelines introduced by the Government, put restraints on the manner of exercise of these powers to rule out arbitrariness, unfairness and to restrict such actions to serious offenders.

There is no monetary limit for the exercise of the powers of arrest under the statute, but by Circular Nos. 12/2022-Cus. and 13/2022-Cus. both dated August 16, 2022, the Board has clarified that arrest should be made only in exceptional circumstances.

Under the new guidelines, no arrests or prosecutions can be initiated in the following cases:

- Unauthorized baggage imports made under Transfer of Residence and smuggling of precious metals, restricted and prohibited items, and notified goods, where market value of goods is below Rs. 5 million.

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- Unauthorized bringing in or taking out of foreign currency of a value below Rs. 5 million.
- Import or export of misdeclared goods or concealment of restricted or prohibited goods, fraudulent evasion of customs duty or availment of drawback, where the market value of imported goods is below Rs. 20 million.
- Obtaining an instrument from any authority by fraud, collusion, willful misstatement or suppression of facts and utilization of such instrument, where the duty involved is below Rs. 20 million.

The notable exceptions to these limits are serious offences relating to items such as fake Indian currency, arms, ammunitions and explosives, antiques, art treasures, wildlife items and endangered species of flora and fauna.

## 2 **Withdrawal of facility for Manufacture in Warehouse for Solar Power Generating Units - Instruction No. 13/2022 dated July 9, 2022**

Under Section 65 of the Customs Act, 1962, read with the Manufacture and Other Operations in Warehouse Regulations, 2019 importers have been extended the facility of duty free import of capital goods for undertaking manufacture in the customs warehouse. The facility is sought to be withdrawn for Solar Power Generating Units on the pretext, that electricity, their end product cannot fulfil the requirement of being kept under one time lock at the time of storage and removal. The Instructions appear to be at variance with the statutory intent and may not survive legal scrutiny. These instructions will have devastating consequences for solar power units operating in the bonded warehouses.

This issue is under consideration by the Delhi High Court in a challenge made by one of the Solar Power Generating Units. The Court has stayed the operation of the customs show cause notice and posted the matter for hearing later this month.

## 3 **Free Trade Agreements to override CAROTAR in case of inconsistency – Instructions No. 19/2022-Cus. dated August 17, 2022**

Bilateral and multilateral trade agreements strengthen partnerships and boost trade. India has inked FTAs with several countries, including the UAE, Mauritius, Japan, South Korea, Singapore, and ASEAN members. The Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 ["CAROTAR"] were introduced to streamline the rules of origin and curb the misuse of the preferential rate of duty. With these Rules, came more stringent obligations on exporters and importers for establishing the origin of goods, and authorities questioned or sought validation for certificates issued by agencies in the exporting country, by calling for extensive information from the importer. This caused delays and diluted the benefit sought to be conferred by the Free Trade Agreements (FTAs).

Now, the Board has issued Instructions clarifying that in case of inconsistency, provisions of FTA would override the CAROTAR. The Customs officers can call for information, date or evidence only to the extent permissible under the FTA. This comes as a huge relief to importers and exporters grappling with uncertainties and delays caused by the CAROTAR, and confirms the legal position maintained by us, that the FTAs have a legal binding effect.



## REENA KHAIR

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Reena is a Senior Partner and Head of the International Trade & Indirect Taxation Practice at the Firm.

She is a lawyer of eminence with more than 25 years of work experience and specialisation in the areas of international trade and indirect taxation. She represents clients regularly before the Customs, Excise, and Service Tax Appellate Tribunal, as well as before various High Courts and the Supreme Court of India. She has extensive court room experience with more than 300 reported cases argued by her.

In the domain of international trade, Reena has represented clients comprising domestic and foreign industries, as well as user industries in India before the Designated Authority, Directorate General of Trade Remedies, and higher forums. She has also successfully argued the highest number of anti-dumping and anti-subsidy cases before the Tribunal. She has also assisted clients in trade remedial investigations in foreign jurisdictions.

She has been regularly providing advisory services and has been involved in dispute resolution for high-profile matters relating to customs, excise, service tax, FEMA, and GST. Critical issues handled by her include classification under the Harmonized System Nomenclature, valuation, export promotion schemes, drawback, EOUs, SEZs, inverted duty structure, admissibility of credits, transitional issues in GST, export refunds.

She regularly assists clients in the transition to the GST regime.

She has also conducted Internal Management audits for optimization of tax liability, identifying issues/risks for potential disputes with departmental authorities and restructuring of transactions undertaken for various clients including some of India's major conglomerates and multinational corporations in the oil & gas, specialty materials and chemicals, steel, and manufacturing sector.

### Awards & Recognitions

Recognised among India's 'Top 100 Lawyers' by FORBES Legal Powerlist 2020; felicitated for expertise in Anti-Dumping.



## SHAMPA BHATTACHARYA

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Shampa is a Partner in the Indirect tax practice of the Firm. She has more than 15 years of post-qualification experience in corporate and civil law with exclusive specialisation of more than 11 years in the domain of indirect taxes. She has worked extensively on various indirect taxes including Customs, Goods & Services Tax (GST), erstwhile Service tax, Excise laws, Value Added Taxes, Foreign Trade Policy and other ancillary laws.

Prior to joining Kochhar & Co., Shampa has an enriching extensive experience of having worked with two of the Big 4 international consultancy firms namely Deloitte and Ernst & Young in the indirect tax practice in Delhi and Gurgaon.

She has advised clients and assisted them in litigation matters by way of drafting, pleading and strategizing. Her experience includes advising large MNC and Indian companies on structuring of transactions by devising tax efficient models, identifying potential revenue and tax leakages in existing operations and providing feasible remedies, guiding through assessments, audit and investigations by the revenue authorities and compliance services for clients.

Shampa has advised extensively on revenue investigations by custom authorities, classification of goods as per Harmonized System of Nomenclature ('HSN') including imports under free trade agreements, issues with regard to customs valuation including special valuation bench matters, anti-dumping matters and advising on export benefits and authorisations viz EPCG, SCOMET, AA under the Foreign Trade Policy. She has had the expertise of assisting IT based corporates in setting up special economic zone (SEZ) units and other export -oriented units. She has been a part of the GST implementation for MNCs and also offers supports for periodical compliances including GST/ VAT/ Service tax audit. Shampa has been actively involved in rendering policy advocacy support as an alternative to tax litigations by reaching out to policy makers / tax authorities to pre-empt any business disruption. She also assists clients in their anti - profiteering matters and conducting detailed diagnostic tax reviews of the existing business operations of clients. Her focus is also on central and state incentives offered in India.

Her area of industry expertise includes automobile, infra and power, pharmaceutical, telecom and information technology services, FMCG, consumer durables, defence, oil & gas and several others.



## KEY PRACTICE AREAS

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WHITE-COLLAR CRIME

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AND GOVERNANCE (ESG)

INFRASTRUCTURE &  
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INTELLECTUAL PROPERTY

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CUSTOMS LAW

MERGERS & ACQUISITIONS

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LITIGATION

PRIVATE EQUITY, VENTURE  
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SHIPPING & MARITIME

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## ABOUT US

With more than 200 lawyers, Kochhar & Co is one of India's pre-eminent corporate law firms. The firm has a full-service presence in seven (7) prominent cities namely New Delhi, Mumbai, Bengaluru, Chennai, Gurugram, Hyderabad and Chandigarh and three (3) overseas offices in Dubai, Singapore, and Chicago. Kochhar & Co has a reputation for cutting edge legal expertise, clear and commercially driven advice, and an unwavering commitment to our clients' needs through delivering bespoke, sustainable, and innovative legal solutions.

Kochhar & Co is the preferred law firm for some of the largest multinational and blue-chip corporations from Europe, North America, and Asia including 65 of the Fortune Global 500 corporations. The firm has an enviable domestic footprint and acts as counsel to several large and iconic Indian corporations across both the private and public sectors.

**UAE presence:** Kochhar & Co Inc. Dubai is a leading full-service law firm in the UAE advising clients on both UAE and DIFC Laws. The Dubai team comprises of senior partners and lawyers with several decades of rich and diverse experience on the UAE, English and Indian law matters and specialises in providing a wide range of legal services in the areas of corporate & commercial laws, banking & project finance, dispute resolution, tax and IPR.

**Awards & Recognition:** Conferred with numerous awards including the National Bar Award, International Council of Jurists Award bestowed by the Prime Minister and Rastriya Gaurav Award (National Pride) Award. Recognised among top-tier Indian firms by leading global publications: Forbes Legal Powerlist, Legal 500, Benchmark Litigation and India Business Law Journal.

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