

# TAX FLASH NEWS

22 July 2019

## Circular update – Treatment of goods taken out of India for ‘sale on approval basis’

CBIC<sup>1</sup> has issued a circular<sup>2</sup> to provide a clarification on the issues concerning the maintenance of records, issuance of delivery challan or raising of invoices in cases where goods are being taken out of India for an exhibition or on a consignment basis for export promotion.

Gist of the clarification provided in the circular is summarised as under –

Sl. no.	Issue discussed	Remark
1	Whether goods taken out of India would qualify as exports?	Since the activity of sending goods out of India for an exhibition or on a consignment basis, does not fall within the scope of the term ‘supply’ <sup>3</sup> , such activity cannot be treated as exports.
2	Whether any records are required to be maintained for sending goods out of India?	The records are to be maintained in the format prescribed in the circular.
3	Documentation requirement for sending goods out of India?	Since the activity is in the nature of ‘sale on approval basis’, the goods shall be accompanied by a delivery challan as prescribed in rule 55 of the CGST Rules <sup>4</sup> .
4	Whether the execution of bond or LUT would be required for sending goods out of India?	Since movement of such goods outside India, does not qualify as exports, execution of a bond or LUT is not required.
5	<b>Time of supply (TOS)</b>	
	a) When goods sent out of India are not brought back within a period of six months from the date of removal	Supply shall be deemed to have taken place on the expiry of six months. Accordingly, the supplier shall be required to issue a tax invoice.
	b) Goods are sold fully or partially abroad	If the goods are sold within the specified period of six months, TOS shall be the date of such sale.
6	<b>Refund claim</b>	
	a) Situation where goods are sent out of India	Since the activity of taking out of India on ‘sale on approval basis’ is not a zero rated supply, the sender cannot prefer any refund claim.
	b) A situation where supply has been deemed to have taken place after the goods have been sent out of India	In such situation sender can prefer a refund claim even when goods are sent without execution of LUT or bond, if the supplier is otherwise eligible to claim refund under section 54 of the CGST Act <sup>5</sup> read with Rule 89 of the CGST rules, i.e. claim of refund of unutilised input tax credit.

<sup>1</sup> Central Board of Indirect Taxes and Customs

<sup>2</sup> Circular no. 108/27/2019-GST dated 18 July 2019

<sup>3</sup> Section 7 of the Central Goods and Services Tax Act, 2017

<sup>4</sup> Central Goods and Services Tax Rules, 2017

<sup>5</sup> Central Goods and Services Tax Act, 2017

		However, the supplier cannot prefer a refund under rule 96 of the CGST rules i.e. IGST paid on goods exported out of India, as the incidence of supply shall take place after goods are being taken out of India.
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### Our comments

It is a welcome circular which has provided a much needed clarification on the various doubts of the industry with regards to taking the goods out of India for sale on approval basis in an export business.

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