

GST UPDATE ON CIRCULAR NO. 108 DT. 18.07.2019

CBIC has issued **Circular No. 108/27/2019-GST dated July 18.2019** providing relief to the assesses where he requires goods to be sent/taken out of India for exhibition or on consignment basis for export promotion. This circular clarifies that taking the goods outside India for exhibition is not supply as it doesn't satisfy the utmost requirements of "Supply" definition. As the consideration is not involved in the same, hence it cannot be termed as "Supply". When it is not supply then though the goods are taken out of India then also this activity cannot be considered as 'Zero rated Supply' (export). Taking the goods out of India for a fair/exhibition will be in the nature of 'Sale on approval basis'. The goods shall be accompanied with delivery challan issued as per the provisions contained in Rule 55 of CGST Rules. It is further clarified that since this is not a supply so there is no requirement for execution of bond/undertaking for taking goods out of India. This has sorted out the demand of trade and industry to prescribe the proper procedure of taking goods out of India for fair.

The goods are required to be bought back within a period of six months from the date of removal. Supply shall be deemed to be taken place after six months from the date of removal even though if the goods are neither sold nor bought back to India. In case the goods are not brought back within a time period of six months, then the assessee has to issue a tax invoice and pay GST on the same. If the goods are sold fully or partially outside India then the tax invoice shall be issued accordingly. Further assessee can apply for refund as per the provisions contained in section 54(3) of the CGST Act in respect of those goods which have been sold within the stipulated time period. Furthermore, if the goods are brought back into India then he has to surrender the benefits taken at the time of taking goods outside India. Since the assessee has not taken any benefit at that time then he need not to surrender anything. Even the Gems and Jewellery exporters were taking goods under undertaking then they have to pay the GST on import into India. But now with this clarification, they need not to export under undertaking, hence no need to pay IGST on re-import of goods. This has solved their problems also.

But now goods can be sent on Delivery challan for approval basis which raises a query as to whether shipping bills can be made on the basis of Delivery challan. Or custom portal will require Invoice only? A suitable amendment is to be done in custom portal for the same.

In respect of raising a invoice of the unsold goods, this circular quotes as follows

*"When the specified goods sent / taken out of India have been sold fully or partially, within the stipulated period of six months, as laid down in sub-section (7) of section 31 of the CGST Act, the sender shall issue a tax invoice in respect of such quantity of specified goods which has been sold abroad, in accordance with the provisions contained in section 12 and section 31 of the CGST Act read **with rule 46 of the CGST Rules.**"*

But the invoice date is not specified. Whether the exporter has to raise the invoice on that date only or he can come back into India and then raise the invoice. Secondly, the circular says that exporter cannot

claim refund on payment of IGST but can claim proportionate refund claim on goods sold in foreign country. However, there is problem in filing the details in GSTR-1 return. The GST portal requires that the date of invoice should be prior to date of shipping bill. But in this case, the invoice date will afterwards the date of shipping bill. The GST portal will create problems to upload the details of export in the return. Hence, the portal should be amended accordingly.

Further, the circular says that the invoice should be issued and GST should be paid for the goods unsold after six months of taking goods outside India. Government has specified that the tax invoice be in the format as mentioned in Rule 46 of the CGST Rules. Rule 46(e) requires that the name and address of the recipient be mentioned on the invoice. Further as per the amendment to CGST Rules issued vide Notification No. 33/2019-Cental tax, a proviso has been inserted to Rule 54 which states as follows

“(4A) A registered person supplying services by way of admission to exhibition of cinematograph films in multiplex screens shall be required to issue an electronic ticket and the said electronic ticket shall be deemed to be a tax invoice for all purposes of the Act, even if such ticket does not contain the details of the recipient of service but contains the other information as mentioned under rule 46”

Proviso has been provided only in the case of multiplex screens that the invoices issued without the name and address of recipient shall be deemed to be a tax invoice, **so a question arises here whether the tax invoice issued at the end of six months of unsold goods be issued without the name and address of recipient and shall it be acceptable?**