

GST Vices in Retail Shops Which will Reprimand Someone

Date: May 06,2020



**Rajat Mohan,
Senior Partner,
AMRG &
Associates**



**Ms. Priyanka
Sachdeva
(Partner)**

Retail business in India is estimated to be around ₹ 600 billion which is about 10 percent of its GDP and is one of the fastest-growing retail markets in the world. If you buy white goods or furniture or something alike from retail shops, you may be on the wrong side of GST law. Read through below to understand why and how it can be avoided.

E-way bill rule is a unique code that requires every registered person who causes movement of goods exceeding fifty thousand rupees to generate an e-way bill online before such goods are moved outside the premises. Lately, it has been experienced that there is a surge in the procurement of goods as B2B shopper rather than as a B2C, this entitles the recipient to claim full input tax credit because of which cost of the product is lowered on an average by 18%. This trend has been at shops selling high-value electronic items like LCD, fridge, air conditioners, laptops, printers, smartphones or items of furniture like tables, almirahs, desks etc. Now the issue is every shop supplying such high-value items handover the goods to B2B customers at the counter of the shop itself and the subsequent transportation is the responsibility of the recipient, who is buying goods on behalf of his company. The generation of e-way bill is missed by supplier and recipient both in the supply chain. Legally speaking GST law remains non-complied to the extent of e-way bills and the transaction goes unreported in the e-way bills portal. However, it is only a matter of time before which the tools of data analytics (matching GSTR -1 vis a vis e-way bill summary) are used to detect such non-compliance. The law casts a duty to generate e-way on the person who causes a movement which generally is the recipient in this case, sooner or later such recipient would invite a departmental visit. In one of our cases, a retail chain has been summoned by the department to explain the reasons for the non-generation of E-way bills in case of big-ticket supplies.

There are some other critical unique issues also in relation to retail chains, let us see them one by one.

Incorrect classification of nature of supply

In the case where the buyer goes to a State other than the State where such buyer is not registered and the address of the recipient is required to be declared in the tax invoice as per CGST Rules and purchases goods over the counter (OTC) which are then transported by such buyer to the declared address. The practice of treating the same as intra-State supply by treating the place of delivery by the supplier as the place of supply is prevalent. These results into a more serious issue, whereby taxes are paid in a wrong state. GST is destination-based tax i.e. taxes need to be paid in the state of consumption, unlike VAT which was paid in the state of origin.

Let's understand this with the help of an example.

A resident of Delhi buys an LCD from a store in Gurgaon, Haryana and brings back it to Delhi then the store needs to pay IGST-Delhi. However, the store submits that delivery of goods is made at the counter of their shop and they have no mechanism to track the state in which such goods are to be consumed thereby they pay CGST & SGST - Haryana. Two issues emerge from this situation, first, the tax which was supposed to be deposited in Delhi is in effect deposited in the state of Haryana and second that the registered recipient entity would be denied tax credit as the tax has been paid in state of Haryana instead of Delhi. Overall perspective, this tax position would be a subject matter of litigation soon, as this imbalances the revenue collection of a state.

Should the consumer be burdened for Eway Bills?

Another issue is that in case the movement of goods takes place due to sale by a retailer to a customer, the title of goods typically gets transferred to the buyer at the retail shop itself. In such cases, it is the buyer who causes the movement of goods by engaging the transporter and who is required to generate the e-way bill in specified cases. However, it may not be practically possible for the buyer to generate e-way bills in all cases due to non-registration in the seller state, availability of vehicle details, etc. Though an unregistered person can enroll himself as a 'citizen' for e-way bill generation, achieving 100% compliance in such cases may be challenging.

One solution is to enter into a contract with the transporter for the generation of e-way bills. However, the consequences of non-compliance by the transporter will still have to be borne by the buyer thus due diligence is required in all cases.

How to determine where the movement terminates for delivery?

The big question in the minds of the retail shops seeking to adhere to the E-way bill compliance is how to capture the actual place of delivery. In reality, the constructive place of delivery may vary from symbolic delivery which is merely handing over the goods to the customer.

What if the customer who purchases a carton of chips from Delhi to gift it to the person in Mumbai. In such a case, the retailer would ideally capture Delhi as a place of delivery however, the actual place of delivery is Mumbai. From this situation, two issues stem, first that the retailer can be held guilty for furnishing incorrect particulars in the E-way bill and secondly, the recipient registered customer cannot move the goods from Delhi to Mumbai without self-generating the E-way bill.

What is the correct mechanism for capturing a place of delivery?

In my opinion, for goods which are supplied on OTC basis but the supply involves further movement of goods which is arranged by the buyer, the expression "movement of goods terminates" would mean the place where the movement of goods terminates when the goods reach the place of registration of the recipient or to the address that has been declared in the tax invoice (in case of an unregistered person). Accordingly, the place of supply shall be the address declared in the tax invoice.

Further, in case the place of supply will be in a State other than the State in which the supplier is located, such supplies shall be treated as inter-State supplies and the supplier shall be liable to pay integrated tax in such cases. However, where the supply is to an unregistered person and where the recipient's address is not available on record, the place of supply shall be the location of goods at the time of delivery to the recipient. Accordingly, such supplies shall be treated as intra-State supplies and the supplier shall be liable to pay Central tax and State tax / Union territory tax in such cases.

Practice followed by big giant Companies

FMCG leaders like Walmart has decided to set a mechanism for E-way bill generation where the IDs of the customer will be used to capture the place of delivery.

However, a circular from the GST policy wing is much needed which brings the way forward needs to be followed by retail shop owners to safeguard themselves.

Conclusion

The government is expected to use the e-way bill as an effective mechanism for reconciling the movement of goods with GST returns, which would further help in safeguarding its revenues and detect tax evasion. However, during such PAN India reconciliations, multiple retailers are expected to be reprimanded on account of above non-compliances. By this date, the quantum of non-compliance and incorrect reporting would have been gigantic. Every retail store needs to make a balanced judgment in respect of the above issues so as to minimize the tax risk on the company.