



**EXCLUSIVE CONFERENCE
ON
PHARMA INDUSTRY**

Organized by
WIRC OF ICAI, MUMBAI

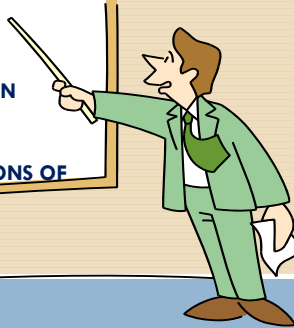
At
Hotel J.W.Mariott, Juhu Tara
Road, Juhu, Mumbai.



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**SERVICE TAX – PHARMA
INDUSTRY**

- ✓ TAXABILITY
- ✓ EXEMPTIONS
- ✓ POINT OF TAXATION
- ✓ REVERSE CHARGE
- ✓ VALUATION
- ✓ PLACE OF PROVISIONS OF SERVICE



**Presented By
RAJIV LUTHIA**

DISCUSSION IS EXCHANGE OF INTELLIGENCE
ARGUMENT IS EXCHANGE OF IGNORANCE

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**TAXABILITY & EXEMPTIONS.....
POST 1ST JULY,2012**



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□ Section 65B(44).... Definition of "Service" ... means

- Any activity.... Excluding
 - Transfer of title in goods or immovable property by way of sale, gift or in any other manner; or
 - Such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the constitution; or
 - A transaction in money or actionable claim;
 - Provision of Service by an employee to employer in course of employment
 - Fees taken in court or tribunal established any law
- For consideration
- Carried out by person for another &
- Includes declared Service

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Explanations

3... -an unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons;
- an establishment of a person in the taxable territory and any of his other establishment in a non-taxable territory shall be treated as establishments of distinct persons.

However as per Rule 6A (which provides conditions for treating service as export) of the Service Tax Rules, 1994, one of the condition for treating services as export is that "the provider of service & recipient of service are not merely establishments of a distinct person in accordance with explanation to section 65B(44)"

4... A person carrying on a business through a branch or agency or representational office in any territory shall be treated as having an establishment in that territory.

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EXEMPTIONS..... POST 1ST JULY,2012


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ENTRY 2 MEGA EXEMPTION NOTIFICATION 25/2012..
Health Care Services by a Clinical Establishment, an authorised medical practitioner or para-medics.

- Services in **recognised systems of medicine** are exempt..e.g.
 - Allopathy, /Yoga,
 - Naturopathy/ Ayurveda,
 - Homeopathy/Siddha/ Unani,
 - Any other system of medicine that may be recognised by CG
- Para-Medics also exempted like nursing staff, physiotherapist, lab assistant, etc.
- Supply of meals ... **transportation of patients**....are also exempted.....in view of bundled services Section 66F
- Hair transplant or cosmetic/plastic surgery **not exempted** unless medically required.
- Acupressure, Acupunctureliable since not recognised system of medicine
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EXEMPTIONS.....

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Cord-Blood Banking 

- **New Entry 2A** in Mega Exemption Notification 25/2012 w.e.f.17th Feb,2014
- Exemption Granted to **services provided by cord blood bank** by way of preservation of stem cells or any other service in relation to such preservation.
- DOF No.334/03/2014-TRU dated 17th February,2014 clarified services in relation to preservation of stem cell could be such as:
 - ▣ collection of umbilical cord blood
 - ▣ processing the same for segregation of stem cells
 - ▣ testing and cryo-preservation of stem cells

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EXEMPTIONS..... POST 1ST JULY,2012

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- **ENTRY 2B** OF MEGA EXEMPTION NOTIFICATION 25/2012
- ▣ **Inserted vide Notification 6/2014 w.e.f. 11th July,2014**
- ▣ exemption to services provided **by operators** of the Common Bio-Medical Waste treatment facility
- ▣ to a clinical establishment
- ▣ **by way of treatment or disposal of bio-medical waste or the process incidental thereto**




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DEFINITION OF “CLINICAL ESTABLISHMENT”

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- ▣ Means a **hospital, nursing home, clinic, sanatorium, or any other institution by whatever name called**
- ▣ That offers services or facilities requiring **diagnosis or treatment or care or illness, injury, deformity, abnormality, or pregnancy**
- ▣ in any recognized systems of medicines in India,
- ▣ or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases.

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EXEMPTION WITHDRAWN

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- ENTRY 7 OF MEGA EXEMPTION NOTIFICATION 25/2012..
 - Omitted vide Not. 6/2014 w.e.f.11th July,14
 - Services by way of technical testing or analysis
 - of newly developed drugs, including vaccines and herbal remedies,
 - on human participants
 - by a clinical research organization approved to conduct clinical trials by the Drug Controller General of India.
 - Similar exemption existed under Notification No. 11/2007-ST dated 1st March,2007



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EXEMPTIONS..... POST 1ST JULY,2012

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- ENTRY 27 MEGA EXEMPTION NOTIFICATION 25/2012..
 - Services provided by an incubatee upto a total turnover of Rs. 50 Lacs in a F.Y.
 - Conditions :
 - Total Turnover had not exceeded 50 Lacs during the preceding F.Y. ,
 - AND
 - 3 years period has not elapsed from the date of entering into an agreement as an incubatee.



INCUBATEE COMPANIES



DEFINITION OF "INCUBATEE"

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- Means an entrepreneur located within the premises of
 - Technology Business Incubator [TBI],
 - Science & Technology Entrepreneurship Park [STEP] recognized by the National Science & Technology Entrepreneurship Development Board of the Department of Science & Technology
 - And who has entered into an agreement with TBI or STEP
 - To enable himself to develop and produce hi-tech & innovative products

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EXEMPTIONS..... POST 1ST JULY,2012

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- ENTRY 30(C) MEGA EXEMPTION NOTIFICATION 25/2012..
 - Carrying out an intermediate production process as job work in relation to –
 - Any goods on which appropriate duty is payable by the principal manufacturer
 - Prior to this notification, above services were covered under the exclusionary clause of Business Auxiliary Services as any activity which amounts to manufacture of excisable goods

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EXEMPTIONS..... POST 1ST JULY,2012

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- ENTRY 31 MEGA EXEMPTION NOTIFICATION 25/2012..
 - Services by an organizer to any person
 - In respect of a **business exhibition**
 - Held outside India

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POINT OF TAXATION RULES,2011



- Amended Rule 6 of ST Rules,1994 ... ST liability to be discharged on monthly/quarterly basis for the services deemed to be provided
- Rule 2(e)...POT means...**point in time service is deemed to have been provided.**
- POT is introduced for determining the **rate and the date** at which the ST liability arises
- Generally, it is **earlier** of three events...
 - Date of Invoice,
 - Date of Completion of Service or
 - Date of Payment
- W.e.f. 1st April, 2012, **the time period specified** has been increased to **30 days** from the date of completion of service or receipt of any payment towards the value of such taxable service, whichever is earlier.

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POT FOR ROYALTIES..RULE 8



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- In respect of **royalties & payments pertaining to copyrights, trademarks, designs or patents,**
- where the **whole amount** of the consideration for the provision of service is **not ascertainable at the time when service was performed**
- and subsequently the use or the benefit of these services by a person other than the provider gives rise to any payment of consideration,
- **the service shall be deemed to have been provided each time when a payment in respect of such use or the benefit is received by the provider or an invoice is issued by the provider, whichever is earlier**

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Concept of Reverse Charge Mechanism

- Liability to discharge service tax shifts from Service provider (SP) to Service receiver (SR)
- SR to deposit the service tax liability on the notified services directly into the governments kitty
- SR to get registered and pay service tax, also file service tax returns.
- Section 68(2) provides for payment of ST by a person other than the SP, when the service tax is levied u/s 66B.
- Empowers the CG to notify the such services and the extent of ST payable by such person.

ST LIABILITY TO BE DISCHARGED UNDER RCM....

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    graph TD
      A[ST LIABILITY TO BE DISCHARGED UNDER RCM....] --> B[FULL REVERSE CHARGE]
      A --> C[PARTIAL REVERSE CHARGE]
      B -- 100% --> D[SERVICE RECEIPT]
      C -- "% as notified" --> E[SERVICE PROVIDER]
      C -- "% as notified" --> F[SERVICE RECEIPT]
    
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Notified Services...Not.No. 30/2012 w.e.f.1st July,12)
UNDER FULL REVERSE CHARGE

1) **Sponsorship Services**

- provided to any body corporate or partnership firm (including LLP)
- located in the taxable territory
- ST payable by such body corporate or firm, as the case may be, who makes sponsorship payment, being service recipient.

2) **LEGAL SERVICES**

Arbitral tribunal

Individual Advocate or Firm of Advocates

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BUSINESS ENTITY LOCATED IN TAXABLE TERRITORY

Only when the turnover of Business Entity is more than Rs.10 Lacs in previous Financial year

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3) Service Provided by **SP located in non-taxable territory** and received by any person located in a taxable territory


- Place of Provision of Service Rules, 2012 are notified w.e.f. 1st July,2012 to determine the place where such services are provided or deemed to have been provided.
- The said Rules have superseded the Export of Service Rules, 2005 & Taxation of Services (Provided from Outside India & Received In India) Rules, 2006
- **POINT TO BE NOTED**
- Service provided by a person **located in Jammu & Kashmir** to a person located in other than J& K (Eg. Mumbai), then same is liable to ST under reverse charge
- Such transactions are liable to reverse charge only W.e.f. 1st July,2012.
- Pre 1st July, RCM applicable only if services are provided from a person located outside **INDIA**



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4) **SERVICES PROVIDED BY DIRECTOR TO COMPANY / BODY CORPORATE**

- Liable to ST under RCM w.e.f. 7th August,2013
- Company/ Body Corporate liable to pay ST



WHICH SERVICES?????

ISSUE 1:
M/s ABC Pvt Ltd has paid Mr. X, the managing director the fees towards the following:

- Rs. 3,00,000 per month as remuneration
- Rs. 20,000/- as sitting fees per meeting for attending 4 board meetings.
- Rs. 1,00,000/- per month as rent for the office

Discuss the tax liability?

- Remuneration paid to Mr. X (MD) is **not liable to ST**, as not a service.
- Employee – Employer relationship ...[Section 65B(44)]..definition of service]
- Sitting Fees **not liable to ST**.... Is a part of "SALARY"
- Rent paid **not liable to ST under RCM**.....as not provided in the capacity of director

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5) **Goods Transport Agency Services**

(i) **Specified Person Liable to pay freight**

Rule 2(1)(d)(B) of STR,1994 amended w.e.f.1st July,2012

Person liable to pay freight is :

- any factory registered under or governed by the Factories Act, 1948 (63 of 1948)
- any society registered under the Societies Registration Act, 1860 (21 of 1860) or
- any co-operative society established by or under any law
- any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made there under;
- any body corporate established, by or under any law, or
- any partnership firm whether registered or not under any law including association of persons;

Then any person who pays or is liable to pay freight either himself or through his agent for the transportation of such goods by road in a goods carriage is liable to pay ST;

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Goods Transport Agency Services.....CONTD

(ii) If such person is located in a non-taxable territory, then GTA himself liable to pay ST.

PRE- JULY,2012 SCENARIO


- When either the consignor or consignee of the goods fall under the 7 specified categories
- then the liability to discharge service tax was that of person making payment of freight.

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Notified Services...Not.No. 30/2012 as amended

UNDER PARTIAL REVERSE CHARGE

SERVICE PROVIDER	SERVICE RECEIVER
<ul style="list-style-type: none"> Individual/Proprietary Firm HUF Partnership Firm AOP Located in taxable territory	<ul style="list-style-type: none"> Business Entity registered as "BODY CORPORATE" Clause 2(7) of Companies Act,1956 Located in taxable territory



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	% of tax payable by SP	% of tax payable by SR
1) SUPPLY OF MANPOWER SERVICES		
2) SECURITY SERVICES (w.e.f.7 th Aug,2012)	25%	75%

> "Supply of Manpower" as defined in Rule 2(1)(d)(ii)(g) of Service Tax Rules,1994 means supply of manpower, temporarily or otherwise, to another person to work under his superintendence or control.

> "Security Services" as defined in Rule 2(1)(d)(ii)(fa) of Service Tax Rules,1994 meansservices relating to the security of any property, whether movable or immovable, or of any person, in any manner and includes the services of investigation, detection or verification, of any fact or activity.

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	% of tax payable by SP	% of tax payable by SR
3) WORKS CONTRACT SERVICES	50%	50%

"Works Contract" means a contract

- transfer of property in goods involved in the execution of such contract
- leviable to tax as sale of goods and such contract
- is for the purpose of carrying out
 - construction,
 - erection,
 - commissioning,
 - installation,
 - commissioning,
 - fitting out,
 - repair, maintenance, renovation, alteration
 of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property

> the service recipient has the option of choosing the valuation method as per choice, independent of valuation method adopted by the service provider. (Rule 2A of Valuation rules,2006)

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➤ **RENTING OF MOTOR VEHICLE**


- Services must be renting of Motor Vehicle designed to carry passenger
- SP and SR should be as specified for partial RCM
- Above provision not applicable to services provided to a person engaged in the similar line of business

Value of services	% of tax payable by SP	% of tax payable by SR
Abated Value	NIL	100%
Non- Abated Value	60% (50% w.e.f. 1 st Oct,14)	40% (50% w.e.f. 1 st Oct,14)

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POINT OF TAXATION RULES FOR PAYMENT OF ST UNDER RCMRULE 7

- Date on which payment is made
- If payment is **not made within a period of 6 months** of the date of invoice, the POT shall be.....
 - Time when invoice for service provided or agreed to be provided is issued.
 - If invoice is not issued to the service receiver within 30 days of the date of completion of service, POT shall be the date of the completion of such service.
- In **case of associated enterprises** where the person providing the service is located outside India.....the POT shall be the **date of credit in the books of account of the person receiving the service or date of making the payment whichever is earlier**
- Provisions of Partial RCM would be applicable only where the POT is on or after 1st July,2012 under applicable rule in respect of Service provider.... Circular No.162/13/2012-ST dated 6th July,2012



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Notification No.13/2014 [w.e.f.1st Oct,2014]...POINT OF TAXATION RULES,2011

AMENDMENT

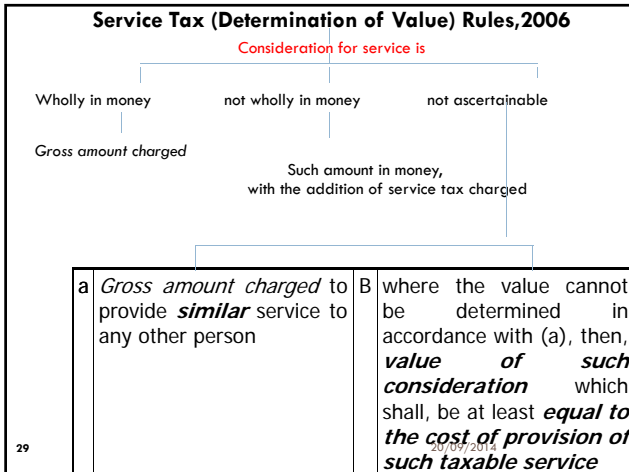
- 1st proviso to Rule 7 is substituted if payment not made within 3 months of date of invoice....., POT shall be the date immediately following the said period of 3 months.

IMPLICATIONS

- Rule 7 of POTR, 2011applicable to persons paying ST under reverse charge.....POT is date of payment.
- Erstwhile Payment not made within 6 months of the date of invoice....., POT determined as per Rule 3, which is earliest of completion of service, raising of invoice or payment.
- Transitional provisions are prescribed in Rule 10 in respect of invoices issued before 1st October,2014 and have remained unpaid.

VALUATION OF TAXABLE SERVICES

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Gross amount charged inclusive of Service Tax

- When the gross amount charged is inclusive of service tax payable, the value of such taxable service would be:

$$\text{Value of taxable service} = \frac{\text{Gross amount charged} * 100}{100 + \text{Rate of ST}}$$


- No ST on free services as there is no consideration involved.

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Value of Taxable Service

➤ **Inclusions:**

- ❖ All expenditure or costs



➤ **Exclusion:**

- ❖ All expenditure or cost incurred by service provider as a *pure agent* subject to certain conditions

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Pure Agent

- enters into a contractual agreement
- neither intends to hold nor holds any title to the goods or services
- does not use such goods or services so procured
- receives only the actual amount incurred to procure such goods or services

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Exclusion from Valuation

➤ Conditions for exclusion from the value

- ❖ SP acts as pure agent while making payment to third party
- ❖ recipient of service receives and uses the goods or services so procured
- ❖ recipient of service is liable to make payment to third party
- ❖ recipient authorises to SP to make payment
- ❖ recipient knows payment made by SP to third party
- ❖ Payment made by SP to third party is separately indicated in the invoice
- ❖ SP to recover actual amount
- ❖ Amount recovered is in addition to the services he provides

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Shri Bhagavathy Traders (2011) TIOL 1155...LB of Bangalore CESTAT

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- ❑ The concept of reimbursement will arise only when the person actually paying was under no obligation to pay the amount and he pays the amount on behalf of the buyer of the goods and recovers the said amount from the buyer of the goods.
- ❑ Only when the service recipient has an obligation legal or contractual to pay certain amount to any third party and the said amount is paid by the service provider on behalf of the service recipient, the question of reimbursing the expenses incurred on behalf of the recipient shall arise.

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INTERCONTINENTAL CONSULTANTS & TECHNOCRATS PVT. LTD. (2012) TIOL 966...DELHI HC

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- ❑ Rule 5(1) is *ultra vires* Section 66 & 67 and travels much beyond the scope of this sections.
- ❑ It is only the value of service that can be brought to charge and nothing more. The quantification of the value of the service can therefore never exceed the gross amount charged by the service provider for the service provided by him.
- ❑ The power to make rules can never exceed or go beyond the section which provides for the charge or collection of the service tax.
- ❑ If the expenses on air travel tickets are already subject to service tax and is included in the bill, to charge service tax again on the expense would certainly amount to double taxation. It is true that there can be double taxation, but it is equally true that it should be clearly provided for and intended

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PLACE OF PROVISION OF SERVICE RULES, 2012



- Section 66B, levies **tax on services that are provided in taxable territory.**
- **"Place of Provision of Service Rules, 2012 are made applicable** to determine the place where
 - ❖ **the services are provided;**
 - ❖ **agreed to be provided ;or**
 - ❖ **Deemed to have been provided**
- **Taxable Territory** means the territory to **which the provisions of Chapter V of the Finance Act ,1994 apply.**
- **"Non taxable territory"** means the territory which is outside the taxable territory
- **Replaced Export of Service Rules, 2005 & Taxation of Services (Provided from Outside India & Received In India) Rules, 2006**
- **These rules are primarily meant for persons who deal in cross-border services.**
- **They will also be equally applicable for those who have operations with suppliers or customers in the state of Jammu and Kashmir.**

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Notification No.14/2014 [w.e.f.1st Oct,2014]...PPSR, 2012

SERVICES BY INTERMEDIARIES.....RULE 9 OF PPSR,2012


- Definition of "Intermediary" under Rule 2(f) is amended to extend services of a broker, an agent or any other person, by whatever name called, who arranges or facilitates **a supply of goods**

IMPLICATIONS

- Hitherto, the definition of "intermediary" covered broker/agent arranging or facilitating **provision of service** between two or more persons.
- From 1st October, 2014, an intermediary of goods covered under rule 9(c) of PPSR
- Intermediary located in India rendering services to principals located outside India now liable for ST.**
- Under UK VAT, PPSR for intermediaries is LOCATION of CUSTOMER**



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ANY QUESTIONS.....

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WITH KNOWLEDGE WE KNOW THE WORDS, BUT WITH EXPERIENCE WE KNOW THE MEANING

Thank You!



Rajiv Luthia
R. J. Luthia & Associates
Chartered Accountants
Ph : 2564 1553/2569 4989
Email: rajiv@rjl.co.in

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