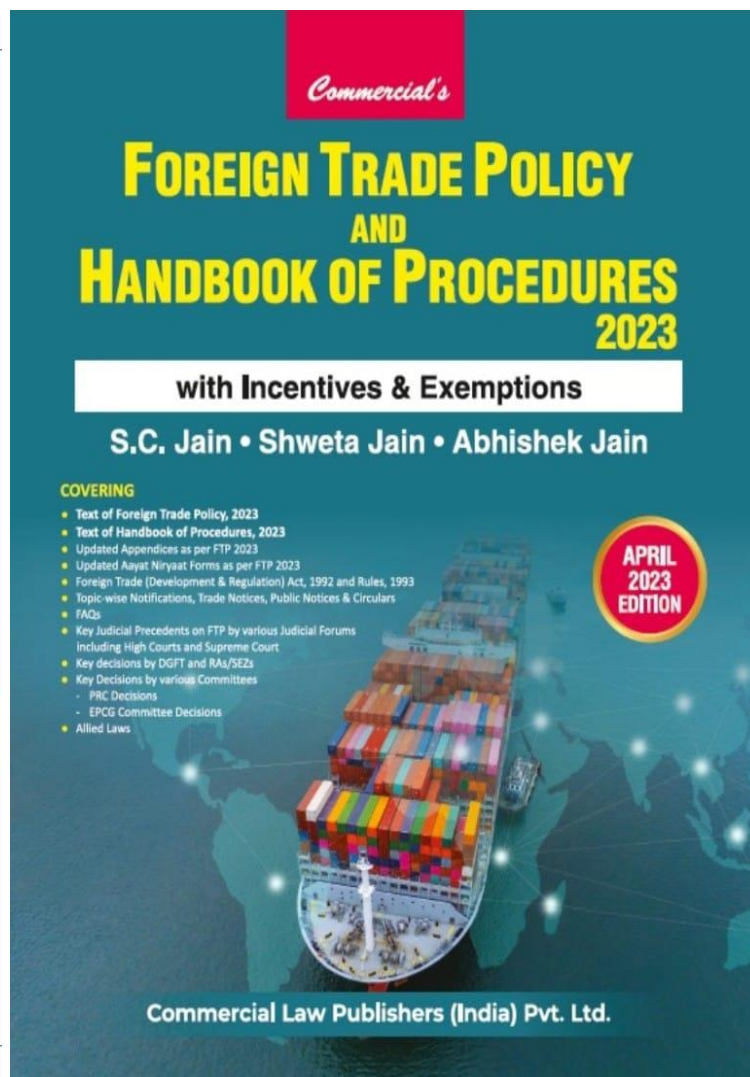


We are proud to announce the launch of our new book **"How to Handle Customs Problems"** published by Commercial Law Publisher and authored by SC Jain (Managing Partner) and Shweta Jain (Partner) RSA Legal Solutions.

Key highlights of the book are:

- Updated by Union Budget, 2023
- Updated by CBIC Customs Manual, 2023
- Supported by legal provisions and judicial precedents
- Procedural clarity
- Appropriate for CHAs, industry, students and professionals

The link to purchase the book is https://commerciallawpublishers.com/home/product_view/1110/How-to-Handle-Customs-Problems



It gives us immense pleasure to announce the launch of our new book titled **"Foreign Trade Policy and Handbook of Procedures, 2023"** published by Commercial Law Publishers and authored by SC Jain (Managing Partner), Shweta Jain (Partner) and Abhishek Jain (Partner) at RSA Legal Solutions. Key highlights of the book are:

- Foreign Trade Policy, 2023
- Handbook of Procedures, 2023
- Updated Appendices as per FTP, 2023
- Updated Aayat Niryaat Forms as per FTP, 2023
- Foreign Trade (Development and Regulation) Act, 1992 and Rules 1993
- Topic wise Notifications, Trade Notices, Public Notices and Circulars
- FAQs
- Key Judicial Precedents by High Courts and Supreme Court
- Key decisions by DGFT, RAs and various committees

The link to purchase the book is: https://commerciallawpublishers.com/home/product_view/1141/Foreign-Trade-Policy-and-Handbook-of-Procedures-2023

SEMINAR FOR DGFT



We had been invited by Directorate General of Foreign Trade (DGFT) under Ministry of Commerce to present a seminar on the Adjudication procedure in terms of Foreign Trade (Development and Regulation) Act, 1992. It was a very interactive session with the officials of DGFT including very senior dignitaries of DGFT. Delhi DGFT office was physically present while the other RAs of DGFT at various locations in the country were present through live streaming with them. The interaction involved discussion over various case laws as decided by High Courts and Supreme Court, view point of DGFT on each aspect, industry issues being faced, challenges being faced by DGFT and industry in various matters etc. We are grateful to DGFT, Ministry of Commerce for having provided us this opportunity.



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ARTICLES BY TEAM RSA LEGAL

- ❖ Article on “Union Budget Sixer: Is it end of transaction planning through Cross-Charge” penned down by Anshul Mittal (Partner)



Introduction

The Finance Bill 2024 introduces transformative changes to the Input Service Distributor (ISD) framework under the Central Goods and Services Tax Act, 2017. The amendments focus on broadening the scope of input services and refining the distribution process of input tax credit

(ITC). This in-depth analysis dissects the modifications, providing insights into the potential impact on businesses and the overall GST reform.

The proposed amendments to the Central Goods and Services Tax Act, 2017, as outlined in the Finance Bill 2024, bring significant changes to the definitions and operational mechanisms regarding the Input Service Distributor (ISD) framework. The modifications primarily focus on expanding the scope of input services and refining the distribution process of input tax credit (ITC). Here, we dissect the alterations and evaluate their potential impacts on businesses and the GST reform.

Expansion of Input Service Distributor's Scope

Present Provision: The present definition of an Input Service Distributor (ISD) is more restrictive, focusing on the receipt and distribution of tax invoices issued under section 31 for input services. The ISD's role is primarily to distribute the credit of central tax, state tax, integrated tax, or Union territory tax paid on said services to a supplier of taxable goods or services having the same Permanent Account Number (PAN) as the ISD.

Proposed New Provision: The amendment broadens this definition to include offices of the supplier that receive tax invoices for input services, including invoices in respect of services liable to tax under sub-section (3) or sub-section (4) of section 9, for or on behalf of distinct persons as defined in section 25. With this amendment, any unit holding a normal registration and receiving invoices for input services common to multiple distinct persons will also need to register as an ISD and they no more can distribute it by cross-charging to other unit. Furthermore, the amendment broadens the range of services including RCM services that qualify as input services for an ISD, potentially increasing the volume of Input Tax Credit (ITC) available for distribution.

Our Analysis

In our view, the revised definition will enhance the clarity regarding the Input Service Distributor (ISD) concept, allowing ISDs to distribute all input services comprehensively, including those will subject to GST under Reverse Charge Mechanism (RCM) such as legal and security services, with proper legal backing. Initially, there was considerable ambiguity for head offices regarding whether to opt for ISD



registration or normal registration, especially since managing RCM invoices was problematic due to the legal stipulation that ISDs could not receive RCM supplies.

Typically, head offices manage and pay for services of all kinds. Despite ISD registration being mandatory, many chose not to register under this category as the GST law does not explicitly prohibit cross-charging, and supplying to a distinct person within the same organization is recognized as a supply under GST.

Consequently, many companies opted for normal registration for their head offices, employing cross-charging to distribute their common credits, usually managed by the head offices. This led to a variety of practices regarding the allocation of common services through cross-charging. This has always been a point of contention between the assessee and the department regarding how to determine which services are common and which are specific in each state. After implementation of this provision, the common services will be routed only through ISD which will simplify the compliance process.

Although there was nothing inherently wrong with the present approach, it allowed some companies to exploit cross-charging for undue advantage, shifting credit accumulations from one unit to another where credit was lacking, and payments were made in cash. In such cases, the GST receivable by one state was transferred to another state, causing a loss to the exchequer of those states.

The amendment seeks to address this by requiring all common services to be received under ISD registration, while taxes on RCM supplies should be paid through normal registration within the same state, given that ISDs are not permitted to pay tax under RCM. This modification clarifies the role of ISDs, resolving the earlier challenge where companies faced difficulties in managing the distribution of RCM invoices across various units. Consequently, with this amendment, invoice processing can be centralized through the head office, and RCM taxes can be paid via normal registrations within the same state.

It is expected that the new procedure as would be prescribed would allow the issuance of invoices related to RCM supplies on which the tax was paid by the normal registration present in the same State, to the ISD, ensuring efficient distribution to all applicable distinct persons without the need for adjustments to the GST portal.

This approach, which centralizes common credits within ISD before distribution, has always been advisable, as the department has frequently raised issues with cross-charging transactions.

Moreover, Section 20 now mandates that any office receiving input services on behalf of distinct persons must register as an ISD. This means for any service related to distinct persons, companies must either get the invoice issued to the ISD registration and route it through them or obtain a new ISD registration in the same state where a unit is receiving an invoice for a common service and distribute it from there.

Direct cross-charging of common services by units will become impermissible, as the ISD provision is set to supersede this practice. This indicates that strategies involving the transfer of credits to other units through cross-charging will be discontinued following the implementation of this proposal.

The concept of RCM (Reverse Charge Mechanism) encompasses numerous complexities, and its indirect incorporation into the ISD (Input Service Distributor) framework is likely to raise numerous questions. Assesseees will now be confronted with decisions on whether to route all transactions through a single ISD or to opt for multiple ISDs to specifically cater to RCM supplies.



Conclusion

In conclusion, the Finance Bill 2024 heralds a significant shift in the GST framework, particularly impacting the operational dynamics of Input Service Distributors (ISDs) and the long-standing practice of cross-charging within businesses. By broadening the scope of ISD to include services liable under the Reverse Charge Mechanism (RCM) and mandating ISD registration for units dealing with common services, the amendments aim to streamline tax credit distribution and enhance compliance transparency.

This legislative spin not only clarifies the distribution of input tax credits but also challenges businesses to re-evaluate their internal tax management strategies. As the GST law evolves with these amendments, businesses must adapt to a more centralized approach to tax credit distribution, ensuring compliance while optimizing their tax credit utilization. The effectiveness of these changes will ultimately depend on the detailed procedural guidelines that will be issued and the ability of businesses to understand the transition towards a more structured and compliant GST regime.

REGULATORY UPDATES

GST

NOTIFICATIONS

❖ **Notification No. 03/2024- Central Tax dated 05.01.2024**

CBIC rescinded Notification No. 30/2023- Central Tax dated 31.07.2023, which specifies the special procedure to be followed by the registered person engaged in the manufacturing of certain goods i.e. Pan masala, Tobacco items, etc. This notification shall come into force w.e.f. 01.01.2024.

❖ **Notification No. 04/2024- Central Tax dated 05.01.2024**

A special procedure has been prescribed to be followed by a registered person engaged in the manufacturing of the goods i.e. Pan masala, Tobacco items, etc. The details that the registered persons are required to be furnished:

- ✚ Details of Packing Machines in FORM GST SRM-I
- ✚ Special Monthly Statement for each month in FORM GST SRM-II
- ✚ Chartered Engineer Certificate in FORM GST SRM-III

This notification shall come into force w.e.f. 01.04.2024.

CUSTOMS

NOTIFICATIONS

❖ **Notification No. 01/2024- Customs dated 15.01.2024**

The export duty of 50% has been imposed on 'Molasses resulting from the extraction or refining of sugar'. The said notification shall come into force w.e.f. 18.01.2024.

❖ **Notification No. 02/2024- Customs dated 15.01.2024**



CBIC has extended the existing concessional import duties such as basic customs duty and Agriculture Infrastructure and Development Cess on specified edible oils till 31.03.2025.

❖ **Notification No. 03/2024- Customs dated 22.01.2024**

CBIC imposed a duty of 10% on the import of Spent catalysts or ash containing precious metals.

❖ **Notification No. 04/2024- Customs dated 22.01.2024**

CBIC has exempted the following from the levy of Social Welfare Surcharge:

- ✚ Spent catalysts or ash containing precious metals
- ✚ coins of precious metals falling under tariff item 7118

❖ **Notification No. 05/2024- Customs dated 22.01.2024**

CBIC imposed Agriculture Infrastructure and Development Cess on the following:

Description	Rate of duty
Spent catalyst or ash containing precious metals falling under tariff item 7112	4.35%
Gold or Silver findings falling under tariff item 7113	5%
Coins of precious metals falling under tariff item 7118	5%

❖ **Notification No.06/2024- Customs dated 29.01.2024**

CBIC has extended the validity of exemption provided to certain goods under Notification No. 50/2017- Customs, which was lapsing on 31.03.2024 up to 30.09.2024, which include but are not limited to goods for use in the manufacture of EVA sheets or backsheets which are used in the manufacture of solar photovoltaic cells or modules; solar tempered glass for use in manufacture of solar cells/panels/modules; etc.

❖ **Notification No.08/2024- Customs dated 30.01.2024**

CBIC has reduced the customs duty on Screw, SIM socket, or other mechanical items of metal for cellular mobile phone when imported into India from 15% to 10%.

❖ **Notification No. 05/2024- Customs (N.T.) dated 19.01.2024**

CBIC extended the exemption available to the following deposits from being made in the Electronic Cash Ledger till 29.02.2024, with respect to:

- ✚ Goods imported or exported in customs stations where customs automated system is not in place;
- ✚ Goods imported or exported in International Courier Terminals;
- ✚ Accompanied baggage;
- ✚ Other than those used for making electronic payments of:
 - any duty of customs, including cesses and surcharges levied as duties of customs;
 - integrated tax;
 - Goods and Service Tax Compensation Cess;
 - Interest, penalty, fees, or any other amount payable

❖ **Notification No. 01/2024- Customs (ADD) dated 15.01.2024**

CBIC seeks to continue the anti-dumping duty imposed on imports of "Meta Phenylene Diamine" originating in or exported from China PR for 5 years to safeguard the domestic industry from the injury caused by dumping the products at a price lower than the normal rate.



INSTRUCTIONS

❖ **Instruction No. 01/2024- Customs dated 10.01.2024**

CBIC addressed the quality control or inspection requirements for exporting milk and milk products. Referring to the Export (Quality Control and Inspection) Act, of 1963, the instruction emphasized that milk and milk products must undergo quality control or inspection or both before export. Accordingly, in case of export of Milk & Milk Products, the customs officer shall verify:

- ✚ the letter of approval issued by EIC for the plant and consequential certificate for Export issued by the approved establishment;
- ✚ the certificate of inspection issued by the Export Inspection Agency declaring that such consignment is export worthy in the specified format.

FOREIGN TRADE POLICY

NOTIFICATIONS

❖ **Notification No. 55/2023 dated 03.01.2024**

DGFT has revised the import policy of screws falling under ITC (HS) Codes 73181110, 73181190, 73181200, 73181300, 7318400, 7318500, and 73181900 from “free” to “prohibited” subject to the condition that import shall be free if CIF value is Rs. 129/- or above per kg.

❖ **Notification No. 56/2023 dated 01.01.2024**

DGFT has amended the import policy for used IT Assets such as laptops, desktops, monitors, and printers. Though the imports of these assets from SEZ to DTA are restricted, however import will be free provided the following conditions are fulfilled:

- ✚ Used IT Assets can be moved from SEZ to DTA without a Restricted Imports License, provided there is a minimum usage of 2 years in the SEZ area, and the goods are not older than 5 years from the date of manufacturing.
- ✚ In the case of a unit closing down operations in SEZ and relocating to DTA, the import is allowed without a Restricted Imports License, given that the goods are not older than 5 years from the date of manufacturing.
- ✚ The relaxation for import is subject to the condition that no exemption from regulatory requirements (CRO, WPC, RoHS) was availed at the time of import of the Used IT Assets into the SEZ.

Further, the license for restricted import is required in case of not meeting the specified criteria.

❖ **Notification No. 57/2023 dated 15.01.2024**

Import of Semi-Manufactured Silver Paste, Sheets, Plates, Strips, Tubes, Electrodes, Wires, and Silver Brazing Alloys (in any form), by Electrical, Electronics, and Engineering industries including Glass and Solar Industries as input for their manufacturing process (actual user) basis shall be free. Further, import of the given items for R&D purposes by Government or recognised research institutions shall also be free and for other purposes permission from Nominated Agencies as notified by RBI and DGFT shall be required.

❖ **Notification No. 58/2023 dated 23.01.2024**



DGFT has revised the import policy from “free” to “prohibited” for Glufosinate Technical falling under ITC (HS) Code 38089390. However, the import will be allowed without restrictions if the CIF value is Rs. 1289/- or above per kg. w.e.f. 25.01.2024.

PUBLIC NOTICE

❖ **Public Notice No. 36/2023 dated 03.01.2024**

Though the Export of Sugar to USA and EU under TRQ is free, the DGFT has allocated the quantity of 8606 MTRV raw cane sugar to be exported to USA under TRQ scheme for US fiscal year 2024. A Certificate of Origin issued by the Additional Director General of Foreign Trade, Mumbai, shall be required for the export to USA based on the recommendations from APEDA concerning the eligible entity and quantity. Agriculture and Processed Food Products Export Development Authority (APEDA), New Delhi acts as the implementing agency for export of TRQ items to USA.

❖ **Public Notice No. 37/2023 dated 12.01.2024**

DGFT has extended the validity of recognition of Pre-Shipment Inspection Agency from 27.12.2023 to 31.03.2024 as listed in Appendix 2G of the Appendices & Aayat Niryat Forms (A&ANF) of Foreign Trade Policy 2023.

CIRCULAR

❖ **Policy Circular No. 09/2023-24 dated 09.01.2024**

It has been clarified that only the import of Laptops, Tablets, All-in-one Personal Computers, Ultra Small Form Factor Computers, and Servers falling under HSN 8471 is restricted and their import will be allowed against a valid import authorization. Further, the restriction applies exclusively to the specified IT Hardware and does not encompass other goods like desktop computers falling under tariff head 8471.

RATIO DECIDENDI

ERSTWHILE LAW

❖ **Hewlett Packard India Sales Private Limited vs. Commissioner of State Tax, CESTAT Bengaluru**

In the instant case, the question before the Hon'ble Tribunal was that whether service tax is payable when consideration is absent. The Hon'ble Tribunal has held that service tax is not payable for providing services to the customers during warranty period through third party arrangement, under the taxable category of 'Management, Maintenance or Repair Service'. The Tribunal in this regard observed that no consideration was received by the assessee even though the defective parts were replaced. It was further of the view that determination of value in terms of Rule 3 of the Service Tax (Determination of Value) Rules, 2006, in absence of any consideration, is fallacious and is a misunderstanding of the very concept of levy of service tax. The Hon'ble Tribunal observed that it was not the case of the Department that the assessee though received value of the services but the same could not be quantified or ascertained, hence the method of valuation becomes necessary.



GST LAW

❖ **IFB Industries Ltd. vs. National Anti-Profiteering Authority, Delhi High Court**

In the instant case, a total of 107 writ petitions were filed challenging the constitutional validity of Section 171 of the CGST Act and Rules 122, 124, 126, 127, 129, 133 and 134 of the CGST Rules as well as the legality of the SCNs proposing penalties under Section 122 and final orders issued by the National Anti-Profiteering Authority (NAA) directing the petitioners to pass on the commensurate benefit of reduction in the rate of tax or the Input Tax Credit to its consumers/recipients along with interest. At the outset, the High Court observed that Section 171 mandates that whatever is saved in tax must be reduced in price and thus, incorporates the principle of unjust enrichment. Accordingly, it has a flavor of consumer welfare regulatory measures, as it seeks to overcome the cascading effect of indirect taxes and to reduce the tax burden on the final consumer. The provisions of Anti-Profiteering under the CGST Act and Rules fall within the law-making power of the Parliament under Article 246A of the Constitution dealing with the ancillary and necessary aspects of Goods and Services Tax and are not beyond the legislative competence of the Parliament. The Acts and their provisions are not to be declared unconstitutional on the fanciful theory that there is an apprehension of misuse of statutory provision or the possibility of abuse of power. It was held that the constitutional validity of Section 171 of Act, 2017 as well as Rules 122, 124, 126, 127, 129, 133, and 134 of the Rules, 2017 is upheld. It is possible that there may be cases of arbitrary exercise of power under the anti-profiteering mechanism by enlarging the scope of the proceedings beyond the jurisdiction or on account of not considering the genuine basis of variations in other factors such as cost escalations on account of which the reduction stands offset, skewed input credit situations, etc. However, the remedy for the same is to set aside such orders on merits. What will be struck down in such cases will not be the provision itself which invests such power on the concerned authority but the erroneous application of the power.

❖ **Eicher Motors Limited vs. Superintendent of GST and Central Excise, High Court of Madras**

In the instant case, the petitioner filed the writ petition challenging the SCN and Order issued by the respondent wherein the petitioner was held liable to pay interest under Section 50(1) of the CGST Act on the tax dues which was duly deposited in the Electronic Cash Ledger (ECL) within due time. The High Court observed that the tax must be paid by the taxpayer prior to the last date for filing of GSTR-3B as provided in Section 39 of the CGST Act. It was further observed that for any tax amount which is paid by generating GST PMT-06, the tax liability will be discharged to that extent as the payment will get credited to the Government account and then will be deemed to be credited in the ECL of the taxpayer. ECL is maintained only for accounting purposes and ultimately to determine the final tax liability and to verify the payment of said tax liability within the time prescribed. The High Court held that when the tax amount has been credited to the Government within the prescribed time limit i.e. before filing of the monthly return GSTR-3B, the question of payment of interest would not arise.

CUSTOMS/FOREIGN TRADE POLICY

❖ **M/s Global Links vs. Commissioner of Customs, CESTAT New Delhi**

In the instant case, the appellant filed an appeal after his Customs Broker License suspension was confirmed by the Adjudicating Authority. In the instant case, the goods imported from China were examined and several violations of import policy conditions were noted under DGFT. The importer in his statement contended that it was the duty of the appellant to inform the compliance requirements to the importer. The role of Customs Broker is one of the great responsibility in the customs operation and



it is for this reason, a license is issued only after conducting an examination. The Hon'ble Tribunal addressed that the Customs Broker is required to fulfil its obligations under CBLR, 2018. In the instant case, the importer was not informed about the regulatory compliance for the imports, which indicates the abdication of the responsibility by the appellant which he admitted. The Hon'ble Tribunal held that once a violation of CBLR Regulations is admitted, the authority is empowered to revoke the license of Customs House Agent and also to forfeit his security. Accordingly, the appeal stands dismissed as there is no irregularity committed by the Adjudicating Authority while revoking the license of the appellant and imposing the consequential punishments under the CBLR Regulations.

❖ **Acme Micronised Minerals vs. Commissioner of Customs, CESTAT Ahmedabad**

In the present case the dispute to be settled is that whether the goods imported by the appellant is classifiable as natural Calcite Powder under CTH 25309030 under the notification No. 46/2011-Cus dated 01.06.2011 as claimed by the appellant or under CTH 28365000 with denial of notification No. 46/2011-Cus. as contended by the revenue, on the basis of test report of CRCL, Kandla. The Hon'ble Tribunal observed that at the relevant time when the CRCL, Kandla had undertaken the testing of imported goods, the said laboratory did not have the facilities to test such products. Further, relying on various judgments the Hon'ble Tribunal held that the classification of the product cannot be relied upon the test reports of such laboratories who do not have the facilities to test that product. Accordingly, since the entire case is based on the test report of CRCL, Kandla, the contention of the department cannot be accepted and the goods are rightly classifiable under CTH 25309030.

NEWS NUGGETS

- ❖ [TCS refund under GST: A navigation through its impact on E-commerce and other businesses](#)
- ❖ [GSTN issues advisory on bank Account Details submission for registered taxpayers](#)
- ❖ [GSTN enhances payment methods for GST taxpayers with Credit Cards, Debit Cards, and UPI](#)
- ❖ [Advisory for Electronic Cash Ledger \(ECL 2.0\) on ICEGATE](#)
- ❖ [Ministry of Finance announces Customs Brokers Licensing Examination 2024](#)

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ABOUT THE FIRM

RSA Legal Solutions is a top-tier Tax Law firm committed to providing world-class advisory, litigation, and compliance services to businesses, and is singularly focused on serving the needs of business clients. The firm specializes in GST, Customs, Foreign Trade Policy, SEZ laws, FEMA, Income Tax, Corporate laws, and other allied laws. RSA has partners from top law firms and Big 4s.

Our firm has recently been awarded with the **"Highly Recommended Law Firms, 2022"** by the Leaders Globe Magazine. RSA has successfully found a place in the list of Finalist for **"Tax Law Firm of the Year 2021"** by Asian Legal Business (ALB) Awards. RSA recently featured in the **Top 20 recommended lawyers in India** by Business Connect magazine in 2019-2020. RSA has been chosen in top 5 finalist in the category of **"Best Start up law firm of the year"** award by the prestigious **IDEX Legal Awards**. Also, the firm was awarded with the **"Top 10 GST Consultants Award"** by the famous **Insight Success Magazine**.

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