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EDITORIAL



Friends,

The GST Council's meeting, the first in the year 2021, comes at a time when the country is reeling under the second wave of coronavirus infections. Finance Minister Nirmala Sitharaman chaired the 43rd GST Council meet on 28th May 2021 after a gap of almost eight months amid the second wave of the COVID-19 pandemic.

A DETAILED ANALYSIS OF THE RECOMMENDATIONS OF 43RD GST COUNCIL MEETING HELD ON 28TH MAY 2021 IS HEREUNDER:

A. GSTR 9 AND GSTR 9C FOR F.Y. 2020-21:

- The filing of annual return in FORM GSTR-9 / 9A to be optional for taxpayers having aggregate annual turnover upto Rs 2 Crore;
- The reconciliation statement in FORM GSTR-9C will be required to be filed by taxpayers with annual aggregate turnover above Rs 5 Crore.
- Taxpayers would be able to self-certify the reconciliation statement (GSTR 9C), instead of getting it certified by chartered accountants/cost accountants.

B. Interest will be applicable on Net Cash Basis w.e.f. 01st July 2017 vide retrospective amendment in section 50 of the CGST Act 2017.

C. Relaxation has been provided to taxpayers in filing of monthly/Quarterly return in Form GSTR-3B.

D. Certain other COVID-19 related relaxations provided as under:

Compliance	Tax Period	Relaxation
GSTR-1/ IFF	May 2021	Due date extended till 28 th June 2021
GSTR-4	FY 2020-21	Due date extended till 31 st July 2021
FORM GST ITC-04	QE March 2021	Due date extended till 30 th June 2021
CMP-08 by composition taxpayers	Q.E. March 2021	<i>NIL interest for first 15 days from the due date. Reduced rate of 9% for further 45 days</i>

- Cumulative application of Rule 36(4) of the CGST Rules 2017 for the periods April, May and June, 2021 in the return for the period June, 2021.
- Companies can file GST returns using EVC instead of DSC till 31st August 2021.
- Time limit for completion of various actions, by any authority or by any person, under the GST Act, which falls during the period from 15 April, 2021 to 29 June, 2021, extended upto 30 June, 2021, subject to some exceptions.
- In addition to the exemption from Basic Custom Duty (BCD), exemption from IGST has been given upto 31.08.2021 for a number of specified COVID-19 related goods such as medical oxygen, oxygen concentrators and other oxygen storage and transportation equipment, certain diagnostic markers testkits and COVID-19 vaccines, etc. even if imported on payment basis, for donating to the government or on recommendation of state authority to any relief agency or even "free of cost" for free distribution.
- Amnesty Scheme to provide relief to taxpayers regarding late fee for pending returns (July, 2017 to April, 2021).

EDITORIAL

- Rationalization of late fee imposed under section 47 of the CGST Act applicable for the returns to be filed for prospective tax periods.

E. GST Rates:

- Levability of IGST on repair value of goods re-imported after repairs to be laid down soon.
- GST rate of 12% to apply on parts of sprinklers/drip irrigation systems falling under tariff heading 8424 (nozzle/laterals) to apply even if these are sold separately.

F. CLARIFICATION HAS BEEN ISSUED IN RESPECT OF CERTAIN SERVICES:

- **MAJOR RELIEF TO MILL OWNERS PERFORMING JOB WORK FOR PUBLIC DISTRIBUTION SYSTEM** -Supply of service by way of milling of wheat/paddy into flour (fortified with minerals etc. by millers or otherwise)/rice to Government/ local authority etc. for distribution of such flour or rice under PDS is exempt from GST if the value of goods in such composite supply does not exceed 25%. Otherwise, such services would attract GST at the rate of 5% if supplied to any person registered in GST, including a person registered for payment of TDS.
- There are 2 relief measures announced for real state industries herein –
 - ITC availment by Land owner promoters on GST charged to them by developer promoters.
 - Time of Supply for developer promoters - any time before or at the time of issuance of completion certificate
- Services supplied to an educational institution including Anganwadi (which provide pre-school education also), by way of serving of food including mid- day meals under any midday meals scheme, sponsored by Government is exempt from levy of GST irrespective of funding of such supplies from government grants or corporate donations.
- Services provided by way of examination including entrance examination, where fee is charged for such examinations, by National Board of Examination (NBE), or similar Central or State Educational Boards, and input services relating thereto are exempt from GST.

- GST on MRO (Maintenance, Repair and Operations) services in respect of ships/vessels shall be reduced to 5% (from 18%). It has been clarified that PoS (Place of Supply) of B2B supply of MRO Services in respect of ships/ vessels would be location of recipient of service.
- GST is payable on annuity payments received as deferred payment for construction of road. Benefit of the exemption is for such annuities which are paid for the service by way of access to a road or a bridge.
- Services supplied to a Government Entity by way of construction of a rope-way attract GST at the rate of 18%.
- Services supplied by Govt. to its undertaking/PSU by way of guaranteeing loans taken by such entity from banks and financial institutions is exempt from GST.

G. The CGST Act and Rules would be amended so as to remove the GSTR-2 & GSTR-3 related provisions so that GSTR 3B and GSTR 1 would be the return filing system only.

We urge you all to take good care of yourself and your families during these challenging times.

We do hope that this bulletin adds value to your professional sphere.

Just to reiterate that we remain available over telecom or e-mail.

Truly Yours

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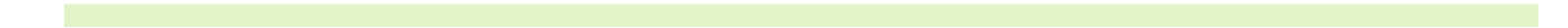
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Stay Safe and Healthy

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Due date	Form/Return /Challan	Reporting Period	Description
31st May 2021 (Extended till 30 th June 2021)	ITC-04	Jan-March 2021	Due Date for furnishing Details of Job Worker
31st May 2021 (Extended till 31st July 2021)	GSTR-4	FY 2020-21	Due Date for furnishing Summary of Inward Supplies and Outward Supplies for Composite Taxpayers
31st May 2021	Form 26QB	April 2021	Due Date for furnishing and making payment of TDS on Immovable property
31st May 2021	ITNS-281	March 2021	Due Date for making payment under Section 194IA/194IB/194M



NOTIFICATION/CIRCULAR

FURNISHING & UPLOAD OF FORM NO. 34BB ON
INCOME TAX E-FILING PORTAL

OUR COMMENTS: The Ministry of Finance, Government of India, Central Board of Direct Taxes **vide Notification No. 05/2021 dated 24.05.2021** has notified Procedure for exercise of option under sub-section (1) of section 245M and intimation thereof by furnishing and upload of Form No. 34BB under sub-rule (1) of Rule 44DA of Income-tax Rules, 1962.

[For further details please refer the notification]

CBDT NOTIFIES SLUMP SALE AMENDMENT RULES

OUR COMMENTS: The Ministry of Finance, Government of India, Central Board of Direct Taxes **vide Notification No. 68/2021 dated 24.05.2021** has notified the Slump Sale Amendment Rules through Income Tax (16th Amendment) Rules, 2021. The Finance Act, 2021 brought a few significant changes to the provisions relating to slump sale under the income tax rules. Earlier, in the case of slump sale transactions, under the provisions of section 50B, the actual consideration of the slump sale transaction is respected and considered as the full value of consideration for computing capital gains. In other words, there was no need for arriving at Fair Market Value or requirement of a valuation exercise.

An amendment has been made in the Finance Act, 2021 to provide that FMV of the undertaking/division on the date of transfer (to be determined based on the rules, which may be prescribed later) as a full value of

consideration. Accordingly, FMV will have to be considered irrespective of the transaction value actually received by the seller. It would be important to note that this amendment would be applicable from AY 2021-22 and hence, any slump sale transaction done during FY 2020-21 (from April 1, 2020) would be affected.

[For further details please refer the notification]

CLARIFICATION REGARDING THE LIMITATION TIME FOR
FILING OF APPEALS BEFORE THE CIT(APPEALS)

OUR COMMENTS: The Ministry of Finance, Government of India, Central Board of Direct Taxes **vide Circular No. 10/2021 dated 25.05.2021** has circulated that the time limit for filing of appeals before CIT(Appeals) has been extended till 31st May 2021 including extending time for filing the appeals before CIT(Appeals). The Central Board of Direct Taxes, clarifies that if different relaxations are available to the taxpayers for a particular compliance, the taxpayer is entitled to the relaxation which is more beneficial to him. Thus, for the purpose of counting the period(s) of limitation for filing of appeals before the CIT(Appeals) under the Act, the taxpayer is entitled to a relaxation which is more beneficial to him and hence the said limitation stands extended till further orders as ordered by the Hon'ble Supreme Court.

[For further details please refer the circular]

CASE LAWS

SRI MARG HUMAN RESOURCES PVT LTD VS THE PRINCIPAL ADDITIONAL DIRECTOR GENERAL, DGGI, CHENNAI ZONAL UNIT, CHENNAI -2021 [MADRAS HIGH COURT]

Brief: Attachment of account under Article 19 - Challenge to attachment orders issued under Section 83 of the CGST Act pursuant to search and investigation.

OUR COMMENTS: In the present case, Petitioner submits that Section 67 of CGST cannot be against the future receivables and prays for lifting of the impugned attachment, pending issuance of SCN and determination of tax liability. Madras High court held that attachment proceedings cannot be at the cost of right of provision under Article 19(1)(g) of the Constitution which provides right to practise any profession, or to carry on any occupation, trade or business. The petitioner has already discharged 27% of the proposed and estimated tax due. There is a mechanism provided under the Act for proper adjudication of the tax due and determination under Sections 73 and 74 of the Act. Therefore, there is no meaning in attaching the bank accounts any further. The respondents have commenced the investigation during October, 2020. The respondents can issue notice under Section 73 of the CGST Act, 2017 and thereafter, determine the amount due and recover the amounts. Therefore, the writ petition is allowed.

[In favour of the Petitioner]

KHALID VS THE STATE OF RAJASTHAN-2021 [RAJASTHAN HIGH COURT]

Brief: Seizure of goods - Demand of Tax and penalty under Section 129 - Confiscation of goods without giving fair opportunity for depositing of tax and penalty under Section 130 of the CGST Act - option to provisional release of goods and vehicle under Rule 140(1).

OUR COMMENTS: In the present case, Rajasthan High Court held that if goods have been seized, proceedings under Section 130 of the Act can only be initiated after a fair opportunity is given to the assessee for depositing of tax or penalty as assessed. The provisions of Section 129 are independent of Section 130 and before any decision is taken under Section 130, the power is available under Section 129 to release the goods provisionally in terms of Rule 140(1) provided the owner submits the requisite as required. Since no opportunity was given to petitioner for depositing the amount of demand of tax and penalty while issuing the impugned order, it would be in the interest of justice that the petitioner be given a chance to avail the provisional release of goods and vehicle in terms of Rule 140(1). If the petitioner fulfils the conditions as laid down under Rule 140(1) of the CGST Rules, the respondents shall release the goods provisionally subject to the final outcome of the appeal. The writ petition as well as stay application stand disposed of.

[In favour of the Petitioner]

NOTIFICATION/CASE LAW

AMENDMENT IN FOREIGN EXCHANGE MANAGEMENT
(BORROWING AND LENDING) (AMENDMENT)
REGULATIONS, 2021

OUR COMMENTS: The Reserve bank of India, Government of India vide Notification No. FEMA. 3(R)2/2021-RB dated 24.05.2021 has amended Foreign Exchange Management (Borrowing and lending) (Amendment) Regulations, 2021.

In the Foreign Exchange Management (Borrowing and Lending) Regulations, 2018, in regulation 7, in clause (A), after sub-clause (ii), the following sub-clause shall be inserted, namely:

“iii) An AD in India may lend to a person resident outside India for making margin payments in respect of settlement of transactions involving Government Securities by the person resident outside India, subject to such terms and conditions as may be specified by the Reserve Bank.

Explanation:

The expression ‘Government Security’ shall have the same meaning as assigned to it in Section 2(f) of Government Securities Act, 2006, and the word ‘securities’ shall be construed accordingly.

[For further details please refer the notification]

J.P. MORGAN INDIA PRIVATE LIMITED VERSUS SPECIAL
DIRECTOR, DIRECTORATE OF ENFORCEMENT AND ANR
-2021 [DELHI HIGH COURT]

Brief: Offence under FEMA - Distinction between the two stages of the adjudication process - eligible reasons by the respondent no. 1 for the formation of opinion to proceed with the inquiry against the petitioner.

OUR COMMENTS: In the present case, Delhi High Court held that The Adjudicating Authority, under the Scheme of the FEMA, performs a quasi-judicial function as opposed to a purely administrative function. The requirement of giving reasons therefore cannot be undermined and must be insisted upon from the Adjudicating Authority. The reasons to be given for its opinion under Rule 4(3) of the Adjudication Rules to proceed with the inquiry though need not be as elaborate as in a Court decision or let’s say an order passed by the Adjudicating Authority under Rule 4(8) of the Adjudication Rules, but have to be adequate, proper and intelligible, sufficiently clear and explicit. They must reasonably deal with the substantial points raised in the matter and show that they were taken into consideration. However, the extent and nature of reasons depend upon specific facts and circumstances of each case.

The Impugned Opinion/Order dated 05.06.2020, does not satisfy the test of giving reasons by the respondent no. 1 for the formation of opinion to proceed with the inquiry against the petitioner.

The reasons are the bridge between the material on record and the final decision. Therefore, after considering the judgment of the Supreme Court, the Complaint and the reply of the petitioner to show cause, that is the material on record, the Adjudicating Authority is to give reasons, howsoever brief, at least showing that he is alive to the contentions raised in the reply to the Show Cause Notice and why he is of the opinion that inquiry must still be held. In the present case, this bridge is missing.

It is also to be seen as to whether the inquiry deserves to be set aside only for the above violation. In the present case, as noted herein above, the Supreme Court has passed a detailed judgment finding various acts of violation of the FEMA and the Rules/Regulations framed there-under inter alia against the JP Morgan group of companies, may not be specifically by name against the petitioner. The present inquiry has been initiated on the direction of the Supreme Court in the said judgment. The allegations against the petitioner also cannot be said to be such that do not warrant any inquiry given the above factual background. The role of the petitioner and its employees and the capacity in which they acted in the transactions in question need a detailed inquiry as such allegations form part of a larger whole which is being inquired into.

Considering that at the stage of Rule 4(3) of the Adjudication Rules, the Adjudicating Authority was merely to form an opinion whether to proceed with the inquiry; and as held by the Supreme Court in **Natwar Singh [2010 (10) TMI 156 - SUPREME COURT]** it is only

thereafter that the “real and substantial inquiry into allegations of contravention begins”; and that unlike the final order imposing penalty, “the opinion formed by the Adjudicating Authority whether an inquiry should be held into the allegations made in the complaint are not fraught with such grave consequences”, and as held by the High Court of Bombay in **Shashank Vyankatesh Manohar [2013 (8) TMI 435 - BOMBAY HIGH COURT]** that “in case the objections are such as would require detailed consideration, the authority concerned can dispose of the objections by stating that the same would require detailed consideration, which would be done at the disposal of the notice by the final order”, it is held that there was enough reason for the respondent no. 1 to form an opinion to proceed with the inquiry against the petitioner and no useful purpose would be served by quashing the impugned Opinion and insisting on the reasons to be first recorded. Exercise of powers under Article 226 being discretionary in nature, this court, in the peculiar facts of the present petitions, does not find it fit to exercise the same.

Even though the Impugned Opinion of the Adjudicating Authority does not record any reasons for the same, the same is sustained. This shall, however, not be considered as an affirmation of this Court to the manner in which such opinion is to be recorded. It is also made clear that this Court has not expressed any opinion on the merit of the allegations made against the petitioner in the Show Cause Notice or the inquiry.

[In favour of the petitioner]

INSTRUCTION/CASE LAW

RELAXATIONS PROVIDED UNDER GAS CYLINDERS RULES, 2016

OUR COMMENTS: The Ministry of Finance, Government of India, Central Board of Indirect Taxes and Customs vide **Instruction No. 12/2021-Customs dated 25.05.2021** has instructed that Relaxations shall be provided under Gas Cylinders Rules, 2016 so as to fast-track approvals for imported cylinders and pressure vessels for storage and transportation of medical oxygen.

In this regard, DPIIT has further clarified as follows:

A. In case the importer has applied through online application to PESO and the decision is pending in PESO, the exemption allows them to bring oxygen cylinders on urgency for COVID relief activities in India.

B. In case the importer has not applied through online application to PESO, the exemption allows them to bring cylinders for urgent use for enhancing oxygen distribution logistics in India.

C. It is the responsibility of the consignee to follow the procedure as per relaxed conditions given in the table of para 3 of the Press Release, prior to the filling of the medical oxygen in these cylinders at refillers/ filling plants.

D. In view of the above, Customs is requested to give necessary clearances without PESO approvals for such items received at the ports/ airports for COVID relief works.

[For further details please refer the instruction]

ADANI PORTS AND SPECIAL ECONOMIC ZONE LTD. VERSUS UNION OF INDIA-2021[GUJARAT HIGH COURT]

Brief: Adjudicating SCN after long gap of 11 years - Matter was kept pending - Validity of Less Charge Demand Notice - concessional rate of duty - Import of certain second hand equipments, i.e. capital goods/professional equipments - whether the respondent authorities could now be permitted to adjudicate the Demand Notice dated 2.8.2007, more particularly, when no intimation was issued to the petitioner No.1 – company communicating about keeping the adjudication of the Demand Notice in abeyance?

OUR COMMENTS: In the present case, Gujarat High Court held that This Court, in the case of SIDDHI VINAYAK SYNTEX PVT LTD. VERSUS UNION OF INDIA & 2 [2017 (3) TMI 1534 - GUJARAT HIGH COURT] has in detail held and observed that where the department has kept the proceedings in call books, it would be impermissible for the department to reactivate the same after years together and more particularly, when the noticee has not been informed or communicated about transferring the matter to the call book and therefore, the action would be in breach of the principles of natural justice.

Clearly, the petitioners by this petition, have challenged the Demand Notice dated 2.8.2007 mainly on the ground that after the issuance of said notice, no steps worth the name have been taken by the respondent authorities for adjudicating the said notice. Perceptibly, not a single communication has been addressed by the respondent to the petitioners, intimating it about keeping the show-cause notice in abeyance. Furthermore, in the

reply filed by the respondent, limited explanation is offered in paragraph 3.3 to the effect that due to reorganization of the department, shifting of the office documents have taken place, and during such shifting, the documents might have been misplaced. It is further averred that the office has tried to find out the documents related to the concerned Demand Notice, however, the same are not traceable. Clearly, the Revenue has thoroughly failed to justify its lapse for not adjudicating the Demand Notice for more than 11 years. Quite apart, as is discernible from the contents of paragraph 3.3 of the reply, during the shifting of the office, papers pertaining to the Demand Notice are not traceable.

Thus, allowing the Revenue at this stage to proceed with the adjudication of the notice, would be an exercise in futility, in breach of the principles of natural justice and against the principle laid down by this Court. The demand notice quashed. Hence, the petition is allowed.

[In favour of the petitioner]

M/S. SHREE RISHABDEV MARBLE AND MINERALS PVT. LTD. VERSUS ASSISTANT COMMISSIONER OF CUSTOMS -2021[RAJASTHAN HIGH COURT]

Brief: Permission for withdrawal of petition - job-work - request made for export of the goods from the job worker premise is rejected

OUR COMMENTS: In the present case, Rajasthan High Court held that the writ petition is dismissed as withdrawn with the liberty to the petitioner to avail the

statutory remedy of appeal. It is directed that if the appeal is filed by the petitioner within a period of three weeks, the same shall be decided on merits after giving an opportunity of hearing to the petitioner.

[In favour of the petitioner]

TRADE NOTICES

MANDATORY RECORDING OF INFORMATION ABOUT TRANSFER OF DFIA (DUTY FREE IMPORT AUTHORIZATION) SCRIPS AND PAPERLESS ISSUANCE OF DFIA SCRIPS

OUR COMMENTS: The Ministry of Finance, Government of India, Central Board of Indirect Taxes and Customs vide **Trade Notice No. 06/2021-22 dated 25.05.2021** has issued Notice relating to mandatory recording of information about transfer of DFIA (Duty Free Import Authorization) Scrrips and Paperless issuance of DFIA Scrrips.

The issuance of paper copies of DFIA scrrips (for EDI Ports) shall be discontinued with effect from 07.06.2021. Security Paper copies of DFIA Scrrips shall continue to be issued for Non-EDI Ports. Any transfer of DFIA Scrrips issued on or after this date shall be mandatorily recorded in the online system. The record of such transfers shall be mandatory for EDI ports as well as non-EDI Ports.

For cases where the DFIA scrip was issued prior to 07.06.2021 and an ARO/Invalidation is to be requested against the DFIA Scrip, the details of transfer of the said scrip (if any) would also be required to be recorded in the DGFT online system. For cases, where the ARO/invalidation is being requested by the original scrip owner no such record of transfer would be required. For cases where scrrips were issued prior to 07.06.2021 and no request for ARO/Invalidation is to be made as on this date or after, the recording of any transfer of the given scrip shall not be mandatory.

[For further details please refer the Trade Notice]

DGFT IMPORT-EXPORTER CODE(IEC) SERVICES AFFECTED DUE TO NON-AVAILABILITY OF PAN VALIDATION SERVICES FROM 01.06.2021 TO 06.06.2021

OUR COMMENTS: The Ministry of Finance, Government of India, Central Board of Indirect Taxes and Customs vide **Trade Notice No. 07/2021-22 dated 26.05.2021** has informed that some DGFT services wherein CBDT PAN validation services are being consumed in the DGFT IT systems will get impacted during 01.06.2021 to 06.06.2021.

Following DGFT services will not be available from 1st June 2021 to 6th June 2021:

- i. Application for a new IEC
- ii. Application for Amendments/Modification in an IEC
- iii. One-time linking of Aadhaar for e-sign purposes

In view of the above, all stakeholders may therefore plan their activities accordingly.

[For further details please refer the Trade Notice]

IN STANDS**AN INTEGRATED APPROACH TO GST E-INVOICING, E-WAYBILL & E-RETURN FILING**

ABOUT THE BOOK: This publication includes:

1. Detailed discussion and walkthrough of GST E-Invoices.
2. Detailed discussion and walkthrough of GST E-Waybill.
3. Detailed discussion and walkthrough of GST Return Filing and Reconciliations.
4. Detailed discussion and walkthrough of ICEGATE Portal.
5. Deciphering an Integrated Approach to GST E-Invoice, E-Waybill, Return Filing & Reconciliation

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Section wise Compendium on GST



ABOUT THE BOOK: This publication includes:

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4. Practical Illustrations

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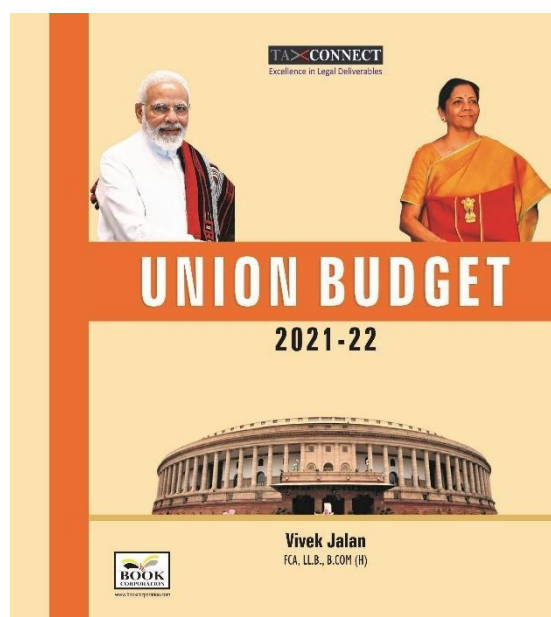
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IN STANDS

UNION BUDGET 2021



ABOUT THE BOOK: This publication includes:

1. Commentary on Budget
2. Finance Minister's Budget Speech
3. Budget at a Glance
4. Memorandum
 - a. Direct Tax
 - b. Customs
 - c. Excise
 - d. GST
5. Finance Bill
6. Notes on Clauses

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