BEFORE DELHI VALUE ADDED TAX, APPELLATE TRIBUNAL DELHI
Sh. Narinder Kumar, Member (Judicial) & Sh. Rakesh Bali, Member (Administrative)

Rev. Application Nos. 333 & 334/ATVAT/22
In Appeal Nos. 125-126/ATVAT/18
Date of Order : 23/5/2022

M/s. Gupta Bros India,
232, Jor Bagh,
New Delhi – 110 003 ..... Applicant

V.

Commissioner of Trade & Taxes, Delhi. ..... Respondent

Counsel for the Appellant- Applicant : Sh. K.K. Sharma & Sh.V.K.Gupta.
Counsel for the Respondent : Sh.C.M.Sharma.

O R D E R

1. This order is to dispose of application No. 333 & 334/22 filed by the Dealer-Assessee-Applicant for review of order dated 28/12/21 passed by this Appellate Tribunal.

Vide order dated 28/12/21, MA No. 279/21 filed by dealer-applicant seeking condonation of delay in filing of two appeals

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125-126/21 was dismissed by this Appellate Tribunal. Consequently, the appeal was also dismissed being barred by limitation. MA No. 333/22 has been filed with prayer for review of the order vide which application was dismissed and MA No. 334/22 has been filed with prayer for review of the order vide which appeals were dismissed being barred by limitation.

Contentions

2. In the course of arguments the first argument put-forth by learned counsel for the applicant is that this is a case where order passed by Objection Hearing Authority was not served upon the dealer and as such it was for the Department/Revenue to prove service of the said order upon the dealer-assessee, but Revenue never established this fact, and as such there was no delay in the filing of the appeals. The contention is that in view of this fact, the application filed for review of the order be allowed.

3. On the other hand, learned counsel for the Revenue-Respondent has submitted that when the dealer-assessee never denied in the affidavit service of the order passed by Learned OHA, it was not for the Revenue to establish service of the said order upon the dealer. Learned counsel has further submitted that for the reasons recorded in the order dated 28-12-2021, passed by this

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Appellate Tribunal, when there is no error apparent on the face of record, this application for review of the said order be dismissed.

4. Another ground put-forth on behalf of the dealer-applicant is that lesser time was granted by this Appellate Tribunal to the dealer-assessee to submit arguments on the application seeking condonation of delay in filing the appeals.

Learned counsel for the applicant has submitted that court is to do justice and technicalities should not come in way to achieve this aim. In this regard, learned counsel has merely placed on record Compilation I & II which contain reference to several decided cases.

Following six decided cases, i.e. from S. No. 19-21 and 23-25 as find mention in Compilation-I, are on the point of condonation of delay: -

19. Perumon Bhagvathy Devaswom, Perinadu Village vs. Bhargavi Amma (Dead) By LRs. & Ors., MANU/SC/ 7894/ 2008.
20. S. Ganesharaju (D) Thr. L.Rs. and Ors. vs. Narasamma (D) Thr. L.Rs. and Ors., MANU/SC/0379/2012;
21. Abdul Ghafoor and Ors. vs. State of Bihar, MANU/SC/1273 /2011;

23. Bhagwat and Ors. vs. Dy. Director of Consolidation and Ors., MANU/UP/0747/1989;

24. Jais Lal vs. Deputy Director of Consolidation, Jaunpur and Ors., MANU/UP/2287/2013;

25. Parbhu and Ors. vs. Deputy Director of Consolidation, Ghazipur and Ors., MANU/UP/2781/2012.

In same compilation, following three decisions, i.e. from S. No. 32-34 are on the point that court should adopt liberal approach in condonation of delay:

32. G. Ramegowda and Ors. vs. Special Land Acquisition Officer, Bangalore, AIR 1988 SC 897;

33. Collector, Land Acquisition, Anantnag and Ors. vs. Katiji and Ors., AIR 1987 SC 1353;

34. Municipal Council, Paithan vs. Solid Waste Management Institute of Maharashtra, 2018 SCC On Line Bom 12219.

In Compilation-I, following four decisions from S. No. 51-54 pertain to providing of opportunity of being heard:

51. Zolba vs. Keshao and Ors., AIR 2008 SC 2099;

52. Jagdamba Prasad Shukla vs. State of U.P. and Ors., 2000 SCC On Line SC 1201;

53. Sangfroid Remedies Ltd. vs. Union of India (UOI) and Ors., (1999) 1 Supreme Court Cases 259;

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54. Sangram Singh vs. Election Tribunal, Kotah and Ors., MANU/SC/0044/1955.

5. It may be mentioned here that in the course of arguments on these review applications, no reference has been made to any of the decisions made available in the form of compilation -1 & 2. We have ourselves gone through the citations referred to in these compilations.

6. On the other hand, learned counsel for the Revenue has submitted that after reply was filed by the Revenue to the application of the dealer seeking condonation of delay, counsel for the applicant himself straightway opted to advance arguments on the application and as such on the part of the applicant, it is wrong to say that lesser time was granted to the applicant to make submissions on the application seeking condonation of delay.

Learned counsel for the Revenue has taken strong objection to the averments put-forth in present application seeking review, as according to him, the tone and tenor of the words used in the application is totally unwanted, uncalled-for and unacceptable.

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Ultimately, learned counsel for the Revenue has submitted that this application seeking review rather deserves to be dismissed with heavy cost.

7. Section 76 of DVAT Act provides that the Appellate Tribunal may rectify any mistake or error apparent from the record or its proceedings.

As regards the ~~other~~ expression "error apparent from the record or its proceedings", we deem it proper to refer to the provisions of Regulation 24 of Delhi VAT Appellate Tribunal Regulation 2005.

Regulation 24 reads as under :

> "(1) Subject to the provisions contained in sub-section (2) of section 76 of the Act and the rules made there under, any person considering himself aggrieved by an order of the Tribunal and who, from the discovery of new and important matter or evidence which after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the order made against him, may apply for a review of the order within sixty days from the date of service of the order:
>
> Provided that the Tribunal may at any time, review the order passed

by it suo motu also for reasons to be recorded by it in writing.

2. Where it appears to the Tribunal that there is no sufficient ground for review, it shall reject the application.

3. Where the Tribunal is of opinion that the application for review should be granted, it shall grant the same:

Provided that-

(a) no such application shall be granted without previous notice to the opposite party to enable him to appear and be heard in support of the order, a review of which is applied for; and

(b) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge, or could not be adduced by him when the order was made, without strict proof of such allegation."

8. In view of the above provision pertaining to review of order, any person feeling aggrieved by the order of the Appellate Tribunal is to satisfy that the review is being sought because of discovery of new and important matter or evidence and that the said matter or evidence was not within his knowledge or could not be produced at the time the order was passed by the Appellate Tribunal or that on account of some mistake or error apparent on

the face of the record or for any other sufficient reason, desires to obtain a review of the order made against him.

9. In this application seeking review of the order dated 28/12/2021, the applicant has alleged that the appeals presented by the dealer – applicant were received by the Registry of this Appellate Tribunal after scrutiny and that had the appeals been barred by limitation, the Registry would not have accepted the same.

10. In this regard, as per Section 77 of DVAT Act Appellate Tribunal may entertain an appeal u/s 76, even after the period of limitation laid-down therein, i.e. of two months, if the appellant satisfies the Appellate Tribunal that the Appellate had sufficient cause for not preferring the appeal within the prescribed period.

Sub-rule (6) of Rule 57A of DVAT Rules 2005 provides that where an appeal is made after the expiry of the period specified in sub-section (2) of Section 76, it shall be accompanied by a petition duly verified setting forth the facts showing sufficient cause for not preferring the appeal within the said period.

In this regard, it may be mentioned here that simply because fresh appeals are received by the Registry, it cannot be said that the dealer – appellant stands absolved of his duty to take appropriate steps like filing of an application seeking

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condonation of delay, wherever an appeal is barred by limitation, i.e. being presented after the prescribed period, even if the applicant feels that the he has sufficient cause for condonation of delay.

Admittedly, no such application was accompanying the appeal presented by the dealer.

An appellant – applicant is to so satisfy the Appellate Tribunal and merely because an appeal is received by the Registry, same cannot be said to have been admitted or entertained by the Appellate Tribunal.

Here too, merely because appeal was presented before the Registry, without filing application seeking condonation of delay, it cannot be said that the Appellate Tribunal had to ignore the issue of delay in filing of appeal.

The application seeking condonation of delay was dismissed keeping in view that the dealer-applicant had failed to prove any "sufficient cause" to explain the delay in filing of the appeals.

By way of appeal, the dealer-applicant intended to challenge impugned order dated 21/09/17 passed by Ld. Objection Hearing Authority (hereinafter referred to as OHA).

The appeals were presented on 13/07/18. As per Sub-section (2) of Section 76, subject to provision of 77 of Delhi Value Added Act, 2004 (herein after referred to as DVAT Act), appeal can be entertained when same is filed within two months.

Section 77 empowers the Appellate Tribunal to admit an appeal under section 76 of the Act, after the prescribed period of limitation, if the appellant satisfies the Appellate Tribunal that he had "sufficient cause" for not preferring the appeal within such period.

11. In the application submitted on 2.11.2021 seeking condonation of delay, the ground put-forth by the dealer-applicant was that Sh. Tarun Kapoor, CA, who was dealing with the matters of the dealer-applicant since long, did not get the impugned order, passed by the Ld. OHA; that even the dealer – assessee had not received the impugned order; that ultimately, the learned counsel, now representing the dealer in this matter was engaged, who applied for supply of certified copy and then preferred the appeals.

It may be mentioned here that no other material or document was placed on record or sought to be produced as regards the application seeking condonation of delay. Rather, straightway arguments were advanced on the said application.

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12. In the course of arguments, on the application seeking condonation of delay, the contention raised by the Ld. Counsel for the applicant was that it was a case where the CA engaged by the dealer-applicant in connection with VAT and Income Tax matters, was at fault, as he had not collected the impugned order passed by the OHA.

In the course of arguments, in that application, reference was also made by Ld. Counsel for the applicant to first two out of the three affidavits of the following deponents:

Sh. Tarun Kapoor, CA;

Sh. Pranesh Gupta, one of the partners of the dealer-applicant;

Sh. Vinod Gupta, Adv, Counsel representing the applicant.

Ld. Counsel for the applicant had also referred to decision in **Rafiq & Anr. v. Munshilal & Anr,**1981 SCR (3) 509; **Ram Kumar Gupta & Ors. v. Har Prasad & Anr,** civil appeal No. 7648-7649 of 2009 decided by Hon'ble Apex Court on 18/11/2009 and **Commissioner, VAT v. India International Centre, ST Appeal No. 1 of 2010** decided by our own Hon'ble High Court on 19/11/2010.

13. On the other hand, Ld. Counsel for the Revenue had referred to the following endorsement appended to the impugned order :-

"No. F. SCTT-I/T&T/1798 dated 21.9.2017

M/s Gupta Bros. India, 232, Jor Bagh, New Delhi-110003.

Sh. Tarun Kapoor, CA & Counsel for the Objector, B-7, Hans Bhawan, Bahadur Shah Zafar Marg, New Delhi-110002.

Departmental Representative (Sh. Vikas Gupta, Asstt. Commr., Ward-100)

A.C., Ward-98

Guard file."

The contention raised by the Ld. Counsel for the Revenue was that as per above endorsement, copies of the impugned order were dispatched not only to the dealer at its given address, i.e. 232, Jor Bagh, New Delhi-110003 but also to Sh. Tarun Kapoor, CA & Counsel for the objector at his address B-7, Hans Bhawan, Bahadur Shah Zafar Marg, New Delhi-110002, by Speed Post, and as such, it could not be said that the impugned order was not received by Sh. Tarun Kapoor or by the dealer.

Whereas Ld. Counsel for the applicant had submitted that it was for the Revenue to prove service of the impugned order on the dealer and the CA, and that there was no proof that the order

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was served upon the dealer or its CA; on the other hand, Ld. Counsel for the Revenue had submitted that when a perusal of the impugned order made it evident that copies thereof were dispatched by speed-post, and there was no merit in the contention of learned counsel for the applicant that the impugned order was not served upon the dealer or its CA.

14. While appreciating the above contentions raised by the Ld. Counsel for the parties, this Appellate Tribunal proceeded to dispose of the application seeking condonation of delay by observing in the manner as :

> "It is well settled that sufficient cause for condonation of delay needs to be shown to the court in order to persuade the court to exercise the discretion judiciously. In **Vijay Baburao Shirke**'s case, [2021] 92 GSTR 300 (AAAR), on the point of condonation of delay, it has been observed that liberal construction of the expression "sufficient cause" is intended to advance substantial justice. This expression itself presupposes no negligence or inaction on the part of the appellant and also implies the presence of legal and adequate reasons. The concerned party is required to show that besides acting bona fide, it had taken all possible steps within its power and control and had approached the court without any unnecessary delay. Court is to take into consideration whether such delay could easily be avoided by the appellant acting with normal care and caution.

Here, in his affidavit, Sh. Tarun Kapoor, CA, has testified that while he was engaged in connection with VAT & Income Tax matters pertaining to dealer, for the Tax Period 2010-2011, he failed to collect copy of the impugned order, and further that he asked his client to collect the same at his own end.

Sh. Pranesh Gupta, one of the partners of the Dealer-Applicant, too has testified in his affidavit that their C.A Sh. Tarun Kapoor, who was dealing with their matters for a long time regularly, unfortunately failed to collect the copy of the impugned order.

It is significant to note that none of the two deponents has testified that the impugned order was never received by any of them. Learned counsel for the Revenue has rightly submitted that in absence of such deposition, it cannot be said that the impugned order was never received by the dealer and its Chartered Accountant. Onus to prove this fact was on the dealer-applicant, but the dealer has failed to do so. Therefore, the averment of the applicant that the impugned order was never received either by the CA or by the firm remains only an averment.....

As noticed above, dealer has failed to establish that the impugned order was never received either by the CA or by the firm or that there was any change of address of anyone of them.....

We have gone through the certified copy of the impugned order. As per note, on the top, in the right side corner of the impugned order, words "By Speed Post" have been specifically typed.

In his affidavit, Shri Tarun Kapoor, CA has attributed the delay to himself and, further testified that Sh. Vinod Kumar Gupta, Advocate (representing applicant in these matters) engaged by the applicant, collected/obtained certified copy of the order on 17.5.2018 after having applied for the same.

But the fact remains that Sh. Tarun Kapoor, CA of the applicant has nowhere testified that no copy of the impugned order passed by Ld. OHA was received by him at the given address by speed post.

Sh. Pranesh Gupta partner of the dealer firm has also attributed the delay to Sh. Tarun Kapoor, CA by testifying that their CA failed to collect the copy of the impugned order. He too has nowhere testified that no copy of the impugned order passed by Ld. OHA was received by him at the given address by speed post.

Learned counsel for the Revenue has also rightly pointed that nowhere in the affidavits CA Sh. Tarun Kapoor or Sh. Pranesh Gupta, partner of the dealer firm, has testified as to why the former had to apply for certified copy of the impugned order . There is also nothing on record to suggest as to on which date certified copy of the impugned order was applied for.

When CA of the firm has attributed the fault to himself and partner of the firm and learned counsel arguing this matter have also attributed the fault to the CA, submitting that the CA failed to collect copy of the impugned order, and there is no affidavit to the

effect that impugned order was never received by them, the averment in this regard remains a bald assertion.

In **Rafiq & Anr's. case (supra),** Hon'ble Court observed that it is not proper that an innocent litigant, after doing everything in his power to effectively participate in his proceedings by entrusting his case to the Advocate, should be made to suffer for the inaction, deliberate omission or misdemeanour of his agent. For whatever reason the Advocate might have absented himself from the Court, the innocent litigant could not be allowed to suffer injustice for the fault of his Advocate. Hon'ble Court further observed that the problem that agitated was whether it is proper that the party should suffer for the inaction, deliberate omission, or misdemeanour of his agent. The answer obviously was in the negative. The case is distinguishable on facts as it is not a case of non appearance of the counsel or CA before any authority.

In Ram Kumar Gupta's case (supra), counsel for the appellants Sh. Gupta could not appear before the learned Judge of the Hon'ble High Court as at that point of time, he was designated as Additional Advocate General of the State and for that reason, it was not possible for him to appear at the time of hearing of the writ petition as well as for restoration of the writ petition. There, no delay was caused by the appellants in filing the application for restoration of the writ petition. In any view of the matter, Hon'ble Court was of the view that the appellants could not be punished for the lapses even if there was any, as the appellants had engaged a learned

counsel to appear and contest the writ petition. The case is therefore distinguishable on facts.

Decision in India International Centre's case is also distinguishable on facts.

Had Sh. Tarun Kapoor been a new entrant to the field, it would have been a different matter. As per case of the applicant, the firm was having assistance of the CA-Sh. Tarun Kapoor since long. In the course of arguments, on our query, learned counsel for the applicant has submitted that Sh. Tarun Kapoor was in practice as CA for the last 4 years prior to handling with the present matter. With sufficient practice to the credit of the CA and in view of the version that the CA was dealing with their matters since long, it cannot be said that it is a case of mistake on the part of CA.

Learned counsel for the Revenue has rightly submitted that failure has been attributed to CA of the firm only to get relief in this application.

In view of the above discussion, when applicant has failed to bring on record any material to suggest that the impugned order was not communicated to the Dealer-Applicant and its Learned CA, by speed post, vide endorsement dated 21.9.2017, and in the two affidavits it has been testified that learned CA failed to collect the copy of impugned order, but no "sufficient cause" has been proved by the appellant-applicant to explain the delay in filing these

appeals, this application seeking condonation of delay deserves to be dismissed. We order accordingly."

15. Accordingly the application seeking condonation of delay was dismissed.

16. As regards the contention put forth by the learned counsel for the applicant that it was for the Revenue to establish service of order passed by learned OHA, upon the dealer, learned counsel for the Revenue has rightly submitted that when in his affidavit Sh. Tarun Kapoor, CA of the applicant has nowhere testified that no copy of the impugned order passed by Ld. OHA was received by him at the given address by speed post and in his affidavit Sh. Pranesh Gupta partner of the dealer firm nowhere testified that no copy of the impugned order passed by Ld. OHA was received by him at the given address by speed post, it was not for the Revenue to establish service of the said order upon them. Had the applicant discharged its onus first, only then the same would have shifted to the Revenue. Therefore, there is no merit in the contention raised by the learned counsel for the appellant in this regard.

17. As regards the objection raised by learned counsel for the applicant that at the time of disposal of the applications seeking

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condonation of delay, lesser time was granted to counsel for the applicant to make submissions, same is against record.

As already noticed above, on 14/12/2021, when reply was filed on behalf of the Revenue to the application seeking condonation of delay and its copy was supplied, learned counsel for the appellant-applicant had himself straightway advanced arguments on the said application making reference to and relying upon the affidavits to the above said deponents. Thereupon, learned counsel for the Revenue also put forth his arguments. It was only after the arguments were concluded on the application that the matter was listed for orders on 28/12/2021. There was no reason to hush up the matter. Therefore, it cannot be said that insufficient time was afforded to learned counsel for the appellant-applicant to present the case of the dealer.

18. It may be mentioned here that Appellate Tribunal has strong objection against certain averments put forth by the applicant in present applications for review.

As regards the manner in which application seeking condonation of delay came to be filed by the appellant, in present applications, it has been alleged that it was only after objection raised by the Revenue that the appeal was presented beyond time without an application seeking condonation of delay, that a

suggestion was made to the counsel for the applicant to file such an application, with supporting evidence in the form of an evidence, affidavit.

In this regard, it may be mentioned here that in the application filed to seek condonation of delay, the dealer – applicant had not so averred. What he put forth therein was that the Appellate Tribunal had directed the dealer – applicant to file application. The Appellate Tribunal took note of this fact and observed in the order, sought to be reviewed, that no such direction was ever issued by this Appellate Tribunal to the applicant, and that this averment was against record. That is how, the applicant has brought a twist in its version by alleging that the application was filed when the Revenue raised objection to its maintainability.

However, at the same time, in para No. 6 of present application seeking review, the applicant has put forth a shocking averment that the counsel for applicant had agreed to file application seeking condonation of delay to avoid disharmony in the court room and merely for a congenial atmosphere in the hearing before the Appellate Tribunal.

Does this averment mean that learned counsel for the applicant intended to raise noise in the court room during the proceedings on the application seeking condonation of delay or that had he

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not made up his mind to file application, learned counsel would have gone to the extent of creating disharmony in the court room or uncongenial atmosphere or as if the counsel has extended a veiled threat to the Court by so pleading in present application. We have come across this averment for the first time, which appears to have been attributed by a counsel to its party and, in other words, presented as an averment of the party. Suffice it to observe that had the counsel for applicant due respect for Court, he would have of his own struck off this averment from the application before it was signed. However, this averment was never struck off or sought to be struck off.

19. In para No. 30 of the application seeking review, applicant has gone on to allege that this Appellate Tribunal has erred by contradicting its own position, as held in its order dated 20.12.2021 in Appeal No. 251-253/ATVAT/2021.

From this averment, it appears as if the dealer – assessee has the impression that this Appellate Tribunal has recorded wrong finding and that too in respect of its case. Suffice it to state that each case is decided on its own facts. Dealer – assessee has not dared and cared to refer to the facts of the other case, for the reasons best known to the dealer. The averment of the dealer is

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baseless. Even otherwise, a review application is not maintainable in case of any wrong finding recorded by a Court.

20. The other application No. 334/22 has been filed for restoration of the appeal which came to be dismissed as barred by limitation. In the course of arguments, learned counsel for the applicant has submitted that the MA No. 334/22 is also maintainable.

On the other hand, learned counsel for the Revenue has raised objection to the maintainability of this MA No. 334/22 while submitting that the dismissal of the appeals was consequential to the dismissal of the application seeking condonation of delay.

Learned counsel for the applicant does not dispute that dismissal of the two appeals was consequential to the dismissal of the application seeking condonation of delay. In other words, in case the review application No. 333/22 was allowed, it would have led to automatic restoration of the two appeals. Reason for dismissal of two appeals was dismissal of the application seeking condonation of delay. In this situation, there was no need to file separate application for review of the order vides which the two appeals were dismissed being barred by limitation.

21. It may be mentioned here that even though written submissions and paper books have been submitted by counsel for the applicant, no argument, except the arguments discussed above, has been advanced by learned counsel for the applicant or by learned counsel for the Revenue on the review applications.

22. In view of the above discussion, we are of the considered view that this is not a case calling for review of the orders dated 28/12/2021 passed by the Appellate Tribunal. As a result, the applications are hereby dismissed. Applicant is burdened with costs of Rs.15,000/- to be deposited under the appropriate Head.

23. Copy of the order be supplied to both the parties as per rules. One copy be sent to the concerned authority. Another copy be displayed on the concerned website.

Announced in open Court.

Date : 23/5/2022

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(Rakesh Bali)
Member (A)

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(Narinder Kumar)
Member (J)

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in Appeal No. 125-126/ATVAT/18

Dated: 25/5/22

Copy to:-

(1) VATO (Ward-)
(2) Second case file
(3) Govt. Counsel
(4) Secretary (Sales Tax Bar Association)
(5). PS to Member (J) for uploading the judgment on the portal of DVAT/GST, Delhi - through EDP branch.
(6) Dealer
(7) Guard File
(8) AC(L&J)

REGISTRAR

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