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Kolkata : 1, Old Court House Corner, "Tobacco House" 1st Floor, R.No.-13 (North), Kolkata-700001
: Room No 119; 1st Floor; Diamond Arcade; 1/72, Cal Jessore Road; Kolkata – 700055

Dubai : AziziFeirouz, 803, 8th Floor, AL Furjan, Opposite Discovery Pavillion, Dubai, UAE

Contact: +919874466163; +91 9830661254

Website: www.taxconnect.co.in

Email: info@taxconnect.co.in

EDITORIAL



Friends,

Wish you a Merry Christmas!

There are many amendments proposed from 1st January 2022. Among them the most crucial two which would impact all taxpayers is related to the legal changes for availing ITC and filing GSTR-1 and GSTR-3B which have been notified vide Notification No 39/2021-Central Tax dated 21st December 2021. We will discuss the said two amendments and how the taxpayers shall prepare for the changes from the coming return filing for the period Dec'2021.

CHANGES FOR AVAILING INPUT TAX CREDIT FROM 1st JAN'22:

A new Clause 16(2)(aa) inserted whereby adding an additional condition to claiming ITC. Implications of the amendment for Taxpayers is as follows –

From 1st January 2022, Five conditions have to be satisfied to claim ITC –

- a. Recipient must possess the tax invoice/ Debit Note.
- b. Recipient must have received the goods/services
- c. The Tax charged must be actually paid to the Govt.
- d. Recipient must file its GSTR 3B
- e. The supplier must file its GSTR-1 and communicate the details to the recipient vide GSTR 2A

Rule 36(4) would be amended and not applicable going forward which requires that an excess to the extent of 5% may be availed over and above the value of GST reflected in GSTR 2A/2B.

Amendment for provisions of Recovery of tax without issuing of a Show Cause Notice:

Explanation to Section 75(12) has been added to widened the scope for recovery of tax under the provisions of Section 79 on accounts of mismatch in tax reported in GSTR 1 vis-a-vis GSTR 3B. Section 79 on recovery of tax States that where any tax payable is not paid, the proper officer shall proceed to recover without issuing of a Show Cause Notice by deducting from refunds, detaining and selling goods or immovable property, collect from debtors,

The precautions thus to be taken from January 2022 are as follows –

1. File the GSTR 1 so that on outward tax liability which as per GSTR-1 is the actual tax liability. Any mistake in filing GSTR-1 and its consequent difference with GSTR-3B may lead to recovery proceedings u/s 79 of The CGST Act without issuance of a SCN.
2. Be careful in uploading Credit notes. In case of a Credit Note which is not uploaded in the GSTR-1, there may be a difference between GSTR-1 and GSTR-3B. This may lead to recovery proceedings u/s 79 of The CGST Act without issuance of a SCN.
3. In case of a major difference between GSTR 1 and GSTR 3B, one may represent before the Jurisdictional officer as to the reasons of the difference so that recovery proceedings may not be initiated.
4. Another option would be to pay the excess tax in this month and adjust it in the GSTR 3B of the next month to prevent any recovery proceedings.

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

Truly Yours

Editor:

Vivek Jalan

Partner - Tax Connect Advisory Services LLP

Co-Editors:

Rohit Sharma

Senior Manager – Tax Connect Advisory Services LLP

Rajanikant Choudhury

Manager: Tax Connect Advisory Services LLP

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TAX CALENDAR

Due date (2021)	Form/Return/Challan	Reporting Period	Description
30 th December	TDS Challan-cum-statement	November 2021	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, 194 IB, 194M.
31 st December	Income Tax Return	AY 2021-22	Income Tax Return for Non-Audit cases and who have not entered into any international or specified domestic transactions.
31 st December	Form No. 15G/15H	July to September 2021	Upload the declarations received from recipients in Form No. 15G/15H during the quarter ending September, 2021
31 st December	GSTR- 9	FY 2020-2021	GST Annual Return (GSTR-9)
31 st December	GSTR 9C	FY 2020-2021	Statement of Reconciliation under GST (GSTR-9C)

INCOME TAX

NOTIFICATION

REOPENING OF ASSESSMENT U/S 147 - ELIGIBILITY OF REASONS TO BELIEVE, NFINITY. COM FINANCIAL SECURITIES LIMITED VERSUS ASSISTANT COMMISSIONER OF INCOME TAX – 4 (1) (1) & ORS.

BRIEF: All material facts had been disclosed by petitioner in the course of the regular assessment proceedings and the reasons recorded for initiation of reassessment too give reference only to the details already submitted by petitioner in the course of the original assessment proceedings and nothing more. It is a well settled judicial principle that the true test of income chargeable to tax escaping assessment is whether there exists fresh “tangible material” on the basis of which an appropriate conclusion can be reached.

In the absence of such fresh material, the reassessment proceedings would be invalid. This Court has held that reassessment based on a reconsideration of material already available on record at the time of the original assessment proceedings tantamounts to a change of opinion and would be invalid.

Since the relevant facts, which were already on record at the time of the original assessment proceedings, also form the basis for the initiation of the subject reassessment proceedings, it is amply clear that there was no fresh material that could have come to the notice of respondent no.1 to warrant reopening of assessment. Information received from DDIT (Inv.) regarding petitioner indulging in illegitimate activity of booking bogus profit/loss on scrip of M/s. Divine Multimedia (India) Ltd. would not by itself constitute any fresh material for reopening assessment. Information received

from DDIT (Inv.) has already been examined and inquired into by respondent no.1 in the original assessment proceedings where after submitting various details with regard to details of investments, details of short term capital gains and long term capital gains the same had been satisfactorily explained and accepted by respondent no.1.

Held-The notice issued under Section 148 is issued without jurisdiction and requires to be set aside. -

[Decided in favour of assessee]

GST

CIRCULAR

GST ON SERVICE SUPPLIED BY RESTAURANTS THROUGH E-COMMERCE OPERATORS

OUR COMMENTS: The Central Board of Indirect Taxes and Customs (CBIC) vide notification 167/23/2021 dated 17th December 2021, clarified that the e-commerce operators are liable to pay GST on restaurant services. The GST Council in its 45th meeting held on 17th September, 2021 recommended to notify, 'Restaurant Service' under section 9(5) of the CGST Act, 2017. Accordingly, the tax on supplies of restaurant service supplied through e-commerce operators shall be paid by the e-commerce operator.

In this regard notification No. 17/2021 dated 18.11.2021 has been issued. "Certain representations have been received requesting for clarification regarding modalities of compliance to the GST laws in respect of supply of restaurant service through e-commerce operators (ECO)," the circular read. As 'restaurant service' has been notified under section 9(5) of the CGST Act, 2017, the ECO shall be liable to pay GST on restaurant services provided, with effect from the 1 January, 2022, through ECO. Accordingly, the ECOs will no longer be required to collect TCS and file GSTR 8 in respect of restaurant services on which it pays tax in terms of section 9(5).

On other goods or services supplied through ECO, which are not notified u/s 9(5), ECOs will continue to pay TCS in terms of section 52 of CGST Act, 2017 in the same manner at present. As ECOs are already registered in accordance with rule 8(in Form GST-REG 01) of the CGST Rules, 2017 (as a supplier of their own goods or services), there would be no mandatory requirement of taking separate registration by ECOs for payment of tax on restaurant

service under section 9(5) of the CGST Act, 2017. The circular clarified that ECOs will be liable to pay GST on any restaurant service supplied through them including by an unregistered person.

It is clarified that the aggregate turnover of person supplying restaurant service through ECOs shall be computed as defined in section 2(6) of the CGST Act, 2017 and shall include the aggregate value of supplies made by the restaurant through ECOs. Accordingly, for threshold consideration or any other purpose in the Act, the person providing restaurant service through ECO shall account such services in his aggregate turnover. ECOs provide their own services as an electronic platform and an intermediary for which it would acquire inputs/input service on which ECOs avail input tax credit (ITC). The ECO charges commission/fee etc. for the services it provides. The ITC is utilised by ECO for payment of GST on services provided by ECO on its own account (say, to a restaurant). The situation in this regard remains unchanged even after ECO is made liable to pay tax on restaurant service. ECO would be eligible to ITC as before. Accordingly, it is clarified that ECO shall not be required to reverse ITC on account of restaurant services on which it pays GST in terms of section 9(5) of the Act. It may also be noted that on restaurant service, ECO shall pay the entire GST liability in cash (No ITC could be utilised for payment of GST on restaurant service supplied through ECO). Registered persons supplying restaurant services through ECOs under section 9(5) will report such supplies of restaurant services made through ECOs in Table of GSTR-1 and Table 3.1 (c) of GSTR-3B, for the time being.

[For further details please refer to the Circular]

FEMA

CIRCULAR

EXIM BANK GOVERNMENT OF INDIA SUPPORTED LINE OF CREDIT (LoC) OF USD 40 MILLION TO THE GOVERNMENT OF THE TOGOLESE REPUBLIC

OUR COMMENTS: Vide Circular 21 dated 23rd December 2021, Export-Import Bank of India (Exim Bank) has entered into an agreement dated June 23, 2021 with the Government of the Togolese Republic, for making available to the latter, Government of India supported Line of Credit (LoC) of USD 40 million (USD Forty million only) for the purpose of financing the project for electrification of 350 villages through Solar Photo Voltaic Systems in the Togolese Republic. Under the arrangement, financing of export of eligible goods and services from India, as defined under the agreement, would be allowed subject to their being eligible for export under the Foreign Trade Policy of the Government of India and whose purchase may be agreed to be financed by the Exim Bank under this agreement. Out of the total credit by Exim Bank under the agreement, goods, works and services of the value of at least 75 per cent of the contract price shall be supplied by the seller from India, and the remaining 25 per cent of goods and services may be procured by the seller for the purpose of the eligible contract from outside India.

The Agreement under the LoC is effective from December 07, 2021. Under the LoC, the terminal utilization period is 60 months after the scheduled completion date of the Project.

Shipments under the LoC shall be declared in Export Declaration Form as per instructions issued by the Reserve Bank from time to time.

No agency commission is payable for export under the above LoC. However, if required, the exporter may use his own resources or utilize balances in his Exchange Earners' Foreign Currency Account for payment of commission in free foreign exchange. Authorised Dealer (AD) Category- I banks may allow such remittance after realization of full eligible value of export subject to compliance with the extant instructions for payment of agency commission.

AD Category – I banks may bring the contents of this circular to the notice of their exporter constituents and advise them to obtain complete details of the LoC from the Exim Bank's office at Centre One, Floor 21, World Trade Centre Complex, Cuffe Parade, Mumbai 400 005 or from their website www.eximbankindia.in

The directions contained in this circular have been issued under section 10(4) and 11(1) of the Foreign Exchange Management Act (FEMA), 1999 (42 of 1999) and are without prejudice to permissions/ approvals, if any, required under any other law.

[For further details please refer the Circular]

CUSTOMS

NOTIFICATION

ANTI-DUMPING DUTY ON IMPORTS OF HYDROGEN PEROXIDE FROM BANGLADESH IMPOSED

OUR COMMENTS: Vide notification number 72/2021 dated 17th December 2021, in the matter of import of 'Hydrogen Peroxide' (hereinafter referred to as the subject goods), falling under tariff items 2847 00 00 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), originating in or exported from Bangladesh, Taiwan, Korea RP, Indonesia, Pakistan and Thailand (hereinafter referred to as the subject countries), the designated authority, vide its final findings notification No.14/03/2015- DGAD, dated the 11th April, 2017, published in the Gazette of India, Extraordinary, Part I, Section 1, dated the 11th April, 2017, had come to the conclusion that the product under consideration exported to India from the subject countries below its associated normal value, thus, resulting in dumping of the product and some of the imports were also causing material injury to the domestic industry;

And whereas, the designated authority had recommended imposition of definitive anti-dumping duty on imports of the subject goods originating in, or exported from, the subject countries;

And whereas, on the basis of the aforesaid findings of the designated authority, the Central Government had imposed an anti-dumping duty on the subject goods, vide notification of the Government of India in the Ministry of Finance (Department of Revenue), No.28/2017- Customs (ADD), dated the 14th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (i), vide number G.S.R. 587(E), dated the 20th June, 2017; as amended by notification No. 33/2018-Customs (ADD), dated 1st June, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (i), vide number G.S.R.523(E), dated the 4th June, 2018;

And Whereas, M/s. Al-Razi Chemical Complex Limited (Exporter/ Trader) [Bangladesh] have requested for review in terms of rule 22 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination

of Injury) Rules, 1995, in respect of exports of the subject goods made by them, and the designated authority, vide new shipper review notification No.7/25/2021-DGTR, dated the 10th September, 2021, published in the Gazette of India, Extraordinary, Part I, Section 1, dated the 10th September, 2021, has recommended provisional assessment of all exports of the subject goods made by the above stated party till the completion of the review by it;

Now, therefore, in exercise of the powers conferred by sub-rule (2) of rule 22 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, the Central Government, after considering the aforesaid recommendation of the designated authority, hereby orders that pending the outcome of the said review by the designated authority, the subject goods, when originating in or exported from the subject country by M/s. Al-Razi Chemical Complex Limited (Exporter/ Trader) [Bangladesh] and imported into India, shall be subjected to provisional assessment till the review is completed.

2. The provisional assessment may be subject to such security or guarantee as the proper officer of customs deems fit for payment of the deficiency, if any, in case a definitive antidumping duty is imposed retrospectively, on completion of investigation by the designated authority.

3. In case of recommendation of anti-dumping duty after completion of the said review by the designated authority, the importer shall be liable to pay the amount of such antidumping duty recommended on review and imposed on all imports of subject goods when originating in or exported from the subject country by M/s. Al-Razi Chemical Complex Limited (Exporter/ Trader) [Bangladesh] and imported into India, from the date of initiation of the said review.

[For further details please refer the Notification]

DGFT

NOTIFICATION

'FREE' IMPORT POLICY FOR IMPORT OF MOONG UNDER HSN-0713 31 90 EXTENDED UPTO 31.03.2022

OUR COMMENTS: The Central Government vide notification number **S.O. 5317(E)** dated 20.12.2021 in partial modification of Department of Commerce Notification S.O. 1858 (E) dated 15.05.2021 hereby extends the 'Free' import policy for Import of Moong [Beans of the SPP Vigna Radiata (L.) Wilczek] under ITC (HS) Code 0713 31 90 up to 31.03.2022.

For import of the above-mentioned item, the Bill of Lading/Lorry Receipt should be issued on or before 31.03.2022. The said consignments may be cleared given that the 'Out of charge' has been authorised by the Customs Authorities on or before 30.06.2022.

Effect of the Notification: Import policy for Moong shall be "Free" for consignments with Bill of Lading/Lorry Receipt dated on or before 31.03.2022. Imports should be cleared from Customs on or before 30.06.2022.

This issues with the approval of Minister of Commerce and Industry.

NOTIFICATION

SCOMET UPDATES 2021 - AMENDMENT IN APPENDIX 3 (SCOMET ITEMS) TO SCHEDULE-2 OF ITC (HS) CLASSIFICATION OF EXPORT AND IMPORT ITEMS, 2018 - 47/2015-2020

OUR COMMENTS:The Central Government vide Notification No. 47/2015-2020 dated 20.12.2021 hereby makes the amendment in Appendix 3 (SCOMET Items) to Schedule- 2 of ITC (HS) Classification of Export and Import Items 2018, as enclosed in the Annexure to this Notification.

The updated Appendix 3 (SCOMET Items) to Schedule- 2 of ITC (HS) Classification of Export and Import Items, 2018 including annexure to this notification would be uploaded on the web-portal of DGFT under heading "Regulatory Updates" and Sub-heading "Import, Export and SCOMET policy".

In order to provide transition time to the industry, this Notification shall come into effect after 30 days of the date of issuance i.e. 19th Jan, 2022.

Effect of this Notification:

Annual SCOMET Update - 2021 has been notified to amend the Appendix 3 (SCOMET Items) to Schedule-2 of ITC (HS) Classification of Export and Import Items, 2018.

NOTIFICATION

'FREE' IMPORT POLICY FOR IMPORT OF TUR/PIGEON PEAS UNDER HSN- 0713 60 00 EXTENDED UPTO 31.03.2022

OUR COMMENTS: The Central Government notification number S.O. 5318(E) dated 20.12.2021 hereby amends the Department of Commerce Notification S.O. 1858 (E) dated 15.05.2021 read with Department of Commerce Notification S.O. 3707(E) dated 13.09.2021 as under:-

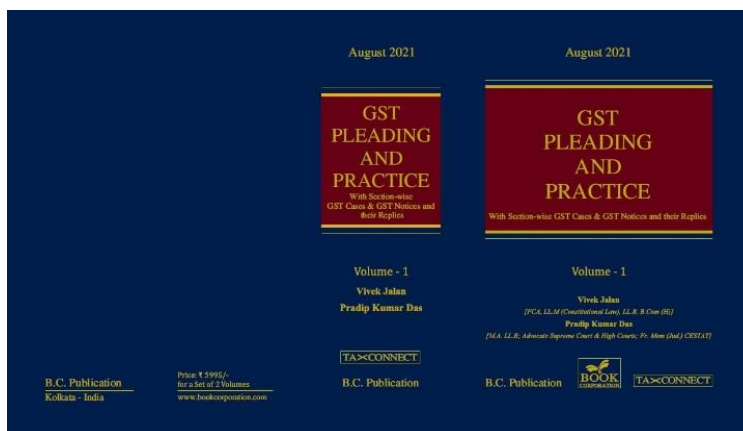
The "Free" Import Policy of Tur/Pigeon Peas (Cajanus Cajan) (ITC(HS) 0713 60 00) and Urad [Beans of the SPP Vigna Mungo (L.) Hepper] (ITC(HS) 0713 3110) shall stand extended up to 31.03.2022.

For import of the above-mentioned two items, the Bill of Lading/Lorry Receipt should be issued on or before 31.03.2022. The import of such consignments may be cleared given that the 'Out of charge' has been authorised by the Customs Authorities on or before 30.06.2022.

[For further details please refer the Notifications]

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Authors:

Vivek Jalan

[FCA, LL.M (Constitutional Law), LL.B, B.Com(H)]

Pradip Kumar Das

[M.A. LL.B; Advocate Supreme Court & High Courts; Fr. Mem (Jud.) CESTAT]

Published by:

BOOK CORPORATION

4, R. N. Mukherjee Road
Kolkata 700001

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Cell : 9830010297, 9331018333

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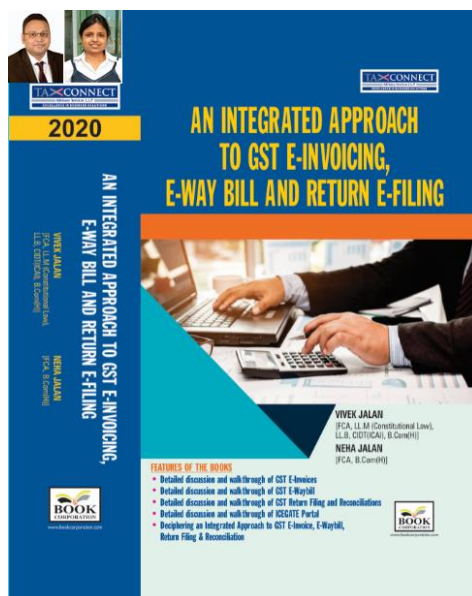
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Authors:

Vivek Jalan

[FCA, L.L.M (Constitutional Law), L.L.B, CDT(ICA), B.Com(H)]

Neha Jalan

[FCA, B.Com(H)]

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Phones: (033) 64547999

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Authors:

Vivek Jalan

[FCA, L.LM (Constitutional Law), L.LB, CIDT(ICA), B.Com(H)]

Pradip Kumar Das

[M.A. LL.B; Advocate Supreme Court & High Courts; Fr. Mem (Jud.) CESTAT]

Published by:

BOOK CORPORATION

4, R. N. Mukherjee Road

Kolkata 700001

Phones: (033) 64547999

Cell : 9830010297, 9331018333

Order by email: bookcorporation@gmail.com

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Phones: (033) 40016761

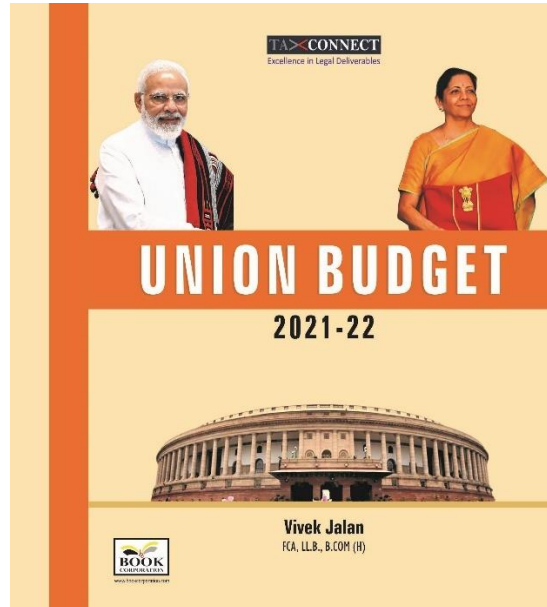
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Authors:

Vivek Jalan

[FCA, L.LM (Constitutional Law), L.LB, CIDT(ICA), B.Com(H)]

Published by:

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4, R. N. Mukherjee Road
Kolkata 700001

Phones: (033) 64547999

Cell : 9830010297, 9331018333

Order by email: bookcorporation@gmail.com

Website : www.bookcorporation.com

In Association With:

TAX CONNECT ACADEMY

1, Old Court House Corner
Kolkata 700001

Phones: (033) 40016761

Cell : 9874466163, 9830661254

Order by email: info@taxconnect.co.in

Website : www.taxconnect.co.in

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OUR OFFICES:

MUMBAI

Building No.9, Flat- 403,
LodhaEternis, 11th Road,
MIDC, Andheri(E)-400093

Contact Person: Rajanikant
Choudhury

Email:
rajnikan.choudhary@taxcon
nnect.co.in

BANGALORE

A-414,Carlton Towers, 19th
Main; Road Hal Old Airport
Rd, Domlur, Bengaluru,
Karnataka-560008

Contact Person: Manmit
Sinha

Email:
manmit.sinha@taxconnectdel
hi.co.in

DELHI

B-139, 2nd Floor,
Transport Nagar, Noida-
201301 (U.P)

Contact Person: Poonam
Khemka

Email:
poonam.khemka@taxconn
ectdelhi.co.in

KOLKATA

1, Old Court House
Corner, "Tobacco House",
1st Floor, Room No. 13
(N), Kolkata-700001

Contact Person: Priyanka
Chowdhury

Email:
priyanka.chowdhury@taxc
onnect.co.in

KOLKATA

R No 119; 1st Floor;
Diamond Arcade; 1/72,
Cal Jessore Road;
Kolkata – 700055

Contact Person: Priyanka
Chowdhury

Email:
priyanka.chowdhury@tax
connect.co.in

DUBAI

Azizi Feirouz, 803, 8th Floor,
AL Furjan, Opposite
Discovery Pavillion, Dubai,
UAE

Contact Person: Rohit Sharma

Email:
rohit.sharma@taxconnect.co.i
n

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