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W.P.No.35902 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.09.2022

PRONOUNCED ON : 16.09.2022

CORAM

**THE HON'BLE MR. JUSTICE S.VAIDYANATHAN**

**AND**

**THE HON'BLE MR. JUSTICE C. SARAVANAN**

W.P.No.35902 of 2007

M/s. Wavin India Limited,  
rep.by M. Gersome Inbamani,  
Manager & Power of Attorney Holder,  
65 & 66, Industrial Estate,  
Ambattur, Chennai – 58.

.. Petitioner

VS.

1. The Sales Tax Appellate Tribunal,  
(Main Bench),  
City Civil Court Buildings,  
Chennai – 104.

2. The Commercial Tax Officer,  
Koyambedu Assessment Circle,  
Maduravoyal, Chennai – 102.

.. Respondents



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**Prayer:** Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorarified Mandamus to call for the records on the file of the 1<sup>st</sup> respondent in T.A. No. 486/03 dated 12.06.2007 and quash the same as invalid and illegal, and without jurisdiction and further directing the 1<sup>st</sup> respondent to pass orders on merits under Section 6-A of the Central Sales Tax Act, 1956.

For Petitioner        ::        Mr.C. Venkataraman  
For Respondents    ::        Ms.K. Vasanthamala,  
Govt. Advocate (T)

### **ORDER**

The petitioner has challenged the impugned order dated 12.06.2007 passed by the 1<sup>st</sup> respondent Tribunal in T.A.No.486/03. Relevant portion of the impugned order reads as under:-

*"6.We have considered the arguments on both the sides and also verified the connected records. It is seen from the records that the respondent had originally been assessed by the proceedings dated 28.6.1996 on a total and*



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*taxable turnover of Rs.6,64,77,414/- and Rs.3,36,40,102/- respectively under the Central Sales Tax Act, 1956 for the year 1994-95. The taxable turnover determined above included a turnover of Rs.29,95,525/- on which the claim of exemption as branch transfer was disallowed by the assessing authority and treated as direct interstate sales. Against the above assessment the appellants preferred an appeal before the Appellate Assistant Commissioner (CT), VI, Chennai. After considering the arguments and the connected records, the first appellate authority in his orders dated 11.12.1998 had confirmed the assessment on a turnover of Rs.10,23,728/-. The balance turnover of Rs.19,71,803/- was remanded back to the assessing authority for verification of the claim of exemption with reference to the documents produced by the appellants. When the assessing authority issued notice with reference to the remand directions of the first appellate authority, the appellants had filed the documents relating to the branch transfer not only for the remanded turnover of Rs.19,71,803/-, but also for the confirmed turnover of Rs.10,23,728/-. Since the first appellate authority had already confirmed the assessment on the turnover of Rs.10,23,728/- the assessing officer had not taken into consideration, the documents produced by the appellants. He had confirmed the assessment on this turnover when he passed fresh orders on 31.12.2002. It is the contention of the learned counsel for the appellants that the Commissioner of Commercial Taxes in the instructions issued in Acts Cell IV/41367/2000 dated 10.7.2000 had*



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*instructed the authorities to accept the declarations in Form F also and to rectify the assessment under section 55 of the Tamil Nadu General Sales Tax Act, 1959. Though the appellants had not produced the declarations in Form F, the other documents produced by them ought to have been admitted by the assessing authority and also the first appellate authority. But the claim of the learned counsel is found to be not acceptable. The instructions relied on by the learned counsel relates to declarations that are obtained and produced subsequent to original assessment. Even the learned counsel himself had admitted that the appellants are not having the required declarations and that therefore, the claim for rectification of assessment under section 55 of the Tamil Nadu General Sales Tax Act is misplaced. Further, still the original assessment in this case was made on 28.6.1996. The rectification, if any, permitted under section 55 of the Tamil Nadu General Sales Tax Act, 1959, has to be made within 5 years from the date of order. The period of limitation, therefore, had expired on 27.6.2001. The appellants had produced the other documents by their letter dated 6.12.2002 only. By the time they had filed the letter before the assessing officer, the period of limitation provided under Section 55 of the Tamil Nadu General Sales Tax Act, 1959 had long expired. Further, when the first appellate authority by his order dated 11.12.1998 had confirmed the assessment on the disputed turnover of Rs.10,23,728/-, the appellants ought to have preferred second appeal before the appropriate Forum. They had allowed the orders*



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*of the first appellate authority to become final by not preferring any appeal within the permitted time. The first appellate authority on considering these facts only had dismissed the appeal. We find that the orders of the first appellate authority is correct and no interference is called for in this case.*

*In the result, the appeal stands dismissed."*

2. It is submitted that it was not mandatory for the petitioner to file Form - F to claim exemption under Section 6A of Central Sales Tax Act, 1956 during the period in dispute and therefore the petitioner was entitled to produce any other documents in its possession to establish branch transfer.

3. In this connection, a reference was made to the decision of the Division Bench of this Court in **A. Dhandapani V. State of Tamil Nadu and Another** (1995) 96 STC 98 (Mad).

4. A reference was also made to the decision of the Full Bench of the Kerala High Court in **M.Syed Alavi and Others Vs. State of Kerala**,

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(1981) 48 STC 150 (Ker). The Full Bench of the Kerala High Court in the above case relied on several decisions of various Courts including the decision of this Court in **S. Senniappa Mudaliar V. The Government of Madras**, (1965) ILR 2 Mad 397. A reliance was placed on the decision of this Court in **State of Tamil Nadu V. Sharada Enterprises**, (2019) 71 GSTR 107 wherein the above view was followed.

5. It was submitted that an issue which was not agitated by way of further appeal after the case was partly allowed and partly remanded by the First Appellate Authority back to the Original Authority, the Appellate Commissioner and the Tribunal could still decide the issue afresh notwithstanding the fact that no appeal was filed against the order of the First Appellate Authority dismissing the appeal partly and partly remanding the case back to the Assessing Officer. It is therefore submitted that the impugned order rejecting the prayer of the petitioner therefore deserves to be interfered with.



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6. Per contra, learned Government Advocate (Taxes) would submit that the impugned order is well-reasoned and thus, it requires no interference. It is further submitted that the petitioner has no documents to substantiate that there were branch transfers.

7. It is further submitted that having given up their rights in the first round of litigation against the order dated 11.12.1998 of the Appellate Assistant Commissioner, it was not open to the petitioner to re-agitate the issue either at the stage when the case was taken up during remand or during further appeal.

8. That apart, it is submitted that the period of five years limitation under Section 55 of the Tamil Nadu General Sales Tax Act, 1959 expired on 27.06.2001 from order dated 28.06.1996 of the Assessing Officer.

9. Therefore, it is submitted that on this count also the order cannot be revised under Section 55 of the Tamil Nadu General Sales Tax Act, 1959



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after a lapse of five years from the date of order of final assessment for revision inasmuch as the turnover under dispute was not in appeal between the period 12.12.1998 and 20.04.2003 and thereby, the petitioner had allowed the order of the First Appellate Authority to become final.

10. We have considered the arguments advanced by the learned counsel for the Writ Petitioner and the learned Government Advocate for the respondents. We have perused the impugned order and the order passed earlier by the Assessing Authority and the Appellate Authority both before and after remand order of the latter.

11. The purpose of assessment under the taxing enactment is to arrive at the correct tax payable by an assessee. An enquiry that is contemplated, the burden of proof was on the petitioner to establish that the movement of goods was otherwise than by way of sale and for this purpose, the petitioner was required to furnish Form - F as is prescribed. The present writ petition is inspired from the decision of the Hon'ble Full Bench of Kerala High



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Court in **M.Syed Alavi and Others vs. State of Kerala**, (1981) 48 STC 150 (Ker) wherein, after referring to sub-section (2) to Section 105 of C.P.C, the Court in para 17 ultimately held as under:-

*"In the instant case, it is true that no appeal was filed against the decision dated 12th April, 1976, of the Appellate Assistant Commissioner. The effect of non-filing of an appeal is that the finding is binding on the assessing authority when the case went back to that authority and also on the Appellate Assistant Commissioner while disposing of the appeal from the revised decision of the assessing authority. It is not binding on the Appellate Tribunal in the appeal filed under Section 9 against the decision of the Appellate Assistant Commissioner. The Appellate Tribunal was free to arrive at its own decision on the question of liability of the petitioners to assessment to sales tax".*

12. The decision of the Kerala High Court also refers to an earlier decision of this Court in **S.Senniappa Mudaliar vs. The Government of Madras**, (1965) ILR 2 Mad 397 apart from other decisions of various courts including that of the Hon'ble Supreme Court. This view was followed by the Division Bench of this Court in **State of Tamil Nadu vs. Sharada Enterprises**, (2019) 71 GSTR 107 (Mad.) cited by the learned



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counsel for the petitioner.

13. Earlier, the petitioner had suffered an assessment order at the hands of the second respondent Assessing Officer on 28.08.1996 wherein several issues including non-furnishing of Form - F on account of branch transfer was discussed and confirmed against the petitioner. Thus, exemption under Section 6A of the Central Sales Tax Act, 1956 was disallowed.

14. The petitioner preferred an appeal before the Appellate Assistant Commissioner (CT)-VI in AP.CST No.85/96. The Appellate Assistant Commissioner (CT)-VI, by his order dated 11.12.1998, partly dismissed the appeal and thereby confirmed the levy of tax in respect of turnover for branch transfer in absence of Form - F and other documents and partly remanded the case back to the Original Authority with the following observation:-

**8. POINT:** *In this case I find that the*

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*Assessing Officer has assessed the turnover of Rs.6,67,585/- since the appellants have not filed any declarations in Form F in support of their claim of stock transfer. Even at the time of hearing, the appellants have not mentioned anything about this turnover, specifically not in their ground of appeal. **At the time of hearing, the appellants did not also produce any declaration form in support of their claim of stock transfer and they have not also filed any details to show that there has been actually a stock transfer. In the absence of any declaration forms and any other supporting materials I conclude that the Assessing Officer is justified in disallowing exemption on this turnover and accordingly I confirm the levy of tax at 11.6% on the turnover of Rs.6,67,585/-.***

- i) in regard to the assessment on the turnover of Rs.23,27,946/- the Assessing Officer has observed that the appellants did not file declarations in Form F for the turnover of Rs.3,56,143/-. **The appellants in their appeal petition have not specified whether they are in a position to file the declaration forms, in support of their claim. Even at the time of hearing, the appellants have not filed any declaration forms in Form F or any other supporting documents to show that the above turnover actually related to stock transfer. I therefore confirm the assessment made at 11.6% on the turnover of Rs.3,56,143/-, since the appellants are***



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*not in possession of any declaration forms or any other records in support of their claim of exemption. ....*

*..... Also I find that the Assessing Officer has not given reasonable time and opportunity to the appellants to prove their case. I therefore, remand the turnover of Rs.19,71,803/- back to the Assessing Officer for giving an opportunity to the appellants to produce all other supporting documents to prove that there has not been any pre-existing contract and that the goods have been dispatched to their Pondicherry branch in the normal course of business.*

*ii) In regard to levy of penalty, in as much as the assessment has been Partly Dismissed and Partly Remanded I set aside the levy of penalty also and remand the same back to the Assessing Officer for redo and restructuring in the light of the changed circumstances."*

15. As far as the issue relating to branch transfer for which Section 6A exemption was denied by the Assessing Officer and confirmed by the Appellate Assistant Commissioner, the petitioner did not take it up on further appeal before the Appellate Tribunal.

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16. Thereafter, the Additional Commercial Tax Officer on 31.12.2002 passed an order in the remand proceeding. Relevant portion of the order dated 31.12.2002 of the Original Assessing Authority reads as under:-

*4. In pursuance of the order of the AAC (CT) VI, I have examined the reply of the dealer with the connected supporting documents in support of their claim of exemption on stock transfer. Accordingly, I confirm the levy of tax @ 11.6% on the turnover of Rs.6,67,585/- for which they have not filed any declaration in Form 'F' as ordered by AAC (CT), and other details regarding stock-transfer. Similarly, out of Rs.23,27,946/- the turnover of Rs.3,56,143/- are not covered by Form 'F' or by any other supporting documents. The AAC (CT) VI has also confirmed the levy of tax on the turnover of Rs.3,56,143/- @ 11.6%. For the remaining turnover of Rs.19,71,803/- as stock transfer, copies of invoices, lorry receipt, stock details of Pondicherry branch and assessment order of Pondicherry branch office have been received and verified. Even though Form 'F' is not filed by the dealers, they have filed copies of transport documents such as lorry receipts, stock transfer invoices, verified the claim and found to be in order. As per the decision of the Allahabad High Court in 67 STC 266 ( Commissioner of Sales Tax vs. Agro Food Products) and 88 STC 153 (State of Orissa vs. Ramnarain Sitaram)*

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*wherein it was held that Form 'F' is not mandatory and other evidences can be tendered. Further, the goods have been dispatched to the Pondicherry branch in the normal course of business and not on the basis of pre-existing contract. I, therefore, allow the exemption claimed on stock transfer amounting to Rs.19,71,803/- which are covered by supporting documents such as lorry receipts, tax paid by Pondicherry branch as per assessment order, etc.*

*In view of the above, I re-fix the assessment of Tvl.Wavin India Ltd., Chennai 58 for the year 1994-95 under the CST Act 1956 and assess the dealers as under:-*

Inter state sales covered by Form 'C' @ 4%	3,06,42,659.00/-
Inter-state sales not covered by Form 'C' @ 11.6%	1,912.00/-
Branch transfer Form 'F' not filed as confirmed by the AAC (CT) VI @ 11.5%	6,67,585.00/-
Branch transfer Form 'F' not issued as confirmed by the AAC (CT) VI @ 11.6%	3,56,143.00/-
Taxable turnover re-fixed	3,16,68,299.00/-
ADD : Exemption allowed	

i) Sales against Form H	3,18,08,805.00
ii) branch transfer to Pondicherry covered by Form 'F' and other connected records (1028507 +1971803)	30,00,310.00
Taxable turnover re-fixed	6,64,77,414.00



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i) Sales against Form H	3,18,08,805.00
Tax due @ 4% on Rs.3,06,42,659.00	12,25,706.36
Tax due @ 11.6% on Rs.10,25,640.00	1,18,974.24
	13,44,680.60

As proposed, penalty is levied u/s.92A of the CST Act read with Sec.12(3)(b) as amended provisions on the difference of tax paid as per Returns and tax paid as per final assessment:

	PENALTY	PENALTY
Penalty due	59,432 -	40.00
Penalty paid	Nil	Nil
Balance	59,432-	40.00

Notice in Form 54 issued

Tax	
Total due	Rs.13,44,681.00
Paid	Rs.12,25,818.00
Balance	Rs. 1,18,863.00

17. Though the petitioner failed to challenge the order of the



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Appellate Assistant Commissioner dated 11.12.1998, insofar as, rejection of exemption under Section 6A(1) of the Central Sales Tax Act, 1956 is concerned, the fact remains that the benefit of branch transfer was partly allowed to the petitioner to the extent of Rs.19,71,803/- even though, the petitioner was not able to produce Form - F before the Assessing Officer pursuant to remand order as is evident from a reading of order dated 31.12.2002 of the Assessing Officer.

18. Aggrieved by the same, the petitioner preferred an appeal before the Appellate Assistant Commissioner (CT)-VI in AP.CST.31/2003 wherein the petitioner sought to once again resurrect the issue given up by the petitioner i.e., as regards branch transfer which was disallowed by the Assessing Officer.

19. The Appellate Assistant Commissioner (CT)-VI, by his order dated 22.09.2003 dismissed the appeal. Relevant portion of the order dated 22.09.2003 of the Appellate Assistant Commissioner (CT)-VI in AP.CST.31/2003, is extracted below:-



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"6. Prima facie, the orders of the appellate authority cannot be questioned before the same appellate authority. The Appellate Assistant Commissioner has no powers to review his own orders. If the appellants were aggrieved of the appellate orders, or that they have found that certain argument advance before the appellate authority and the records produced before it are not properly taken note of by the said appellate authority, the course open to them is to file a second appeal before the competent authority and not to question before the same authority. And when the appellate authority has confirmed the levy of tax on certain turnovers after hearing the appeal, the duty of the assessing authority is to implement the orders of the appellate authority as per Rule 32(2) of the TNGST Rules, 1959. Secondly, the appellants have argued that the Commissioner of Commercial Taxes has instructed the assessing officers to reopen the assessment within the period of limitation wherever statutory declarations in Form -C or F as the case may be, are produced before the assessing officers with regard to the turnover wherein the assessing authority had earlier levied tax for want of such declarations. Here again, the assessing authority cannot be found fault with for not following the declaration of the Commissioner. In the instant case, the appellants have not produced the declarations covering the entire turnover arguing that production of Form-F is not mandatory. And more important is that the acceptance of Form at a later date or reopening of



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assessment accepting the declarations at a later date cannot be a routine , or mechanical procedure; on the other hand, it can be only on sufficient cause as decided by various courts of law on this issue, and also as instructed by the Commissioner of Commercial Taxes, Chennai. Here, it is clearly seen that the appellate authority has decided that the claim of exemption on certain turnovers preferred under Section 6A of the CST Act, 1956 is not in order, and apt to be rejected. The assessing authority has also not seen sufficient cause for reopening the assessment. In short, I do not find anything amiss in the action of the assessing authority in implementing the appeal orders and levying tax on the turnover of Rs.3,56,143/- confirming the tax already levied. However, the penalty levied in relation to those turnovers which was earlier remanded for reconsideration is not sustainable as per the decision of the Madras High Court in the case of Apollo Saline Pharmaceuticals Private Limited (2002) 125 STC 505.

7. In fine, the tax levied on the turnovers disputed is confirmed and the penalty of Rs.59,432 – levied under Section 12(3)(b) of the Act vide the impugned proceedings is deleted.

In fine, the AP.CST.31/2003 is modified".

20. Under Section 55 of the of the Tamil Nadu General Sales Tax Act, 1959 which is applicable for assessment under Central Sales Tax



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Act,1956, a five year window period is prescribed for revising the assessment. It reads as under:-

Section 55 Power to rectify any error apparent on the face of the record. –

- (1) An assessing authority or an appellate or revising authority (including the Appellate Tribunal) may, at any time within [five years] from the date of any order passed by it, rectify any error apparent on the face of the record;

Provided that no such rectification which has the effect of enhancing an assessment or any penalty shall be made unless such authority has given notice to the dealer and has allowed him a reasonable opportunity of being heard.

Section 55(2) Where such rectification has the effect of reducing an assessment or penalty, the assessing authority shall make any refund which may be due to the dealer.

Section 55(3) Where any such rectification has the effect of enhancing an assessment or penalty, the assessing authority shall give the dealer a revised notice of assessment or penalty and thereupon the provisions of this Act and the rules made thereunder shall apply as if such notice had been given in the first instance.

Section 55(3-A) The powers under sub-section (1) may be exercised by the assessing authorities even



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though the original order of assessment, if any, passed in the matter has been the subject - matter of an appeal or revision.

Section 55(4) The provisions of this Act relating to appeal and revision shall apply to an order of rectification made under this section as they apply to the order in respect of which such order of rectification has been made."

21. The facts on record indicate that the petitioner has not produced any documents to revise the assessment of tax in respect of the turnover of Rs.10,23,728/-. As far as the balance turnover of *Rs.19,71,803/-* which was remanded back to the Assessing Officer for verification is concerned, the order dated 31.12.2002 of the Assessing Officer indicates that there also the petitioner had not procured Form F.

22. The petitioner had produced only collateral evidence to substantiate stock transfer without producing Form-F for a turnover of Rs.19,71,803/- by the Additional Commercial Tax Officer vide order dated



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31.12.2002.  
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Even if the Form-F was not filed by the petitioner for the balance turn over, the petitioner is entitled to file copies of transport documents such as lorry receipts, stock transfer invoices and delivery chalan etc. to substantiate such stock transfers. Once the case is remanded back, the order remanding the case back to the Original Authority is to be construed as an Interlocutory Order. While, it is not open for a Lower Authority to over look the direction of the Appellate Authority, the Higher Appellate Authority, such as the Appellate Tribunal can examine the case afresh in the light of the law settled by the Kerala High Court in **M.Syed Alavi and Others vs. State of Kerala**, (1981) 48 STC 150 (Ker) followed by this Court in **State of Tamil Nadu vs. Sharada Enterprises**, (2019) 71 GSTR 107 (Mad.

23. The Appellate Tribunal is the ultimate fact finding authority. Therefore, it was incumbent on the part of the Appellate Tribunal to have examined the claim based on the additional documents/evidence in the light of the law settled by the Kerala High Court in **M.Syed Alavi and Others vs. State of Kerala**, (1981) 48 STC 150 (Ker) followed by this Court in

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**State of Tamil Nadu vs. Sharada Enterprises, (2019) 71 GSTR 107**

(Mad.)

24. We are therefore of the view that the impugned order passed by the first respondent Appellate Tribunal is unsustainable and liable to be set aside. We, therefore remand the case back to the first respondent Appellate Tribunal to re-examine the issue in the light of the law settled by the Kerala High Court in **M.Syed Alavi and Others vs. State of Kerala, (1981) 48 STC 150 (Ker)** and the decision of this Court in **State of Tamil Nadu vs. Sharada Enterprises, (2019) 71 GSTR 107 (Mad.)** within a period of six months from the date of receipt of a copy of this order. Needless to state that the petitioner shall be heard. The petitioner is at liberty to produce the documents that are available to substantiate that there was indeed a stock transfer. If desired, the first respondent Appellate Tribunal may remit the case back if it is prima facie convinced the documents are genuine.



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costs.



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25. This Writ Petition is allowed with the above observations. No

(S.V.N.J.,)

(C.S.N.J.,)

16.09.2022

Index : Yes/No  
Internet : Yes/No  
Speaking : Non Speaking Order  
kkd

**To**

1. The Sales Tax Appellate Tribunal,  
(Main Bench),  
City Civil Court Buildings,  
Chennai – 104.
2. The Commercial Tax Officer,  
Koyambedu Assessment Circle,  
Maduravoyal, Chennai – 102.



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**S. VAIDYANATHAN,J.**

**AND**

**C. SARAVANAN,J.**

jen/kkd

Pre-delivery Order in  
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