



सत्यमेव जयते

**आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),**

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
07926305065- टेलिफैक्स 07926305136



DIN:20230264SW000011691D

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/2677/2022-APPEAL /8541 - H5
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-161/2022-23**
दिनांक Date : **16-02-2023** जारी करने की तारीख Date of Issue 20.02.2023
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. **CGST-06/D-VI/O&A/32/Accurpress/AM/2022-23**
दिनांक: **27.05.2022**, issued by Deputy/Assistant Commissioner, CGST, Division-VI,
Ahmedabad-North
- घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

**M/s Accurpress India Machinery Private Limited,
1023, North Plaza, Opp. Palladium,
Nr. 4D Square, Vishat -Gandhinagar Highway,
Motera, Ahmedabad-380005**

2. Respondent

**The Deputy/ Assistant Commissioner, CGST, Division-VI, Ahmedabad
North , 7th Floor, B D Patel House, Nr. Sardar Patel Statue , Naranpura,
Ahmedabad - 380014**

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :
Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.



(क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(c) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (7) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग" (Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है .

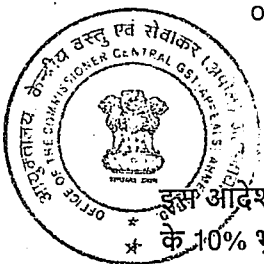
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER-IN-APPEAL

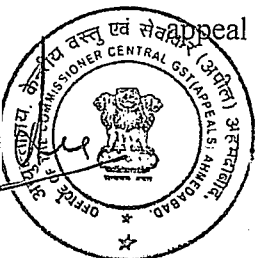
The present appeal has been filed by M/s. Accurpress India Machinery Private Limited, 1023, North Plaza, Opp. Palladium, Nr. 4D Square, Vishat-Gandhinagar Highway, Motera, Ahmedabad – 380005 (hereinafter referred to as “the appellant”) against Order-in-Original No. GST-06/D-VI/O&A/32/Accurpress/AM/2022-23 dated 27.05.2022 (hereinafter referred to as “the impugned order”) passed by the Assistant Commissioner, Central GST, Division VI, Ahmedabad North (hereinafter referred to as “the adjudicating authority”).

2. Briefly stated, the facts of the case are that the appellant was holding Service Tax Registration No. AAJCA9990PSD001. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the Financial Year 2015-16, it was noticed that there is difference of value of service amounting to Rs. 22,11,364/- between the gross value of service provided in the said data and the gross value of service shown in Service Tax Return filed by the appellant for the FY 2015-16. Accordingly, it appeared that the appellant had earned the said substantial income by way of providing taxable services but not paid the applicable service tax thereon. The appellant was called upon to submit clarification for difference along with supporting documents, for the said period. However, the appellant had not responded to the letters issued by the department.

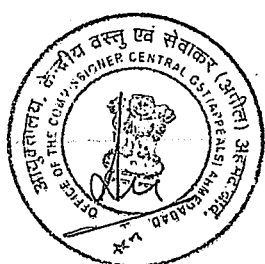
2.1 Subsequently, the appellant was issued a Show Cause Notice No. CGST-06/04-803/O&A/Accurpress/2020-21 dated 23.12.2020 demanding Service Tax amounting to Rs. 3,08,556/- for the period FY 2015-16, under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994; and imposition of penalties under Section 76, Section 77 & Section 78 of the Finance Act, 1994.

2.2 The Show Cause Notice was adjudicated ex-parte vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 3,08,556/- was confirmed under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act, 1994 for the period from FY 2015-16. Further, Penalty of Rs. 3,08,556/- was imposed on the appellant under Section 78 of the Finance Act, 1994 and Penalty of Rs. 5,000/- was imposed on the appellant under Section 77 of the Finance Act, 1994 for failure to assess the correct tax liability.

3. Being aggrieved with the impugned order, the appellant have preferred the present appeal on the following grounds:



- The appellant is engaged in sale, service and marketing of press brake machine.
- The Show Cause Notice and personal hearing notices were not received by the appellant as they changed their office from SF No. 4, Orchid, Thaltej-Shilaj Road, Ahmedabad to 307, Trayksha Desire, Chandkheda, Gandhinagar in July-2018 and further changed to 1023, North Plaza, Motera, Ahmedabd in March-2022.
- They have received recovery notice along with OIO on 17.07.2022 at 307, Trayksha Desire, Chandkheda, Gandhinagar. After receiving recovery notice the appellant vide letter dated 10.08.2022 requested all the mentioned notice and SCN from the adjudicating authority. They submitted copy of letter dated 10.08.2022.
- The adjudicating authority erred in determining the service tax liability merely by comparing the data shared by Income Tax / Form 26AS Return with Service Tax Returns, without verifying the nature of business carried out and without proper inquiry / examination / verification of the facts and on the basis of mere assumption that the income is taxable under the Finance Act, 1994.
- The difference as mentioned in the impugned order due to marketing services provided to party located outside India, claiming the benefit of export of service without payment of service tax by the appellant as per the provisions of Rule 6A of the Service Tax Rules, 1994 and Section 66B of the Finance Act, 1994. They submitted copy of ledger, FIRC's and Bank receipts along with appeal memorandum.
- The appellant submitted before issuing SCN, no investigation, inquiry, examination and verification was carried out to satisfy the taxability and liability of tax and therefore the SCN is bad in law. The SCN was merely base on the information received from CBDT as part of Income Tax Return. The Hon'ble Allahabad Tribunal in case of Go Bindas Entertainment Private Limited Vs. CST – 2019 (27) GSTL 397, held that no demand can be confirmed by comparing ST-3 with balance sheet. In support of their view, the appellant also relied upon the decision in the case of Kush Construction Vs. CGST – 2019 (24) GSTL 606 (Tri-All).
- The department has not sufficiently and adequately established suppression on part of the appellant and it is ought to have failed in shifting the onus unto the appellant. The department has not discharged its onus to invoke larger period of limitation in the present case and hence the SCN barred by limitation of normal period provided in sub-



section (1) of Section 73 of the Finance Act, 1994. In support of their view, the appellant relied upon the following case laws:

- (a) Pushpam Pharmaceuticals Company Vs. CCE – 1995 (78) ELT 401 (SC)
- (b) CCE Vs. Chemphar Drugs & Liniments – 1989 (40) ELT 276 (SC)
- (c) Padmini Products Vs. CCE – 1989 (43) ELT 195 (SC)
- (d) Continental Foundation Jt. Venture Vs. CCE – 2007 (216) ELT 177 (SC)

- The demand of Service Tax proposed in SCN as well the very proceeding initiated by the SCN are illegal and bad-in-law and therefore no penalties shall be imposed upon the appellant. Also, where the larger period of limitation not available, penalty under Section 78 cannot be imposed.

4. Personal hearing in the case was held on 08.02.2023. Shri Sajith Sathvan Ezhava, Chartered Accountant, appeared on behalf of the appellant for personal hearing. He reiterated submission made in appeal memorandum.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum and documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the demand against the appellant along with interest and penalty, in the facts and circumstance of the case is legal and proper or otherwise. The demand pertains to the period FY 2015-16.

6. I find that in the SCN in question, the demand has been raised for the period FY 2015-16 based on the Income Tax Returns filed by the appellant. Except for the value of "Sales of Services under Sales / Gross Receipts from Services" provided by the Income Tax Department, no other cogent reason or justification is forthcoming from the SCN for raising the demand against the appellant. It is also not specified as to under which category of service the non-levy of service tax is alleged against the appellant. Merely because the appellant had reported receipts from services, the same cannot form the basis for arriving at the conclusion that the respondent was liable to pay service tax, which was not paid by them. In this regard, I find that CBIC had, vide Instruction dated 26.10.2021, directed that:

"It was further reiterated that demand notices may not be issued indiscriminately based on the difference between the ITR-TDS taxable value and the taxable value in Service Tax Returns.



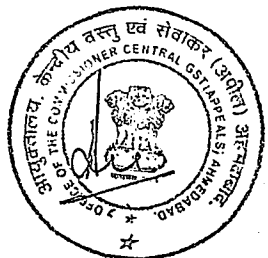
3. It is once again reiterated that instructions of the Board to issue show cause notices based on the difference in ITR-TDS data and service tax returns only after proper verification of facts, may be followed diligently. Pr. Chief Commissioner /Chief Commissioner (s) may devise a suitable mechanism to monitor and prevent issue of indiscriminate show cause notices. Needless to mention that in all such cases where the notices have already been issued, adjudicating authorities are expected to pass a judicious order after proper appreciation of facts and submission of the noticee.”

6.1 In the present case, I find that letters were issued to the appellant seeking details and documents, which were allegedly not submitted by them. However, without any further inquiry or investigation, the SCN has been issued only on the basis of details received from the Income Tax department, without even specifying the category of service in respect of which service tax is sought to be levied and collected. This, in my considered view, is not a proper ground for raising of demand of service tax in back drop of the situation when the appellant is registered with Service Tax department.

7. On verification of the Ledger for Marketing Support, Foreign Inward Remittance Certificates submitted by the appellant, I find that difference of value of service amounting to Rs. 22,11,364/- between the gross value of service provided in the data received from Income Tax department and the gross value of service shown in Service Tax Return filed by the appellant for the FY 2015-16, was in respect of amount received by the appellant from Accurpress (SUZHOU) Machinery Co. Ltd. in convertible foreign exchange. However, the appellant have not produce any documents showing that they have fulfilled all the six conditions as enumerated in Rule 6A of the Service Tax Rules, 1994, which are as under:

“6A. *Export of services.*- (1) *The provision of any service provided or agreed to be provided shall be treated as export of service when,-*

- (a) *the provider of service is located in the taxable territory,*
- (b) *the recipient of service is located outside India,*
- (c) *the service is not a service specified in the section 66D of the Act,*
- (d) *the place of provision of the service is outside India,*
- (e) *the payment for such service has been received by the provider of service in convertible foreign exchange, and*
- (f) *the provider of service and recipient of service are not merely establishments of a distinct person in accordance with item (b) of Explanation 3 of clause (44) of section 65B of the Act”*



8. I am of the considered view that the appellant cannot seek to establish their eligibility for exemption from payment of Service Tax as export of service at the appellate stage without submitting such evidences before the adjudicating authority. They should have submitted the relevant records and documents before the adjudicating authority, who is best placed to verify the authenticity of the documents as well as their eligibility for exemption. I also find that the adjudicating authority has confirmed the demand of Service Tax in the impugned order ex-parte. However, the appellant have contended that they have not received any letter / notice, show cause notice and personal hearing notice. I find that the adjudicating authority was required to give adequate and ample opportunity to the appellant for personal hearing and only thereafter, the impugned order was required to be passed, specifically in the circumstances of the case that the SCN has been issued merely on the basis of data received from the Income Tax department without even specifying the category of service in respect of which service tax is sought to be levied and collected.

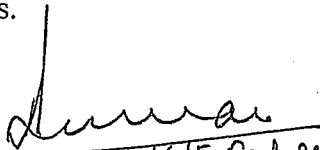
8.1 Considering the facts of the case as discussed herein above and in the interest of natural justice, I am of the considered view that the case is required to be remanded back to the adjudicating authority to consider the claim of the appellant for exemption from Service Tax on the basis of the documents submitted by them along with appeal memorandum and decide the case accordingly.

9. The appellant is directed to submit all the records and documents in support of their claim for exemption from Service Tax before the adjudicating authority within 15 days of the receipt of this order. The adjudicating authority shall after considering the records and documents submitted by the appellant decide the case afresh by following the principles of natural justice.

10. In view of the above discussion, I remand the matter back to the adjudicating authority to reconsider the issue a fresh and pass a speaking order after following the principles of natural justice.

11. अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है ।

The appeal filed by the appellant stands disposed of in above terms.


(Akhilesh Kumar) 16th February 2023..
Commissioner (Appeals)



Attested

Date : 16.02.2023



(R. C. Maniyar)
Superintendent(Appeals),
CGST, Ahmedabad

By RPAD / SPEED POST

To,
M/s. Accurpress India Machinery Private Limited,
1023, North Plaza, Opp. Palladium,
Nr. 4D Square, Vishat-Gandhinagar Highway,
Motera, Ahmedabad – 380005

Appellant

The Assistant Commissioner,
CGST, Division-VI,
Ahmedabad North

Respondent

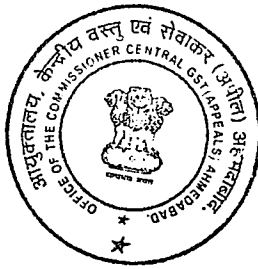
Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad North
- 3) The Assistant Commissioner, CGST, Division VI, Ahmedabad North
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North

(for uploading the OIA)

5) Guard File

6) PA file



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