**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED : 07.08.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.33639 of 2023
and W.M.P.No.33480 of 2023

S.Doctor Viswanathan,
State Tax Officer, Commercial Taxes Department,
Pondy Bazaar Assessment Circle,
Chennai (Central) Division, Chennai.

.. Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary,
Commercial Taxes and Registration Department,
Secretariat, Chennai – 600 009.

2.The Commissioner of Commercial Taxes,
O/o. the Commissioner of Commercial Taxes,
Chepauk, Chennai – 600 005.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records in connection with the impugned order bearing Proc.No.CD2/5566023/2023, dated 01.11.2023 issued by the 2nd respondent and quash the same.

For petitioner : Mr.V.Prakash
Senior Counsel
for Mr.K.Krishnamoorthy
For Respondents : Mrs.Vasanthamala
Government Advocate (Tax)



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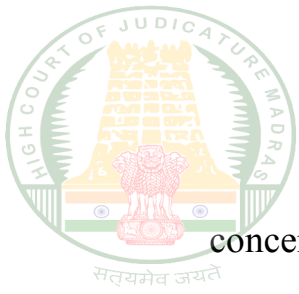
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ORDER

The subject matter of challenge in the present writ petition pertains to the impugned suspension order issued by the 2nd respondent in Proc.No.CD2/5566023/2023 dated 01.11.2023.

2.The petitioner is working in the post of Commercial Tax Officer which has now been re-designated as the State Tax Officer. He is assigned with the statutory duties under the Goods and Service Tax Act (GST) with effect from 01.07.2017. Among many other statutory functions, the petitioner has also been assigned the duty of passing orders of refund claims under the statutory forms. The further case of the petitioner is that this task is in the nature of a Quasi-Judicial function. As per the prevailing regulations, the petitioner has to pass orders within a week from the date of filing of a refund claim by the tax payer under Form RFD-01, where 90% of the claim to be refunded is decided. Thereafter, under RFD-04, the petitioner has to decide the refund of the balance 10%.

3.In so far as the scrutiny of the application for refund is



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concerned, it is governed by the circular issued which specifically states

as to what are all the documents / sites, the officer should check before processing the refund claim.

4.The further case of the petitioner is that one of the refund claim made by Khan Traders was allotted to the petitioner during March, 2023. The said Khan Traders filed an online application under statutory form RFD-01 on 19.04.2023, claiming a refund of Rs.69,01,127/-. Along with the claim, he also submitted various other documents. The petitioner on verifying the documents and after checking the ICEGATE site, granted refund under RFD-02 upto 90% of the total claim. Thereafter, under RFD-05, the balance 10% was also refunded.

5.The specific case of the petitioner is that he has passed the refund order in strict compliance with Rule 54 of the CGST Rules and the circular dated 23.03.2020. After nearly six months, it came to light that the goods never crossed beyond the boundaries of India and some fraud had been committed by the trader. It is under these circumstances, the impugned suspension order dated 01.11.2023 came to be issued by the 2nd respondent. The same has been put to challenge in the present writ



petition.

WEB COPY 6.The respondents have filed counter affidavit. The respondents have taken a stand that the petitioner failed to verify the e-way bills which will specifically show the movement of the vehicle when it is crossing various tolls. It is further stated in the counter that the trader namely Khan Traders was also attempting to claim refund of the accumulated Input Tax Credit by playing fraud and the Directorate of Revenue Intelligence had forewarned to withhold any such application after the claim is made. Based on the record of the Directorate of Revenue Intelligence dated 11.09.2023, an inquiry was conducted and the results of the inquiry are as follows:

“1)The refund for the month of March 2023 for Rs.69,01,128/- was filed on 19.04.2023 at 16:53 hrs and RFD 04 for Rs.62,11,015/- was sanctioned on 24.04.2023 at 04:52 pm. However, RFD 05 was issued on 09.05.2023 at 12:08 pm only. Further, the RFD 06 amount of Rs.6,90,112/- was sanctioned on 09.05.2023 at 12:08 pm for which RFD 05 has been issued on 09.05.2023 at 12:09 pm by the said official.

2) From the above, it is seen that, refunds were sanctioned in undue haste and non-application of mind, though a statutory time limit of 7 days from the date of acknowledgement has been given for 90% amount sanction and 60 days for the balance



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10% of the refund claimed.

3) Registration Certificate in respect of Tvl. Khan Traders, details was not verified properly during the sanction of refunds though the same was deemed approved.

4) Being a deemed approved Registration Certificate claiming refund within a month for sensitive commodity, no efforts were taken for post verification.

5) No proper efforts were made to verify the documents like E Way Bills and the purchases (15.3.2023 – 6 invoices – Rs.4.16 Crores) (10.04.2023 – 12 invoices – Rs.8.07 Crores) Vs Export (sale details (31.03.2023 – 23 Invoices) (24.04.2023 – 21 Invoices, 25.04.2023 – 21 Invoices, 26.04.2023 – 9 Invoices) submitted along with the high value Refund claims.

6) In this case, though high value refund claims were filed for 2 months (as detailed above) wherein Registration was given by deemed approval and the business activity was done only on one day during the month (31.03.2023) – March 23 Invoices, no doubts / queries were raised by the Officers who were having quiet good field experience.

7) The Refund claims were sanctioned with undue haste, without proper application of mind and without any due regards to statutory time limit of 7 days from the date of acknowledgement has been given for 90% amount sanction and 60 days for the balance. 10% of the refund claimed”.



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WEB COPY 7. In the light of the above findings that came out of the inquiry, the petitioner was placed under suspension by the 2nd respondent since the petitioner has issued refund to a fake exporter without properly verifying the relevant details with undue haste and with malafide intention and thereby the petitioner has caused revenue loss to the Government exchequer to the tune of Rs.6,90,01,127/-. It is also stated in the counter affidavit that a charge memo has already been issued by the 2nd respondent dated 05.01.2024 to the petitioner.

8. The respondents have therefore justified placing the petitioner under suspension pending disciplinary proceedings, considering the public interest involved and the money that has been lost by the exchequer and the respondents have sought for the continuation of the suspension of the petitioner and for the dismissal of this writ petition.

9. Heard the learned Senior Counsel for the petitioner and the learned Government Advocate (Tax) for the respondents.

10. This Court has carefully considered the submissions made on



either side and the materials available on record.

WEB COPY 11. Section 54 of the CGST Act, 2017 deals with refund of tax. A circular dated 23.03.2020 has also been issued by the Commissioner of Commercial Taxes specifically providing the modalities to be followed for all refund applications filed in form GST RFD-01. It will be relevant to take note of clause 18 of the circular hereunder:

“Scrutiny of Application

*18. In case of refund claim on account of export of goods without payment of tax, the Shipping bill details shall be checked by the proper officer through ICEGATE SITE (www.icegate.gov.in) wherein the officer would be able to check details of EGM and shipping bill by keying in port name, Shipping bill number and date. It is advised that while processing refund claims, information contained in Table 9 of **FORM GSTR-1** of the relevant tax period as well as that of the subsequent tax periods should also be taken into cognizance, wherever applicable. In this regard, TN Circular No.06/2017-TNGST dated 29.12.2017 may be referred, wherein the procedure for rectification of errors made while filing the returns in **FORM GSTR-3B** has been provided. Therefore, in case of discrepancies between the data furnished by the taxpayer in **FORM GSTR-3B** and **FORM GSTR-1**, the proper officer shall refer to the said Circular and process the refund application accordingly.”*



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12.The petitioner at paragraph No.5 of the affidavit has stated as follows:

“5.I submit that Tvl. Khan traders filed an online application under the statutory Form RFD-01 on 19.04.2023, claiming a refund of Rs.69,01,127/- along with a statement, GSTR-2A, Annexure-B, GSTR-3B, GSTR-1, an export invoice, declaration, shipping bills, and a copy of the electronic credit ledger in respect of the export of goods supplied without payment of integrated tax in accordance with Rule 96A(1) of the TNGST Rules. The aforesaid documents are the required documents for granting refunds as per Circular No-1/2019-2020 dated 23.3.2020. A System-generated acknowledgement was issued to him under RFD-02. A provisional refund as per Rule 91(2) up to 90% of the total claim was issued on 24.04.2023, under RFD-04. Thereafter, RFD-05 payment order was passed on 09.05.2023, and the balance of 10% as issued vide RFD-06.”

13.Apart from the above, the petitioner has also specifically listed the various documents / certificates filed online which has to be verified before passing orders on a refund. Annexure – A to the circular dated 23.03.2020 is extracted hereunder:

**“Anneure – A****List of all statements / declarations / undertaking / certificates and other supporting documents to be provided along with the refund applications**

Sl. No.	Type of Refund	Declaration / Statement / Undertaking / Certificates to be filled online	Supporting documents to be additionally uploaded
1	Refund of unutilized ITC on account exports without payment of tax	Declaration under second and third proviso to Section 54(3)	Copy of GSTR-2A of the relevant period
		Undertaking in relation to sections 16(2)(c) and section 42(2)	Statement of invoices (Annexure-B)
		Statement 3 under rule 89(2)(b) and rule 89(2)(c)	Self-certified copies of invoices entered in Annexure-B whose details are not found in GSTR-2A of the relevant period
		Statement 3A under rule 89(4)	BRC/FIRC in case of export of services and shipping bill (only in case of exports made through non-EDI ports) in case of goods.

14.The respondents have filed counter to the effect that the petitioner before passing orders granting refund, failed to verify the E-way bills and as a result, the petitioner has refunded the Input Tax to a fraudulent exporter.

15.The scope of interference in a suspension order is very narrow



and the law on this issue is now too well settled. It will be relevant to

take note of the judgment of the Hon'ble Supreme Court in ***Union of***

India and another Vs. Ashok Kumar Aggarwal reported in (2013) 16

SCC 147 and the relevant paragraphs are extracted hereunder:

“21.The power of suspension should not be exercised in an arbitrary manner and without any reasonable ground or as vindictive misuse of power. Suspension should be made only in a case where there is a strong prima facie case against the delinquent employee and the allegations involving moral turpitude, grave misconduct or indiscipline or refusal to carry out the orders of superior authority are there, or there is a strong prima facie case against him, if proved, would ordinarily result in reduction in rank, removal or dismissal from service. The authority should also take into account all the available material as to whether in a given case, it is advisable to allow the delinquent to continue to perform his duties in the office or his retention in office is likely to hamper or frustrate the inquiry.

22.In view of the above, the law on the issue can be summarised to the effect that suspension order can be passed by the competent authority considering the gravity of the alleged misconduct i.e. serious act of omission or commission and the nature of evidence available. It cannot be actuated by mala fide, arbitrariness, or for ulterior purpose. Effect on public interest due to the employee’s continuation in office is also a relevant and determining factor. The facts of each case have to be taken into consideration



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as no formula of universal application can be laid down in this regard. However, suspension order should be passed only where there is a strong prima facie case against the delinquent, and if the charges stand proved, would ordinarily warrant imposition of major punishment i.e. removal or dismissal from service, or reduction in rank etc.

23. In Jayrajbhai Jayantibhai Patel v. Anilbhai Nathubhai Patel & Ors., (2006) 8 SCC 200, this Court explained:

“18. Having regard to it all, it is manifest that the power of judicial review may not be exercised unless the administrative decision is illogical or suffers from procedural impropriety or it shocks the conscience of the court in the sense that it is in defiance of logic or moral standards but no standardised formula, universally applicable to all cases, can be evolved. Each case has to be considered on its own facts, depending upon the authority that exercises the power, the source, the nature or scope of power and the indelible effects it generates in the operation of law or affects the individual or society. Though judicial restraint, albeit self-recognised, is the order of the day, yet an administrative decision or action which is based on wholly irrelevant considerations or material; or excludes from consideration the relevant material; or it is so absurd that no reasonable person could have arrived at it on the given material, may be struck down. In other words, when a court is satisfied that there is an abuse or misuse of power, and its jurisdiction is invoked,



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it is incumbent on the court to intervene. It is nevertheless, trite that the scope of judicial review is limited to the deficiency in the decision-making process and not the decision.”

24. Long period of suspension does not make the order of suspension invalid. However, in State of H.P. v. B.C. Thakur, (1994) SCC (L&S) 835, this Court held that where for any reason it is not possible to proceed with the domestic enquiry the delinquent may not be kept under suspension.

25. There cannot be any doubt that the Rules 1965 are a self contained code and the order of suspension can be examined in the light of the statutory provisions to determine as to whether the suspension order was justified. Undoubtedly, the delinquent cannot be considered to be any better off after the charge sheet has been filed against him in the court on conclusion of the investigation than his position during the investigation of the case itself. (Vide: Union of India & Ors. v. Udai Narain)

26. The scope of interference by the Court with the order of suspension has been examined by the Court in a large number of cases, particularly in State of M.P. v. Sardul Singh, (1970) 1 SCC 108; P.V. Srinivasa Sastry v. Comptroller & Auditor General of India, (1993) 1 SCC 419; Director General, ESI & Anr. v. T. Abdul Razak, AIR 1996 SC 2292; Kusheshwar Dubey v. M/s Bharat Cooking Coal Ltd. & Ors., AIR 1988 SC 2118; Delhi Cloth General Mills vs. Kushan Bhan, AIR 1960 SC 806; U.P. Rajya Krishi Utpadan Mandi Parishad & Ors. v. Sanjeev Rajan, (1993) Supp. (3) SCC 483; State



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of Rajasthan v. B.K. Meena & Ors., (1996) 6 SCC 417; Secretary to Govt., Prohibition and Excise Department v. L. Srinivasan, (1996) 3 SCC 157; and Allahabad Bank & Anr. v. Deepak Kumar Bhola, (1997) 4 SCC 1, wherein it has been observed that even if a criminal trial or enquiry takes a long time, it is ordinarily not open to the court to interfere in case of suspension as it is in the exclusive domain of the competent authority who can always review its order of suspension being an inherent power conferred upon them by the provisions of Article 21 of the General Clauses Act, 1897 and while exercising such a power, the authority can consider the case of an employee for revoking the suspension order, if satisfied that the criminal case pending would be concluded after an unusual delay for no fault of the employee concerned. Where the charges are baseless, mala fide or vindictive and are framed only to keep the delinquent employee out of job, a case for judicial review is made out. But in a case where no conclusion can be arrived at without examining the entire record in question and in order that the disciplinary proceedings may continue unhindered the court may not interfere. In case the court comes to the conclusion that the authority is not proceeding expeditiously as it ought to have been and it results in prolongation of sufferings for the delinquent employee, the court may issue directions. The court may, in case the authority fails to furnish proper explanation for delay in conclusion of the enquiry, direct to complete the enquiry within a stipulated period. However, mere delay in conclusion of enquiry or trial can not be a ground for quashing the suspension order, if the charges are grave in nature. But, whether the employee should or



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should not continue in his office during the period of enquiry is a matter to be assessed by the disciplinary authority concerned and ordinarily the court should not interfere with the orders of suspension unless they are passed in mala fide and without there being even a prima facie evidence on record connecting the employee with the misconduct in question.”

16.It is quite clear from the above judgment that the order of suspension is generally interfered where the authority does not have the jurisdiction to issue such a suspension order or where it is attended with malafides or in a case where there are no strong *prima facie* materials available against the delinquent. The Hon'ble Supreme Court has also cautioned that in a case where it involves public interest and the continuation of the employee in the office will be detrimental to the further proceedings, that is also a ground where a suspension will be justified.

17.The petitioner in the instant case has challenged the order of suspension mainly on the ground that there are no strong *prima facie* materials against the petitioner and that there was a clear non-application of mind on the part of the respondents in justifying the suspension on the



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ground that the petitioner did not check / verify the E-way bills, which was not a requirement under the circular dated 23.03.2020.

18.It must be borne in mind that the threshold while dealing with a suspension order passed against an authority exercising a Quasi-Judicial power or a Judicial power, must be slightly at a higher level than the test applied for the authorities who are performing administrative functions. The act of passing orders on the application filed for refund of the Input Tax, is clearly a Quasi-Judicial function. The relevant provision contemplates that the refund claim must be proceeded within a period of seven (7) days from the date of filing of he application for refund. If it is not complied with, it will attract interest and in which case it will also amount to a misconduct for violation of the provisions of the GST Act. Therefore, the authority has to balance the interest of the exchequer and at the same time must process the refund claim within the time stipulated by the Act. That is the reason why the circular itself provides the documents / certificates that are to be verified online. It is quite apparent that whatever documents / certificates / declarations / statements that have been provided under annexure – A was verified by the petitioner while passing orders for refund of the Input Tax Credit. A portal is specifically created only for this purpose and the officer is expected to go



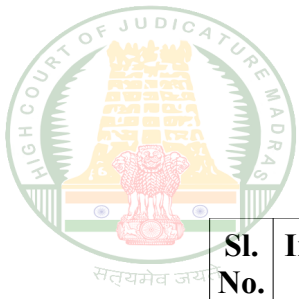
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into the ICEGATE site and check the details of the EGM and shipping bill by keying in port name, shipping bill number and date. There is no dispute that the petitioner has followed this procedure. No where under the Act or under the circular, the petitioner was expected to verify the E-way bills physically. If the petitioner has to involve in this exercise, obviously he will not be able to process the application and pass orders within a period of seven (7) days.

19.The export invoices, shipping bills, ICEGATE, EPDMS that was verified by the petitioner is grouped by way of a tabular column as hereunder:

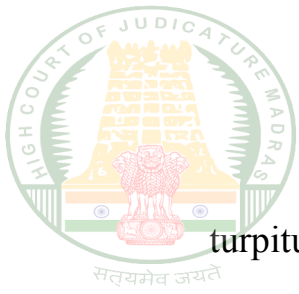
**“EXPORT INVOICES, SHIPPING BILLS, ICE
:: GATE, EPDMS COMPARISON TABLE**

Sl. No.	Invoice No.	Value (INR)	Invoice Page No.	SB No.	SB Page No.	ICE Gate Page No.	EPDMS Page No.
1	KT01	948,000.00	70	9144893	96	226	296
2	KT02	955,900.00	71	9144896	101	229	297
3	KT03	963,800.00	72	9144898	106	232	298
4	KT04	971,700.00	73	9144895	111	235	299
5	KT05	979,600.00	74	9144899	116	238	300
6	KT06	987,500.00	75	9144897	121	241	301
7	KT07	995,400.00	76	9144901	126	244	302
8	KT080	948,000.00	77	9144902	131	247	303
9	KT09	955,900.00	78	9144900	136	250	304
10	KT10	963,800.00	79	9144904	141	253	305



Sl. No.	Invoice No.	Value (INR)	Invoice Page No.	SB No.	SB Page No.	ICE Gate Page No.	EPDMS Page No.
11	KT11	971,700.00	80	9144903	146	256	306
12	KT12	979,600.00	81	9144906	151	259	307
13	KT13	987,500.00	82	9144905	156	262	308
14	KT14	995,400.00	83	9144909	161	265	309
15	KT15	948,000.00	84	9144907	166	268	310
16	KT16	955,900.00	85	9144908	171	271	311
17	KT17	963,800.00	86	9144910	176	274	312
18	KT18	971,700.00	87	9144911	181	277	313
19	KT19	979,600.00	88	9144913	186	280	314
20	KT20	987,500.00	89	9144912	191	283	315
21	KT21	995,400.00	90	9144915	196	286	316
22	KT22	948,000.00	91	9144914	201	289	317
23	KT23	955,900.00	92	9144916	206	292	318
	Total	22,309,600.00					

20.As a Quasi-Judicial authority, if the petitioner has fulfilled all the requirements that are provided under the relevant Act and the circular, that by itself is sufficient compliance before passing the order of refund of the tax. If for any reasons, it ultimately turns out to be a fake export by a fraudster, the order passed by the petitioner by itself cannot result in the suspension of the petitioner. In other words, when the petitioner was exercising his Quasi-Judicial function, unless there was a strong *prima facie* material against the petitioner involving moral



turpitude, grave misconduct, etc., suspension must be the last resort.

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21. In the light of the above discussions, this Court finds that there were no strong *prima facie* materials against the petitioner to *prima facie* come to a conclusion that the petitioner was involved in an act of moral turpitude or grave misconduct.

22. In view of the above, this Court is inclined to interfere with the order of suspension passed by the 2nd respondent.

23. The learned Government Advocate (Tax) submitted that the charge memo has already been issued to the petitioner and the departmental proceedings are underway. The learned counsel also brought to the notice of this Court the suspension order that was issued against another officer and which was put to challenge in W.P.No.8203 of 2024. The learned Government Advocate submitted that this Court was inclined to dismiss the writ petition on the ground that the charge memo has already been given.



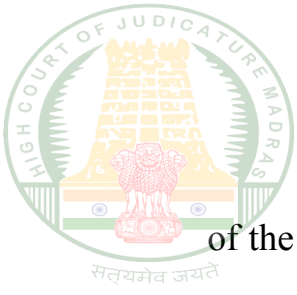
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24.The order that was brought to the notice of this Court will not apply to the facts of the present case since the ground that was taken in that writ petition was that no charge memo was served on the petitioner and the petitioner was kept on a continued suspension. This Court was informed that the charge memo has already been served on the petitioner therein and recording the same, that writ petition was dismissed.

25.That order will not become a precedent in the present case since, the ground that has been taken is completely different and the same has been dealt with in detail supra.

26.In the instant case, it has come to light that a fake exporter has taken the department for a ride and he has also received refund of tax to the tune of Rs.69,01,127/-. To that extent, there is definitely a loss to the exchequer. Apart from that, some of the other officers have also been suspended in this case and the respondents want to conduct a detailed enquiry. Keeping this in mind and also considering the public interest involved, it will not be desirable to continue the petitioner in the same station. Therefore, it will be left open to the respondents to post the petitioner in some insensitive post in a different place till the completion



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of the departmental proceedings.

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27.In the result, the impugned suspension order bearing Proc.No.CD2/5566023/2023, dated 01.11.2023 issued by the 2nd respondent is hereby quashed. There shall be a direction to the respondents to post the petitioner in some insensitive post in a different station. The departmental proceedings shall be proceeded with after affording sufficient opportunity to the petitioner. It will be desirable to complete the proceedings within a period of three (3) months from the date of receipt of a copy of this order.

28.Accordingly, this Writ Petition stands allowed with the above directions. Consequently, the connected Miscellaneous Petition is closed.

No costs.

07.08.2024

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Index : Yes
Internet : Yes
Neutral Citation : Yes



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To

- 1.The State of Tamil Nadu,
Rep. by its Secretary,
Commercial Taxes and Registration Department,
Secretariat, Chennai – 600 009.
- 2.The Commissioner of Commercial Taxes,
O/o. the Commissioner of Commercial Taxes,
Chepauk, Chennai – 600 005.



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