



सीमा शुल्क के प्रधान आयुक्त कार्यालय (सामान्य)
OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS (GENERAL)
कस्टमब्रोकरअनुभाग, नवीनसीमाशुल्कभवन,
CUSTOMS BROKER SECTION, NEW CUSTOM HOUSE,
बेलार्डईस्टेट, मुंबई - I
BALLARD ESTATE, MUMBAI - I

F.NO. GEN/CB/115/2024/CBS

Date: 28.03.2024

DIN: 2024 037700000621979

ORDER No. 56/2023-24
UNDER REGULATION 16 OF THE CUSTOMS BROKER LICENSING
REGULATION, 2018

M/s. Aaroh Logistics, (AARPS9514JCH001), having address registered at Shop No 35 Adarsh Market Plot No. 18A, Sector 48A, Seawoods, Nerul, Navi Mumbai, Thane, Maharashtra - 400707 (hereinafter referred as the Customs Broker/CB) is holder of Customs Broker License No. 11/2205, issued by the Commissioner of Customs, Mumbai under regulation 7(1) of CBLR, 2013, [Now regulation 7(2) of CBLR, 2018] and as such they are bound by the regulations and conditions stipulated therein.

2. An offence report with respect to the role of the CB, M/s. Aaroh Logistics is received in this office from the CIU, JNCH, Nhava Sheva, Zone-II wherein it is informed that M/s Pinga Enterprises Pvt Ltd (AAKCP1048G) has filed B/E No 2018186 dated 07.02.2024 for the import of "Unbranded ladies purses along with Bag accessories" from China through their Customs Broker M/s Aaroh Logistics (AARPS9514JCH001). The Bill of Entry was RMS facilitated, hence no assessment and examination was prescribed. However, Container No. WHSU5956802 of the said B/E was marked suspicious during CSD scanning, requiring 100% examination under AC/DC Docks supervision.

3. As per the endorsement dated 07.02.2024 on the body of B/E and the examination report fed in the ICES on 09.02.2024, goods were examined on 07.02.2024 in the presence of CHA and under supervision of AC/DC(Docks). The endorsement and report fed into the ICES reveals that "goods were examined 100% and found as declared".

4. Meanwhile, as per the specific input about possible misdeclaration, goods were kept on hold by CIU/JNCH on 13.02.2024. On examination under Panchanama dated 13-14.02.2024, Branded purse of Bagco, Michael Kors, Prada, Marc Jacobs, Mincol Kage, Coach, Charro, Dior, Saint Laurent, Fendi etc were found. Further, undeclared Shoes of Nike, Adidas, Puma, Vans of the wall, Asics Gel etc were also found. The preliminary investigation revealed

that goods were imported in violation of IPR regulations in the guise of unbranded purse.

5.1 During the course of investigation, statement of Shri Parth Gori, H-card Holder (Card No. 1212/2019) of CB M/s Aaroh Logistics (11/2205), was recorded under Section 108 of the Customs Act, 1962, by officers of CIU/JNCH on dated 15.02.2024 & 28.02.2024, wherein he *interalia* stated that:

- i. He looks after the import department and his work is mainly related to documentation and import clearance as directed by his office.
- ii. He received invoice, BL and packing list from Shri Sanjay Singh who works for M/s Pinga Enterprises based on which they filed the Bill of Entry.
- iii. They are working for clearance of goods of M/s Pinga Enterprises for the past 1 year. In this course of time, they had cleared few consignments of the same importer of similar items as declared in subject Bill of Entry.
- iv. CFS official informed that the subject container is under CSD scan. The document was presented to Custom Officer Shri M Afaque Sheikh and the shipping line seal having number WHAA517626 was cut and the goods were examined on 07.02.2024 in evening time. Goods were de-stuffed as per the image of the CSD and random cartons were opened as instructed by the Custom officer. Later, after sometime at late evening, the goods were examined by AC/Docks. The container was sealed vide Bottle Seal No. 124933. Next day, Shri M Afaque Sheikh was on leave or may be got transferred he don't know so the document was presented to Shri Sudhir Nair, Superintendent of Customs on 09.02.2024 who was given CFS charge for one day. As directed by Shri Sudhir Nair, Customs officer, the Bottle Seal No. 124933 was cut and container was opened and goods were examined again as per CSD image. However, OOC was not given. The container was sealed again vide Seal no. 125004. On 12.02.2024, new officer, Smt. Sujata Kunder was posted and she again asked to open the container for examination of goods. She examined few packages however, instructed for de-stuffed complete cargo. Later they got to know that the container is put on hold so they sealed the container using Bottle Seal no. 125012.
- v. They filed the B/E based on importers documents. They had no idea whatsoever about the undeclared goods present in the container and no branded goods were seen during the examinations.
- vi. He and Mr. Bijender BCBA pass holder, both handled the consignments given to them. In the instant case, Mr. Bijender was present during the examination and he helped him with documentation. Mr. Bijender works on his instructions.
- vii. On being asked that had he cleared any previous consignment of M/s Pinga Enterprises which had shoes or any other kind of footwear, he replied

in negative and stated that he did not remember about the previous consignment.

viii. On being asked that as per the CBLR rules you are supposed to follow the examination instructions that is 100% examination for CSD scan container. He replied that Yes, they should have examined 100% but they de-stuffed all the goods marked suspicious in the CSD image and random Carton were cut and examined by the officer.

ix. they were absolutely unaware of the counterfeit undeclared goods in the consignment as B/E was filed based on the documents submitted by the importer.

x. In his further statement dated 28.02.2024, stated that the CB firm does not have a G-Card Holder now. The G-Card holder of the CB firm had left the company during COVID time and the firm is operating without a G-Card holder since then.

xi. for a regular document, they submit BL, invoice, Packing list, copy of B/E to the Docks officer posted in the CFS who gives forwarding on it. Then CFS officer gives seal cutting permission based on the forwarding, only then they cut the seal. For the CSD Hold container, a letter is received by the CFS from the CSD which has the list of containers put on hold by CSD. They first go to the AC/docks with all documents and CSD letter, then it is signed by the AC/docks. They are also provided with the CSD image for examination purpose.

xii. the Seal cutting permission was taken for this container on 07.02.2024 from the docks officer Shri Afaq Sheikh and the shipping line seal having number WHAA517626 was cut. The container was then examined by the said Docks officer Shri Afaq Sheikh. All the goods marked suspicious in the CSD image were de-stuffed and random cartons were cut. Later, the container was re- sealed by Bottle Seal No. 124933 (private seal purchased by them) on 07.02.2024. On 09.02.2024, the said Bottle Seal No. 124933 was cut open after getting verbal direction from Shri SU Nair, Docks officer and goods were examined. Goods were de-stuffed as per CSD image and random cartons were checked. Later the container was again sealed by the Bottle Seal No. 125004 (private seal purchased by them) on 09.02.2024.

xiii. Docks officer, Smt Sujata Kunder madam gave verbal direction to cut the Bottle Seal No. 125004 (private seal purchased by them) for re-examination of goods on 12.02.2024. The goods were examined in the evening, however, officer asked them to de-stuff the entire container. Labourers were not available at that time so they were arranging the labour but they got to know from the Docks officer. Smt Sujata Kunder madam that the container was put on Hold by CIU on same day 12.02.2024. So, they sealed the container again with Bottle Seal no. 125012 (private seal purchased by them).

xiv. their director is Mr. Harish Shenoy, F-card Holder. G-Holder was Mr. Deepak Shahi, however he left the company during covid times. All Customs related is taken care of by him and his director Mr. Harish Shenoy. He had the authorization from their company and he had submitted the authorization letter in the previous statement as well as during the examination of goods by the CIU.

xv. In the instant case, Mr. Bijendra (his company's employee) was present during the examination. Due to some medical emergency, their director Mr. Harish Shenoy, F-card Holder was out of India. Due to some urgent work, he was not available for examination. He helped him with documentation. Normally, he and his director Mr. Harish Shenoy, F-card Holder present in all customs procedure. This is first time they both (He and his director Mr. Harish Shenoy, F-card Holder) were not present.

5.2 During the course of investigation, statement of Shri Bijendra Shahi, employee and BCBA Pass Holder (BCBA issued Card no. 4144) of CB M/s Aaroh Logistics, was recorded under section 108 of the Customs Act, 1962 by officers of CIU, JNCH on dated 28.02.2024, wherein he *interalia* stated that:

- i. he did office work, bring letters and deliver parcels and he did not know the seal cutting procedure.
- ii. he was present during the examinations on 07.02.2024, 09.02.2024 and 12.02.2024. His senior Shri Parth Gori, H-Card Holder directed him to conduct the examination as he was busy with other work and could not wait there.
- iii. he normally working in office only, this was the first time as both his seniors were busy due to some work. So he was asked to be present during the examination.
- iv. Seal cutting permission was taken for the Container No. WHSU5956802 on 07.02.2024 from the docks officer and the shipping line seal having number WHAA517626 was cut. The container was then examined by the said Docks officer. He did not remember the name of the Docks officer. Goods were de-stuffed and random cartons were cut. Later, the container was re-sealed by their Bottle Seal No. 124933 (private seal purchased by them) on 07.02.2024. On 09.02.2024, the said Bottle Seal No. 124933 was cut open after getting verbal directions from Docks officer and goods were examined. Goods were de-stuffed and random cartons were checked. Later the container was again sealed by the Bottle Seal No. 125004 (private seal purchased by them) on 09.02.2024.
- v. A lady Docks officer, gave verbal direction to cut the Bottle Seal No. 125004 (private seal purchased by them) for re-examination of goods on 12.02.2024. The goods were examined in the evening, however, officer asked him to de-

stuff the entire container. Labourers were not available at that time. His senior was arranging the labourers but they got to know from the Docks officer madam that the container was put on Hold by CIU on same day 12.02.2024. So, they sealed the container again with Bottle Seal no. 125012 (private seal purchased by them).

6. From facts of case, it appears that CB M/s. Aaroh Logistics (11/2205) has failed to comply with the provisions of regulation 10 (b), 10 (d) and 10(e) of CBLR, 2018.

Legal Provision of the CBLR, 2018:-

Regulation 10 (b) of the CBLR, 2018:- "A Customs broker shall transact business in the Customs Station either personally or through an authorized employee duly approved by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;"

Regulation 10 (d) of the CBLR, 2018:- "A Customs broker shall advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;"

Regulation 10 (e) of the CBLR, 2018:- "A Customs broker shall exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage;"

6.1 From the offence report, it is noticed that Shri Bijendra Shahi, BCBA Pass Holder of CB M/s Aaroh Logistics was present during the examination of the consignment. Since he did not have a valid Customs Pass to handle the consignment and he did not have any authorization from CB to handle the consignment duly approved by the DC/AC which is prerequisite under regulation 10(b) of the CBLR, 2018. Therefore, CB violated the provisions of regulation 10(b) of the CBLR, 2018.

6.2 From offence report, it is noticed that Container No. WHSU5956802 of the Bill of Entry No.2018186 dated 07.02.2024 was marked suspicious during CSD scanning, requiring 100% examination under AC/DC Docks supervision. CB in his statement dated 15.02.2024 has inter-alia confirmed that goods marked suspicious were destuffed and random cartons were cut. Therefore, it appears that the goods were not presented for 100% examination by CB, as required and 100% examination was not conducted. On examination by CIU, JNCH, under panchnama dated 13-14.02.2024, the goods in violation of IPR regulations as well as undeclared goods were found. Therefore, it appears that CB failed to advise the importer regarding IPR Regulation and to comply with the provisions

of the Customs Act, 1962, other allied Acts and the rules and regulations. Further, the CB also failed to bring to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs about the non-compliance of IPR rules and misdeclaration of goods by the importer. Therefore, it appears that CB failed to comply with the provisions of regulation 10 (d) of the CBLR, 2018.

6.3 From the offence report, it is noticed that Shri Parth Gori, authorised representative of CB M/s Aaroh Logistics in his statement dated 15.02.2024 has *inter alia* stated that they de-stuffed all the goods marked suspicious in the CSD image and random Carton were cut and examined by the officer. Since, there was clear instruction to examine the consignment 100%, the CB did not adhere to the same and opened only random Cartons for examination. It was only after the examination by CIU, JNCH violation of IPR regulations as well as undeclared goods were found. If CIU, JNCH had not intervened, the misdeclared and non-compliant of IPR goods would have been cleared. Therefore, it appears that CB did not exercise due diligence and failed to comply with the provisions of regulation 10 (e) of the CBLR, 2018.

6.4 In view of the above facts, the CB License held by M/s Aaroh Logistics (CB No. 11/2205) was suspended by the Pr. Commissioner of Customs (General) vide Order No. 50/2023-24 dated 12.03.2024 and personal hearing was granted to the CB on 20.03.2024 at 12.00 noon.

7. WRITTEN SUBMISSION OF THE CB:- In response to the said Suspension Order, CB M/s Aaroh Logistics (11/2205) submitted their reply on 19.03.2024 vide letter dated 18.03.2024. In his submission CB submitted the following:-

i. CB submitted that the said Suspension Order dated 12.03.2004 has been issued against the Customs Broker on the basis of mis- appreciation of facts and the law and is liable to be withdrawn at the first Instance. CB further submitted that, no documents viz. Offence Report, copies of statements made by various persons related to investigation of case with respect to Bill of Entry No. 2018186 dated 07.02.2024 filed by them on behalf of M/s Pinga Enterprises Pvt Ltd has been provided to them.

ii. In defence of the violation of regulation 10(b) of the CBLR, 2018:-

CB in his defence submitted that it is on record that the transaction of business at the port of import was being carried out by the Customs Broker himself and through the H-Card Holder, Shri Parth Gori who was duly authorized to handle the consignment. Shri Bijendra Shahi, the BCBA Pass Holder was deployed for office work and other miscellaneous work of the Customs Broker, which is apparent from his statements that is narrated in the Suspension Order. Shri Bijendra Shahi was never authorized to attend "Core" viz. statutory work on behalf the Customs Broker, thus he was never authorized to "transact business"

at the Customs station, but only to assist the authorized employee to enable them to "transact business with the Customs".

CB further submitted that as per statements of Shri Parth Gori dated 28.02.2024 as narrated in the Suspension Order dated 12.03.2024 it is apparent that he was present at all the times while examination of goods were carried out by the Customs Officer and Shri Bijendra Shahi was only assisting him for the said function, and hence it cannot be said that the Customs Broker "transacted business at the Customs Station" through unauthorized employees. Thus, the allegation of violation of Regulation 10(b) of the CBLR, 2018 does not prima facie sustain against the Customs Broker.

iii. In response to the violation of regulation 10(d) of the CBLR,2018:-

CB in his defence submitted that the extent of examination purely comes under the domain of the Customs Officer and is a procedural aspect of assessment of goods. Customs Broker does not have any role in picking and choosing the packets or the lot for examination of goods which is the domain of the Customs Officer performing the assessment functions and the Customs Broker only abides by the direction of the Customs Officer and presents the goods accordingly. Customs Broker being professional can tender advice only when full facts are known to him. In the instant case, it is on record that the goods which have been found during examination allegedly do not tally with the declaration made in various documents and there is no evidence to suggest that the Customs Broker was privy to fact that the consignment contains goods which allegedly violates the IPR Law/Regulations. It is submitted that there is nothing on record to suggest that the Customs Broker has any prior knowledge of such things, in such a matter the question of advising the client does not arise and so does the question of bringing the fact of non-compliance to the notice of the Deputy/Assistant Commissioner would be irrelevant. Thus, the allegation of violation of Regulation 10(d) would not prima facie survive against the Customs Broker.

iv. In response to the violation of regulation 10(e) of the CBLR,2018:-

CB in his defence submitted that the examination of goods is a part of assessment function which falls under the sole domain of the "proper officer" of the Customs and the Customs Broker per se does not have any role to play in that as the same is a statutory function. It is on record that the random packages were opened as per the directions and choice of the examining officers and it is the officer who gave the report that the consignment was examined to the extent of 100%. During the process of examination, the Customs Broker can only assist the proper officer or present the goods for examination, thereafter no role remains of him to direct the "proper officer" to conduct the examination in a particular way. In the instant case, there is nothing on record which suggests

that the Customs Broker was having any knowledge regarding mis- declaration of goods under the consignment, hence it cannot be said that he did not exercise due diligence. Thus, it is submitted that the allegation of violation of Regulation 10(e) of the CBLR, 2018 too would not prima facie survive against the Customs Broker.

v. CB submitted that in the facts and circumstances of the case, there cannot be any imminent prejudice to the cause of revenue/Customs Department, if the Customs Broker is allowed to work in terms of the provisions of the CBLR, 2018 pending fair inquiry of the case. On the contrary, the cause of Customs Broker would be severely prejudiced if the suspension is continued in the case, as without prima facie case, the Customs Broker would be forced to suffer irreparable loss in the form of loss of livelihood, loss of business and loss of reputation.

vi. CB submitted that the livelihood of the Customs Broker and that of families of the employees of the Customs Broker would suffer, if the suspension of the CB License is continued in this case.

08. RECORD OF PERSONAL HEARING OF THE CB :- In pursuance to regulation 16(2) of the CBLR, 2018, opportunity of personal hearing was granted to the CB M/s Aaroh Logistics (11/2205). Shri Ashwini Kumar (Advocate) authorized representative of M/s Aaroh Logistics (11/2205) appeared for PH on 20.03.2024. He reiterated their written submission submitted vide letter dated 18.03.2024.

DISCUSSION AND FINDINGS

9.1 I have carefully gone through the records of the case, the written submissions submitted by the Customs Broker and the submissions made during the personal hearing. The facts of the case and finding of investigation have been mentioned in above Paras and are not being repeated for brevity.

9.2 The issues to be decided in the instant case is whether the suspension Order No. 50/2023-24 dated 12.03.2024 is required to be continued or revoked.

9.3 CB in his defence submitted that the transaction of business at the port of import was being carried out by the Customs Broker himself and through the H-Card Holder, Shri Parth Gori who was duly authorized to handle the consignment. However, I observe that Shri Parth Gori, H-Card Holder in his statement recorded under Section 108 of the Customs Act, 1962, dated 15.02.2024 & 28.02.2024 stated that he and his director Mr. Harish Shenoy, F-card Holder were not present during the examination of the goods. It is noticed that Shri Bijendra Shahi, BCBA Pass Holder of CB M/s Aaroh Logistics was present during the examination of the consignment and he did not have a valid Customs Pass to handle the consignment and he did not have any authorization from CB to handle the consignment duly approved by the DC/AC

which is prerequisite under regulation 10(b) of the CBLR, 2018. Therefore, it appears that CB has violated the provisions of regulation 10(b) of the CBLR, 2018

9.4 CB in his defence submitted that they does not have any role in picking and choosing the packets or the lot for examination of goods. I notice that Container No. WHSU5956802 of the Bill of Entry No.2018186 dated 07.02.2024 was marked suspicious during CSD scanning, requiring 100% examination under AC/DC Docks supervision. CB in his statement dated 15.02.2024 has inter-alia confirmed that goods marked suspicious were destuffed and random cartons were cut. Therefore, it appears that the goods were not presented for 100% examination by CB, as required and 100% examination was not conducted. Therefore, it appears that CB failed to comply with the provisions of regulation 10 (d) of the CBLR, 2018.

9.5. From the offence report, it is noticed that Shri Parth Gori, authorised representative of CB M/s Aaroh Logistics in his statement dated 15.02.2024 has *inter alia* stated that they de-stuffed all the goods marked suspicious in the CSD image and random Carton were cut and examined by the officer. Since, there was clear instruction to examine the consignment 100%, the CB did not adhere to the same and opened only random Cartons for examination and did not exercise due diligence. Therefore, it appears that CB has violated the provisions of regulation 10(e) of the CBLR, 2018.

9.6. I observe that the CB has a very important role in customs clearances and lot of trust has been placed by the Department on the CB. In regime of trade facilitation and with more and more of the goods being facilitated by the Risk Management Systems without examination by the Customs, the role of CB has further increased so that economic frontiers of the country are well guarded. In this regard, I rely on the judgement of the Hon'ble Supreme Court in case of Commissioner of Customs vs M/s K.M. Ganatra & Co has held that:-

"the Customs House Agent (CHA) occupies a very important position in the customs house. The customs procedures are complicated. The importers have to deal with a multiplicity of agencies namely carriers, custodians like BPT as well as the Customs. The importer would find it impossible to clear his goods through its agencies without wasting valuable energy and time. The CHA is supposed to safeguard the interests of both the importers and the customs. A lot of trust is kept in CHA by the importers/exporters as well as by the government agencies..."

9.7. Further, I rely on the judgement of the Hon'ble High Court of Madras in case of Cappithan Agencies vs Commissioner Of Customs, Chennai-VIII, 2015 (326) E.L.T. 150 (Mad.), has held that:

“...Therefore, the grant of licence to act as a Custom House Agent has got a definite purpose and intent. On a reading of the Regulations relating to the grant of licence to act as CHA, it is seen that while CHA should be in a position to act as agent for the transaction of any business relating to the entry or departure of conveyance or the import or export of goods at any customs station, he should also ensure that he does not act as an Agent for carrying on certain illegal activities of any of the persons who avail his services as CHA. In such circumstances, the person playing the role of CHA has got greater responsibility. The very description that one should be conversant with the various procedures including the offences under the Customs Act to act as a Custom House Agent would show that while acting as CHA, he should not be a cause for violation of those provisions. A CHA cannot be permitted to misuse his position as CHA by taking advantage of his access to the Department. The grant of licence to a person to act as CHA is to some extent to assist the Department with the various procedures such as scrutinizing the various documents to be presented in the course of transaction of business for entry and exit of conveyances or the import or export of the goods. In such circumstances, great confidence is reposed in a CHA. Any misuse of such a position by the CHA will have far reaching consequences in the transaction of business by the customs house officials. Therefore, when, by such malpractices, there is loss of revenue to the custom house, there is every justification for the Respondent in treating the action of the Petitioner Applicant as detrimental to the interest of the nation and accordingly, final order of revoking his licence has been passed.”

9.8. In view of the discussion held above, I have no doubt that the suspension of the CB licence vide Order No. 50/2023-24 dated 12.03.2024 under regulation 16 of the CBLR,2018 was just and proper. The said regulation reads as: -

“16. Suspension of license. - (1) Notwithstanding anything contained in regulation 14, the Principal Commissioner or Commissioner of Customs may, in appropriate cases where immediate action is necessary, suspend the license of a Customs Broker where an enquiry against such Customs Broker is pending or contemplated.”

10. From the above facts, prima-facie, the Customs Broker M/s. Aaroh Logistics (CB No. 11/2205) appeared to have failed to fulfil their obligations under Regulation 10(b), 10(d) & 10(e) of CBLR, 2018 and contravened the same. Therefore, for their acts of omission and commission as above, CB M/s. Aaroh Logistics (CB No. 11/2205) appeared liable and guilty. I find that the CB has failed to discharge duties cast on them with respect to Regulation 10(b), 10(d) &

10(c) of CBLR, 2018. Hence, all the charges sustain for the time being and can form grounds for continuation of the order of suspension.

11. Accordingly, I pass the following order: -

ORDER

- I. I, Principal Commissioner of Customs (General), in exercise of powers conferred upon me under the provisions of Regulation 16(2) of CBLR, 2018 order that the suspension of the Customs Broker Licence of M/s Aaroh Logistics (CB No. 11/2205) (AARPS9514JCH001) ordered vide Order no. 50/2023-24 dated 12.03.2024 shall continue, pending inquiry proceedings under Regulation 17 of CBLR, 2018.
- II. This order is being issued without prejudice to any other action that may be taken or purported to be taken against the CB or any other person(s)/firm(s) etc. under the provisions of the Customs Act, 1962 and Rules/Regulations framed there under or under any other law for the time being in force.

28/3/2024
(SUNIL JAIN)

Principal Commissioner of Customs (G)
NCH, Mumbai - I

Encl. - RUDs

To,

M/s. Aaroh Logistics (11/2205) (PAN:AARPS9514JCH001),
Shop No. 35, Adarsh Market, Plot No. 18A, Sector 48A,
Seawoods, Nerul, Navi Mumbai, Thane,
Maharashtra - 400707

OK
Issued by Speed
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Copy to:

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