



सीमाशुल्क (अपील) आयुक्तका कार्यालय, अहमदाबाद
 OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,
 चौथीमंजिल 4th Floor, हडको बिल्डिंग HUDCO Building, ईश्वर भुवन रोड Ishwar Bhuvan Road,
 नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009
 दूरभाष क्रमांक Tel. No. 079-26589281
 DIN-20250571MN000000D53D

क	फाइल संख्या FILE NO.	S/49-291/CUS/AHD/2023-24
ख	अपीलआदेश संख्या ORDER-IN-APPEAL No. (सीमाशुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	JMN-CUSTOM-000-APP-06-25-26
ग	पारितकर्ता PASSED BY	SHRI AMIT GUPTA Commissioner of Customs (Appeals), AHMEDABAD
घ	दिनांक DATE	07.05.2025
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL / BILL OF ENTRY NO. & DATE	Bill of Entry No. 7411006 dated 28.07.2018 filed at Custom House, Pipavav
च	अपील आदेश जारी करने की दिनांक ORDER-IN-APPEAL ISSUED ON:	07.05.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. K.V.S. Traders, 5328, Hardhian Singh Road, Karol Bagh, New Delhi - 110005.

1.	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है. This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते हैं. Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.

	निम्नलिखित सम्बन्धित आदेश/Order relating to :	
(क)	बैगेज के रूप में आयातित कोई माल.	
(a)	any goods imported on baggage.	
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.	
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.	
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.	
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.	
3.	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :	
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :	
(क)	कोर्ट फी एक्ट, 1870 के मद सं.6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.	
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule I item 6 of the Court Fee Act, 1870.	
(ख)	सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो	
(b)	4 copies of the Order - In - Original, in addition to relevant documents, if any	
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां	
(c)	4 copies of the Application for Revision.	
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथासंशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्षक अधीन आता है में रु. 200/- (रुपए दो सौ मात्र) या रु. 1000/- (रुपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां, यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु. 200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु. 1000/-	
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs. 200/- (Rupees two Hundred only) or Rs. 1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs. 200/- and if it is more than one lakh rupees, the fee is Rs. 1000/-.	
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं	
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :	
	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-	

	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हजार रूपए.
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पाँच हजार रूपए
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हजार रूपए.
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने मांगे गए शुल्क के 10 % अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के 10 % अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा।
(d)	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.
6.	उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-
(a)	in an appeal for grant of stay or for rectification of mistake or for any other purpose; or
(b)	for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.



ORDER-IN-APPEAL

1. M/s. K.V.S. Traders, 5328, Hardhian Singh Road, Karol Bagh, New Delhi - 110005 (hereinafter referred to as the 'appellant') has filed the present appeal against the assessment of Bill of Entry No. 7411006 dated 28.07.2018 filed at Custom House, Pipavav (hereinafter referred to as the 'impugned Bill of Entry').

2. Facts involved in the appeal, in brief, are that the appellant has filed the impugned Bill of Entry at Custom House, Pipavav, for import of 45,259 Sq. Meter 'PU Coated Fabrics' having width of 54 +/- 2 inch and thickness of 0.5mm +/- 10%. During re-assessment of the impugned goods under the provisions of Section 17(4) of the Customs Act, 1962, the assessable unit value was increased from USD 0.80 per Sq. Meter to USD 1.00 per Sq. Meter. The assessing officer has noted that the importer was informed about enhancement of value and he agreed for the enhancement. The impugned Bill of Entry was finally assessed on 31.07.2018. The appellant has paid duty of Rs.11,54,170/-, as assessed by the assessing officer, on 31.07.2018 and the 'Out of charge' was granted on 01.08.2018. No speaking order on re-assessment was passed under the provisions of Section 17(5). The appellant had not filed any appeal against assessment of the impugned Bill of Entry at that time, i.e. within the appeal period of 60 days plus condonable delay period of 30 days, as prescribed under Section 128(1) of the Customs Act, 1962.

3. Vide letter dated 10.06.2019 (received on 28.06.2019), the appellant has filed a claim for refund of excess duty of Rs.2,30,834/- with the Assistant Commissioner of Customs, Pipavav (hereinafter referred to as the 'adjudicating authority'). During the personal hearing before the adjudicating authority, the Consultant on behalf of the appellant, relied upon the Final Order No. A/11104-11106/2023 dated 03.05.2023 passed by Hon'ble CESTAT, Ahmedabad, in their own case and stated that the Bill of Entry No. 7411006 dated 28.07.2018 has not been mentioned (covered) in the said Order of CESTAT, but the matter in that case was same. The adjudicating authority has relied upon the Judgment dated 18.09.2019 of Hon'ble Supreme Court in the case of *ITC Ltd. Vs. CCE, Kolkata [2019 (368) E.L.T. 216 (S.C.)]* and observed that every Bill of Entry is an order and if an importer is aggrieved, they are required to file appeal against Bill of Entry. The adjudicating authority further observed that the importer/claimant has accepted the value enhancement without any protest or objection and they had not preferred an appeal against the impugned Bill of Entry No. 7411006 dated 28.07.2018. In view of these observations, the refund claim has been rejected vide Order-In-Original No. Draft/AC/LRM/GPPL/REF/GPPL/23-24 dated 05.09.2023.

4. It is pertinent to note that the present appeal has been filed against the assessment of Bill of Entry No. 7411006 dated 28.07.2018 and no appeal has been filed against the said Order-In-Original dated 05.09.2023.

Personal Hearing:

5. Personal Hearing in this matter was held in virtual mode on 07.03.2025, which was attended by Shri H. K. Hirani, Consultant. He reiterated the submissions made at the time of filing of appeal. He also sent further written submissions dated 07.03.2025, received on 17.03.2025, with request to consider them along with the appeal memorandum.

6. Due to transfer of my predecessor, another Personal Hearing was held before me by virtual mode on 30.04.2025, which was attended by Shri H. K. Hirani, Consultant. He reiterated the submissions made at the time of filing of appeal and requested to consider the written submissions made during the previous hearing.

H2

Discussion regarding time-limit for filing appeal:

7. Before going into merits of the case, I shall examine as to whether the appeal has been filed within the time-limit as prescribed in Section 128(1) of the Customs Act, 1962, or otherwise.

8. After going through the particulars mentioned at Sr.No.1 of Form C.A.-1, I observe that the present appeal has not been filed against any adjudication order, but it has been filed against the enhancement of value in the Bill of Entry No. 7411006 dated 28.07.2018. A copy of the first page of the Form C.A.-1 is given as under:

B/Entry No. 7411006 dated 28.07.2018
O-I-O No. Draft/AC/LRM/GPPL/REF/GPPL/23-24 dtd. 05.09.2023

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FORM C.A.-1**Before the Commissioner of Customs (Appeals)**4th Floor, Hudco Bhavan, Navarangapura, Ahmedabad - 380 009

Appeal filed under Section 128 of CA 1962

Appeal No.**of 2020-21****KVS Traders****Address :- 5328, Hardhian Singh Road,
Karol Bagh, New Delhi - 110 005****Email :- girishkohli5328@gmail.com****Appellant****Versus****Asst. /Dy. Commissioner of Customs,****Respondent****Office of Commissioner of Customs, GPPL Pipavav,
Rajula, Amreli, Gujarat - 365560.**

1.	Adjudication Order No. and date.	Nil The appeal is against enhancement of transaction value in the B/Entry No. 7411006 dated 28.07.2018
2.	Name and address of the appellant.	KVS Traders Address :- 5328, Hardhian Singh Road, Karol Bagh, New Delhi - 110 005 Email :- girishkohli5328@gmail.com
3.	Designation and address of the officer passing the decision or order appealed against and the date of the decision or order.	Dy. /Asstt. Commissioner of Customs Office of Commissioner of Customs, GPPL Pipavav, Rajula, Amreli, Gujarat - 365560.
4.	Date of communication of the decision or order appealed against to the appellant.	05.09.2023
5.	Address to which notices may be sent to the appellant.	--- As Above ---

9. As mentioned by the appellant at Sr.No.1 of Form C.A.-1, the appeal has been filed against Bill of Entry No. 7411006 dated **28.07.2018**. Whereas, at Sr.No.4 of the Form C.A.-1, the **date of communication** of the decision or order appealed against, has been mentioned as **"05.09.2023"**. So, it is to be ascertained that on which date of assessment of the impugned BoE dated 28.07.2018 was communicated to the appellant. I have checked the status and particulars of the said BoE on the website of ICEGATE. The said particulars, as reflected on the URL, https://enquiry.icegate.gov.in/enquiryatices/BETTrack_Ices_action, have been given below:

BILL OF ENTRY

LOCATION	BILL OF ENTRY NO	BILL OF ENTRY DATE
PIPAVAV - VICTOR PORT GUJARAT SEA (INPAV1)	7411006	28/07/2018

BE Details

IEC	TOT VAL	TYP	CHA Number	FIRST CHECK	PRIOR BE	SEC48
0510070299	3118526.14	H	AABCV6455CCHO 02	N	N	N
APPRAISING GROUP	TOTAL ASSESSABLE VALUE	TOTAL PACKAGE	GROSS WEIGHT (Kg)	TOTAL DUTY (INR)	FINE PENALTY (INR)	WBE No.
3	3150026	1355	28000	1154170	N.A.	N.A.

Current Status

APPRA I SEMEN T	CURR ENT QUE UE	NO OF QUERY RAISED	NO OF QUERY REPLE D	REPLY DATE	REPL Y STAT US	APPR DATE	ASSESS DATE	PAYMENT DATE	EXAM DATE	OOC DATE
Process ed	N.A.	0	0	N.A.	NO	2018-7-30 18.45.10.0	2018-7-31 14.35.26.0	2018-7-31 0.0.0.0	N.A.	2018-8-1 16.6.16.0

Payment Details

CHALLAN No.	DUTY AMOUNT (INR)	FINE AMOUN T (INR)	INTEREST AMOUN T (INR)	PENAL AMOUNT (INR)	TOTAL DUTY (INR)	DUTY PAID (INR)	MODE OF PAYMENT
2023583687	1154170	0	0	0	1154170.0	1154170.0	EPAYMENT

10. It can be seen from the above particulars that the impugned Bill of Entry No.7411006 dated 28.07.2018 was assessed on 31.07.2018, the appellant had paid duty on 31.07.2018 and the 'Out of Charge' was given on 01.08.2018. Thus, it is clear that the assessment was done on 31.07.2018 and in pursuant to the assessment, the appellant has paid duty on 31.07.2018. Therefore, I am of the view that the date of communication of the assessment in this case is **31.07.2018**. Whereas, the appellant has wrongly shown the date of communication of decision or order appealed against as "05.09.2023" against Sr.No.4 of the Form C.A.-1. Actually, the date "05.09.2023" is the date

of issuance of the Order-In-Original No. Draft/AC/LRM/GPPL/REF/GPPL/23-24. The said Order-In-Original has NOT been passed towards assessment of Bill of Entry No. 7411006 dated 28.07.2018, but it has been passed towards rejection of refund claim. I find that the present single appeal, which has been filed against assessment of Bill of Entry No. 7411006 dated 28.07.2018 cannot be treated to have been filed against O.I.O. No. Draft/AC/LRM/GPPL/REF/GPPL/23-24 dated 05.09.2023. In other words, the present single appeal filed against assessment cannot be treated as appeal against rejection of refund claim also.

11. I observe that the assessment in respect of the impugned Bill of Entry was finalized and communicated through EDI System to the appellant on **31.07.2018**, and the appellant has paid the duty as reassessed by Customs officer on 31.07.2018. Whereas, the present appeal has been received in this office on **26.10.2023**, i.e. after a period of **more than five years** from the date of assessment. The present appeal has been received after 1913 days from the date of communication of the assessment. The normal period of 60 days for filing of appeal, as prescribed under Section 128(1) of the Customs Act, 1962, has been expired on 29.09.2018 and so, there is a **delay of 1853 days** in filing the present appeal. The appellant has neither sought condonation of delay in filing appeal, nor I have power to condone such delay of more than 30 days as per the Proviso to Section 128(1) of the Customs Act, 1962.

12. Regarding condonation of delay beyond the period of 30 days:

12.1 As per the proviso to Section 128(1) of Customs Act, 1962, if the Commissioner (Appeals) is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. Thus, the Commissioner (Appeal) has no statutory power to condone the delay beyond the period of 30 days.

12.2 In this regard, I rely upon the Judgment of the Hon'ble Supreme Court in case of **Singh Enterprises Vs. Commissioner of C.Ex., Jamshedpur** [2008 (221) E.L.T. 163 (S.C.)], wherein the Hon'ble Apex Court while interpreting the Section 35 of the Central Excise Act, 1944, which is *pari materia* to Section 128 of the Customs Act, 1962, held that the appeal has to be filed within 60 days, but in terms of the proviso, further time of 30 days can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The relevant para of the said Judgment is reproduced below (underline supplied):



"8. The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of Statute are vested with jurisdiction to condone the delay beyond the permissible period provided under the Statute. The period upto which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Indian Limitation Act, 1963 (in short, the 'Limitation Act') can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days time can be granted by the appellate

authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only upto 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days period."


12.3 The above view was reiterated by the Hon'ble Supreme Court in the case of *Amchong Tea Estate [2010 (257) E.L.T. 3 (S.C.)]*. Further, the Hon'ble High Court of Gujarat in case of *Ramesh Vasantbhai Bhojani [2017 (357) E.L.T. 63 (Guj.)]* and the Hon'ble Tribunal, Bangalore in the case of *Shri Abdul Gafoor Vs Commissioner of Customs (Appeals) [2024-TIOL-565-CESTAT-BANG]* took a similar view while dealing with Section 128 of the Customs Act, 1962.

12.4 In terms of legal provisions under Section 128 of the Customs Act, 1962 and in light of the judicial pronouncements by Hon'ble Supreme Court, Hon'ble High Court and Hon'ble Tribunal, it is settled proposition of law that the appeals before first appellate authority under the provisions of Customs Act, 1962, are required to be filed within 90 days, including the condonable period of 30 days, as provided in the statute; and the Commissioner of Customs (Appeals) is not empowered to condone any delay beyond 30 days.

13. In light of the above observation, I am of the view that the impugned appeal, which has been filed after **delay of 1853 days**, beyond the statutory time-limit of 60 days, is time-barred in terms of Section 128(1) of the Customs Act, 1962. Thus, the appeal is liable to be rejected on the grounds of limitation without going into merits.

Order:

14. In view of the above discussion, I reject the appeal filed by the appellant M/s. K.V.S. Traders on the grounds of limitation.


(AMIT GUPTA)
Commissioner (Appeals)
Customs, Ahmedabad

Date: 07.05.2025

F.No. S/49-291/CUS/AHD/2023-24

By e-mail [As per Section 153(1)(c) of the Customs Act, 1962]

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3. The Deputy/Assistant Commissioner of Customs, Custom House, Pipavav.
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4. Guard File.

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