

Docket: 2019-2139(GST)I

BETWEEN:

AXAMIT VERSA INC.,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on October 24, 2022, at Montréal, Quebec

Before: The Honourable Justice Jean Marc Gagnon

Appearances:

Counsel for the appellant: Claire Ross

Counsel for the respondent: Julien Vailles

JUDGMENT

The appeal from the reassessment made on May 9, 2019, under the *Excise Tax Act* for the period from January 1 to December 31, 2015, is allowed without costs, in accordance with the attached reasons for judgment.

Signed at Ottawa, Canada, this 15th day of December 2022.

“J.M. Gagnon”

Gagnon J.

Citation: 2022 TCC 163
Date: 20221215
Docket: 2019-2139(GST)I

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REASONS FOR JUDGMENT

Gagnon J.

I. Introduction

[1] The appellant is appealing a reassessment made by the Agence du Revenu du Québec (the Agency), as agent of the Minister of National Revenue (the Minister), pursuant to the *Excise Tax Act*, R.S.C., 1985, c. E-15, as amended (the ETA).

[2] After the appellant filed its annual return covering the annual reporting period of January 1 to December 31, 2015, (the Period), the Agency issued a Notice of Assessment dated June 20, 2016, denying the appellant's claims for input tax credits (ITCs). A reassessment issued by the Agency on May 9, 2019, following an objection reduced the total amount of ITCs disallowed for the Period to \$691, which led to this appeal.

[3] At the opening of the hearing, the appellant reduced its appeal to the claim of a single \$675 ITC on the goods and services tax payable applicable to the monthly rental payments made by the appellant (ITC claimed).

[4] During the Period, the appellant operated a computer consulting business and since 2013 occupied leased spaces for this purpose in a commercial building belonging to 9097-6549 Québec inc. (the Lessor). In 2015, the commercial lease

agreement between the Lessor and the appellant was renewed for a period of one year. An important element is that the corporate name of the Lessor does not appear in the renewal agreement entered into between the parties. Rather, the name shown in the agreement is a corporate name registered in the Lessor's file with the Registraire des entreprises du Québec, i.e., Gestion 170 René-Lévesque. This corporate name, which corresponds to the number of the building where the appellant leases its spaces, is used by the Lessor for the purposes of operating the building and has been registered in its file with the Registraire des entreprises du Québec since June 27, 2002.

[5] The appellant and respondent admit that the sole issue is whether the appellant is required to obtain the Lessor's ETA registration number (GST number) in a timely manner and send it to the competent authorities. The other conditions entitling the appellant to the ITC including the amount of the ITC claimed are not in dispute.

II. Issue

[6] The issue is whether, for the purposes of qualifying for the ITC claimed, the appellant met the applicable conditions of paragraph 169(4)(a) of the ETA and the *Input Tax Credit Information (GST/HST) Regulations*, SOR/91-45 (the Regulations) in connection with the Lessor's GST number.

III. Position of the appellant

[7] The appellant acknowledged that Part IX of the ETA stipulates that a registrant must meet specific conditions to show that it is entitled to an ITC and submitted that these requirements had been met in this case. More specifically, the appellant had obtained the Lessor's GST number when it filed its annual return for the Period as required by paragraph 169(4)(a) of the ETA. According to the appellant, this is the registrant's sole requirement with respect to the GST number of the supplier of the supply. The appeal must be allowed.

IV. Position of the respondent

[8] The burden of proof is on the appellant, and the appellant must demolish the assumptions of fact on which the reassessment was based. Paragraph 13 of the respondent's Reply to the Notice of Appeal sets out the findings and assumptions of fact on which the reassessment was based:

- (a) The facts admitted above;

- (b) The appellant is a registrant for purposes of Part IX of the ETA;
- (c) The appellant's fiscal year, during the Period, began on January 1 of a year and ended on December 31;
- (d) The appellant operates a computer services business;
- (e) For the Period, the appellant claimed, *inter alia*, the ITC amounts described in paragraph 9 hereof;
- (f) The supporting documents submitted to substantiate these claims did not meet regulatory requirements.

[9] In the circumstances, the appellant must obtain the Lessor's GST number in a document signed or issued by the Lessor referred to in subsection (h) of the definition of supporting document provided for in section 2 of the Regulations before it produces the annual reporting period for the Period. This is not a technical formality but a stringent requirement. The appellant must obtain the GST number from the Lessor, who must furnish it in writing forthwith as indicated in subsection 223(2) of the ETA. It is not up to the Agency to take these steps.

[10] The evidence does not show that the appellant obtained such a document when required, and testimonial evidence is insufficient to satisfy the condition. The appellant did not send the Lessor's GST number for the purpose of establishing its claim within the time limit, which provided grounds for denying the credit. A non-compliant application of the applicable rules is contrary to the measures adopted in the ETA and its related regulations.

[11] Given the foregoing, the appeal must be dismissed.

V. Analysis

- Statutory provisions

[12] Paragraph 169(4)(a) of the ETA stipulates the following:

- (4) A registrant may not claim an input tax credit for a reporting period unless, before filing the return in which the credit is claimed,
 - (a) the registrant has obtained sufficient evidence in such form containing such information as will enable the amount of the input tax credit to be determined, including any such information as may be prescribed;

(emphasis added)

[13] Subsection 223(2) of the ETA stipulates the following:

Particulars

(2) A person who makes a taxable supply to another person shall, on the request of the other person, forthwith furnish to the other person in writing such particulars of the supply as may be required for the purposes of this Part to substantiate a claim by the other person for an input tax credit or rebate in respect of the supply.

(emphasis added)

[14] Excerpts from sections 2 and 3 of the Regulations which may be relevant for the purposes hereof state:

2 In these Regulations,

(. . .)

supporting documentation means the form in which information prescribed by section 3 is contained, and includes

- (a) an invoice,
- (b) a receipt,
- (c) a credit-card receipt,
- (d) a debit note,
- (e) a book or ledger of account,
- (f) a written contract or agreement,
- (g) any record contained in a computerized or electronic retrieval or data storage system, and
- (h) any other document validly issued or signed by a registrant in respect of a supply made by the registrant in respect of which there is tax paid or payable. (*pièce justificative*)

(. . .)

3 For the purposes of paragraph 169(4)(a) of the Act, the following information is prescribed information:

(. . .)

(b) where the total amount paid or payable shown on the supporting documentation in respect of the supply or, if the supporting documentation is in respect of more than one supply, the supplies, is \$30 or more and less than \$150,

(i) the name of the supplier or the intermediary in respect of the supply, or the name under which the supplier or the intermediary does business, and the registration number assigned under section 241 of the Act to the supplier or the intermediary, as the case may be,

(. . .)

(c) where the total amount paid or payable shown on the supporting documentation in respect of the supply or, if the supporting documentation is in respect of more than one supply, the supplies, is \$150 or more,

(i) the information set out in paragraphs (a) and (b),

(. . .)

(emphasis added)

- testimonial evidence

[15] At the hearing, the appellant's president testified on behalf of the appellant, and the respondent called the Agency's objections officer who was responsible for processing the objection submitted by the appellant.

[16] The appellant's president, Mr. Bulgakov, has held this position since March 2009. In 2015, the appellant had three employees.

[17] He confirmed that an external accounting firm prepared the tax returns for the years 2013, 2014 and 2015 based on the documents and information that the appellant had in its possession and had sent to the firm.

[18] In response to a question regarding how the appellant obtained the Lessor's GST number, he specified that the number was obtained in 2013, i.e., during the first year of the lease at 170 René-Lévesque. This was the first year in which the appellant was likely to claim an ITC for the goods and services tax remitted to the Lessor. This number had been requested from the appellant by its accountants for the purpose of preparing income tax returns.

[19] He confirmed that he personally asked the Lessor for the GST number and sent it to the accountants upon receipt in 2013. The witness confirmed that the

Lessor's GST number was obtained after he had asked the Lessor to provide it and that this number was in his possession before any income tax returns containing an ITC claim in connection with the Lessor were prepared.

[20] With respect to the failure to send the Lessor's GST number to the Agency in the context of the objection submitted against the 2015 income tax return, he could not recall that the agent had expressly requested the Lessor's GST number to provide a rationale for entitlement to the ITC.

[21] The witness explained that when a fax in support of the objection was sent on March 25, 2019, he attached an extract from the Registraire des entreprises relating to the Lessor proving the existence of a corporate name, Gestion 170 René-Lévesque, used by the Lessor. The fax confirmed the Lessor's 9097-6549 Québec inc. corporate name and the Gestion 170 René-Lévesque corporate name which appeared on the renewal agreement entered into between the Lessor and the appellant. The information linked the corporate name Gestion 170 René-Lévesque to the Lessor. Apparently, no response was obtained from the Agency's objection department after the fax was sent, and the memorandum on the objection dated March 27, 2019, was completed.

[22] On cross-examination, the witness confirmed that the documents sent to the objections officer in support of the ITC claim relating to the lease with the Lessor did not contain the Lessor's GST number. He also confirmed that he had personally contacted the Lessor to obtain its GST number but that the appellant did not have a document in its possession signed by the Lessor confirming its GST number.

[23] During her examination-in-chief, the objections officer confirmed that she had searched the two registration registers available at the Agency for a registration under the name of Gestion 170 René-Lévesque, but her search was unsuccessful. She explained that this search was performed only out of curiosity because it was not up to the Agency to perform this type of search.

[24] On cross-examination, she confirmed that she had asked the appellant for the Lessor's GST number during a telephone interview but not in writing. She also confirmed that she received the appellant's fax dated March 25, 2019, and that she did not search the Agency's two internal registration registers regarding the Lessor's 9097-6549 Québec inc. corporate name before sending her memorandum on the objection. She explained that she was not authorized to do this.

- applicable treatment

[25] Paragraph 169(4)(a) of the ETA is clear. Before filing the return in which an ITC is claimed, a registrant must obtain such particulars of the supply as may be required for which the credit is claimed. In this case, one of these particulars is set out in paragraph 3(b)(i) of the Regulations, i.e. the registration number assigned to the Lessor.

[26] The respondent is of the opinion that the appellant did not obtain the Lessor's GST number before producing the annual reporting period for the Period. If it had obtained it, why would the appellant not have sent it to the Agency?

[27] The respondent also insisted on written evidence signed by the Lessor to satisfy the condition and that the appellant never obtained this written evidence from the Lessor, whereas the Lessor's GST number was finally sent to the Agency, but after the decision on the objection. In particular, he referred to subsection (h) of the definition of supporting documentation in the Regulations to justify the need in this case for a document from the Lessor to prove that the Lessor's GST number had been obtained.

[28] Finally, the respondent's book of authorities contained three decisions: *Systematix Technology Consultants Inc. v. Canada*, 2007 FCA 226, *Tan v. The Queen*, 2015 TCC 121 and *3922731 Canada Inc. v. The Queen*, 2011 TCC 186.

[29] The Court does not believe that the principles established by the Federal Court of Appeal in *Systematix* are called into question in this case. The appellant was required to obtain the Lessor's GST before it filed the GST return in which the ITC was claimed. This is a mandatory requirement that the appellant must meet. This also appears to be the position acknowledged by the appellant at the hearing. Rather, the issue is the means permitted by the Regulations to meet the mandatory requirement.

[30] The Court does not believe that *Tan* is determinative for the purposes of this case. In this informal case, the appellant argued that it did not understand that it had to provide its suppliers' GST numbers because the Minister was already aware of this information. There is no question here of debating this argument or questioning the conditions to be met in order to be entitled to claim an input tax credit, in particular with regard to the obligation to obtain the Lessor's GST number beforehand. The Lessor's GST number is known. It remains to be determined whether the circumstances surrounding the obtaining of this number by the appellant meet the mandatory requirements of the ETA.

[31] The Court does not believe there is any need to extrapolate a possible misunderstanding during a telephone conversation with regard to the information requested and concluding that the appellant refused to send the Lessor's GST number on the grounds that the Minister and her agent had access to this information. The appellant's evidence and representations at the hearing hardly support this argument.

[32] Finally, *3922731 Canada* (decided on an informal basis) also appears to differ from the case at bar. More specifically, paragraph 19 of the case to which the respondent referred dealt with an invoice containing a certain number of misstatements, and the invoice was submitted as the only source that could contain the supplier's GST number, although it was not registered at the time of invoicing. The facts were therefore focused on an invoice specific to that case. Also, the case did not discuss possible means of satisfying the condition, probably because it was not required due to the circumstances of the case.

[33] The officer's memorandum on the objection in this case confirmed that there were no restrictions on the form and number of documents that could contain the information to support an ITC claim. Furthermore, the principles taken up in *3922731 Canada* were not called into question here.

[34] In summary, *3922731 Canada* does not appear to be determinative in the case under consideration.

[35] The uncontradicted testimonial evidence showed that the appellant, through its president, contacted the Lessor in 2013 to ask it to send its GST number. The evidence also established that once this information was obtained, the appellant forwarded this information to its accountants who subsequently prepared the appellant's annual income tax returns, including the return for the Period that included the ITC claimed.

[36] The uncontradicted evidence also showed that the appellant did not obtain the Lessor's GST number in a document signed by the Lessor and that this number had still not been sent to the Agency at the time the memorandum on the objection was sent.

[37] There have been some developments regarding the interpretation and weight to be given to the conditions set out in the Regulations on obtaining the particulars before filing a return for a period including an ITC claim since these legislative provisions were introduced. Some of these developments can occasionally evolve

according to the issues involved or certainly provide some reassurance as to the meaning or the scope to be given to the language used.

[38] These developments not only include positions expressed by the courts, but also positions expressed by the authorities responsible for introducing legislative measures or administering the legislation involved.

[39] In this regard, it seems relevant to review some of these positions which indicate the scope and meaning to be given to the time, manner and form surrounding the obtaining of the information that a registrant must obtain to be entitled to claim an ITC. Obtaining the supplier's GST number is certainly covered by these positions.

[40] The Federal Court of Appeal's decision in *Systematix* is undoubtedly a landmark decision confirming that the conditions set out in the Regulations are mandatory and must be satisfied to give rise to an ITC claim. This position is now regularly taken up by this Court.

[41] Chapter 8, section 4, paragraph 33 of the memorandum prepared by the Canada Revenue Agency relating to ITCs, as amended on April 8, 2015, specified the source of the particulars to be obtained referred to in the Regulation:

More than one document

33. There is no requirement that the evidence needed to support a claim for an ITC be contained in a single document. It is not uncommon, particularly where written agreements are concerned, that primary documentation needs to be supplemented by additional material. For example, a contract for services may specify the particulars concerning the supplier, the recipient, and the terms of payment, but the consideration and the tax paid or payable may be determined only on a periodic basis and documented on separate invoices. Both the written agreement and the invoice are required to satisfy the documentary requirements needed to claim an ITC.

(emphasis added)

[42] In 2009, during an annual meeting of the Canadian Bar Association Commodity Tax Section, the Canada Revenue Agency specified:

36. -- ETA 169(4) Documentation

Facts / Background

The *Input Tax Credit Information (GST/HST) Regulations* stipulate certain information requirements that must be obtained to substantiate an ITC claim. The CRA indicated in the past that such information could be taken from several documents.

Question

In the following circumstances, would an ITC be allowed to the recipient?

1. The supplier has a valid GST registration number.
2. The recipient has obtained such number at one point in time in the past and has kept a copy in its files.
3. The supplier issues an invoice with the above-mentioned GST number but due to a typo (one character is wrong), the valid number is not exactly reproduced on the invoice.
4. At the time of issuing this invoice, the supplier GST number is still valid.

CRA Comments

Subsection 169(4) of the *Excise Tax Act* (the ETA) provides that, before filing the return for the period in which an input tax credit is claimed, the registrant must have obtained sufficient to allow the amount of the input tax credit to be determined, including information that may be prescribed under the *Input Tax Credit (GST/HST) Information Regulations* (the Regulations).

The requirement to obtain the registration number of the supplier is found under subparagraph 3(b)(i) of the Regulations. This obligation exists when the total amount paid or payable on the supporting documentation in respect of the supply is \$30 or more. “Supporting documentation” is defined in section 2 of the *Input Tax Credit Information (GST/HST) Regulations* (the Regulations) to include:

- (a) an invoice,
- (b) a receipt,
- (c) a credit-card receipt,
- (d) a debit note,
- (e) a book or ledger of account,
- (f) a written contract or agreement,

(g) any record contained in a computerized or electronic retrieval or data storage system, and

(h) any other document validly issued or signed by a registrant in respect of a supply made by the registrant in respect of which there is tax paid or payable.

There is no requirement that the evidence needed to support an input tax credit claim be contained in a single document. Therefore, if the registrant has the correct registration number of the supplier in its files before filing the return in which the input tax credit is claimed, the registrant will have met the documentary requirement of subparagraph 3(b)(i) of the Regulations.

(emphasis added)

(. . .)

[43] In 2004, during a roundtable of the Institute of Chartered Accountants of Alberta, the Canada Revenue Agency provided the following response to a question about the possibility of providing several sources to meet the requirements of the Regulations:

Question 2

[...]

Response

There is no provision which requires all requisite information in support of an ITC claim to be presented in a specific kind of document or format or that all required information be contained within a single document, in the Excise Tax Act or in the related regulations.

Subsection 286(1) requires that books and records be kept in such form and contain such information as will enable the determination of liabilities and obligations under Part IX of the Act. A “record” is broadly defined under subsection 123(1) and includes, in part, “an agreement ... a statement ... and any other thing containing information, whether in writing or in any other form.”

Paragraph 169(4)(a) states that, in order to claim an ITC, the registrant must obtain “sufficient evidence in such form containing such information as will enable the amount of the input tax credit to be determined, including any such information as may be prescribed.”

The prescribed information, per the Input Tax Credit Information GST/HST Regulations, should allow the Minister to ascertain:

- the identities of the supplier and recipient;
- the Business number of the supplier;
- when the supply took place;
- the nature of the supply;
- the tax status of the supply;
- the value of the consideration paid or payable;
- the terms of payment; and
- the amount of tax paid or payable.

An ITC would be allowed to the extent that this information is available in support of a registrant's claim, and to the extent that the supply is for consumption, use or supply in the course of commercial activities of the recipient. It remains a question of fact, verifiable on audit, whether a particular document or record, or set of documents and/or records, is sufficient to support a specific ITC claimed by a registrant.

(emphasis added)

[44] In *McDavid v. The Queen*, 2014 TCC 112 (General Procedure):

[27] The required information does not have to be in the form of an invoice nor does it have to be contained in a single document. Indeed, the definition of supporting documentation is an inclusive and broad one. It is found in section 2 of the Regulations.

[45] Recently, in *CFI Funding Trust v. The Queen*, 2022 TCC 60, a general procedure decision that was not appealed, the Honourable Mr. Justice Hogan specified the following at paragraphs 41 and 42 of his reasons:

[41] Subsection 169(4) simply provides that the registrant must have obtained the prescribed information in a form that will allow the ITCs to be determined. How that information is obtained does not matter. It may be obtained through oral or electronic communication. In addition, the information may be obtained by the recipient from so-called foundational documents or from other sources that contain the prescribed information.

[42] As noted by the Appellant, the Respondent's position contradicts prior public statements made by the CRA on what constitutes "supporting documentation" for the purpose of the Regulations.

(emphasis added)

[46] The position submitted by the respondent in this case is somewhat similar and tends to contradict the positions taken by the Canada Revenue Agency, particularly with respect to the rigid form in which a signed document must be obtained from the Lessor confirming his GST number.

[47] In this regard, the Court adopted, with necessary modifications, Hogan J.'s comments at paragraphs 45 to 47 of his reasons, referring to the Canada Revenue Agency's positions stated above:

[45] It is impossible to reconcile the Respondent's stance here with the statements noted above. If the Respondent is correct, then the CRA's position on reverse billing is incorrect. One should not lose sight of the reasons why the CRA informs taxpayers of its interpretation of the law. The CRA does so to dispel uncertainty on how issues will be dealt with on audit. This practice promotes tax compliance and allows taxpayers to avoid disputes, which is undoubtedly beneficial to both parties. In this context, it is not good practice for the CRA to resile from published positions simply because it may be convenient to do so in a particular case.

[46] Statutory definitions are either exhaustive or non-exhaustive. Exhaustive definitions are usually introduced by the word "means", followed by a definition that comprises the meaning of the word. Non-exhaustive definitions are introduced by the expression "includes" or "does not include", followed by a directive which adds to or subtracts from the ordinary or technical meaning of the word.

[47] As the Supreme Court of Canada emphasized in *Canada Trustco Mortgage Co*, "when the words of a provision are precise and unequivocal, the ordinary meaning of the words play[s] a dominant role in the interpretive process."

(emphasis added)

[48] In *Canada v. Loblaw Financial Holdings Inc.*, 2021 SCC 51, the Supreme Court of Canada clarified that in the context of tax law, the particularity and detail of many tax provisions along with the principle that taxpayers are entitled to arrange their affairs to minimize the amount of tax payable led the Court to focus on the text and context due. Therefore, if taxpayers are to act with any degree of certainty under such a regime, then full effect should be given to Parliament's precise and unequivocal words.

[49] The clarifications made above by the Canada Revenue Agency are supported by the wording of paragraph 169(4)(a) of the ETA and are consistent with the meaning and scope to be given to the measures described in the Regulations concerning the particulars that a registrant must obtain in connection with a supply.

[50] More specifically, it does not seem appropriate that the general wording of the preamble to the definition of supporting document in the Regulations should be given a scope limited to the list that follows the preamble. On the contrary, the text of the preamble provides a flexibility that Parliament wanted to favour. The word “document” in the French version and the word “form” in the English version reflect this choice. The word document is defined in subsection 123(1) of the ETA and refers to record, itself defined in the same subsection. A record includes “an account, an agreement, a book, (. . .) a form, an image, an invoice, a letter, (. . .) a statement, a telegram, a voucher, and any other thing containing information, whether in writing or in any other form.”

[51] The English version of subsection 169(4)(a) of the ETA is to the same effect in that it uses the words “... in such form containing such information...”, and the French version uses the words “... les renseignements suffisants ...” without referring to the definition of supporting document used solely for the purposes of the Regulations.

[52] The Court is of the opinion that the decision in *CFI Funding Trust* is also consistent with the positions announced by the federal tax authorities and reflects the interpretation that must be given to the statutory text as also recently established by the Supreme Court of Canada in *Loblaw Financial Holdings*.

[53] In the case at bar, the testimony provided by the appellant’s president confirmed that the information regarding the Lessor’s GST number included in the appellant’s book of exhibits had been obtained as early as 2013 and sent to the external accountants. The Court considers this testimony credible and sufficiently reliable to give it credence. The respondent did not challenge it. The appellant had therefore obtained this information before filing the 2015 annual income tax return containing the ITC claim. The condition related to obtaining the GST number does not require a particular form or that this information be sent to the Agency to allow the Court to decide the appeal. For the sake of clarity, accepting that the testimonial evidence confirms that the information was obtained does not exempt the appellant from the mandatory regulatory requirement to obtain this information before filing the return.

[54] The Court is of the opinion that subsection 223(2) of the ETA does not add a condition to the provisions of subsection 169(4)(a) of the ETA. The application of the subsection is subject to the discretion of the recipient. Therefore, this provision does not apply in all circumstances. This is a means that a recipient has at its disposal to induce its supplier to send it the information to substantiate the ITC claim. Should the supplier fail to cooperate, it is liable to penalties under the ETA. The recipient is not required to exercise the right conferred by subsection 223(2).

[55] The Court understands that the auditing process should not make the Agency responsible for routinely and unilaterally verifying GST numbers in support of ITC claims. The registrant claiming the ITC is solely responsible for meeting this requirement.

[56] In this case, the Court is of the opinion that the circumstances surrounding the appellant's failure to provide the Agency with the Lessor's GST number after the objections officer voluntarily started verifying the number internally without being required to pursue her verification after having received the Lessor's corporate name would not limit the Court's duty to decide the appeal.

VI. Conclusion

[57] The Court is of the opinion that the appellant has met its burden and fulfilled the condition relating to obtaining the Lessor's GST number as established in subsection 169(4)(a) of the ETA and the Regulations.

[58] In view of all the foregoing, the appellant's appeal with respect to the annual reporting period from January 1 to December 31, 2015, is allowed and the matter is referred back to the Minister for reconsideration and reassessment allowing the \$675 ITC claim for the monthly rental charges.

Signed at Ottawa, Canada, this 15th day of December 2022.

“J.M. Gagnon”

Gagnon J.

CITATION: 2022 TCC 163
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THE KING,
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