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STATUTES GOVERNING THE LEVY OF SERVICE TAX IN INDIA



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ABSTRACT

Service tax is one of the major sources of revenue for the Government. Even after that there is no independent code or any statute for the governance of service tax laws. The laws are not clear, every other day the department comes with a new circular or notification, which has made the entire scenario complicated and problematic for the tax payers. It is not easy to find out the laws relating to a particular service, there are some services which may fall under more than one category and many more problems. The present study considers statutes governing the levy of Service Tax which includes Finance Act 1994 Chapter V and Chapter VA, Service Tax Rules 1994, Service Tax (Advance Rulings) Rules 2003, Cenvat Credit Rules 2004, Service Tax (Registration of Special Category of Persons) Rules 2005, Authority for Advance Rulings (Customs, Central Excise and Service Tax) Procedure Regulation 2005, Export of Services Rules 2005, Taxation of Services (gave from outside India and got in India) Rules 2006, Service Tax (Determination of quality) Rules 2006, Works Contract (Composition Scheme for Payment of Service Tax) Rules 2007, Service Tax (Publication of Names) Rules 2008, Service Tax Dispute Resolution Scheme 2008, Service Tax (Provisional Attachment of Property) Rules 2008, Service Tax Return Preparer Scheme 2009 and Provisions of Central Excise Law applicable to Service Tax.

All the major acts and the statutes have been compiled by the Government at the same time there are some very lengthy existing statutes, which have been amended from time to time by the legislatures, so there should also be a code relating to service tax laws, having all the requisite and necessary particulars and laws in it to facilitate the individual tax payer.

KEYWORDS :Service tax, Assesseees, Rules, Schemes, Notification.

INTRODUCTION

The Tax Reform Committee under the chairmanship of Dr.Raja J. Chelliah (1992) recommended the introduction of service tax, to broaden the tax base, raise revenues and promote greater participation of the citizens in economic development. Dr.Manmohan Singh, then Finance Minister in the Budget 1994-95 introduced the new concept of service tax with effect from 1st July 1994.

Service tax assessment is basically self assessment. There is no provision for compulsory assessment of assessee's return.Services falling under two or more sub-clauses cannot be taxed twice if the service is provided only once.It is extended to whole of India except the state of Jammu and Kashmir. Service tax is leviable on taxable services only. Under service tax, there is reliance on collection of tax, primarily through voluntary compliance by service tax assessee. The service tax is a source of revenue for the Government in the form of indirect taxes.

Service tax is one of the major sources of revenue for the Government. Even after that there is no independent code or any statute for the governance of service tax laws. The laws are not clear, every other day the department comes with a new circular or notification, which has made the entire scenario complicated and problematic for the tax payers. It is not easy to find out the laws relating to a particular service, there are some services which may fall under more than one category and many more problems. The material containing legal provisions and rules relating to service tax are not easily available nor they are compiled together in a single statute, hence it is very difficult for a general tax payer to find out the proper classification and rate of tax of his service, which have indeed made the entire situation relating to service tax very complex. Hence in order to facilitate the tax payers and to protect their interest, the Government should come out with an independent code relating to service tax containing all the provisions and rules, which should be easily available to the individual tax payer and should contain all the information relating to the levy and payment of service tax.

All the major acts and the statutes have been compiled by the Government at the same time there are some very lengthy existing statutes, which have been amended from time to time by the legislatures, so there should also be a code relating to service tax laws, having all the requisite and necessary particulars and laws in it to facilitate the individual tax payer.

Service tax presently administered under the provisions of Section 64 - 96 of the Finance Act, 1994 as duly amended in 1996, 1997 and 1998 and the Service Tax Rules, 1994. Levy and collection of the tax is handled by the Central Excise Officers, duly authorized for the purpose, in terms of Rule 3 of Service Tax Rules, 1994.

The present paper throws light on the various statutes governing service tax as follows.

- 1.Finance Act 1994 Chapter V and Chapter VA
- 2.Service Tax Rules 1994
- 3.Service Tax (Advance Rulings) Rules,2003
- 4.Cenvat Credit Rules 2004
- 5.Service Tax (Registration of Special Category of Persons) Rules 2005
- 6.Authority for Advance Rulings(Customs, Central Excise and Service Tax) Procedure Regulation,2005
- 7.Export of Services Rules 2005
- 8.Taxation of Services (provided from outside India and received in India) Rules 2006
- 9.Service Tax (Determination of Value) Rules 2006

10. Works Contract (Composition Scheme for Payment of Service Tax) Rules 2007
11. Service Tax (Publication of Names) Rules 2008
12. Service Tax Dispute Resolution Scheme 2008
13. Service Tax (Provisional Attachment of Property) Rules, 2008
14. Service Tax Return Preparer Scheme 2009
15. Provisions of Central Excise Law applicable to Service Tax

1. FINANCE ACT 1994 CHAPTER V & VA

There is no separate statute for service tax, instead it is governed by Chapter V [Sections 64 to 96(I)] of Finance Act, 1994 (all the chapters together are hereinafter referred to as the "Act") as amended from time to time and the rules.

EXTRACT OF FINANCE ACT, 1994 (32 OF 1994) REGARDING IMPOSITION OF SERVICE TAX IS AS FOLLOWS¹.

- Section 64 specifies the name and extent of the law.
- Section 65 deals with the definitions of various services brought under tax net, and the service providers with special reference to taxable services under section 65(41).
- Section 65A gives classification of taxable services.
- Section 66 authorizes the charge of service tax.
- Section 66A deals with charge of service tax on services received from outside India.
- Section 67 describes valuation of taxable services
- Section 68 deals with the payment of service tax.
- Section 69 refers to registration for service tax.
- Section 70 enumerates details about furnishing of returns.
- Section 71 deals with scheme for submission of returns through service tax returns preparers.
- Section 72 provides for best judgment assessment.
- Section 73 deals with recovery of service tax not levied or paid or short-levied or short paid or erroneously refunded.
- Section 73A provides that service tax collected from any person to be deposited with Central Government.
- Section 73B deals with amount collected in excess.
- Section 73C gives details about provisional attachment to protect revenue in certain cases.
- Section 73D deals publication of information in respect of persons in certain cases.
- Section 74 deals with the rectification of mistakes.
- Section 75 provides for payment of interest on delayed payment of service tax.
- Section 76 - 80 deals with various penalties.
- Section 81 deals with offences by companies.
- Section 82 authorizes search of premises.
- Section 83 enumerates the various Central Excise provisions, made applicable to the service tax.
- Section 84-85 provides for appeal to the Commissioner of Central Excise (Appeals).
- Section 86 provides for an appeal to the appellate tribunal.
- Section 86 describes powers of review, appeal etc.
- Section 87 deals with recovery of any amount due to Central Government.
- Section 88-92 omitted by the Finance No.2 Act 1998 w.e.f. 16-10-1998.

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- Section 93 provides for power to grant exemption from service tax.
- Section 93A provides for power to grant rebate.
- Section 94 gives powers to make rules.
- Section 95 provides for power to remove difficulties.
- Section 96 provides for making provisions of Limitation Act inapplicable to the service tax provisions.
- Section 96A-96I deals with provisions of advance rulings.
- Section 96A deals with the definitions of advance ruling, applicant, application, authority, etc.
- Section 96B provides for Vacancies etc. not to invalidate proceedings
- Section 96C refers to Application for Advance Rulings
- Section 96D provides for Procedure on receipt of application
- Section 96E indicates Applicability of Advance Ruling
- Section 96F deals with Advance Ruling to be void in certain circumstances
- Section 96G indicates Powers of Authority
- Section 96H refers to Procedure of Authority
- Section 96I mentions Power of Central Government to make rules

2.SERVICE TAX RULES 1994

The Central Government makes the following rules for the purpose of the assessment and collection of service tax².

- Rule 1 provides the name and date of Service Tax Rules.
- Rule 2 defines the act, assessment, form, half-year, input service distributor, large tax payer, the person responsible for payment of service tax and quarter.
- Rule 3 deals with appointment of officers.
- Rule 4 deals with mode of registration.
- Rule 4A deals with taxable service to be provided or credit to be distributed on invoice, bill or challan.
- Rule 4B deals with issue of consignment note.
- Rule 5 deals with records.
- Rule 6A deals with access to registered premises.
- Rule 6 describes manner of payment of service tax.
- Rule 7 refer filing of Returns.
- Rule 7A refers returns in case of taxable service provided by goods transport operators and clearing and forwarding agents.
- Rule 7B refers to revision of returns.
- Rule 7C refers to amount to be paid for delay in furnishing the prescribed return.
- Rule 8 provides for the form of appeal to Commissioner of Central Excise (Appeals).
- Rule 9 provides for the form of appeals to appellate tribunal.
- Rule 10 deals with procedure and facilities for large taxpayer.

3.SERVICE TAX (ADVANCE RULINGS) RULES,2003

The Central Government makes the following rules for the purpose of the Service Tax Advance Rulings³:

- Rule 1 provides the name, extent and date of commencement of Rules.
- Rule 2 defines the Act, Authority, Form, etc.
- Rule 3 provides Form and Manner of application

- Rule 4 indicates certification of copies of the Advance Rulings pronounced by the Authority.

4. CENVAT CREDIT RULES 2004

These rules are for the purpose of regulating availment and utilization of CENVAT Credit by the assessee. The extracts of Cenvat Credit Rules made by the Central Government are as follows⁴:

- Rule 1 provides the name, extent and date of commencement Rules.
- Rule 2 defines capital goods, Customs Tariff Act, Excise Act, exempted goods, exempted services, Excise Tariff Act, Finance Act, final products, first stage dealer, input, input service, input service distributor, job work, large taxpayer, manufacturer or producer, notification, output service, person liable for paying service tax, provider of taxable service, second stage dealer.
- Rule 3 describes the procedure of availing CENVAT credit
- Rule 4 deals with conditions for allowing CENVAT credit
- Rule 5 refers to refund of CENVAT credit
- Rule 5A refers to refund of CENVAT credit to units in specified areas.
- Rule 6 notifies obligation of manufacturer of dutiable and exempted goods and provider of taxable and exempted services.
- Rule 7 refers manner of distribution of credit by input service distributor.
- Rule 7A refers distribution of credit on inputs by the office or any other premises of output service provider.
- Rule 8 permits storage of input outside the factory of the manufacturer.
- Rule 9 provides for documents and accounts.
- Rule 9A provides information relating to principal inputs.
- Rule 10 refers to transfer of CENVAT credit.
- Rule 11 provides for transitional provision.
- Rule 12 refers to special dispensation in respect of inputs manufactured in factories located in specified areas of North East region, Kutch district of Gujarat, State of Jammu and Kashmir and State of Sikkim.
- Rule 12A gives procedure and facilities for large taxpayer.
- Rule 12AA mentions power to impose restrictions in certain types of cases
- Rule 13 refers power of Central Government to notify goods for deemed CENVAT credit.
- Rule 14 provides for recovery of CENVAT credit wrongly taken or erroneously refunded.
- Rule 15 gives provisions of confiscation and penalty.
- Rule 15A narrates for general penalty.
- Rule 16 refers for supplementary provisions.

5. SERVICE TAX (REGISTRATION OF SPECIAL CATEGORY OF PERSONS) RULES 2005

The extract of Service Tax (Registration of Special Category of Persons) Rules 2005 made by the Central Government is as follows⁵:

- Rule 1 provides the name and date of commencement of Rules.
- Rule 2 defines the Act, aggregate value of taxable service, input service distributor, etc.
- Rule 3 refers to registration.
- Rule 4 provides for furnishing of return.

6. AUTHORITY FOR ADVANCE RULINGS(CUSTOMS, CENTRAL EXCISE AND SERVICE TAX) PROCEDURE REGULATION,2005

These regulations may be called the Authority for Advance Rulings (Customs, Central Excise and Service Tax) Procedure Regulation, 2005. The extract of these rules are follows⁶:

- Rule 1 provides the name and date of commencement of Rules.
- Rule 2 defines the 'advance ruling', applicant, application, authorized representative, authority, chairperson, commissioner, member, petition, rules, secretary, etc.
- Rule 3 mentions the language of the authority.
- Rule 4 indicates powers of the authority
- Rule 5 indicates powers and functions of the secretary.
- Rule 6 refers to signing of notices, etc
- Rule 7 gives mode of service of notices, etc.
- Rule 8 provides procedure for filing applications.
- Rule 9 provides procedure on receipt of an application.
- Rule 10 refers to commissioner to be designated by the Board.
- Rule 11 provides additional facts by way of a petition.
- Rule 12 refers to questions not specified in the application.
- Rule 13 permits the authorization to be filed.
- Rule 14 deals with continuation of proceedings after the death, of the applicant.
- Rule 15 provides for hearing of application.
- Rule 16 provides for hearing of application ex parte.
- Rule 17 mentions period of withdrawal of application.
- Rule 18 provides for modification of the order / advance rulings.
- Rule 19 refers to rectification of mistakes
- Rule 20 permits amendment of the records.
- Rule 21 grants supply of certified copies.
- Rule 22 allows inspection of records.
- Rule 23 refers to declaration of advance ruling to be void in certain circumstances.
- Rule 24 provides for proceedings open to the public.
- Rule 25 release of publication of orders / advance rulings.
- Rule 26 provides for authentication and communication of orders / advance rulings.
- Rule 27 indicates proceedings of authority.
- Rule 28 provides for procedure in case of petition.
- Rule 29 provides for dress regulation.
- Rule 30 indicates prohibition of arms, mobile phones, etc.

7. EXPORT OF SERVICES RULES 2005

If service is exported, there is no service tax liability. If the service is exported, the Cenvat credit is not required to be reversed. Assessee can utilize credit for payment of service tax on other services. However, if this is not possible, he can get refund.

Service tax is required to be exempted only if there is actual export of service. 'Export of Services Rules, 2005' has been notified w.e.f. 15-3-2005. The rules make it clear that exemption from services/rebate of service tax and excise duty paid is admissible only if there is 'export of service' as defined in these rules. Mere receipt of payment in free foreign exchange will not be sufficient to treat the service as 'export service'.

Important points for Export of Service:

- No service tax is payable if taxable service is exported as per Export of Service Rules.
- No tax is payable on export of service. If paid, it is refundable.
- Rebate/refund of service tax paid on input services is obtained if taxable service is exported.
- Common conditions in respect of all taxable services, for treating the service as export of service are - (a) The service should be provided from India and used outside India and (b) Payment for such service is received by the service provider in convertible foreign exchange. In addition, there are some conditions based on the category of service (e.g. immovable property outside India, service performed outside India, recipient is located outside India).

The Central Government makes the following rules for the purpose of the Export of Services⁷:

- Rule 1 provides the name and date of commencement of Rules.
- Rule 2 defines the Act, input, input service, etc.
- Rule 3 refers to export of taxable service.
- Rule 4 provides that taxable service may be exported without payment of service tax.
- Rule 5 refers to rebate of service tax.

8. TAXATION OF SERVICES (PROVIDED FROM OUTSIDE INDIA AND RECEIVED IN INDIA) RULES 2006

The statutory provisions use the words 'Services provided from outside India and received in India'. However, generally, the tax is known as tax on 'Import of Services'.

Section 66A(1) (effective from 18-4-2006) provides that where any service specified in section 65(105) of Finance Act, is, — (a) given or to be given by a man who has set up a business or has an altered foundation from which the administration is given or to be given or has his lasting location or common spot of living arrangement, in a nation other than India, and (b) got by a man (hereinafter alluded to as the beneficiary) who has his place of business, settled foundation, perpetual location or normal spot of home, in India, such administration should, for the reasons of this area, be assessable administration, and such assessable administration might be dealt with as though the beneficiary had himself given the administration in India, and in like manner every one of the procurements of this Chapter should apply.

In case of import of services the service recipient is liable to pay tax. The Central Government makes the following rules for the purpose of the Taxation of Services (provided from outside India and received in India)⁸.

- Rule 1 provides the name and date of commencement of Rules.
- Rule 2 defines the act, input, input service, output service, India Inc.
- Rule 3 deals with taxable services provided from outside India and received in India.
- Rule 4 deals with mode of registration and payment of service tax.
- Rule 5 indicates that taxable services not to be treated as output services.

9. SERVICE TAX (DETERMINATION OF VALUE) RULES 2006

The concentrate of Service Tax (Determination of Value) Rules 2006 made by the Central Government is as follows⁹:

- Rule 1 provides the name and date of commencement of Rules.

- Rule 2 defines the act, section, value, etc.
- Rule 2A provides for determination of value of services involved in the execution of a works contract.
- Rule 3 deals with manner of determination of value.
- Rule 4 indicates rejection of value.
- Rule 5 determines inclusion in or exclusion from value of certain expenditure or cost.
- Rule 6 shows cases in which the commission, costs, etc. will be included or excluded.
- Rule 7 indicates actual consideration to the value of taxable service provided from outside India.

10. WORKS CONTRACT (COMPOSITION SCHEME FOR PAYMENT OF SERVICE TAX) RULES 2007

The concentrates of Works Contract (Composition Scheme for Payment of Service Tax) Rules 2007 made by the Central Government are as follows¹⁰:

- Rule 1 provides the name and date of commencement of Rules.
- Rule 2 defines the Act, section, works contract service, etc.
- Rule 3 refers to rate of service tax under composition scheme.

11. SERVICE TAX (PUBLICATION OF NAMES) RULES 2008

The Central Government makes the following rules for the purpose of the Service Tax (Publication of Names)¹¹:

- Rule 1 provides the name and date of commencement of Rules.
- Rule 2 defines chapter, section, etc.
- Rule 3 refers to publication of names and other particulars.
- Rule 4 provides for initiation of action and publication.

12. SERVICE TAX DISPUTE RESOLUTION SCHEME 2008

It is govern by Chapter VI of the Finance Act 2008. The extracts of Service Tax Dispute Resolution Scheme 2008 made by the Central Government are as follows¹²:

- Section 91 provides the name and date of commencement of Rules.
- Section 92 defines the Chapter, designated authority, person, prescribed, tax arrears, etc.
- Section 93 provides for applicability of scheme.
- Section 94 refers to settlement of tax payment.
- Section 95 indicates particulars to be furnished in declaration.
- Section 96 provides for time and manner of payment of tax arrears.
- Section 97 refers to appellate authority not to proceed in certain cases.
- Section 98 indicates that no refund of amount paid under the Scheme.
- Section 99 refers to removal of doubts.
- Section 100 provides for power to remove difficulties.
- Section 101 refers to power to make rules. As per this section the Central government makes 'Dispute Resolution Scheme Rules 2008.

13. SERVICE TAX (PROVISIONAL ATTACHMENT OF PROPERTY) RULES, 2008

The concentrate of Service Tax (Provisional Attachment of Property) Rules 2008 made by the Central Government is as follows¹³.

- Rule 1 provides the name and date of commencement of Rules.
- Rule 2 defines the Act, pending revenue, property, personal property, section, etc.

- Rule 3 deals with procedure for provisional attachment of property.
- Rule 4 indicates the property that can be attached.
- Rule 5 refers to obligations of person whose property has been attached provisionally.
- Rule 6 indicates the period for which order of provisional attachment of property remains in force.

14. SERVICE TAX RETURN PREPARER SCHEME 2009

The scheme is akin to the Income Tax Return Preparer Scheme and creates self employment opportunities for younger generation. The term 'Service Tax Return Preparer' ('STR preparer' for short) is defined as an individual who has been issued a Service Tax Return Preparer Certificate and a unique identification number by the Partner Organization to carry on the profession of preparing the return in accordance with the provisions of the scheme. The educational qualification for such STR preparer is plus two and not more than thirty five years of age on the first day of October immediately preceding the day on which the applications are invited. Exemption is given from age limit to any person who has superannuated/retired from the Department of Customs and Central Excise.

The Central Board of Excise and Customs frames Service Tax Return Preparer Scheme 2009 of which extract is as follows¹⁴

- Rule 1 provides the name, date of commencement and application of scheme.
- Rule 2 defines the Act, board, partner organization, resource centre, return, rules, service tax return preparer, etc.
- Rule 3 mentions educational qualification for service tax return preparers.
- Rule 4 refers to enrolment, training and certification to persons to act as service tax return preparers.
- Rule 5 provides for preparation of and furnishing the service tax return by the service tax return preparer.
- Rule 6 indicates the duties and obligations of assessee.
- Rule 7 indicates the duties and obligations of the service tax return preparer.
- Rule 8 provides for selection and responsibilities of the partner organization.
- Rule 9 refers to incentive to service tax return preparer.
- Rule 10 provides for maintenance of particulars relating to service tax return preparer.
- Rule 11 provides for withdrawal of certificate given to the service tax return preparer.
- Rule 12 indicates the responsibilities and functions of the resource centre

The Service Tax Return Preparer Scheme (STRP) was announced by Board vide Notification No.7/2009 ST dated 03.02.09. The DGST has been designated by the Board to act as the Resource Centre and DGST is broadly overseeing the implementation of the scheme. So far, 1477 candidates have been trained by the Partner Organization (N.I.I.T) to function as STRPs. These STRPs are spread all over India are available to the assesseees for preparing and filing of their ST-3 returns.

15. PROVISIONS OF CENTRAL EXCISE LAW APPLICABLE TO SERVICE TAX

A number of provisions of Central Excise Act, 1944 have been made applicable to service tax provisions. They are indicated below in brief¹⁵

- Section 9C - Presumption of culpable mental state.
- Section 9D - Relevancy of statements under certain circumstances.
- Section 11 - Recovery of sums due to Government.
- Section 11B - Claim for refund of duty.

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- Section 11BB - Interest on delayed refunds.
- Section 11C Power to Central Government not recover duty as result of general practice.
- Section 12A - Price of goods to indicate the amount of duty has been paid thereon.
- Section 12B - Presumption that incidence of duty has been passed to the buyer.
- Section 12C - Consumer Welfare Fund.
- Section 12D – Utilization of Consumer Welfare Fund.
- Section 12E - Power of Central Excise Officers.
- Section 14 - Power to summon person to give evidence and produce document in enquiries under this Act.
- Section 15 - Officer required to assist Central Excise Officer.
- Section 33A – Adjudicating procedure.
- Section 35F - Deposit pending appeal of duty demanded or penalty levied.
- Section 35G to 35O - Provisions relating to High Court & Supreme Court Appeals.
- Section 35Q - Appearance by authorized representative.
- Section 36A - Presumption as to documents
- Section 36B - Admissibility of microfilms, FAX, computer print outs, etc. as evidence.
- Section 37A - Delegation of powers.
- Section 37B - Instruction to Central Excise Officers.
- Section 37C - Service of decisions, orders & summons, etc.
- Section 37D - Rounding off of duty, etc.
- Section 40 - Protection of Central Excise Officers of action taken in good faith under this Act.

CONCLUSION:

There is no separate statute for service tax, instead it is governed by Chapter V [Sections 64 to 96(I)] of Finance Act, 1994 as amended from time to time. Provisions of service tax are covered in Finance Act 1994, Service Tax Rules, Service Tax (Determination of Value) Rules, Export of Service Rules, Taxation of Services (Provided from outside India and Received in India) Rules, Cenvat Credit Rules, other rules and various Notifications issued from time to time. These are supplemented by circulars issued by CBEC. Central government has the ability to make standards to complete the procurements of the Act. Administration Tax is controlled by Central Board of Excise and Customs. It is regulated and administered by the Central Excise commissionerates who work directly under the Department of Revenue, Ministry of Finance, Central Board of Excise and Customs, and the Government of India.

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3. Notification No.17 / 2003-ST, Dated 23-7-2003
4. Notification No.23 / 2004-C.E (N.T.), Dated 10-9-2004
5. Notification No.27 / 2005-ST, Dated 7-6-2005
6. Notification No.1 / 2005-AAR, Dated 7-1-2005
7. Notification No.9 / 2005-ST, Dated 3-3-2005
8. Notification No.11 / 2006-ST, Dated 19-4-2006
9. Notification No.12 / 2006-ST, Dated 19-4-2006
10. Notification No.32 / 2007-ST, Dated 22-5-2007

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11. Notification No.15 / 2008-ST, Dated 1-3-2008
12. Chapter VI of The Finance Act, 2008
13. Notification No.30 / 2008-ST, Dated 1-7-2008
14. Notification No.7 / 2009-ST, Dated 3-2-2009
15. As given by Section 83 of Finance Act 1994

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