NEUTRAL CITATION
2026:GUJHC:2097-DB

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 1277 of 2024
With
R/SPECIAL CIVIL APPLICATION NO. 783 of 2021
With
CIVIL APPLICATION (FOR AMENDMENT) NO. 1 of 2023
In R/SPECIAL CIVIL APPLICATION NO. 783 of 2021

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA Sd/-
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI Sd/-

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Approved for Reporting	Yes	No
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SHREE AMBICA AUTO SALES AND SERVICE & ANR.
Versus
UNION BANK OF INDIA & ANR.

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Appearance:
MR UCHIT N SHETH(7336) for the Petitioner(s) No. 1,2
MR CB GUPTA(1685) for the Respondent(s) No. 1,2

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CORAM:**HONOURABLE MR. JUSTICE A.S. SUPEHIA**
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 08/01/2026
COMMON ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. **RULE.** Learned Senior Standing Counsel Mr. C.B. Gupta waives service of notice of Rule on behalf of the respondents.

2. At the outset, learned advocate Mr.Uchit Sheth, appearing for the petitioners has submitted that the issue raised in the present writ petitions is squarely covered by the decision of the Bombay High Court in the case of Star Engineers (I) Pvt. Ltd. Vs. Union of India, passed in Writ Petition

NEUTRAL CITATION
2026:GUJHC:2097-DB

No.15368 of 2023 dated 14.12.2023 and thereafter, the same was followed in the judgment of the same High Court in the case of Aberdare Technologies Pvt. Ltd. & Another Vs. Central Board of Indirect Taxes & Customs and Ors., passed in Writ Petition No.7912 of 2024, dated 29.07.2024.

3. Reliance is also placed by the learned advocate Mr.Uchit Sheth appearing for the petitioners, on the order dated 12.01.2023 passed by the High Court of Orissa at Cuttack in Writ Petition (Civil) No.18216 of 2017 in the case of M/s. Shiva Jyoti Construction Vs. The Chairperson, Central Board of Excise and Customs and Others.

4. The petitioners had initially filed the captioned writ petition being Special Civil Application No.783 of 2021, praying for directions to the respondents to forthwith re-credit/refund the amount of Rs.10,99,06,850/- recovered from him at the time of inspection by coercing him to file Form DRC-03 on the portal.

5. Subsequently, the respondents passed an order dated 26.12.2023, whereby the respondent–Additional Commissioner refused to grant appropriation of the tax amount paid by the petitioners, and as such, the captioned writ petition being Special Civil Application No.783 of 2021 was filed.

6. Learned advocate Mr.Uchit Sheth has submitted that the impugned order dated 26.12.2023 is wholly without jurisdiction, being contrary to the Show Cause Notice dated 06.10.2023 pursuant to which it has been passed. It is

NEUTRAL CITATION
2026:GUJHC:2097-DB

contended that the Show Cause Notice proposed reversal of input tax credit and simultaneous appropriation of the amount of output tax paid by the petitioners towards such proposed reversal. It is submitted that while the amount of input tax credit was proposed to be reversed as per the Show Cause Notice was Rs.34,26,33,614/-, however, the amount of tax paid by the petitioners which was proposed to be appropriated towards such reversal was Rs.42,75,68,473/-. Thus, it is submitted that the amount of tax paid was higher than the amount of input tax credit sought to be reversed as per the Show Cause Notice itself, hence in essence, there was no demand proposed in the Show Cause Notice.

7. It is further submitted that even if, hypothetically, no input tax credit is reversed by the buyer vis-à-vis issuance of credit notes by the vendor, it is the vendor, who is to be disallowed deduction of such discount as per the provision of Section 15(3)(b) of the Central / Gujarat Goods and Services Tax Act, 2017 (in short, “the GST Acts”), which allows a seller to claim deduction for discount only if the buyer reduces input tax credit. This is further fortified by Section 43 of the GST Acts, which makes the seller liable for disallowance of deduction in respect of credit notes if the buyer does not reverse input tax credit. It is submitted that there is no statutory provision under the GST Acts mandatorily requiring the buyer to reduce input tax credit on the basis of credit notes issued by the seller. Thus, it is urged that the impugned action of the respondents is required to be quashed and set aside.

NEUTRAL CITATION
2026:GUJHC:2097-DB

8. When this Court pointed out the judgments of the Bombay High Court and the issue raised in the present petitions to the learned Senior Standing Counsel Mr.C.B. Gupta, he was unable to dispute that no loss to revenue would be caused, if the petitioners are permitted to rectify the invoices, in question. Thus, the facts established are that the petitioners have paid tax of Rs.42,75,68,473/- and had made an application for appropriation of the amount of output tax as against the amount of input tax credit, which was proposed to be reversed as per the show cause notice to the extent of Rs.34,26,33,614/-. The impugned order dated 26.12.2023 was passed by the respondents denying the reversal of input tax credit. It is not in dispute that the amount of tax paid by the petitioners towards discount given by the vendor exceeds the disallowance of input tax credit, and the authorities have confirmed the demand of tax by holding that the petitioners ought to have claimed refund insofar as tax paid on debit notes is concerned.

9. In paragraph Nos.7 to 23 of the judgment in the case of ***Star Engineers (I) Pvt. Ltd.(supra),*** the Bombay High Court has observed thus : : –

> *"7. Mr. Raichandani, learned Counsel for the petitioner would submit that it was arbitrary for the Deputy Commissioner of State Tax to reject the request of the petitioner to amend or rectify the Form GSTR1 filed by the petitioner for the period July 2021, November 2021 and January 2022, either Online or by manual means. It is contended that it is not in dispute and as clear from the impugned letter, that there was no loss of revenue to the Government exchequer, however, on a pure technical ground the provisions of GSTR Portal prohibited any adjustment post the due date, the petitioner's request has been rejected. It is submitted that such technicalities ought not to defeat the requirement of justice. In support of his submissions, Mr. Raichandani has placed reliance on*

NEUTRAL CITATION
2026:GUJHC:2097-DB

the decision of Madras High Court in M/s. Sun Dye Chem Vs. Assistant Commissioner (ST) & Ors.; decision of learned Single Judge of the Madras High Court in the case of Pentacle Plant Machineries Pvt. Ltd. Vs. Office of GST Council & Ors.; decision of the Division Bench of Orissa High Court in Shiva Jyoti Construction Vs. The Chairperson, Central Board of Excise & Customs and Ors., the decision of Jharkhand High Court in Mahalaxmi Infra Contract Ltd. Vs. Goods and Services Tax Council and ors. It is submitted that each of these decisions have taken a view that an inadvertent error on the part of the assessee if takes place in filing the details leading to the mismatch of credit, the assessee ought not to be prejudiced from availing the credit, which they otherwise legitimately are entitled to and to that effect the rectification of error ought to be permitted. Accordingly, in such cases a relief was granted to the petitioner. It is, thus, Mr.Raichandani's submission that the prayer of the petitioner that it be permitted to amend or rectify the Form GSTR-1 for the period in question ought to be granted.

8. On the other hand, Ms. Vyas, learned Counsel for the Revenue while not disputing the factual matrix would submit that no fault can be found in the impugned communication as the provisions of the GST Act itself would not permit the State Tax Officer to accept the request as made by the petitioner for amendment / rectification of Form GSTR-1 which was filed by the petitioner for the period in question. Ms. Vyas has also fairly stated that if the request as made by the petitioner is to be accepted, there is no loss of revenue whatsoever to the public exchequer.

9. Having heard learned Counsel for the parties and having perused the record, there is much substance in the contention as urged on behalf of the petitioner. At the outset we are required to note that insofar as filing of GST returns are concerned, the provisions of Sections 37, 38 and 39 of the Central Goods and Services Tax / Maharashtra Goods and Service Tax, 2017 (for short 'CGST / MGST, 2017') are attracted. Section 37 provides for furnishing details of outward supplies. Section 38 provides for furnishing details of inward supplies. Section 39 provides for furnishing of returns. Sub-section (3) of Section 37 provides that any registered person, who has furnished the details under sub-section (1) for any tax period and which have remained unmatched under Section 42 or Section 43, shall, upon discovery of any error or omission therein, rectify such error or omission in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is a short payment of tax on account of such error or omission, in the return to be furnished for such tax period. The proviso below sub-section (3) stipulates that no rectification of error or omission in respect of the details furnished under sub-section (1) shall be allowed after

NEUTRAL CITATION
2026:GUJHC:2097-DB

furnishing of the return under Section 39 for the month of September, following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier. It would be necessary to note the provisions of Section 37 which reads thus:-

Section 37 Furnishing details of outward supplies
37. (1) Every registered person, other than an Input Service Distributor, a non-resident taxable person and a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish, electronically, in such form and manner as may be prescribed, the details of outward supplies of goods or services or both effected during a tax period on or before the tenth day of the month succeeding the said tax period and such details shall be communicated to the recipient of the said supplies within such time and in such manner as may be prescribed:

Provided that the registered person shall not be allowed to furnish the details of outward supplies during the period from the eleventh day to the fifteenth day of the month succeeding the tax period : Provided further that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing such details for such class of taxable persons as may be specified therein:

Provided also that any extension of time limit notified by the Commissioner of central tax shall be deemed to be notified by the Commissioner.

(2) Every registered person who has been communicated the details under subsection (3) of section 38 or the details pertaining to inward supplies of Input Service Distributor under sub-section (4) of section 38, shall either accept or reject the details so communicated, on or before the seventeenth day, but not before the fifteenth day, of the month succeeding the tax period and the details furnished by him under sub-section (1) shall stand amended accordingly.

(3) Any registered person, who has furnished the details under sub-section (1) for any tax period and which have remained unmatched under section 42 section 43, shall, upon discovery of any error or omission therein, rectify such error or omission in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is a short payment of tax on account of Such error or omission, in the return to be furnished for such tax period:

Provided that no rectification of error or omission in respect of the details furnished under sub-Section (1) shall be allowed after

NEUTRAL CITATION
2026:GUJHC:2097-DB

furnishing of the return under section 39 for the month of September following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier:

Provided further that the rectification of error or omission in respect of the details furnished under sub-section (1) shall be allowed after furnishing of the return under section 39 for the month of September, 2018 till the due date for furnishing the details under sub-section (1) for the month of March, 2019 or for the quarter January, 2019 to March, 2019.

Explanation.—For the purposes of this Chapter, the expression "details of outward supplies" shall include details of invoices, debit notes, credit notes and revised invoices issued in relation to outward supplies made during any tax period."

10. We may also observed that Section 38 provides for communication of details of inward supplies and input tax credit which in sub-section (1) mandates that the details of outward supplies furnished by the registered persons under sub-section (1) of section 37 and of such other supplies as may be prescribed, and an auto-generated statement containing the details of input tax credit shall be made available electronically to the recipients of such supplies in such form and manner, within such time, and subject to such conditions and restrictions as may be prescribed. Sub-section (2) provides for the ingredients of auto-generated statement.

11. Section 39 provides for furnishing of returns under which it is clearly provided that a return is required to be furnished electronically indicating the inward and outward supplies of goods and services or both, input tax credit availed, tax payable, tax paid or such other particulars in such form and manner, and within such time, as may be prescribed. Sub-section (9) although provides for rectification of any omission or incorrect particulars, the proviso therein precludes the assessee from any such rectification or omission or incorrect particulars being allowed after 30th day of November following the end of financial year to which such details pertain, or the actual date of furnishing of relevant annual return, whichever is earlier. Subsection (10) provides for extension of time in the event the assessee has not furnished the return for one or more previous tax period or has not furnished the details of outward supplies as per sub- section (1) of section 37 in the said tax period. Sub-section (9) and (10) of Section 39 are required to be noted which read thus:-
"Section 39. Furnishing of returns -
*(1) -(7)***************

NEUTRAL CITATION
2026:GUJHC:2097-DB

(8) Every registered person who is required to furnish a return under sub-section (1) or sub-section (2) shall furnish a return for every tax period whether or not any supplies of goods or services or both have been made during such tax period.

(9) Where any registered person after furnishing a return under sub-section (1) or sub-section (2) or sub- section (3) or subsection (4) or sub-section (5) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the return to be furnished for the month or quarter during which such omission or incorrect particulars 6[in such form and manner as may be prescribed], subject to payment of interest under this Act:
Provided that no such rectification of any omission or incorrect particulars shall be allowed after the 7[thirtieth day of November] following 8[the end of the financial year to which such details pertain], or the actual date of furnishing of relevant annual return, whichever is earlier.

(10) A registered person shall not be allowed to furnish a return for a tax period if the return for any of the previous tax periods 9[or the details of outward supplies under subsection (1) of section 37 for the said tax period has not been furnished by him:
Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the return, even if he has not furnished the returns for one or more previous tax periods or has not furnished the details of outward supplies under sub-section (1) of section 37 for the said tax period."

12. Having considered the statutory ambit of Section 37, 38 and 39, we are of the clear opinion that the provisions of sub-section (3) of Section 37 read with Section 38 and sub-sections (9) and (10) of Section 39 need to be purposively interpreted. We cannot read subsection (3) of Section 37 to mean that the assessee would be prevented from placing the correct position and having accurate particulars in regard to all the details in the GST returns being filed by the assessee and that there would not be any scope for any bonafide, and inadvertent rectification / correction. This would pre-supposes that any inadvertent error which had occurred in filing of the returns, once is permitted to be rectified, any technicality not making a window for such rectification, ought not to defeat the provisions of sub-section (3) of Section 37 read with the provisions of sub-section (9) of Section 39 read de hors the provisos.

NEUTRAL CITATION
2026:GUJHC:2097-DB

13. In our opinion, the proviso ought not to defeat the intention of the legislature as borne out on a bare reading of sub- section (3) of Section 37 and sub-section (9) of Section 39 in the category of cases when there is a bonafide and inadvertent error in furnishing any particulars in filing of returns, accompanied with the fact that there is no loss of revenue whatsoever in permitting the correction of such mistake. Any contrary interpretation of sub-section (3) of Section 37 read with sub-sections (9) and (10) of Section 39 would lead to absurdity and / or bring a regime that GST returns being maintained by the department having incorrect particulars become sacrosanct, which is not what is acceptable to the GST regime, wherein every aspect of the returns has a cascading effect. This is necessarily required to be borne in mind when considering the cases of inadvertent human errors creeping into the filing of GST returns.

14. Applying such principles to the facts of the present case, in our opinion, the State Tax Officer had all materials before it which went to show that there was nothing illegal and / or that what had happened at the end of the petitioner was that the invoices generated by the petitioner under the bill-to-ship-to-model for delivery of goods to third party vendors of BAL of which input tax credit for the invoices in question, were not availed by BAL due to error of credit not being reflected in the GSTR-1, as the petitioner had mentioned GSTIN of third party instead of GSTIN of BAL. This is also accepted by the State Tax Officer in the impugned communication.

15. As a result of the above discussion, in our opinion, the State Tax officer ought to have granted the petitioner's request to rectify / amend the Form GSTR-1 for the period July 2021, November 2021 and January 2022, either through Online or manual means.

16. We also find that the petitioner's reliance on the decision as noted by us is quite apposite. In Sun Dye Chem Vs. Assistant Commissioner (supra), learned Single Judge of the Madras High Court considered a similar case wherein an error was committed by the petitioner in filing of details relating to credit. The error was to the effect that what should have figured in the CGST/SGST column was inadvertently reflected in the IGST column. It was not the case of the department that the error was deliberate and was intended to gain any undue benefit by the petitioner and in fact, by reason of the error, the customers of the petitioner were denied credit which they claim to be legitimately entitled to. It was also an error which was not initially noted by the petitioner, and on account of the error, the customers of the petitioner would be denied credit which they claimed to be legitimately entitled to, owing to the fact that the

NEUTRAL CITATION
2026:GUJHC:2097-DB

credit stands reflected in the wrong column. It is in these circumstances, after examining the relevant provisions which we have already discussed, the learned Single Judge observed that in the absence of an enabling mechanism, the assessee should not be prejudiced from availing credit which they are otherwise legitimately entitled to. The Court observed that an error committed by the petitioner is an inadvertent human error and the petitioner should not be prevented from rectifying the same and accordingly, allowed the petition.

17. A similar view was taken in the Pentacle Plant Machineries Pvt. Ltd. (supra) which also followed the decision in Sun Dye Chem (supra).

18. We also note that the Division Bench of the Orissa High Court in Shiva Jyoti Construction (supra) was considering the case wherein the petitioner had prayed for a relief that the petitioner be permitted to rectify the GST returns filed in September 2017 and March 2018 which was filed inadvertently in Form-B2B instead of Form B2C as was wrongly filed under the GSTR-1 in order to get input tax credit benefit by a third party namely M/s. Odisha Construction Corporation Ltd. The last date for filing of return was 31 March 2019 and the rectification should have been carried out by 13 April 2019. The petitioner contended that an error came to be noticed after the said third party held up the running bill amount of the petitioner by informing it of the error on 21 January 2020. The petitioner contended that thereafter it was making a request to the department to correct the GSTR-1 form, but it was not allowed. It is in these circumstances, the Court considering the fact that in permitting the petitioner to rectify such error, there was no loss of revenue whatsoever to the department, that it was only about the ITC benefit which was to be given to the customer of the petitioner, failing which a prejudice would be caused to the petitioner. The Division Bench referring to the decision in Sun Dye Chem (supra) granted the prayer of the petitioner for setting aside the letter of rejection as impugned in the proceedings and permitting the petitioner to resubmit the corrected returns in Form - B2B under GSTR-1 for the period in question.

19. The Division Bench of the Jharkhand High Court in Mahalaxmi Infra Contract Ltd. (supra) has taken a similar view wherein the Division Bench after considering the rival contentions and the scheme of the legislation, allowed the petition considering the fact that there was no loss of revenue, if such rectification as prayed for by the petitioner was to be granted.

NEUTRAL CITATION
2026:GUJHC:2097-DB

20. On the interpretation of the provisions as made by us and the common thread running through the decisions as noted above, it would lead us to observe that the GST regime as contemplated under the GST Law unlike the prior regime, has evolved a scheme which is largely based on the electronic domain. The diversity, in which the traders and the assessees in our country function, with the limited expertise and resources they would have, cannot be overlooked, in the expectation the present regime would have in the traders / assessees complying with the provisions of the GST Laws. There are likely to be inadvertent and bonafide human errors, in the assessees adopting themselves to the new regime. For a system to be understood and operate perfectly, it certainly takes some time. The provisions of law are required to be alive to such considerations and it is for such purpose the substantive provisions of sub-section (3) of Section 37 and sub-section (9) of Section 39 minus the proviso, have permitted rectification of inadvertent errors.

21. We may also observe that the situation like in the present case, was also the situation in the proceedings before the different High Courts as noted by us above, wherein the errors of the assessee were inadvertent and bonafide. There was not an iota of an illegal gain being derived by the assessees. In fact, the scheme of the GST laws itself would contemplate correct data to be available in each and every return of tax, being filed by the assessees. Any incorrect particulars on the varied aspects touching the GST returns would have serious cascading effect, prejudicial not only to the assessee, but also to the third parties.

22. It is considering such object and the ground realities, the law would be required to be interpreted and applied by the Department. This necessarily would mean, that a bonafide, inadvertent error in furnishing details in a GST return needs to be recognized, and permitted to be corrected by the department, when in such cases the department is aware that there is no loss of revenue to the Government. Such freeplay in the joint requires an eminent recognition. The department needs to avoid unwarranted litigation on such issues, and make the system more assessee friendly. Such approach would also foster the interest of revenue in the collection of taxes.

23. In the aforesaid circumstances, we have no manner of doubt that the petition is required to be allowed. It is accordingly allowed by the following order:- ORDER (I) The respondents are directed to permit the petitioner to amend / rectify the Form GSTR-1 for the period July 2021, November 2021 and January 2022, either through Online or manual means within a period of four weeks from today. (II) Petition stands disposed of in the above terms. No costs."

NEUTRAL CITATION
2026:GUJHC:2097-DB

10. It is not in dispute and it is established from the record that the petitioners claimed input tax credit of tax separately charged in the invoices issued by the vendor - TATA Motors Ltd. Subsequent to the sale, the vendor issued credit notes for discounts relating to sales, wherein credit was given according to the scheme. Correspondingly, the petitioners issued debit notes of an equivalent amount in respect of such credit notes to the vendor and admitted tax liability in relation to such debit notes in the returns regularly filed by the petitioners in Form GSTR-1 and GSTR-3B. Thus, the credit of the tax amount given by the vendor for the discount was admitted as payable by the petitioners by issuing corresponding debit notes and admitting such liability in the returns.

11. The petitioners, thus, effectively reduced the input tax credit earlier claimed on the basis of the tax invoices of the vendor by the amount of tax relating to the credit notes issued by the vendor for the discounts given to the petitioners. It appears that while matching the figures of input tax credit, the GST portal takes into account only the amounts accounted for as receipt of credit notes by the buyer in Form GSTR-1, and the portal does not take into account the debit notes issued by the buyer with reference to the discounts given by the seller, even though tax liability under the GST Acts are admitted and paid on such debit notes, thereby effectively reducing the input tax credit. Accordingly, Form GSTR-2A reflected a mismatch of input tax credit in the case of the petitioners. Thus, the petitioners erred in issuing debit notes for the discounted

NEUTRAL CITATION
2026:GUJHC:2097-DB

amount by showing the amount of discount in the wrong column in Form GSTR-1.

12. The respondents have not demonstrated that there was any difference in the actual tax liability of the petitioners, even if their case is assumed to be legally tenable. The petitioner had pointed out such error to the respondent authorities and had also submitted an affidavit dated 04.01.2021 affirming that the payment was made by the petitioners at the time of visit under coercion by the authorities.

13. The petitioners were compelled to reverse the entire available credit balance of Rs.10,99,06,850/- in the electronic credit ledger and were made to file Form DRC-03. Accordingly, in the writ petition being Special Civil Application No.783 of 2021, the petitioners had prayed for a direction to permit them to rectify the returns, as the issue is revenue-neutral and the petitioners do not have any tax liability under the GST Act even if the stand of the authorities is accepted.

14. In view of the aforesaid facts, since the petitioners are unable to rectify the returns for the years 2017-18 and 2018-19, and as held by various judgments of the High Courts, including the judgment of the Bombay High Court, if the respondents permit the petitioners to amend or rectify Form GSTR-1, no loss to the revenue would be caused. Hence, in light of the aforesaid settled legal precedents, we direct the respondents to open the portal within a period of four weeks from the date of receipt of this order and to inform the petitioners so as to enable them to amend / rectify Forms

NEUTRAL CITATION
2026:GUJHC:2097-DB

GSTR-1 and GSTR-3B within a period of ten days thereafter. In case the portal is not opened, liberty is reserved in favour of the petitioners to file an application to amend/rectify Forms GSTR-1 and GSTR-3B manually, and the respondents are directed to accept and process the same in accordance with law.

15. With these directions, the petitions are allowed. The impugned order dated 26.12.2023 stands quashed and set aside. Consequently, the Show Cause Notice would not survive. Rule is made absolute.

16. In view of the disposal of the main captioned writ petition, learned advocate for the petitioner does not press the application seeking amendment. The connected application accordingly stands disposed of as not pressed.

Sd/-

(A. S. SUPEHIA, J)

Sd/-

(PRANAV TRIVEDI,J)

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