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EDITORIAL

TRAI CONSULTATION RAISES KEY ISSUES

The telecom regulator's consultation on data protection and privacy comes while the Supreme Court is weighing in on the right to privacy. However, since no right is absolute and all rights are qualified for specific purposes, even if the regulator's determination on data protection is finalised well after the Supreme Court's judgment, they would still need action in the form of a separate law and creation of a data regulator. Those who collect data must secure the data and have an obligation to prevent any harm arising from the collected data. There must be an independent agency that monitors the use of data and holds data collectors and data users to account, to ensure benign use of data

The law India frames on data protection must align with similar laws in jurisdictions such as the EU, in order to allow data to cross borders and feed new businesses and services.

Should individuals have the absolute right to control all their data? Such absolute control would rule out, for example, credit scores, epidemiological forecasts and resultant preventive action, and analysis of metadata by security agencies. Artificial intelligence depends on advanced algorithms teaching themselves using tonnes of data. The data must be available to be read. These are significant externalities to personal data that militate against giving individuals absolute control over their data. Yet, this should not result in uncontrolled use of a person's data in a manner that could do him or her harm. Ensuring this must be the job of an independent, legally empowered and technologically savvy regulator which is answerable to Parliament rather than to the executive

Technology evolves in ways that blur the distinction between personal data and metadata. Encryption upends a lot of data monitoring. A state that does not have the capacity to pierce data veils cannot protect data either. Tech prowess must accompany protective regulation

A PROMISING START TO THE NEW GST REGIME

It's encouraging that the goods and services tax revenue mop up has seen a good start. Collections, at Rs 92,283 crore in July from about 64% of the taxpayer base, surpassed the internal estimate. The initial collections dispel the worry, contained in the Reserve Bank of India's (RBI) annual report, that states could see extra fiscal strain due to GST

The Centre is duty-bound to compensate states for their revenue loss - computed on a base year of 2015-16 and an assumed revenue growth of 14% - for five years after the GST rollout, providing the headroom for states to keep their fiscal deficit under check. The worry should be if the Centre would be left without adequate resources to meet its promise to the states while keeping its own deficit in check

Cesses, the proceeds of which are retained by the Centre, accounted for about 8% of the GST collection in July. Credit will not be available to manufacturers to offset the cess paid on inputs, but collections from cesses will help the Centre bring its finances to a better shape as well. Now that the states and the Centre share a common tax base for GST, GST proceeds must be excluded from the divisible pool of taxes. Simultaneously, the effort should be to converge GST rates and include sectors such as petroleum and real estate to boost collections and help fiscal consolidation

Earlier, rating agency Crisil had estimated a likely 0.7-1.2% reduction in the gross fiscal deficit of the Centre and the states on the back of tax buoyancy. The gross fiscal deficit-to-gross domestic product ratio of states is budgeted to improve to 2.3% during 2017-18 from 2.9% in the revised estimates for 2016-17 largely due to a projected rise in tax revenue. To raise resources on their own, states must also improve their credit ratings, with greater stress on fiscal discipline

DIRECT TAXATION

1.0 No sec. 69C additions if seized documents couldn't be linked to unexplained expenditure

The High Court of Calcutta held that where AO on basis of a document seized during search made addition to income drawing presumption that document was linked to unexplained expenditure while both Appellate Authorities, finding figures appearing on said document could not be linked to assessee's transactions, deleted impugned addition

Principal Commissioner of Income-tax, Central-1, Kol. v. Ajanta Footcare (India) (P.) Ltd. [2017] 84 taxmann.com 109 (Calcutta)*

2.0 No bar on considering HC direction for compounding of offence just because appeal against conviction was pending

The High Court of Madras held that where High Court had given direction to consider application for compounding, mere pendency of appeal against conviction could not be a reason for refusing consideration of issue of compounding

Government of India, Ministry of Finance, Department of Revenue (Central Board of Direct Taxes) v. R. Inbavalli[2017] 84 taxmann.com 105 (Madras)*

3.0 No sec. 14A disallowance if no exempt income earned; CBDT circular can't override express provision

The High Court of Delhi held that Where no exempt income was earned in relevant assessment year, there could be Principal no disallowance in terms of section 14A, read with rule 8D

Commissioner of Income-tax-04 v. IL & FS Energy Development Company Ltd. [2017] 84 taxmann.com 186 (Delhi)*

4.0 Provision which denies double relief to trust on purchase of capital assets doesn't have retro-effect

The High Court of Madras held that the provisions of section 11(6) inserted by the Finance (No.2) Act, 2014 with effect from AY 2015-16 can't be applied retrospectively to AYs prior to AY 2015-16 as the amendment, inserted specifically with effect from Assessment Year 2015-2016 seeks

to disturb a vested right that has accrued to the assessee and the amendment does not purport to be clarificatory. Moreover, the Explanatory Memorandum makes it applicable only w.e.f. AY 2015-16 and application of the amendment retrospectively would certainly lead to a great deal of hardship to the assessee

Director of Income Tax v. Medical Trust of The Seventh Day Adventists [2017] 84 taxmann.com 202

5.0 Period of limitation for passing assessment order to be extended by time taken for special audit

The Supreme Court of India held that SLP dismissed against High Court's ruling that where audit had taken place, period of limitation for passing assessment order would be extended by time taken for special audit; mere irregularities in order of audit would not invalidate proceedings

Shyamal Sarkar v. Commissioner of Income-tax, siliguri[2017] 84 taxmann.com 167 (SC)*

6.0 No need to value closing stock at market price if business of firm continues even after dissolution

The Supreme Court of India held that where firm dissolved on death of one of only two partners but business continued with one partner, there was no question of selling assets/stock-in-trade and, therefore, it was not necessary to value stock-in-trade at market price

Commissioner of Income-tax, Gujarat-II v. Kwaliti Steel Suppliers Complex [2017] 84 taxmann.com 234 (SC)*

7.0 SC quashed Sec. 153C assessments as seized documents didn't belong to AYs in question

The Supreme Court of India held that as per provisions of section 153C, incriminating material which was seized had to pertain to assessment years in question and it is an undisputed fact that loose papers were found and seized from residence of President of assessee, an educational institution, indicating capitation fees received by various institutions run by assessee which did not establish document-wise co-relation with assessment years in question. This issue

pertaining to validity of notice under section 153C raised first time before Tribunal being a jurisdictional issue taken up on facts already on record was sustainable

Commissioner of Income-tax-III, Pune v. Sinhgad Technical Education Society [2017] 84 taxmann.com 290 (SC)

8.0 **Sec. 206AA couldn't be invoked if TDS was deducted as per provisions of DTAA**

In the ITAT Pune Bench 'B' held that where tax has been deducted on strength of beneficial provisions of DTAA, provisions of section 206AA cannot be invoked by Assessing Officer to insist that tax deduction should be higher, i.e., 20 per cent

*Deputy Commissioner of Income tax (International Taxation), Circle-1 v. Calderys France** [2017] 84 taxmann.com 301 (Pune - Trib.)

9.0 **Exp. on medical seminar couldn't be disallowed when doctors attended it to upgrade their own knowledge**

The High Court of Delhi held that where in case of assessee engaged in sales of medical products, Tribunal disallowed expenses incurred on organising seminars and conferences relying upon Circular No. 5 dated 1-8-2012, in view of fact that Tribunal did not consider assessee's plea that doctors attended those events/conferences in their personal capacity to enhance their own knowledge and they were not obliged to recommend assessee's products to other doctors or represent assessee in those conferences, and, moreover, Tribunal also failed to consider whether aforesaid circular was prospective in nature and, thus, not applicable for relevant year, impugned disallowance was to be deleted and, matter was to be remanded back for disposal afresh

Boston Scientific India (P.) Ltd. v. Assistant Commissioner of Income-tax [2017] 85 taxmann.com 5 (Delhi)

10.0 **Ownership of land wasn't necessary for developer to claim section 80-IB relief**

The Supreme Court of India SLP dismissed against High Court's ruling that ownership of land not a criteria to decide status of developer to claim deduction under section 80-IB

*Commissioner of Income-tax v. Sanghvi and Doshi Enterprise** [2017] 84 taxmann.com 241 (SC)

11.0 **Relief once granted u/s 80-IB couldn't be rejected in subsequent years without withdrawing relief granted in earlier year**

The High Court of Bombay held that where deduction under section 80-IB was granted for an initial assessment year, same could not be rejected for subsequent assessment years unless relief for initial year was withdrawn

*Simple Food Products (P.) Ltd. v. Commissioner of Income-tax-II, Nagpur** [2017] 84 taxmann.com 239 (Bombay)

12.0 **SC remanded matter to larger bench of HC to consider grant on interest on refund of self-assessment tax**

The Supreme Court of India held that where High Court on issue of grant of interest under section 244A did not agree with earlier view expressed by coordinate Bench of same High Court, appeal was remanded back to High Court for afresh decision by a larger bench

*Engineers India Ltd. v. Commissioner of Income-tax** [2017] 84 taxmann.com 178 (SC)

13.0 **Rental income from letting out factory premises of discontinued business is taxable as income from other source**

In the ITAT Bangalore Bench 'C' (Smc) held that where business asset including all fittings and fixtures was let out but after discontinuing business activity of textile mill, rental income could not be treated as income from house property and same would be assessed as income from other sources

*T.R. Mills (P.) Ltd. v. Income-tax Officer, Ward 12 (2), Bengaluru** [2017] 84 taxmann.com 74 (Bangalore - Trib.)

14.0 **Income related to activities performed by Foreign Co. outside India with no role of PE couldn't be taxed in India**

In the ITAT Hyderabad Bench 'A' held that where entire activity of designing, manufacturing and delivery of equipment to an Indian company by assessee German company was made outside India and PE of assessee had any role to play, income was not taxable in India

Caterpillar Global Mining Europe GmbH v. Assistant Director of Income-tax (International Taxation)-I,



Hyderabad* [2017] 84 taxmann.com 72 (Hyderabad -

15.0 Business losses prior to 01-04-2017 could be set-off against deemed undisclosed income of section 115BBE

In the ITAT Jaipur Bench held that Amendment brought in sub-section (2) of section 115BBE by Finance act, 2016, whereby set off of losses against income referred to in section 69B was denied, would be effective from 1-4-2017

Assistant Commissioner of Income-tax, Central Circle-2, Jaipur v. Sanjay Bairathi Gems Ltd. [2017] 84 taxmann.com 138 (Jaipur - Trib.)*

16.0 SC admitted SLP to decide whether expenditure incurred to acquire technical know-how could be treated as capital expenditure

The Supreme Court of India held that SLP granted against High Court order that where assessee entered into an agreement with a foreign company for acquiring germplasm and technical know-how and paid certain amount to it in that regard, since agreement had ensured benefits of research, development and improvements to assessee, 25 per cent of expenditure as capital expenditure was justified

Advanta India Ltd. v. Commissioner of Income-tax [2017] 84 taxmann.com 65 (SC)*

17.0 Sec. 264 revision couldn't be dismissed just because it was filed belatedly without examining reason of delay

The High Court of Delhi held that where Commissioner is of view that a petition is time barred, then in terms of proviso to section 264(3), he should examine whether there was any justifiable reason for such delay

Hargovind Pandey v. Principal Commissioner of Income-tax [2017] 84 taxmann.com 90 (Delhi)*

18.0 Tribunal couldn't recall its entire order while allowing rectification application filed u/s 254

The High Court of Gujarat held that while accepting an assessee's rectification applications, Tribunal should not undertake equally painstaking and elaborate consideration of very same issues and very same facts to come to a contrary conclusion

Commissioner of Income-tax (Exemptions) v. Gujarat

Institute of Housing Estate Developers [2017] 84 taxmann.com 148 (Gujarat)*

19.0 Sum paid to NR towards server maintenance charges for usage of intranet and mails couldn't be held as FTS

In the ITAT Chennai Bench 'D' held that where server maintenance charges were paid for usage of intranet, internet, mail data backup, etc, located at Germany and assessee was merely using technology provided by parent company and no managerial, consultancy and technical services were provided by parent company, payment made was not for FTS and where tax has been deducted but paid in any subsequent year, same will be allowed as deduction in year in which tax has been paid or deducted

*Cooper Standard Automotive India (P.) Ltd. v. Assistant Commissioner of Income-tax, Company Circle-I (3), Chennai**

20.0 No TDS on rental payment made by co. on behalf of directors if recipient had no deduction certificate u/s 197

In the ITAT Visakhapatnam Bench held that where recipient of rental payments was an entity governed by section 12A and its income was exempt from tax and also recipient had obtained no deduction certificate under section 197, on said rental payments, assessee was not required to deduct TDS on impugned payments

Deputy Commissioner of Income-tax, Circle- 3 (1), Vijayawada v. Sudalagunta Hotels Ltd. [2017] 84 taxmann.com 149 (Visakhapatnam - Trib.)*

21.0 HC allowed sec. 80-IB relief as modification of software before installing into hardware amounted to manufacture

The High Court of Himachal Pradesh where assessee, engaged in manufacture of voice and fax encryption systems, imported necessary hardware as well as corresponding software and, thereupon software was customised and modified before loading it to hardware, said activity amounted to 'manufacture' of an article or thing and, thus, assessee's claim for deduction under section 80-IB was to be allowed

Commissioner of Income Tax, Shimla v. Shoghi Communication Ltd. [2017] 84 taxmann.com 198 (Himachal Pradesh)*

CORPORATE LAW

1.0 Practicing Chartered Accountant cannot be enrolled as Advocate with Bar Council

The High Court of Gujarat held that a practicing Chartered Accountant could not be enrolled as Member of Bar Council of Gujarat for practice of law as an advocate under Rules of State Bar Council

Mam Raj Goel v. Bar Council of Gujarat [2017] 85 taxmann.com 77 (Gujarat)

2.0 Disobedience of summons for appearance issued under FERA tantamount to criminal offence

The Supreme Court of India held that disobedience to respond to summons issued under section 40(3) of FERA would amount to an offence under section 56

Enforcement Officer v. Mohammed Akram [2017] 84 taxmann.com 304 (SC)

3.0 Professional was guilty of misconduct for illegally signing prospectus even after resigning as director of Company

The High Court of Allahabad held that Where a Chartered Accountant had resigned as Director of a company before opening of public issue but had signed prospectus of said issue, said CA was guilty of other misconduct

Pankaj mithal and umesh chandra tripathi, jj. Reference against misc. Acts no. 1 of 2014 august 2, 2017 [2017] 84 taxmann.com 175 (Allahabad)

4.0 No act of oppression if allotment of additional shares to only one director was ratified by all directors

The National Company Law Tribunal, Ahmedabad Bench held that where petitioner alongwith his wife and sons holding 59.95 per cent shares in second respondent company alleged that first respondent, a director of company, illegally allotted additional shares in her favour to exclusion of his wife, who was also a director of company, in view of fact that additional allotment of shares in question was approved by passing a resolution to which petitioner's wife was also a signatory, no case for oppression and management was made out

5.0 Petitioner couldn't be liable for mis-demeanour when his name was illegally included as director in returns

The High Court of Kerala held that where petitioner was neither director nor shareholder of company, even though his name was included as director in annual return of company from 2005 to 2014, no action could be taken against him in capacity of director for any misdemeanor of Board during such period until scrutiny and enquiry by ROC was completed

RamesanMaithiyeri v. Union of India, Chennai [2017] 85 taxmann.com 19 (Kerala)

6.0 Insolvency resolution process couldn't be initiated in absence of certificate from financial institution

The National Company Law Appellate Tribunal, New Delhi Bench held that where bank which was maintaining accounts of operational creditor gave certificate confirming that there was no payment of unpaid operational debt by Corporate Debtor, but said bank was not a financial institution as defined in section 3(14), application to initiate insolvency resolution process would not be maintainable

Achenbach BuschhutzenCmbH& Co. v. Arcotech Ltd. [2017] 84 taxmann.com 262 (NCLT - New Delhi)

7.0 Insolvency petition couldn't be deemed as time barred when it was filed within a year of refusal to repay loan

The National Company Law Tribunal, Mumbai Bench held that where in terms of agreement, loan was to be repaid after four months from date of last disbursement by petitioner and within 15 days of raising demand and loan was disbursed in year 2010 while repayment demand was raised in year 2016, application for initiating insolvency process would not be time barred

Ajitnath Steels (P.) Ltd. v. Ellora Paper Mills Ltd., Nagpur [2017] 84 taxmann.com 180 (NCLT - Mum.)

8.0 NCLT allows application for convening meeting of shareholders for approving scheme of arrangement

[2017] 81 taxmann.com 413 (NCLT - Ahd.)



INDIRECT TAXATION

1.0 Work contract couldn't be divided into various components for service tax purpose

The High Court of Bombay held that works contract cannot be vivisected into various components

*Sheth&Sura Engineering (P.) Ltd. v. Union of India** [2017] 85 taxmann.com 54 (Bombay)

2.0 HC rightly dismissed writ which was filed 4 years after demand was confirmed

The Supreme Court of India held that writ petition filed challenging order of Joint Commissioner confirming demand of service tax on commission paid by assessee to overseas agent under business auxiliary service was rightly dismissed as it was barred by delay and laches of four years and assessee had never challenged demand so made

*Shoeline v. Commissioner of Service Tax** [2017] 84 taxmann.com 135 (SC)

3.0 Re-packing of motor vehicle parts after anti-rust treatment was deemed manufacture

The CESTAT, Chennai Bench held that where parts/components of motor vehicles were exported by assessee after purchasing said goods from local vendors and thereafter going through process of unpacking, anti-rust treatment, re-labelling and re-packing, it would amount to be deemed manufacture; cenvat credit would be allowed on inputs/input services used in such exports

*Glovis India (P.) Ltd. v. Commissioner of Central Excise, Chennai-IV** [2017] 84 taxmann.com 130 (Chennai - CESTAT)

4.0 HC allows exporters to import without payment of IGST to extent of Advance authorization licenses

Narendra Plastic (P.) Ltd. v. Union of India [2017] 85 taxmann.com 153 (Delhi)

5.0 Storage facility closely linked with sale of gas isn't 'business support service' for service tax purposes

The CESTAT, New Delhi Bench held that where storage facility provided by assessee to buyer was closely linked with sale of gas by assessee,

amount received towards facility fee could not be considered as consideration for providing business support service to client

*Air Liquide North India (P.) Ltd. v. Commissioner of Central Excise, Jaipur** [2017] 84 taxmann.com 50 (New Delhi - CESTAT)

6.0 No penalty for non-filing of GST return when assessee wrongly registered as sole proprietor

Modern Pipe Industries v. State of U.P. [2017] 84 taxmann.com 254 (Allahabad)

7.0 HC allows exporters to import without payment of IGST to extent of Advance authorization licenses

Narendra Plastic (P.) Ltd. v. Union of India [2017] 85 taxmann.com 153 (Delhi)

3.0 Authorities under DVAT cannot delay the refund claim by exercising the revisionary power

The High Court of Delhi held that revisionary power conferred under section 74A of Delhi VAT Act cannot be exercised by Commissioner to delay refund claim of assessee, such an act would result in abuse of power granted to authorities under Act

*Garg Roadlines v. Commissioner, Trade & Taxes** [2017] 81 taxmann.com 54 (Delhi)

9.0 Cenvat credit couldn't be rejected on ground that assessee was not registered during said period of claim

The High Court of Allahabad held that there is no statutory requirement of registration of assessee as a condition precedent or eligibility condition for claiming refund; refund claim of cenvat credit paid on input services could not be rejected on ground of non-registration of assessee

*Commissioner of Service Tax, Noida v. Atrenta India (P.) Ltd.** [2017] 80 taxmann.com 382 (Allahabad)

10.0 Assessee could approach settlement commission only before order of adjudication

The High Court of Andhra Pradesh held that where assessee had decided to go before Settlement Commission by invoking provisions of section 32E(1) he had a right to approach Settlement Commission only before order of adjudication had been passed by AA and not after adjudication



GST 21st COUNCIL MEETING

The 21st GST Council Meeting was held on 9th September 2017 at Hyderabad. In the GST Council Meeting, various decisions pertaining to the implementation and regulation of GST was decided. In this article, we look at some of the highlights and major decisions taken in the 21st GST Council Meeting

GST Rate Changes

The following major GST rate change decisions were taken in the 21st GST Council Meeting:

GST rate has been reduced from 18% to 12% for services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of:

- A civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;
- A structure meant predominantly for use as an educational, a clinical or an art or cultural establishment;
- A residential complex predominantly meant for self-use or the use of their employees or other persons like MPs/Members of State Legislatures, Panchayats, Municipalities, other local authorities, persons holding constitutional posts, chairperson/member/director in a body established by Central Government, State Government or local authorities etc

It has been decided to exempt GST for tickets to FIFA U-17 Football World Cup- 2017 events.

The GST Council has increased GST Cess on mid-sized cars by 2%, big cars by 5 % and SUVs by 7%. No changes to GST Cess rate has been announced for small cars, 13-seater vehicles and hybrid cars

GST Return Filing Due Date Changes

To improve the ease of GST return filing, the Government has decided to setup a Committee to examine the IT challenges experienced by taxpayers in filing of GST returns. Further, the GST return due

dates for the following types of returns have been revised as follows:

- The due date for filing GSTR-1 for July has been extended until 10th October 2017. For taxpayers with an annual turnover of more than Rs.100 crores, the due date for filing July GSTR-1 return will be 3rd October, 2017
- The due date for filing July GSTR-2 return has been extended to 31st October 2017
- The due date for filing July GSTR-3 return has been extended to 10th November 2017
- The due date for all other GSTR-1, GSTR-2, GSTR-3 returns will be mentioned at a later date

GSTR-3B return will have to be filed by all taxpayers in addition to GSTR-1, GSTR-2 and GSTR-3 return until December 2017. Earlier, GSTR-3B returns were to be filed for the month of July and August only. Now, GSTR 3B return will have to be filed for all months from August to December 2017

GST Composition Scheme

A registered person (whether migrated or new registrant), who could not opt for composition scheme, will

FINANCIAL INDICATORS

	Current Rate*	Previous Month	3 Month ago	6 Month ago
3 Month LIBOR (%)	1.31	1.31	1.3	1.21
SENSEX	31882.16	31531.33	31804.23	31262.06
NIFTY	10006.05	9820.25	9,816.10	9668.25
CRR (%)	4	4	4	4
REPO (%)	6	6	6	6.25
REVERSE REPO (%)	5.75	5.75	5.75	5.75
Gold (per 10 gm)	32378	29197	29230	29019
Silver (per kg)	42300	39452	39800	41800
Crude (USD/bbl)	49.94	47.66	48.62	46.17
Rs vs USD	63.81	63.95	64.45	64.14
Rs vs Euro	76.39	75.11	73.47	75.26
Rs vs 100 Yen	59.15	58.77	58.17	58.38
Rs vs RMB	9.61	9.65	9.54	9.47
Rs vs Pound	84.02	83.07	83.06	81.74
MCX Aluminium (per kg)	136.31	130.45	124.35	124.06
MCX Copper (per kg)	446.06	417.9	389	371.25

*As on September 10, 2017

(Sources: MoneyControl, NSE, BSE, RBI, MCX)

be given an alternative to register under the composition scheme till 30th September 2017. Persons registered until 30th September will be able to avail the benefit of composition scheme with consequence from 1st October, 2017

Transitional Provisions

The GST Transitional Provisions rules provide a mechanism for transfer of input tax credit from previous tax regimes to the GST regime. With respect to transitional provisions, the following changes have been made:

- FORM GST TRAN-I can be revised once
- The outstanding date for submission of FORM GST TRAN-I has been extended by single month i.e. 31st October, 2017

TDS and TCS Provisions

GST TDS registration must be completed by Government Departments. GST TCS provisions are applicable for e-commerce operators. The GST Portal did not accept TDS or TCS registration applications from 1st of July. It has not been announced that GST TDS and TCS registration would commence from 18th September 2017

GST Registration

GST registration is mandatory for any person who undertakes inter-state supply, irrespective of sales turnover. This rule has adversely affected certain types of persons engaged in manufacturing handicraft goods or job work

GST

- Transitional Phase Implementation
- IT System Integration
- Business Advisory Services
- Pre Implementation Guidance
- Input Credit Planning & Management



Audit

- Departmental Audit
- Preventive Audit
- Compliance Audit



Compliances

- Preparation of Return
- Maintenance of Records
- Business Advisory Compliances



System Designing

- Business Operating Procedures
- Automation
- Reconciliation
- Planning



INMACS  • **101, Global Business Square, Building No. 32, Sector 44, Institutional Area, Gurgaon +91-124-4786-200**
 • **909, Chiranjiv Tower 43, Nehru Place New Delhi 110019, +91-11-2622-3712**
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