



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.[MD]No.22287 of 2021

and

W.M.P(MD).No.18848 of 2021

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Muvendar Trust

: Petitioner

Vs.

1. The The Income Tax Officer,
Exemption Ward,
Trichy Main Building,
Williams Road, Cantonment,
Trichy - 620015.

2. Additional/Joint/Deputy/Assistant
Commissioner of Income Tax/
Income Tax Officer,
National Faceless Assessment Centre,
Delhi.

: Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari calling for the records of impugned Assessment Order in DIN No.ITBA/AST/S/143(3)/2021-22/1035839283(1) dated 23.09.2021 passed by the second respondent herein and quash the same.

For Petitioner : Mr.T.Ramesh
for S.Radhakrishnan

For Respondents : Mr.N.Dilip Kumar,
Senior Standing Counsel for Income Tax

O R D E R

In the captioned main writ petition an 'assessment order dated 23.09.2021 bearing reference DIN No.ITBA/AST/S/143(3)/2021-22/1035839283(1)' (hereinafter 'impugned order' for the sake of convenience and clarity) being an assessment order made under Section 143(3) read with Section 144B of 'the Income Tax Act, 1961' [hereinafter 'said Act' for the sake of convenience and brevity] has been assailed.

2. Mr.T.Ramesh, learned counsel appearing on behalf of the counsel on record for writ petitioner submitted that the impugned order made by the second respondent is liable to be quashed, notwithstanding very many averments made in the writ affidavit and very many grounds raised in the writ affidavit, learned counsel in



his campaign against the impugned order made three pointed submissions and they are as follows:

(a) The registration of the assessee (which according to him) is a registered 'Public Charitable Trust' under Section 12AA of said Act has been cancelled vide the impugned order without giving an opportunity to the writ petitioner-assessee;

(b) The benefit of Sections 11 and 12 of said Act vide registration under Section 12AA of said Act is being given to the writ petitioner-assessee for over thirty years and it has suddenly been declined;

(c) The impugned order is a non-speaking order and therefore, it calls for interference in writ jurisdiction.

3. Before I proceed further, it is necessary to give short facts or in other words, factual matrix in a nutshell containing essential facts that are imperative for appreciating this order. Short facts shorn of unnecessary particulars are that the writ petitioner-assessee claims to be a public charitable trust having been so registered vide a Trust deed on the file of Sub-Registrar, Peravurani, Thanjavur District; that the writ petitioner-assessee applied for registration under Section 11 of said Act, exemption was granted vide letter Ref No.CNo.2039(43)/87; that approval under Section 80G of said Act was also granted in respect of donations received by the petitioner under same reference dated 29.12.1988; that the exemption was subsequently renewed vide letter C No.2039) 43)/87 dated 29.09.1992 for the period 05.12.1991 to 31.03.1994; that the exemption was periodically renewed until 31.03.2000 vide communication dated 03.03.1999; that the writ petitioner-assessee did not seek approval under Section 80G after 31.03.2000 as the petitioner discontinued taking voluntary contributions and donations from anyone; that the petitioner's accounts have been regularly audited as required under said Act and the petitioner has been filing income tax returns along with the audit report as required under Section 12A(b) of said Act from the year of grant of registration under Section 12A of said Act; that the impugned order was preceded by a notice under Section 143(2) of said Act being notice dated 30.09.2020 and the writ petitioner-assessee uploaded its reply saying that registration under Section 12AA of said Act had not been cancelled; that there were two reminders thereafter from the second respondent i.e., Department dated 25.02.2021 and 30.08.2021 requesting the writ petitioner-assessee to upload the registration certificate but the writ petitioner-assessee did not respond; that thereafter the impugned (assessment) order came to be made *inter-alia* negating the claim of the writ petitioner of being a trust entitled Sections 11, 12 benefits qua said Act and taking the total income of the assessee trust i.e., taking the gross income; that assailing the impugned order captioned main writ petition has been filed.



4. This Court having set out the factual matrix in a nutshell, before proceeding further, deems it appropriate to say that the factual matrix narrated supra is based on the writ affidavit averments and the submissions made before this Court. This Court notices that the registration (as set out supra) is not under Section 12A but it is under Section 12AA of said Act.

5. Mr.N.Dilip Kumar, learned Senior Standing Counsel for Income Tax accepted notice on behalf of both the respondents. Owing to the narrow compass on which captioned writ petition turns, with the consent of learned counsel on both sides, captioned main writ petition was taken up and heard out.

6. In response to the points raised by learned counsel for writ petitioner, learned Revenue counsel made submissions a summation of which is as follows:

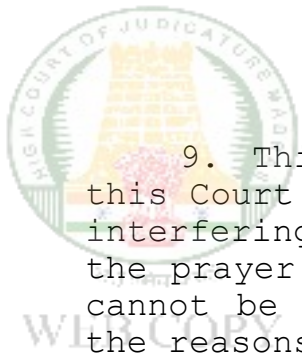
(a) Cancellation of registration under Section 12AA of said Act is not vide the impugned order but the impugned order merely records the fact and more particularly, the impugned order records the fact that the writ petitioner-assessee has not uploaded the Section 12AA registration certificate either in response to notice under Section 142(1) of said Act or two reminders thereafter;

(b) It is incorrect to say that the writ petitioner-assessee is being continuously given the benefit of exemption under Section 12AA of said Act for thirty years as even according to the writ petitioner and even according to the case file placed before this Court, such exemption was negatived for the assessment year 2018-19 vide assessment order dated 30.04.2021 bearing reference DIN ITBA/AST/S/143(3)/2021-22/1032744474(1);

(c) It is not tenable to say that the impugned order is a non-speaking order as it clearly records the trajectory and the reason for not extending Section 12AA benefit to the writ petitioner-assessee.

7. In addition to the aforementioned submissions in terms of reply, a reply to the arguments projected by learned counsel for writ petitioner, learned Revenue counsel also brought to the notice of this Court that there is a effective and efficacious alternate remedy qua impugned order as the same is appealable under Section 246 of said Act.

8. By way of reply submissions, learned counsel for writ petitioner submitted that in 2018-19, Section 12AA of said Act registration has not been cancelled by way of the assessment order i.e., the aforementioned assessment order dated 30.04.2021 and therefore the question of assailing the same in writ jurisdiction



9. This Court carefully considered the rival submissions and this Court is of the considered view that this is not a fit case for interfering with the impugned order in writ jurisdiction and that the prayer of the writ petition in the captioned main writ petition cannot be answered in affirmative i.e., cannot be acceded to and the reasons are as follows:

(a) The relevant part of the impugned order which deals with Section 12AA of said Act issue is captured in two paragraphs of impugned order and the same read as follows:

'...For further proceedings of the case, Notice U/s 143(2) of the Income-Tax Act, 1961 dated 30/09/2020 was issued and duly served upon the assessee but the assessee has not complied. Further, reminder letters dated 25/02/2021 and 30/08/2021 were issued to the assessee requested to make compliance to upload registration certificate. But till date no reply has been received from the assessee.

Considering the above and going through the reason for selection of the case for scrutiny i.e the Registration of the Trust under Section 12AA of the Income-Tax Act, 1961 has been cancelled. Therefore, the authenticity of assessee being a bona fide registered trust not fully confirmed. Hence, without evidence of registered documents, the assessee's claim of being trust is not accepted and taxed as per Income Tax Act, 1961 and the total income of the assessee trust is assessed taking the gross income received by the trust of Rs.5,75,93,708/- during the Financial Year 2018-19...'

A careful perusal of the aforementioned two paragraphs leaves this Court with the considered view that the cancellation of registration under Section 12AA of said Act is not vide the impugned order but it only records the cancellation;

(b) There is nothing to demonstrate why the writ petitioner did not upload the registration certificate under Section 12AA of said Act in spite of adequate ample and multiple opportunities being given to the writ petitioner, all of which is captured in the aforementioned two paragraphs;

(c) On a demurrer, even if it is to be construed that the cancellation is vide impugned order cancellation of registration under Section 12AA of said Act is also revisable under Section 264 of said Act. Suffice to say that there is an effective and



efficacious alternate remedy even against cancellation. To be noted, as mentioned in the opening part of this point this is on a demurrer;

(d) The submission that the writ petitioner-assessee being given the benefit of registration under Section 12AA of said Act for thirty years continuously falls flat on its face in the light of aforementioned assessment order dated 30.04.2021 made for the assessment year 2018-19. The most relevant portion of this assessment order is contained in paragraph 14 thereat and the relevant paragraph 14 reads as follows:

'It is also undisputed that the assessee trust has applied for registration u/s.12A and exemption u/s.80G of the Act on 12.08.1986 onwards. From that time onwards, there has been constant renewal of exemption u/s.80G of the Act but in the case of assessee, the assessee was not able to provide the copy of application for registration u/s 12A and exemption u/s 80G from the inception of the trust i.e. 15/07/1985. Even, the submission of the assessee that it was granted 12A vide ref No.2039(43)/87 by the CIT, Tamilnadu-V, Chennai in the year 1987 is not acceptable. From the copy of ITR of the A.Y. 2013-14 to A.Y. 2015-16 this fact was clear that the assessee did not have 12A registration. Further, the assessee had entered registration no and date of 80G registration in the ITR of A.Y. 2016-17. From this fact, it is clear that the registration number given and claim that it was issued in 1987 was the registration number of 80G issued on 29/09/1992. Further, In A.Y. 2013-14, the auditor has made audit (as per ITR of A.Y. 13-14) as per section 10(23)(iv) of the Act.'

To be noted, there are two 'paragraph 14' in the previous assessment order and I am referring to the first of the two paragraphs at pages 61 and 62 of the typed set of papers that has been placed before me;

(e) The impugned order, in the considered view of this Court cannot be said to be a non-speaking order. Two critical paragraphs in the impugned order which has captured the crux and gravamen of the matter had been extracted and reproduced supra. Those two paragraphs by itself and of course the rest of the order make it clear that it is not a non-speaking order. It may at best be a terse order. An order can be tersely eloquent, it cannot be construed to be a non-speaking order unless it is



laconic, not when it is epigrammatic or merely because it is terse. Therefore, this Court is of the considered view that the argument that the impugned order is a non-speaking order becomes a non-starter i.e., an argument which does not take off;

(f) This takes this Court to the alternate remedy aspect. Alternate remedy no doubt is a self-imposed restraint. It is not an absolute rule. Alternate remedy rule is a rule of discretion. Notwithstanding alternate remedy rule being a rule of discretion, Hon'ble Supreme Court which in a long line of case laws i.e., in a catena of case laws starting from **Dunlop India case [Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd., and others]** reported in (1985) 1 SCC 260 ; **Satyawati Tandon [United Bank of India Vs. Satyawati Tandon and others]** reported in (2010) 8 SCC 110] and **K.C.Mathew [Authorized Officer, State Bank of Travancore and another Vs. Mathew K.C.]** reported in (2018) 3 SCC 85], has held that in fiscal law Statutes, alternate remedy rule has to be applied with utmost rigour. Relevant paragraph in **Dunlop** case is paragraph No.3 and relevant portion of the same reads as follows:

'3. Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged.'

(Underlining made by this Court to supply emphasis and highlight)

Relevant paragraph in **K.C.Mathew** case is paragraph 10 and the same reads as follows:

'10. In **Satyawati Tandon** the High Court had restrained further proceedings under Section 13(4) of the



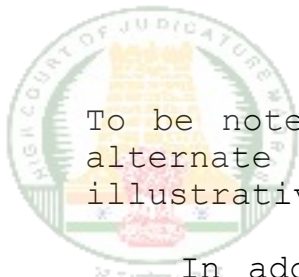
Act. Upon a detailed consideration of the statutory scheme under the SARFAESI Act, the availability of remedy to the aggrieved under Section 17 before the Tribunal and the appellate remedy under Section 18 before the Appellate Tribunal, the object and purpose of the legislation, it was observed that a writ petition ought not to be entertained in view of the alternate statutory remedy available holding: (SCC pp.123 & 128, Paras 43 & 55)

"43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this Rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

55. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection.'

(underlining made by this Court to supply emphasis and highlight)

Paragraph 10 of **K.C.Mathew** case extracts the **Satyawati Tandon** principles i.e., portions of the case law from **Satyawati Tandon** and the same has been reproduced. Therefore, I deem it appropriate to not to burden this order with extracts from **Satyawati Tandon** case.



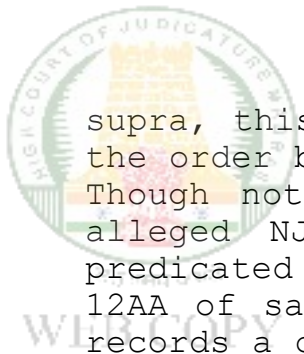
To be noted, these three case laws are not an exhaustive list qua alternate remedy principle in Fiscal Law Statute but they are illustrative qua a long line of case laws.

In addition to the above line of authorities, the latest case law is **Commercial Steel Limited case [The Assistant Commissioner of State Tax and others Vs. M/s.Commercial Steel Limited in Civil Appeal No.5121 of 2021]** which was rendered by a three Member Bench of the Hon'ble Supreme Court on 03.09.2021. Three Member Hon'ble Bench had culled out the exceptions to the alternate remedy rule and had clearly held that interference in writ jurisdiction will arise only in exceptional cases where the exception adumbrated therein are attracted. Relevant paragraphs in **Commercial Steel case** are paragraph Nos.11, 12 and the same read as follows:

'11 The respondent had a statutory remedy under section 107. Instead of availing of the remedy, the respondent instituted a petition under Article 226. The existence of an alternate remedy is not an absolute bar to the maintainability of a writ petition under Article 226 of the Constitution. But a writ petition can be entertained in exceptional circumstances where there is: (i) a breach of fundamental rights; (ii) a violation of the principles of natural justice; (iii) an excess of jurisdiction; or (iv) a challenge to the vires of the statute or delegated legislation.

12 In the present case, none of the above exceptions was established. There was, in fact, no violation of the principles of natural justice since a notice was served on the person in charge of the conveyance. In this backdrop, it was CA 5121/2021 7 not appropriate for the High Court to entertain a writ petition. The assessment of facts would have to be carried out by the appellate authority. As a matter of fact, the High Court has while doing this exercise proceeded on the basis of surmises. However, since we are inclined to relegate the respondent to the pursuit of the alternate statutory remedy under Section 107, this Court makes no observation on the merits of the case of the respondent.'

In addition to the above the oft quoted and celebrated **Whirlpool principle [Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and others]** reported in (1998) 8 SCC 1] case law also fortifies the view that is being taken by this Court. The **Whirlpool Corporation** case is such an oft quoted case law that it has come to stay in litigation parlance as 'Whirlpool exceptions'. In the case on hand, the only arguments that comes closest to an exception is the writ petitioner allegedly not being given an opportunity before cancellation of Section 12AA registration. As already alluded to



supra, this Court is of the view that the impugned order may not be the order by which the Section 12AA registration has been cancelled. Though not specifically pointed out, I am of the view that this alleged NJP violation if at all and if that be so would be predicated and posited on the proviso to Sub-section (3) of Section 12AA of said Act. This did not arise as the impugned order merely records a cancellation. This is buttressed and bolstered by the writ petitioner not uploading the registration certificate more so when it is the positive and categoric averment of the writ petitioner that the 12AA registration has been repeatedly renewed for over a continuous period of time whereas only the 80G registration was discontinued post 31.03.2000. To be noted, even now, even in this writ petition case file, Section 12AA registration certificate has not been produced. This Court is of the considered view that the writ petitioner has not given any acceptable reason for not uploading the 12AA registration certificate which the writ petitioner claims is in its possession.

10. The above takes us to Section 142(1) notice which becomes relevant. A scanned reproduction of 142(1) notice dated 30.08.2021 is as follows:

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**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
National Faceless Assessment Centre
Delhi**

To,
**MUVENDAR TRUST
77 A PATTUKKOTTAI ROAD PERAVURANI PERAVURANI
THANJAVUR 614604, Tamil Nadu.**

PAN: **AAATM0949E** Assessment Year: **2019-20** Dated: **30/08/2021** DIN & Letter No: **ITBA/AST/F/17/2021-22/1035180975(1)**

Sir/ Madam/ M/s.

Subject: Compliance to the Notice U/s 142(1) of the I.T Act, 1961 dated 17.01.2021: Reg.

In connection with the assessment proceedings you were requested to upload/submit the following details as per the Notice U/s 142(1) of the Income-tax Act dated 17/01/2021 but till date no response has been received from your end. You are once again requested to upload the following documents by 06/09/2021. Non compliance to the same assessment will be completed as per the record available on record without given further opportunity.

1. Copy of Trust Deed along with the deed of amendment/alteration/addition/introduction, if any.
2. Brief note on activities.
3. Details of Institution carried out by the trust along with the affiliation.
4. Details of registration/exemption certificate U/s 12AA, 80(G)(v), 10(23) etc. Please specify whether the registration/exemption has ever been cancelled/withdrawn.
5. Audited Accounts for the last three years. Please specify whether any assessment U/s 143(3), 147, 153A, 153C has been made. If yes please upload the details of the same.
6. Copy of Bank Statement for the Financial Year 2018-19.
7. Details of Corpus donation and other donation received during the Financial Year 2018-19.
8. Furnish the details name, address and e-mail of the donors.
9. List of the Trustee.
10. Copy of Form 10A.

Note:- The website address of the e-filing portal has been changed from www.incometaxindiaefiling.gov.in to www.incometax.gov.in.

Harishankar



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11. Details of expenses debited in the Income & Expenditure Account above Rs.5,00,000/-
12. Details of addition on Fixed Assets during the Financial Year 2018-19.
13. Details of payment made to the specified persons as per the provision of Sec.13(3) of the I.T Act 1961.

Yours faithfully,
Additional / Joint / Deputy / Assistant Commissioner of Income Tax/
Income-tax Officer,
National Faceless Assessment Centre,
Delhi

What is of relevance is serial No.4 thereat. The second respondent has sought for the registration certificate under Section 12AA of said Act with utmost clarity and specificity but the same has not been uploaded. This 142(1) notice, as already alluded to supra was followed by not one but two reminders i.e., dated 25.02.2021 and 30.08.2021. There is nothing to demonstrate that the writ petitioner-assessee responded to these two reminders. There is no response which has been placed before me. There is no averment that the writ petitioner-assessee responded to these reminders. On the contrary, specific submission made, on instructions, before this Court today is that the writ petitioner does not readily have the 12AA registration certificate.

11. Reverting to the alternate remedy facet of the matter on hand which has been alluded to supra, interestingly and intriguingly, as rightly pointed out by learned Revenue counsel in one of the previous assessment year i.e., 2018-19 assessment order dated 30.04.2021 (referred to supra) has been assailed by the writ petitioner by way of an appeal. Furthermore, the submission of learned Revenue counsel that even vide the assessment order for 2018-19, the 12AA benefit has been considered and negatived. The reasons in paragraph 14 to which my attention was drawn has already extracted and reproduced supra. The above is buttressed by the positive averment of the writ petitioner in paragraph 5 of the writ affidavit. Relevant portion of paragraph 5 reads as follows:

'Without considering any of the submissions, the Assessing Officer passed an order dated 30/4/2021 for the Assessment Year 2018-19 denying the status of public charitable trust to the petitioner and treated the total income of the petitioner as gross income. The Respondent also initiated action for imposing penalty under Section



274 read with Section 270 A of IT Act for underreporting of income. In the said Assessment Order there is no finding or mention with regard to the cancellation or otherwise of the Registration Certificate earlier issued to the petitioner under the IT Act. Against the said order, the petitioner has filed an Appeal before Commissioner (Appeals) and the same is pending.'

12. A perusal of above averment makes it clear that it is the stated position of the writ petitioner i.e., the stated case of the writ petitioner that the assessment order qua 2018-19 has been assailed by the writ petitioner by way of a statutory appeal. The arguments that vide assessment order 2018-19 there is cancellation of 12AA registration certificate, does not hold water and does not carry the writ petitioner any further for two reasons. One reason is as already alluded to supra, the impugned order is not the order by which the cancellation has been made and on a demurrer even if that be so, the same is revisable under Section 264 of said Act and more importantly the second reason is sauce for Goose is sauce for Gander too. If the writ petitioner can assail the assessment order for 2018-19 (where Section 12AA benefit have been negated) by way of a statutory appeal under Section 246 of said Act, there is no reason as to why the writ petitioner cannot do it qua impugned assessment order. This by itself downs the curtains from all these arguments and it douses the writ petitioner's campaign against the writ petitioner.

13. Notwithstanding the dismissal of the captioned writ petition, if the writ petitioner chooses to avail the alternate remedy either by way of an appeal under Section 246 of said Act or by way of a revision under Section 264 of said Act as the case may be, subject to limitation and subject to pre-deposit condition, the appellate authority/revisional authority can consider the appeal/revision on its own merits and in accordance with law untrammelled by observations made in this order as the observations made in this order are for the purpose of deciding the tenability of interference qua the impugned order in writ jurisdiction.

14. In the light of the narrative, discussion and dispositive reasoning set out supra, the sequitur is the captioned writ petition fails and the same is dismissed. Consequently, captioned W.M.P is also dismissed. There shall be no order as to costs.

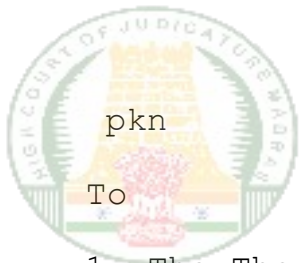
Sd/-

Assistant Registrar (W)

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/ /2021

Sub Assistant Registrar (CS)



1. The The Income Tax Officer,
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Trichy Main Building,
Williams Road, Cantonment,
Trichy - 620015.

2. Additional/Joint/Deputy/Assistant
Commissioner of Income Tax/
Income Tax Officer,
National Faceless Assessment Centre,
Delhi.

+1 CC to M/s.S.RADHAKRISHNAN, Advocate (SR-39118[F] dated
16/12/2021)

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-39350[F] dated 17/12/2021)

W.P.[MD]No.22287 of 2021
16.12.2021

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