



SBS | *Interns'*
Digest
An attempt to share knowledge

By

**Interns of
SBS and Company LLP**

SNAPSHOTS OF LAST MONTH SATURDAY SESSIONS



Controls to be followed in Purchase process and Property, Plant and Equipment process - A. Vaishnavi



Sec 56(2) - Receipts without Consideration - A. Sai Krishna Reddy



Audit of Purchases - G. Prudhvi



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INDIRECT TAX

"POT" FOR SPECIFIED SERVICES

Contributed by S. Priya & Vetted by CA Manindar K |

INTRODUCTION

As we know 'Service' is intangible, it is this nature which makes difficult to identify the point of time at which service was provided or completed. Therefore, Point of Taxation Rules 2011 (for brevity 'POT Rules') was introduced in Service Tax Law to ensure tax collection on accrual basis and is in harmony with other Indirect tax laws. 'Point of taxation' means the point in time a service is deemed to have been provided/received and such framework is based on the principle of 'Specific rule over General rule'.

SPECIFIED SERVICES

There are certain services where Reverse charge mechanism is applicable in terms of section 68(2). Accordingly, instead of service provider, the receiver of the service is required to pay tax to the Government. The following are the list of services which are notified for reverse charge mechanism.

- Provision of service by insurance agent to Insurance company
- Provision of service by recovery agent to a banking company/ financial institutions/ NBFC
- Sponsorship service
- Service of arbitral tribunal
- Legal consultancy service
- Provision of service of Director
- Service provided by Government/Local authority
- Renting of motor vehicles
- Manpower supply service /Security service
- Works contract
- Aggregator service
- Import of service

These are called the specified services for the purpose of POT Rules. Accordingly, the specific rule i.e. Rule 7 is applicable to determine the point in time when service is deemed to be received. Accordingly, in terms of Rule 6 of Service Tax Rules, the said service receiver is required to pay the applicable service tax amount by 6th of month immediately following the month in which service is deemed to be received.

RULE 7 OF POINT OF TAXATION RULES, 2011

This rule determines the point of time when the service recipient is liable to pay service tax. Generally, the point of taxation shall be the date on which payment is made by the service recipient. However, if the payment is not made within three months from the date of invoice, then the date immediately following the said period of three months is the Point of Taxation for such service received.

For better understanding, let us pick cases under this rule:

CASE 1: M/s New Indian Security Services, a firm, provided security service to M/s APC Co. Ltd. in the month of August'2016 charging Rs. 20,000. Invoice was raised on 01.09.2016. However, APC Co. Ltd. made the payment on 02.11.2016.

Taxable point: The service was provided in August and the date of invoice is 01.09.2016. As the three months from such date expires on 30.11.2016 and the payment is made on 02.11.2016 which is within the stipulated period of three months. Therefore, the point of taxation shall be date of payment and so M/s APC Co. Ltd. shall pay service tax by 06.12.2016 as per Rule 6 of Service Tax Rules, 1994.

CASE 2: In this case, payment was made by M/s APC Co. Ltd. on 15.12.2016. Since the period of three months already expired on 30.11.2016 i.e. November month. Point of taxing service tax shall be 01.12.2016 and so the company should pay service tax by 06.01.2017. Failing to pay the tax by 06.01.2017 would attract interest u/s 75 of the Finance Act 1994.

POINT OF TAXATION (SECOND AMENDMENT) RULES, 2016

This amendment rule came into effect on 30.03.2016 vide Notification no. 21/2016 – ST which has added a new proviso to Rule 7 of point of taxation which states that:

" Provided also that where there is change in the liability or extent of liability of a person required to pay tax as recipient of service notified under sub-section (2) of section 68 of the Act, in case service has been provided and the invoice issued before the date of such change, but payment has not been made as on such date, the point of taxation shall be the date of issuance of invoice."

As we know that Krishikalyan cess of 0.5% has been levied w.e.f 01.06.2016, the total tax rate charged on service changed from 14.5% to 15%. The service recipient's liability has increased, in such case if the service was received in ,say, April and the invoice was raised on 20.05.2016 and the payment is made on 20.10.2016 . Though, the payment is made post levy of krishikalyan cess and completion of the service neither Rule 3 (General rule) nor Rule 5 (POT for new levy) would be applicable since the Point of Taxation Rules follows specific rule over general rule. Rule 7 is applied as this rule speaks about point of taxation in the hand of service recipient and so the said rule shall be followed in this case . Hence even if the payment is made on 20.10.2016 when 15% rate was applicable, point of taxation shall be date of invoice i.e. 20.05.2016 and so receiver is liable to pay service tax of 14.5% by 06.06.2016. Default in the same would attract interest from 07.06.2016 till the date of payment.

POINT OF TAXATION (THIRD AMENDMENT) RULES, 2016

This amendment rule came into effect on 13.04.2016 vide Notification no. 24/2016 –ST which modifies the point of taxation for service received from Government.

As we are aware that service received by business entity from Government or local authority is covered under reverse charge mechanism, the point of taxation post this notification is date on which payment is due or date when payment is made, whichever is earlier. Hence, for such service, date of payment is not the sole criteria to decide point of taxation. We should also consider the date on which any communication is received from Government intimating the dues.

ASSOCIATED ENTERPRISE AND POINT OF TAXATION

In case of services received from an associated enterprise located outside India, then as per the proviso to the rule, point of taxation shall be earlier of date of payment or date of debit in books of accounts by the receiver.

CONCLUSION:

This rule guides the service recipient to determine the time of payment, rate applicable and the adjustment of credit on non-payment of service tax within 3 months. In case there is no appropriate information available about the invoice/payment made then the Central Excise Officer may resort to best judgment assessment based on the information gathered from accounts and other documents maintained in the regard.

"It does not matter how slowly you go as long as you do not stop"

FEMA**AN OVERVIEW ON CLASSIFICATION OF NBFCs AND ITS REGISTRATION**

Contributed by A. Vaishnavi & Vetted by CA Murali Krishna G

Non Banking Financial Company (“NBFC”) in generally is a financial institution that provides banking services without having the banking license. These companies are regulated by the Reserve Bank of India (“RBI”). NBFC is a company (either public or Private) registered under the Companies Act, 2013 (or 1956) which is engaged in the business of giving loans and advances, acquisition of shares/stocks/bonds/debentures/securities issued by Government or local authority or other marketable securities of a like nature, leasing, hire-purchase, insurance business, chit business but does not include any institution whose principal business is that of agriculture activity, industrial activity, purchase or sale of any goods (other than securities) or providing any services and sale/purchase/construction of immovable property.

REGISTRATION WITH RBI:

Every company (Except Specialised NBFCs-prescribed by RBI) engaging in the business of Non-Banking Financial Services should fulfil the below mentioned criteria for commencing/carrying its business operations:

1. Minimum Net owned funds as prescribed by RBI
2. Should obtain Certificate of Registration (“CoR”) from RBI (u/s 45-IA of RBI Act, 1934)

PROCESS OF REGISTRATION WITH RBI:

The applicant company is required to apply online and submit a physical copy of the application along with the necessary documents to the Regional Office of the Reserve Bank of India. The application can be submitted online by accessing RBI’s secured website <https://cosmos.rbi.org.in>.

IS REGISTRATION UNDER RBI IS MANDATORY?

Certain NBFC Companies have been exempted from the registration under Section 45-IA of the Reserve Bank of India Act, 1934 if they are registered with other regulators to avoid duality of regulation subject to certain conditions. The regulators for specified NBFC companies which have been exempted from registration under the RBI Act have been specifically mentioned they are as follows:

- Housing Finance Companies – **National Housing Bank**
- Merchant Banking Companies, Stock Exchanges, Companies engaged in the business of Stock-broking/Sub-broking, Venture Capital Fund Companies etc., – **SEBI**
- Insurance Business – **IRDAI**
- Chit Fund Companies – **Respective State Governments**
- Nidhi Companies – **Ministry of Corporate affairs**

REQUIREMENT OF MINIMUM NET OWNED FUND (“NOF”):**Applicable NOF to NBFCs in General:**

In terms of Notification No. DNBS.132/CGM(VSNM)-99 dated April 21, 1999, the minimum NOF requirement for new companies applying for grant of CoR to commence business of an NBFC is stipulated at Rs. 200 lakhs. Although the requirement of minimum NOF at present stands at Rs. 200 lakhs, the minimum NOF for companies that were already in existence before April 21, 1999 was retained at Rs. 25 lakhs. But it shall be mandatory for all NBFCs to attain a minimum NOF of Rs. 200 lakhs by the end of March 2017, as per the milestones given below:

- Rs. 100 lakhs by the end of March 2016
- Rs. 200 lakhs by the end of March 2017

It will be incumbent upon such NBFCs, the NOF of which currently falls below Rs. 200 lakhs, to submit a statutory auditor's certificate certifying compliance to the revised levels at the end of each of the two financial years as given above.

NBFCs failing to achieve the prescribed ceiling within the stipulated time period shall not be eligible to hold the CoR as NBFCs. The Reserve Bank of India will initiate the process for cancellation of CoR against such NBFCs.

Requirement of minimum net owned fund differs based on the nature of activity of particular NBFC as given below.

CLASSIFICATION OF NBFCs:

- Based on the liability structure NBFCs are classified as below:
 1. NBFCs accepting public deposits (NBFCs-D)
 2. Non-deposit taking NBFCs (NBFC-ND) with assets less than Rs. 500 crores. (REVISED)
 3. Non-deposit taking systemically important NBFCs (NBFC-ND-SI) with assets Rs. 500 crores and above.(REVISED)

- Based on the nature of activity NBFCs are classified as below:
 1. Asset Finance Companies
 2. Investment Companies
 3. Loan Companies
 4. Infrastructure Finance Company
 5. Systematically Important Core Investment Company
 6. Infrastructure Debt Fund
 7. Micro Finance Institution
 8. Factors
 9. Mortgage Guarantee Companies
 10. Non-Operative Finance Holding Company

NBFCs accepting public deposits (NBFCs-D):

All NBFCs are not entitled to accept public deposits. The following conditions need to be satisfied by the NBFC Company to accept the public deposits

- Specific authorisation from Reserve Bank of India is required
- Should have an investment grade rating
- Should maintain minimum Capital to Risk (Weighted) Assets Ratio("CRAR")

Ceiling limit (REVISED) on Public Deposits based on the category of NBFC:

| Category of NBFC | Ceiling on public deposits |
|--|----------------------------|
| AFC with CRAR of 12% and having minimum investment grade credit rating, having NOF more than 25 lakh but less than 200 lakh | 1.5 times of NOF |
| AFC with CRAR of 15% and without any credit rating, having NOF more than 25 lakh but less than 200 lakh | Equal to NOF |
| Loan/Investment company with CRAR of 15% and having minimum investment grade credit rating with NOF more than 25 lakh but less than 200 lakh | Equal to NOF |

NBFC-ND with assets less than Rs. 500 crores:

- If it has customer interface are subjected to conduct of business regulations and
- If they accept the public deposits, then they are subjected to Limited prudential regulations
- If they accept public deposits and has customer interface, then they will be subjected both to conduct of business regulations and also the Limited prudential regulations

NBFC-ND-SI with assets Rs. 500 crores and above:

- Irrespective of whether they have accessed public funds or not, shall comply with prudential regulations as applicable to NBFCs-ND-SI. They shall also comply with conduct of business regulations if customer interface exists.

The term 'public funds' includes :

funds raised directly or indirectly through public deposits, commercial papers, debentures, inter-corporate deposits and bank finance, but excludes funds raised by issue of instruments compulsorily convertible into equity shares within a period not exceeding 5 years from the date of issue".

NOF requirement for different NBFCs which are classified based on the nature of Business:

| Nature of NBFC | Required Net Owned Fund (NOF) |
|--|-------------------------------|
| Asset Finance Company | 2 Crore |
| Investment Company | 2 Crore |
| Loan Company | 2 Crore |
| Infrastructure Finance Company | 300 crore |
| Systematically Important Core Investment Company | 5 Crore and above |
| Infrastructure Debt Fund | 300 crore |
| Micro Finance Institution | 5 Crore* |
| Factoring | 5 Crore |

* For NBFC-MFIs Minimum Net Owned Funds of Rs.5 crore. (For NBFC-MFIs registered in the North Eastern Region of the country, the minimum NOF requirement shall stand at Rs. 2 crore).

General compliances to be followed by NBFCs:

- The company should intimate the date of commencement of business immediately after receiving the CoR to RBI and shall be duly signed by all the directors.
- The company shall inform to RBI Immediately, if the NOF of the company falls below the minimum limit as prescribed by the bank from time to time.
- The company should within 1 month of starting its commercial operations nominate a designated director for ensuring compliance with the obligations under the Prevention of Money Laundering Act ("PMLA").
- The company need to submit Statutory Auditor Certificate ("SAC") from there statutory auditor to the regional office of the department of non- banking supervision ("DNBS") under whose jurisdiction the NBFC is registered.

RESIDUARY NON-BANKING COMPANY (RNBC):

Residuary Non-Banking Company belongs to the class of NBFC and is the company registered under the Companies Act, 2013 or 1956, the principal business of RNBC is accepting the deposits as per the directions given by the RBI not being Investment, Asset Financing, Loan Company. These companies are required to maintain investments as per directions of RBI, in addition to liquid assets. The functioning of these companies is different from those of NBFCs in terms of method of mobilization of deposits and

requirement of deployment of depositors' funds as per Directions given by the RBI. There is no ceiling limit on raising the deposits for RNBC and the full deposit amount is safely invested in the approved investments as guided by the RBI. The interest rates (Minimum rate of return) and the maturity period on the amount deposited with the RNBC will be revised by the RBI based on the market conditions; it differs based on the deposit scheme under which the amount is deposited.

| Type of deposit schemes | Present minimum rate of return |
|---|--------------------------------|
| (a) daily deposit schemes | not less than 3.5% p. a. |
| (b) deposits received in lump sum or at monthly or longer intervals | not less than 5% p.a. |

A RNBC can accept deposits for a minimum period of 12 months and maximum period of 84 months from the date of receipt of such deposit.

MISCELLANEOUS NON BANKING COMPANIES:

Miscellaneous Non-Banking Company belongs to the class of NBFC and is the company registered under the Companies Act, 2013 or 1956, the principal business of Miscellaneous Non banking company is inviting deposits from public through advertisements in a leading English newspaper and one vernacular newspaper circulating in the State in which the registered office of the company is situated. The deposits are accepted as per the directions given by RBI under Miscellaneous Non-Banking Companies (Reserve Bank) Directions, 1977. The interest rates (Minimum rate of return) and the maturity period on the amount deposited with the RNBC will be revised by the RBI based on the market conditions.

Present Interest rates:

1. Invite or accept or renew deposit on a rate of interest exceeding 12.5 per cent per annum. Interest may be paid or compounded at rests which shall not be shorter than monthly rests.
2. Pay to any broker for deposits collected by or through him, brokerage in excess of the rates specified below :-

| Type of deposit schemes | Pay to broker |
|--|--|
| (i) where a deposit is for : a period not exceeding one year | one percent of such deposit |
| (ii) where a deposit is for : a period exceeding one year but not exceeding two years | one and a quarter per cent (not per annum) of such deposit |
| (iii) where a deposit is for : a period exceeding two years. | one and a half per-cent (not per annum) of such deposit.] |

"Education is the most powerful weapon we can use to change the world"

This article is contributed by A. Vaishnavi, Intern of SBS and Company LLP. The author can be reached at interns@sbsandco.com

INCOME TAX**INCOME TAX UPDATES**

1. In exercise of the powers conferred by clause (46) of section 10 of the Income-tax Act, 1961 (43 of 1961), the Central Government vide Notification No. 101/2016 dated 27th October, 2016 hereby notifies for the purposes of the said clause, Bihar Electricity Regulatory Commission (a body constituted by the State Government of Bihar), in respect of the following specified income arising to that Commission, namely:-
 - a) amount received in the form of government grants;
 - b) amount received as licence fee from licensees in electricity;
 - c) amount received as application processing fee; and
 - d) interest earned on government grants and fee received.

However, Electricity Regulatory Commission-

- a) shall not engage in any commercial activity;
- b) activities and the nature of the specified income remain unchanged throughout the financial years; and
- c) shall file returns of income in accordance with the provision of clause (g) of sub-section (4C) section 139 of the Income-tax Act, 1961.

Note: This notification shall be applicable from the financial year 2016-17 to 2020-21.

2. The Central Government, in exercise of the powers conferred by section 68 of the Prohibition of Benami Property Transactions Act, 1988 (45 of 1988) hereby makes 'Prohibition of Benami Property Transactions Rules, 2016 vide Notification No. 99/2016 dated 25th October, 2016.
3. The Central Government appoints the 1st day of November, 2016 as date from which the provisions of the Benami Transaction (Prohibition) Amendment Act, 2016 shall come into existence.
4. In exercise of powers conferred under section 71 of the Prohibition of Benami Property Transactions Act, 1988 (45 of 1988), the Central Government vide Notification No. 97/2016 dated 25th October, 2016 hereby notifies that, with effect from the 1st day of November, 2016, the Adjudicating Authority appointed under sub-section (1) of section 6 of the Prevention of Money-Laundering Act, 2002 (15 of 2003) and the Appellate Tribunal established under section 25 of that Act shall discharge the functions of the Adjudicating Authority and Appellate Tribunal, respectively, under the Prohibition of Benami Property Transactions Act, 1988 (45 of 1988) until the Adjudicating Authorities are appointed and the Appellate Tribunal is established under the Prohibition of Benami Property Transactions Act, 1988 (45 of 1988).
5. In exercise of the powers conferred by Explanation 5 to clause (19AA) of section 2 of the Income-tax Act, 1961 (43 of 1961), the Central Government vide Notification No. 93/2016 dated 14th October, 2016 hereby specifies that the reconstruction or splitting up of a company which ceased to be a public sector company as a result of transfer of its shares by the Central Government, into separate companies, shall be deemed to be a demerger if the following conditions are fulfilled, namely:—

- I. that such reconstruction or splitting up has been made to transfer any assets of the demerged company to the resulting company to give effect to the conditions mentioned in the Share Holders' Agreement and Share Purchase Agreement; and
 - II. that the resulting company is a public sector company.
6. vide Circular No. 35/2016 dated 13th October, 2016 clarifies that lump sum lease premium or one-time upfront lease charges, which are not adjustable against periodic rent, paid or payable for acquisition of long-term leasehold rights over land or any other property are not payments in the nature of rent within the meaning of section 194-I of the Income Tax Act, 1961. Therefore, such payments are not liable for TDS under section 194-I of the Act.
 7. The CBDT proposes to insert rule 17CB in the Income Tax Rules, 1962 (Prescribing the method of valuation of fair market value in respect of the trust or the institution – Chapter XII-EB of the Income Tax Act, 1961). In this regard, it seeks comments and suggestion of stakeholders and general public may be sent electronically by 31st October, 2016 at the email address, dirtpl1@nic.in. Draft rule 17CB can be viewed at http://www.incometaxindia.gov.in/communications/notification/draft_valuationrules-accreted%20income.pdf
 8. The CBDT vide Notification No. 92/2016 dated 7th October, 2016 amends the rule 17CA sub-rule (4) of rule 17CA of Income Tax Rules, 1962 as mentioned below:
 - (i) in clause (a), the word “and” occurring at the end shall be omitted
 - (ii) after clause (b), the following shall be inserted, namely:-
 - “(c) from a Government company as defined in clause (45) of section 2 of the Companies Act, 2013 (18 of 2013); and
 - (d) from a foreign source as defined in clause (j) of section 2 of the Foreign Contribution (Regulation) Act, 2010 (42 of 2010).”
 9. The CBDT vide Notification No. 91/2016 dated 6th October, 2016 amends rule 114D & 114E as below:

114D:-

- (i) in sub-rule (1), in clause (l), for the word, brackets and letter “clauses (b)”, the word, brackets and letter “clauses (a)” shall be substituted
- (ii) after sub-rule (3), the following shall be inserted, namely:—
 - “(4) The Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems) shall specify the procedures, data structures, and standards for ensuring secure capture and transmission of data, evolving and implementing appropriate security, archival and retrieval policies in relation to the statement referred to in sub-clause (i) of sub-rule (1).”

114E:-

In sub-rule (3), for the brackets, words and number “(other than the person at Sl. No. 9)”, the brackets, words and numbers “(other than the persons at Sl.No.10 and Sl. No. 11)” shall be substituted.

These updates are contributed by B.Venkata Krishna and vetted by CA Ram prasad of SBS and Company LLP, Chartered Accountants. For any queries reach at caram@sbsandco.com

COMPANIES ACT, 2013**RULES, CIRCULARS AND NOTIFICATIONS ISSUED DURING THE MONTH OF OCTOBER, 2016****RULES****❖ The Companies(Incorporation) Fourth Amendment Rules, 2016**

Vide the above amendment rules, certain provisions in the Companies (Incorporation) Rules, 2014, have been further amended, relating to **(a)** Providing of a new Form No.INC-27, for filing the Order of the Tribunal along with a printed copy of the Articles of Association, within 15 days from the date of receipt of the Order from Tribunal, for effecting conversion of the Public Company into a Private Company **(b)** Introduction of a new Integrated form INC-32, for incorporation of a Company, along with e-MOA & e-AOA in form INC-33 & INC-34, to be effective from 02.10.2016; **(c)** Prescribing the procedure for conversion of a Company limited by Guarantee into a Company limited by Shares, with effect from 01.11.2016, and according making required changes in Form INC-27. Click here for the Complete Rule.

NOTIFICATIONS**❖ Constitution of National Advisory Committee on Accounting Standards:**

Vide Notification Dt: 03.10.2016, the Ministry has notified the National Advisory Committee on Accounting Standards, to advise the Central Government on the formulation and laying down of accounting policies and accounting standards for the adoption by the Companies. Click here for the notification. Click here for the Complete Rule

CIRCULAR**❖ Extension of the due date for filing the financial statements and the Annual Return and the relaxation of additional**

Vide Circular Dt:27.10.2016, MCA has extended the due date for filing e forms AOC 4, AOC 4(XBRL), AOC 4(CFS) and MGT 7 without payment of additional fee till 29th November 2016
Click here for the Complete Notification

These updates are contributed by K. Bhavani and vetted by CS D V K Phanindra of SBS and Company LLP, Chartered Accountants. For any queries, please reach at phanindra@sbsandco.com

INDIRECT TAX**INDIRECT TAX UPDATES****1. Notification no.41/2016-service tax**

This notification has been given to exempt the taxable service provided by State Government Industrial Development Corporations/ Undertakings to industrial units by way of granting long term (thirty years, or more) lease of industrial plots from so much of service tax leviable thereon under section 66B of the said Act, as is leviable on the one time upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable for such lease.

2. Non-levy of service tax on service of transportation by educational institutions to students, faculty and staff during 1-4-2013 to 10-7-2014: Notification no.45/2016-service tax

Entry 9 of Notification 25/2012-ST dated 20.06.2012 provides exemption for various services provided by and to educational institutions. This notification was amended several times in order to rationalise the exemptions in this regard. Services provided by educational institutions to students and faculty were not covered by the said exemption entry during the period 01.04.2013 to 10.07.2014. As the legislative intent is always extend exemption to the transport services provided by educational institutions, a notification has been issued now to exempt the said services provided during the above referred period.

3. Notification No. 56 /2016 – Customs

Notification 57/2000-Customs provides exemption to silver, gold, platinum falling under 71.06, 71.08 and 71.10 from customs duties if imported under the scheme for Export through Exhibitions/Export promotion Tours/Export of Branded Jewellery' as referred under para 4.46 of the Foreign Trade Policy. The present notification is issued to amend the said exemption notification to impose an additional condition that importer of gold/silver/platinum is required execute a bond within a period of 90 days from the date of issue of gold/silver/platinum to the exporters and also required to bind himself to pay on demand the differential duty on quantity issued and quantity exported.

These updates are contributed by A. Sai Ram and vetted by CA Manindar Kof SBS and Company LLP, Chartered Accountants. For any queries reach at manindar@sbsandco.com

SATURDAY SESSIONS

| S.No. | Event | Date | Speaker | Venue |
|-------|---|------------|---------------|-----------|
| 1 | Fixed assets requirements w.r.t CARO | 05/11/2016 | Ashok Reddy | SBS - Hyd |
| 2 | SA 299 (Responsibility of Joint Auditors) | 12/11/2016 | Sai Ram | SBS - Hyd |
| 3 | Sections which are dealt in Audit report | 19/11/2016 | Madhuri Attal | SBS - Hyd |



**Points to be verified in TDS from Audit Perspective-
K.Bhavani**



ODI - N.Supriya



Audit of Fixed Assets - G. Chandrashekar

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