

THE BALOCHISTAN SALES TAX ON SERVICES
APPELLATE TRIBUNAL QUETTA.

Sales Tax Appeal No.09 of 2025

MA (Condonation) 01

(M/s. Bolan Progressive Distributors (Private) Limited v. Commissioner Balochistan Revenue Authority)

Appellants by: Mr. Muhammad Muneeb Advocate

Respondents by: Mr. Wasil Jan Advocate

Date of hearing: 26/06/2025

Date of Order: 10/07/25

ORDER

JUSTICE (R) NAZEER AHMED LANGOVE, CHAIRMAN. The above titled Sales Tax Appeal has been filed by the appellant/ registered person on the grounds set-forth in the memo of appeals calling in question, the order in Appeal No.18/2024 dated 25.10.2024, passed by the learned Commissioner (Appeals), Balochistan Revenue Authority (BRA), Quetta upholding the order in original No.4/2014 dated 03-05-2024 passed by the Additional Commissioner (AC), BRA.

2. Appeal was to be filed within 60 days but it has been filed on 30-01-2025 which is late by 56 days therefore MA (Condonation) No.01 has been filed on the ground that Manager dealing with tax matters left the company which caused delay in filing of appeals. Considering arguments of the learned Counsel of the appellant delay in filing of appeal is condoned.

3. The relevant facts for disposal of the instant appeal are that the appellant is registered with FBR as a Company (Distributors) having NTN 3367599-6 and also registered with BRA as a withholding agent. The appellant is carrying out business in the jurisdiction of Balochistan. Being an establishment in terms of

Balochistan Worker's Welfare Fund Act, 2022 (BWFF Act) the appellant was required to pay BWFF. The AC issued show-cause notice u/s 52 (1) of the Balochistan Sales Tax on Services Act, 2015 (BSTS Act) read with section 4 (14) of the BWFF Act, stating therein that the appellant is an industrial undertaking/ establishment as per clause (h) of section 2 of the BWFF Act which was followed by a couple of notices/ reminders. Finding the response of the appellant unsatisfactory the AC ultimately order-in-original under section 52(3) of the BSTS Act read with subsections (14) and (15) of section 4 of the BWFF Act, holding the appellant liable to pay Rs.2,694,875 to the Government of Balochistan, on account of BWFF. Being aggrieved with said order appeal was filed before the Commissioner (Appeals) who vide order in Appeal No.18/2024 dated 23.10.2024 confirmed the order-in-original. Being aggrieved with the order of the Commissioner (Appeals), the appellant has now come up before this forum on grounds set forth in memo of appeals.

4. On behalf of the appellant, case was argued by Mr. Muhammad Muneeb who mainly emphasized two grounds. Firstly, he contended that the appellant is not an establishment hence it is not liable to pay BWFF. Secondly, he argued that the BWFF Act, 2022 passed on 22.06.2022 would apply prospectively from tax year 2023 onwards.

5. In support of his first argument he stated that being a distributor the appellant does not fall in the definition of establishment therefore it was not paying WWF even under the repealed Workers Welfare Fund Ordinance, 1971. He further contended that now under the BWFF Act the appellant is not required to pay BWFF.

6. In support of his second ground the learned counsel argued that the AC has erred to apply BWFF Act, 2022 from tax year 2022 because the Act passed on 22-06-2022 would apply prospectively from tax year 2023 onwards. He referred to various decisions of the superior courts and argued that enactments in tax laws apply prospectively and applying them retrospectively deny the appellant of his accrued rights. He further argued that if the Act is applied retrospectively, it would be violative of Article 12 of the Constitution of Islamic Republic of Pakistan, 1973 ('the Constitution of 1973') which provides protection against retrospective punishment. He also relied on various decisions of the honorable higher court and Supreme Court of Pakistan, which are as follows:

2023 PTD 607-Sind High Court

"46-1. Section 4C of the Income Tax Ordinance, 2001 is read to reflect that the levy shall be applicable from the tax year 2023."

119 TAX 370-Supreme Court of Pakistan

"Interpretation of Statute - Tax statutes operate prospectively and not retrospectively unless clearly indicated by the legislature."

87 TAX 113-Supreme Court of Pakistan

"Where any statute affects substantive right, it would operate prospectively unless by express enactment or necessary intendment retrospective operation has been given--"

119 TAX 370 = 2019 PTCL 211-SC PAKISTAN

"Retrospectively can only be attributed to a statute where it is made explicit or can be inferred by necessary implication; it cannot be presumed."

7. Mr. Wasil Jan learned counsel appearing on behalf of respondent supported the orders of the assessing officer and contended that the learned Commissioner (Appeals) has rightly upheld the same order. He argued that the BWFF Act provides that it will apply at once i.e. from the date of its enactment.

He further argued that the appellant has itself created liability of WWF in their audited accounts which is recoverable under the provisions of BWWF Act.

8. We have gone through the orders of officers below, examined the available records, relevant provisions of law, case laws relied upon by the appellant and considered arguments of both the parties. The crux of the issues involved in the instant appeals is whether the provisions of BWWF Act would apply from June 22, 2022 i.e. tax 2022 or from 1st July 2023 i.e. tax year 2023 and whether the appellant is an establishment in terms of BWWF Act or not. Section 1 of the BWWF provides as under:

"1. (1) This Act may be called the Balochistan Workers Welfare Fund Act, 2022.

(2) It shall extend to the whole of Province of Balochistan.

(3) It shall come into force at once."

9. The term establishment is defined in section 2 clause (d) of the BWWF Act, 2022 which is reproduced as under:

"2. (d) "establishment" shall have the same meanings as assigned to it in section 2 of the Balochistan Industrial Relations Act, 2010 (Act No. XIV of 2010);"

10. The BIR Act, 2010 defines "establishment" as: -

"2. (i) "establishment" means any office, firm, factory, society, undertaking, company, shop, premises or enterprise, which employs workmen directly or through a contractor for the purpose of carrying on any business or industry and includes all its departments and branches, whether situated in the same place or in different places

and except in section 30 includes a collective bargaining unit, if any, constituted by any establishment or group of establishments;"

11. In the light of above provisions of law it is evident that the appellant is an establishment and liable to pay BWFF under the BWFF Act, 2022 read with the BIR Act, 2010.

12. Perusal of audited accounts of the appellant shows that since tax year 2020 the appellant has created WWF liability in his accounts which is recoverable under section 4 subsections (14) and (15) of the BWFF Act, which are quoted as follows:

(14) If an establishment or industrial establishment fails to make a payment under this section, the amount payable shall be recovered under the laws of the Balochistan Revenue Authority Act including but not limited to Balochistan Sales Tax on Services and rules and regulations or procedures made thereunder and be deposited for the fund in the head of account as notified by the finance department, government of Balochistan, immediately after defraying all the expenses, to the Authority to the extent and the manner as may be prescribed by the authority.

(15) Where an amount of Fund due from an establishment under the Workers Welfare Fund Ordinance, 1971 (XXXVI of 1971), for a particular income or year of account as the case may be, or any payable arrears, thereof, due to any dispute, stay, being subjudice etc. on or before the dates mentioned in section 4 or the date of commencement of this Act, shall be paid to the Fund.

13. In view of the above facts and statutory provisions it is evident that the appellant is an establishment in terms of BWFF Act and liable to pay BWFF. Further the appellant was well aware of the fact that WWF was liable to be paid and it accordingly created liability in its audited accounts. As far as enactment of BWFF on 22-06-2002 is concerned it means that it would apply from relevant tax year i.e. 2022 and not 2023 as contended by the learned counsel for the appellant. In the light of these facts, we find no reasons to interfere hence both the orders passed by the authorities below are upheld. The appeal filed by the appellant is dismissed.

14. orders accordingly

Announced
Dated, the 10 July, 2025.

— sd —

Chairperson

— sd —

Member

— sd —

Member