THE BALOCHISTAN SALES TAX ON SERVICES APPELLATE TRIBUNAL QUETTA.

Sales Tax Appeal No.38, 39 & 40 of 2025
M.A.(Condonation) No.02
M.A.(Stay) No.08,09,10.
(M/s Hassan Abdullah Builders (Private) Limited,
F-10 Markez Islamabad.
versus
Commissioner II, Balochistan Revenue Authority Quetta.

ORDER

Appellants by: Mr. Muhammad Nauman Rafiq

Respondents by: Mr. Wasil Jan Adv

Date of hearing: 17/07/2025

Date of Order: 22/07/25

JUSTICE (R) NAZEER AHMED LANGOVE, CHAIRMAN. The above titled Sales Tax Appeals, M.A.(Condonation) and M.A.(Stay) have been filed by the appellant calling in question, the orders in original Nos.2, 3 & 4/2024-25 dated 04.03.2025, passed by the learned Commissioner II ('Commissioner') of the Balochistan Revenue Authority ('BRA'), Quetta under section 24(1) of the Balochistan Sales Tax on Services Act, 2015 ('Act') wherein the appellant has been required to pay Balochistan Sales Tax on Services ('BSTS') amounting to Rs.6,847,234, Rs.5,847,584 and Rs.5,074,764 respectively which was claimed by the appellant as excess input tax in terms of section 16B(l) of the Act read with Rules 26(2) and 27(8), (9) & (10) of the Balochistan Sales Tax on Services Rules, 2018 ('Rules'). The Commissioner has also ordered for imposition of penalty under section 48 and default surcharge under section 49 of the Act at the

time of final payment. The appellant, being aggrieved with the impugned order passed by the Commissioner has come up before this forum in terms of section 60 sub-section (2) of the Act. Since the issues involved in instant appeals are identical hence, we dispose of the instant appeals and miscellaneous applications through this single order.

2. The relevant facts for disposal of instant appeal are that the appellant is a private limited company and doing business as a builder and registered in BRA with BNTN 7977838-4. The learned commissioner observed from the returns that the appellant has claimed input tax at 18% which is in excess of allowable rate of 15% therefore a show-cause notice under section 24(2) of the Act was issued followed by a couple of reminders. The appellant failed to comply therefore impugned orders have been passed.

3. On behalf of the appellant, case was argued by Mr. Muhammad Nauman Rafiq who relied on the decisions of honorable Supreme Court, reported as 2019 SCMR 648 and honorable Lahore High Court, reported as 2003 PTD 1329. He stated that the honorable Apex court has held that limitation does apply in case of void orders. The learned counsel also stated that the honorable Lahore High Court has held that in revenue matters condonation should be considered sympathetically. Further he stated that the appellant came to know about the impugned order when bank accounts were attached. He continued to state that due to unavoidable circumstances the appellant could not file appeal within time hence delay in filing appeal may be condoned.

4. The learned counsel also contended that the impugned order was passed ex-parte hence there is a strong prima facia case in favour of the appellant. He also stated that the balance of convenience is tilted in favour of appellant and recovery/ bank attachment has created hardship. He therefore requested for stay against recovery and de-attachment of bank accounts.

5. On merits of the case the learned counsel contended that the impugned order was passed without proper service of notices. Relying on decisions reported as 2023 128 Tax 84 (ATIR), 2023 PTCL 337 (FTO) and ITA No.3604/LB/2023 (ATIR) the learned counsel contended that electronic delivery of notice/order is not valid service hence the impugned order is not sustainable. He further stated that the impugned order was passed on a date when the appellant's case was not fixed for hearing which irregularity renders the impugned order illegal as held by the honorable Lahore High in decision reported as 1981 PTD 210 (Lahore HC). The learned counsel relying on case laws reported as 2016 PTD 1613 (ATIR), 2023 SCMR 2070 and 2015 PTD 1490 (ATIR) contended that since the impugned order was passed without reliance on corroborative evidence or confronting material facts to the appellant and hence the impugned order is void ab-initio.

6. The learned counsel also challenged disallowing of input tax in excess of 15% on the ground that the learned commissioner was not sure of the specific provision of Act. Concluding his arguments the learned counsel stated that the commissioner has also initiated duplicate proceedings for the same tax periods under section 24 of the Act which are illegal as held by the honorable Sindh High

Court in CP No.D-1329/2016. Finally, the learned counsel offered to pay input tax claimed in excess of 15% if the commissioner files duplicate proceedings or this Tribunal orders accordingly.

7. Mr. Wasil Jan Adv learned counsel appearing on behalf of respondent supported the order of the learned Commissioner and stated that the appellant was allowed to claim input tax upto 15% as provided in section 16B(l) of the Act read with rule 26(2) and rules 27(8), (9) & (10) of the Rules. He further stated that notices were properly served on the appellant in terms of section 80(1) of the Act. The learned counsel also stated that the learned Commissioner detected from the returns that the appellant has claimed input tax in excess of 15% which tantamount to asking the BRA to allow adjustment of 15% input tax against output tax paid on services provided at 15% at the time of filing of return and also allow adjustment of input tax at 3% to the appellant which was never paid to BRA. It is not only illogical but also contrary to the scheme of BSTS as provided in the Act. The learned counsel also contended that notices were sent to the appellant through courier a valid service in terms of section 80(1) of the Act. Regarding fresh proceedings under section 24 the learned counsel stated that since impugned order was passed only for recovery of unlawful excess claim of input tax only. Further the commissioner is permitted under the Act to scrutinize the claim of 15% input tax adjustment claimed because such adjustment is provisional and subject to verification. The learned counsel therefore contended that these are not duplicate proceedings rather these are lawfully initiated as per provisions of the Act.

8. We have gone through the impugned order of the commissioner, examined the relevant provisions of law, gone through the decisions relied upon and considered arguments of both the counsels. The crux of the issues involved is whether the appellant is legally entitled to claim input tax adjustment in excess of 15% or upto the amount of output tax paid to the BRA or not. Section 16B(l) of the Act read with related rules places a bar on claim of input tax in excess of 15%. These provisions are reproduced below:

> *"**16B. Input Tax Credit Not Allowed.**-(1) Notwithstanding anything contained in this Act, a registered person shall not be entitled to claim, reclaim, adjust or deduct input tax in relation to-*
>
> *(k) goods or services as are liable to sales tax, whether a federal sales tax or a provincial sales tax, at specific rate or at fixed rate or at such other rates not based on value or at a rate lesser than fifteen per cent ad valorem and are used or consumed as inputs in the provision of a taxable service under the Act:*
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> ***Provided** that in case of telecommunication services paying sales tax at a rate not less than nineteen and a half per cent ad valorem, the amount of sales tax paid on goods and services at ad valorem rates not exceeding seventeen per cent, can be claimed by the person providing the taxable telecommunication services.*
>
> *(l) the amount of sales tax paid on the telecommunication services in excess of nineteen and a half per cent ad valorem and the amount of sales tax paid on other taxable goods or services in excess of fifteen per cent ad valorem;"*

9. From perusal of above it is evident that claim of input tax adjustment in excess output i.e. 15% is specifically barred by the Act. The logic behind such bar is the concept that the BRA can allow a registered person to claim input tax only to the extent the registered person has paid output tax at the time of filing return. Claim of input tax in excess of output would mean that the BRA will be paying the registered person an amount which was never paid to the BRA. We are thus inclined to agree to the contention of learned of the respondent and to the findings of the learned commissioner.

10. Now coming to the contention of the learned counsel of the appellant that the commissioner has initiated duplicate proceedings for the same tax periods we have gone through the impugned order and relevant provisions of the Act. We deem it appropriate to reproduce provisions of sections 16(1) and 24(5) of the Act and relevant part of the impugned order as follows:

> ***16. Adjustments of Input Tax.**-(1) A person required to pay tax under this Act shall be entitled to deduct from the payable amount, the amount of tax paid or payable by him on the receipt of taxable services exclusively used in connection with the taxable services he provides, **subject to the condition that he holds a true and valid tax invoice not older than six tax periods**, showing the amount of tax charged under the Act on the services so received, but the Authority may disallow or subject to additional conditions may restrict such deduction in cases or with respect to taxable services or goods specified in section 16A or section 16B or the rules.*

24(5). *An order passed by an officer under sub-section (1) or (1A) may be further amended as may be necessary when on the basis of any additional information acquired during an audit, inquiry, inspection or otherwise the officer is satisfied that: -*

(a) any tax has been under-assessed or assessed at too low a rate; or

(b) *any taxable service provided by the person has escaped assessment.*

11. In view of the above provisions of section 16 input tax is allowed conditionally and section 24(5) authorizes an officer of the BRA to further amend an order passed under sections 24(1) and 24(1A) of the Act. Further in the impugned order the learned commissioner has stated that:

"15. it is important to mention here that the default/ liability created through this order is only against excess input tax adjusted by the taxpayer in excess of 15% and /or reduced rate which is not allowed under the 16B(1)(j)(k) & (l) of the Act and rule 26(2) & 27(8)(9) & (10) of the services rules only. The default / lability is clear and evident therefore the proceedings are initiated and finalized separately. However, the overall impute tax claimed by the registered person during the mentioned period(s) is provisional and is subject to verification as per section 16 read with 16A,16B & 16C of the Act and also as provided under Rule 26(5) in the services rules. The relevant provision is reproduced for ready reference:

"(5) Monthly adjustment of input tax claimed by a registered person under sub-rules (1), (2), (3) and (4) of this rule, shall be treated as provisional adjustment and at the end of each financial

year, the registered person shall make final adjustment which shall be subject to reconciliation and audit by officer of the Authority."

In the of above provisions, the reconciliation proceeding/ assessment of input tax claimed during the period shall be carried out under law through separate proceedings (being subject to verification).

16. penalty under section 48 and default surcharge under section 49 of the Act shall be imposed/ recovered at the time of final payment."

12. In the light of above it is clear that the learned commissioner has not initiated duplicate proceedings but he has started process of verification of input tax of 15% which has been allowed provisionally.

13. In view of the above facts and discussion we find no infirmity in the impugned order or further proceedings initiated. Therefore, we are not inclined to interfere and the impugned order is upheld and the appeal filed by the appellant is dismissed.

Announced
Dated, the 22/07 2025.

— sd —
Chairperson

— sd —
Member

— sd —
Member