BALOCHISTAN SALES TAX ON SERVICES

APPELLATE TRIBUNAL, QUETTA

MA (Condonation) 03/2025

MA (Stay) 20, 21, 22 & 23/2025

STA 48, 49, 50, & 51/2005

M/S Tourism Promotion Services Pvt Ltd. (Quetta Serena Hotel), Quetta

Versus

The Commissioner-II, Balochistan Revenue Authority, Quetta

ORDER

Date of hearing: 31.7.2025

Date of Announcement: 15.8.2025

Appellant by: Mr. Fahad Jamali, Tax Consultant

Respondent by: Mr. Wasil Jan, Advocate

DOSTAIN KHAN JAMALDINI, MEMBER: This single Order will consider and decide above four stay applications and four appeals that have been preferred by the appellant along with an application praying condonation of delay in their filing.

2. The Appellant/Registered Person, having BNTN: B0818463-1 is registered with the Balochistan Revenue Authority (BRA) under tariff heading 9801.1000 (services provided or rendered by hotels, motels, boatels, resorts, guesthouses and farmhouses). It is registered in sub-category (ii) falling in corporate, franchised, and chain businesses subject to 15% BSTS and allowed for input tax adjustments against output tax with certain conditions u/s 16 of Balochistan Sales Tax Act 2015 (hereinafter the Act). The appellant has impugned following Orders-in-Original (hereinafter referred to as 'impugned orders') issued by the learned Commissioner/the Respondent:

Sr No	STA No	Date	Short-paid assessed	Penalty imposed @ 5%	Tax Periods
1	Input 108/2024-25	15-5-2025	Rs. 3,937,551	Rs. 196,878	2021-22
2	Input 105/2024-25	15-5-2025	6,073,251	303,663	2022-23
3	Input 106/2024-25	15-5-2025	8,358,284	417,914	2023-24
4	Input 107/2024-25	15-5-2025	2.105,298	105,265	July to Sep 2024

3. The Respondent, based on the available record with the Balochistan Revenue Authority (the Authority), in above impugned orders, has declared that the Appellant has claimed inadmissible input tax u/s 16B(1) clauses (j),(k), & (l) of the Act and Rule 26(2) and 27(8), (9), & (10) of the Balochistan Sales Tax on Services Rules 2018 (hereinafter the Rules) by claiming input tax in excess of 15% and/or at reduced (below 15%), hence short paid BSTS.

4. The proceedings in all above started with issuance of time-bound show cause notices (SCNs) u/s 24(2) read with sections 16, 16B, 16C, 48 & 49 on 03-01-2025. The details of inadmissible input tax adjustments, indicating invoice numbers, purchase values, tax rate for each transaction, allowed and disallowed tax amount, were conveyed to the Appellant through these notices. The excess input tax claimed in each invoice was also sent to the Appellant for giving explanations as what has caused him to claim inadmissible input tax along with relevant documents (invoices, vouchers, purchase orders, GDN[1]s, GRNs[2], payment details, tax certificates/challans, internal correspondences regarding approval of purchases from management and verify the purpose of purchases, ledgers, etc. Subsequently, two reminders were issued. In response to these, the tax consultants sought time extension for appearance/submissions of relevant documents but no documents were shared. However, one of their tax consultants raised certain legal objections on all four SCNs through their letters bearing Nos. KST-AA-2068, 2069,2070, & 2071, all dated 13-5-2025, i.e., two days prior to announcement of the impugned orders, which did not mention said letter, specifically, but legal contentions raised were disagreed. However, as these letters are made part of the appeals, we take them in consideration while analyzing these cases. These letters raise following common objections, which are reproduced for convenience, *verbatim*:

> *"At the outset, it is submitted that the impugned Show Cause Notice suffers from legal infirmities and jurisdictional defects. It is a settled principle of law that where a legal procedure is prescribed for the assumption of jurisdiction, same must be strictly followed. In this case:*
>
> - *No **audit report or contravention report** has been issued prior to issuance of the impugned Show Cause Notice, which is a pre-requisite under **Rule 149 of the Balochistan Sales Tax on Services Rules, 2018**, which states: Where an audit report or contravention report has been prepared, the contents of the show cause notice shall be based upon the facts contained in such reports.*
> - *The issuance of the Show Cause Notice is without fulfilling the pre is **coram non judice** and without lawful authority."* (all emphases are original)

5. Reliance was placed on case laws, reported as (2006) SCMR 129, 2015 PTD 1242 (Trib.) and 2020 PTD (Trib.) 666 and requested the Respondent to withdraw the SCNs *ab initio*.

6. Neither, the Respondent made compliance of the SCNs by submitting the required documents for review and reconciliation, nor he or his representative joined the tax assessment process, initiated u/s 24 of the Act. This led to the Respondent to conclude that Appellant has admitted his fault of short payment of BSTS by claiming inadmissible input tax. He disagreed with the contentions of the Appellant that the SCNs are illegal and considered these as per the law. The impugned orders were finally issued on 15-5-2025. Aggrieved with the impugned orders, the

[1] Goods Dispatch Notes
[2] Goods Received Notes

Appellant approached this Tribunal with applications for grant of stay and appeals for annulling the impugned orders.

7. This Tribunal scheduled the stay applications and the appeals for regular hearing on 28-7-2025. During the hearing, attention of the learned Counsel for the Appellant was drawn to the fact that the applications and appeals are heavily time-barred, i.e., their filing has crossed the statutory time limit of 40 days. He was indicated that the impugned orders carry date of judgment as 15-5-2025; whereas, the applications and appeals were filed on 22-7-2025, i.e., after 67 days (excluding both the dates). To this the learned Counsel for the Appellant took the position that the impugned orders misdirected him to file the appeals before this Tribunal instead of the Commissioner (Appeals). Thus, he has been deprived of the Commissioner (Appeal) and violation of Article 4 and 10A of the Constitution of Islamic Republic of Pakistan has occurred. Being aggrieved, his client preferred a Constitutional Petition before the honorable High Court of Balochistan though CP No 1048/2025. The true copy of the order of the Double Bench of the court dated 15.7.2025, which is annexed in the appeals, was obtained on 16-5-2025. The order states as follows:

> *"Learned counsel for the petitioner stated that he does not press the instant petition, provided that he is going to file a **fresh appeal** before the Tribunal, hence the petition is dismissed as not pressed."* (emphasis is our)

8. Furthermore, he reaffirmed his legal objections as stated in his letter referred at paragraph 4 supra. The learned Counsel for the Respondent opposed these stands and argued that the direction of the learned Respondent, as stated at paragraph 9(ii) of the impugned orders, for filing an appeal before the Appellate Tribunal, if preferred, is as per law and in accordance to section 67 of the Act. Furthermore, the CP was not pressed before the DB, which dismissed the petition with condition that a fresh appeal is going to be filed before this Tribunal by the Petitioner. Both preferring a CP and obtaining its dismissal from the honorable court were the choices of the Petitioner, therefore, the intervening periods should not be counted for condonation of extra time even if a formal application for condonation of time is filed by the Appellant. The learned Counsel for Appellant requested adjournment till 31-7-2025, so that a proper application is filed for time condonation. The learned Counsel for Appellant filed the application for condonation of time as well as further grounds on 30-7-2025.

9. On 31-7-2025, this Tribunal heard arguments of both the parties on all applications and appeals. In his application for condonation of time, the Appellant submits that as no remedy was available with him u/s 67(1) of the Act, he filed writ petition in the High Court for the order passed by the Respondent. It is stated that under the *ibid* section an order passed by Commissioner (Appeals)—not the Commissioner—is appealable in the Tribunal. He also cited and provided copy of Order No. BRA-CA/AO-31/2025 announced on 25-7-2025 by learned Commissioner (Appeals) in BSTS Appeals No 49 & 50 of 2025 filed by him in a similar case with same facts, but for a different tax period, wherein the appeal was allowed and impugned order passed by the Assistant

Commissioner, BRA, Quetta was annulled. He also stated, in the application, that the time for filing an appeal was curtailed from 60 to 40 days in the Finance Act 2024. He prayed for condonation of time so that he gets proper opportunity of being heard in the best interest of justice, fair play and equity. In his "further grounds" for main appeals, he stated that the learned Respondent has failed to comprehend the law in totality, i.e., section 16B(1) clause (l). According to him the literal construct of the section clarifies that 'any claim as input tax over and above 19.5% for the telecommunication services is not admissible, it means that the input up to the extant of 19.5% on the telecommunication services is allowed.' For cementing this additional ground, he makes reliance in *Messrs Hirjina and Co. (Pakistan) Ltd., Karachi versus Commissioner of Sales Tax Central, Karachi, cited as 1971 SCMR 128.*

10. The learned Counsel for Respondent argued that for respect to law and fair-play, first the Petitioner should cross the bearer of delays in filing these appeals. He relied on the judgment of the honorable Supreme Court of Pakistan in case *Secretary to Government of Khyber Pakhtunkhwa, Communication and Works Department, Peshawar versus Messrs Parcon Associate Government Contractors (reported in PLD 2025 Supreme Court 371)* and Order of the Lahore High Court (Rawalpindi Bench) in *M/S Ali Sher Traders versus Commissioner Inland Revenue etc. (STR No. 05/2025)*. He, thus, raised objections and questioned the maintainability of all applications and appeals. He stated that ample opportunity was given to him for production of record but, the Appellant did not comply and opted for legal objections on the SCNs on presumed interpretation of law. He prayed for dismissal of the application for condonation of delay.

11. We heard both the parties on different aspects of the cases, and took guidance from the law and case laws referred and presented by them. For the satisfaction of the aggrieved party, i.e., the Appellant, first we would analyze whether he has a *prima facia* case or not by taking guidance from the Act and the Rules; thereafter, we will decide the fate of the application filed for condonation of delays on the basis of law and case laws relied upon by the learned counsel for Respondent.

12. The Appellant and his counsel have questioned the basic: considering and praying for annulling the Show Cause Notices issued 03-01-2025 being *coram-non-judice* (from Latin meaning: before one who is not a judge). For them, as the basis of the entire case is unlawful and out of jurisdiction, the entire case, constructed on weak foundations, is defective and should be annulled. It is contended that the SCNs were issued u/s 24(3) of the Act and then the impugned orders were passed u/s 24(1). For them the procedure should have been as laid down u/s 33 of the Act. Thus, the principle determined by the apex court in different case laws (2014 SCMR 1015; 2010 SCMR 1437; 2006 SCMR 129 & PLD 1964 SC 636) that "a thing shall be done in the prescribed manner otherwise not at all", has not been followed and the learned Commissioner-II/the Respondent has stepped out of his jurisdiction. Let's see what section 33 of the Act is, which, according to the Appellant should have been followed by the learned Commissioner-II:

> *"**33. Audit Proceedings.**—(1) An officer authorized by the Authority or the Commissioner may, on the basis of the return or returns submitted a registered person or the records or documents which are in his possession or control of or in the possession or control of his agent; and where such record or documents have been kept on electronic data maintained for obtained under this act and the rules, conduct an audit of such person.*
>
> *(2) In case the Authority or the Commissioner has any information showing that any registered person is involved in tax fraud or evasion of tax, it or as the case may be, he may authorize an officer not below the rank of Assistant Commissioner, to conduct an inquiry or investigation under section 53, which may or may not be in addition to any audit carried out for the same period.*
>
> *(3) .....shall issue a notice of audit.....*
>
> *(3A) .....may conduct audit proceedings electronically .....*
>
> *(4).....shall conduct an audit and issue an audit observation or observations.....*
>
> *(5).....if no reply ..... or ..... reply ..... found unsatisfactory, ...shall issue an audit report".*

13. The learned Commissioner/the Respondent has proceeded u/s 24 (1) and (2). Now, let's see what laws are these:

> *"**24. Assessment of Tax.**—(1) Where on the basis of any information acquired during an audit, inquiry, inspection or otherwise, an officer of the Authority not below the rank of Assistant Commissioner is of the opinion that a registered person has not paid .the tax due on taxable services provided by him or has made short payment, the officer shall make an assessment of the tax actually payable by that person and shall impose a penalty and charge default surcharge in accordance with section 48 and 49.*
>
> *(1A).....*
>
> *(2) No order under sub-section (1) or (1A) shall be made unless a notice to show cause is given to the person in default.....".*

14. A general reading of the Act would transpire that **tax assessment proceedings** (u/s 24) and **audit proceedings** (u/s 33) are distinct proceedings with different purposes, grounds, and outcomes. Purpose of a tax assessment proceeding is to determine a tax liability for a specific tax period (monthly, quarterly or yearly), it is grounded in filing of tax returns on the basis of self-assessment, and u/s 60 of the Act powers of adjudication have been entrusted to tax officers of the Authority. Sub-section 2 of section 60 has empowered the Commissioner to "*adjudicate any case falling in the jurisdiction and powers of any officer subordinate to him and appeal*

against the order passed by the Commissioner in such cases shall lie to the Appellant Tribunal." A tax assessment adjudication is initiated by a tax officer if no return is filled, or the return is incomplete/invalid, or the evidences suggest some misreporting or underreporting. An assessment order determines the tax payable/short-paid and penalty, if applicable. Penalties in assessment proceedings are lower (3% to 10% or some specified amount u/s 48 of the Act)

15. Whereas, the purpose of an audit proceeding is to examine broader compliance over multiple tax periods. Nature of a tax audit is investigative targeting sustained non-compliances, tax evasions and frauds in high-risk sectors. It may be initiated on random basis due to some specific and credible report of non-compliance, tax evasion or tax fraud. In this specific adjudication, either an inquiry or an investigation is conducted after a detailed show cause notice with specific allegations after a comprehensive review of record, books, invoices, financial statements, correctness of tax returns, input tax adjustments, record keeping, and overall adherence to the law. The tax audit findings are issued through an audit report after sharing audit observations with the registered person, if no reply or unsatisfactory reply is furnished by him. Outcomes of an audit adjudication could be a revised assessment for audited periods plus penalties up to 100% of evaded tax and potential prosecution by a Special Judge for offences listed in the table of section 48 of the Act.

16. Above analysis in view, we see no standings in the premise of the Appellant that the impugned orders of the learned Commissioner-II/the Respondent are based on SCNs that are *coram non judice*. The learned Commissioner, in our considered view, initiated and concluded the tax assessment proceedings lawfully within his jurisdiction u/s 24 and powers u/s 60 of the Act. He neither lacked subject-matter jurisdiction, nor personal or territorial jurisdiction in issuing the impugned orders. Thus, on this account, for us its nullity is out of question.

17. As regard plea of the Appellant that he has been misdirected through the impugned orders to approach this Tribunal for remedy, as the provisions u/s 67 of the Act state otherwise, i.e., only orders passed by the Commissioner (Appeal) are appealable before this Tribunal and not the orders passed by the Commissioner; we may refer to legal provisions under sections 60 (2) and 63 (1) of the Act. Section 60 (2) clearly states that the orders of Commissioner are appealable in the Tribunal. Section 63 (1) states that any order of an officer of the Authority **other than Commissioner** are appealable before the Commissioner (Appeal). These provisions are reproduced as follows:

"60. Power of Adjudication.—(1) ……

(2) The Commissioner may adjudicate any case falling in the jurisdiction and powers of any officer subordinate to him and appeal against the orders passed by the Commissioner in such cases[3] shall lie to the Appellate Tribunal."

*"**63. Appeals.**--(1) Any person, other than the Authority or any of its employees, aggrieved by any decision or order passed under section 23, 24, 27, 28, 29, 48, 49, 52, 60, 74 and 81 by an officer of the Authority other than the Commissioner, may within thirty days of the date of receipt of such decision or order, prefer an appeal to the Commissioner (Appeal)."* (emphasis added by us)

*"**67. Appeal to the Appellant Tribunal.**--(1) Where the taxpayer or an officer of the Authority not below the rank of Additional Commissioner objects to any order passed by the Commissioner (Appeals), including an order under sub-section (4) of section 64, the taxpayer or the officer may appeal to the Appellate Tribunal against such order."*

18. In our considered view, a reading of section 67 (1), in isolation, would be a misreading and a collective reading of all three provisions of the Act would be the correct reading for taking guidance from the Act for determining the right forum for filing an appeal against the order or decision of the Commissioner, which in such cases is this Tribunal. This could be the reason that the Appellant did not press his writ petition before the DB, headed by the honorable Chief Justice himself and same was dismissed so that he submits his appeals before us.

19. Similarly, due to a misreading of section 16B(1) clause (l), in the 'further grounds" submitted through his learned Counsel, the Appellant has comprehended that he is allowed input tax adjustment up to the extent of 19.50%. Again, the entire scheme of input tax adjustments toward payment of output tax, has not been taken into account in totality. The scheme of input tax adjustment is such that the rate of output tax paid to BRA will decide the fate of input adjustment against output tax. If output tax is paid at 15% then input tax is allowable subject to restrictions of sections 16, 16A, 16B and 16C of the Act. If the rate is less than 15% then no input tax is adjustable. If the rate is 19.50% in case of telecommunication concern then if input tax pertains to another telecommunication entity then upto 17% input is allowable and if input pertains to other than telecommunication company then upto 15% input tax is allowable. Futher, the input tax adjustments are allowed to registered persons who are subject to BSTS @ 15% and 19.5%; secondly, such persons can adjust their input tax towards their payable out puts tax capped at 15% and 17%, respectively. This is with a logical reason i.e. the BRA generally receives output tax on services provided at 15%, therefore, any input tax claimed over 15% would mean the BRA is

[3] Such cases are indicated in sub-section (1) of section 69, namely, "determination of tax liability, assessment of the tax, charging of default surcharge, imposition of penalty and recovery of amount erroneously refunded or any other contravention or violation including tax fraud under this Act or the Rules"

paying more tax to a registered person than the registered person has paid to the BRA. There are two exceptions to this general rule, firstly in case of output tax exceeding 15% the input tax is allowed at 17% (as in the case of telecommunication service recipients and service providers) and secondly the service providers paying output tax less than 15% are barred from claiming any input tax altogether.

20. The provisions of the Act under section 16B (1) clauses (j), (k) and (l) clarify this scheme, which read as follows:

> ***"16B. Input Tax Credit Not Allowed.--*** *Notwithstanding anything contained in this Act, a registered person shall not be entitled to claim, reclaim, adjust or deduct input tax in relation to:*
>
> *(a)* ----------
> *(b)* ----------
> ……
>
> *(j) goods or services used or consumed in a service liable to sales tax at ad valorem rate lesser than fifteen per cent or at specific rate or at fixed rate or such other rates not based on values;*
>
> *(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 such other rates not based on value or at 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;*
>
> ***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 percent, can be claimed by the person providing the taxable communication 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 percent ad valorem;"*

21. The proviso to clause (k) is related to telecommunication service providers, who can claim input tax adjustments at *ad valorem* rates not exceeding 17%; whereas, clause (l) is concerning to telecommunication services recipients. This, later, provision of the law disallows input tax adjustment on the amount of sales tax paid on the telecommunication services in excess of 19.5% *ad valorem* (under any provincial sales tax law) AND on **other** taxable goods, **or** services (that is excluding the telecommunication services) in excess of 15% *ad valorem* (under federal law of Sales Tax 1990 any provincial/ICT sales tax law other than the Act). The conclusion drawn is that in case of output tax exceeding 15% the input tax is allowed at 17% (as in the case of telecommunication service recipients and service providers) and secondly the service providers paying output tax less than 15% are barred from claiming any input tax altogether. The Respondent

has erred in claiming that clause (l) automatically allows him input tax adjustment up to 19.5% as the law disallows input tax adjustment on the amount of BSTS paid on the telecommunication services in excess of 19.5%. Thus, while going through the entire scheme of input tax adjustment under the Act, we do not see any literal message of the provincial legislature that allows a registered person to claim excess amount than what he contributes towards depositing in the public exchequer under the Act. The referred case law by the Appellant (1971 SCMR 128), therefore, counters his claim. The apex Court has held that the courts "cannot imply anything which is not expressed, it cannot import provisions in the statute so as to support assumed deficiency." We, therefore, restrain to support arguments of the learned Counsel for Respondent to consider automatic additions in clause (l) of section 16B (1) as other provisions of the Act and the Rules clearly cap input tax adjustments. We examined the assessment details annexed with the SCNs prepared by the learned Commissioner/the Respondent and have found legal reason for disallowing, in the impugned orders, claims of the Appellant for excess input tax adjustments and declaring them as contraventions to relevant provisions of the Act and the Rule.

22. However, while looking at the correct application of the penalty u/s 48, we have seen that the learned Commissioner/the Respondent has erred in imposing 5% penalty upon the Appellant in the impugned orders. In a recent order of this Tribunal we have held, after a detail examination of the table u/s 48, that in such cases correct imposition of penalty, if any, would be 3% as provided at serial number 12 of the table[4]. These need corrections up to this extent in the impugned orders.

23. The learned Counsel for the Respondent, during the hearings, pleaded that the appeals are heavily time-barred and need not to be considered. He stated that time taken by the Applicant/Appellant for filing a writ petition on wrong presumptions that no remedy existed should not be counted towards condonation in the case hand. He further argued that the Appellant should give plausible and reasonable explanation for each and every day's delay.

24. While preferring the appeals before this Tribunal by the Appellant on 22-7-2025, only stay applications were filed. It was only during hearing on 28-7-2025 when the learned Counsel was pointed out that the appeals are hopelessly barred by time, he sought adjournment till 31-07-2025 for filing application for condonation of delay. Resultantly, he filed a single application on 30-7-2025 for consideration on 31-7-2025 praying condonation of 20 days' delay. We are hard-pressed to presume that this single application covers all the four appeals. While arguing his case for condonation of delay, the learned Counsel for the Appellant failed to give plausible reasons for each and every day of delay. Neither the application, nor the learned Counsel himself during the course of arguments, uttered about a single moment of time that has passed reasonably causing delay in filing the appeals before this Tribunal as provided in the Act. In the condonation application, without mentioning other provisions of the Act relevant to appeal against decisions

[4] STA 21 & 42/2025 (M/S Latif Petroleum and Engineering Services Pvt. Ltd. v Commissioner-II & Commissioner (Appeals), BRS

and orders of the Commissioner, the Appellant has singled out section 67 of the Act. Since we have already examined these provisions of the Act supra, there is no need of repeating the same. Further, the Appellant is taking position that the "impugned order is weak to its core" as in a similar tax assessment case but for a different tax period, the learned Commissioner (Appeals) has annulled the order of the adjudicating officer vide his order dated 25-7-2025. He also provided us a copy of that order. Since that order is issued very recently by a lower forum and is not before us, we avoid commenting on that. Lastly, the application for condonation of delay draws our attention to the fact that the time for appeal has been curtailed from 60 to 40 days in the Finance Act 2024 (in fact it is Finance Act 2023!). We fail to comprehend as why this fact is brought before us as no reasoning is spelled out in the application nor any argument was given by the Counsel for the Appellant during the hearing? If the latent reason is that the amendment in section 67 sub-section (2) clause (d) in the Finance Act 2023 was not required at all, then again, we abstain to comment on such latent reasoning, if any. However, if such mention is with a latent reason that an amendment made in July 2023 is not applicable to appeals preferred in matters of tax assessments for the tax periods prior to July 2023, again the Appellant fails to make a point. The case of the Appellant for time condonation lacks plausible reasoning and explanations on each and every day's delay as required in the eyes of law; whereas, the positions taken by the learned Counsel for the Respondent while relying on the very relevant case laws strongly hold the ground. Now, there is an established principle that the limitation cannot be taken as a mere technicality as by expiry of period of limitation, valuable rights accrue to the other party and here in this case is the other part is the government tax officer, treated by our jurisprudence as an ordinary party who's accrued rights cannot be denied for lack of due diligence and *bona fide* inability in the Appellant. The law assists the vigilant and not those who sleep on their rights.

25. In view of above, we have no option but to dismiss the application requesting condonation of delays for filing the appeals, which are discussed and commented upon in this order. With the dismissal of MA/03/2025 (condonation), all other applications and appeals stand as dismissed being barred by time. The appeals on merit also lack any substance hence appeals are also dismissed on merit. However the Respondent/Commissioner is directed to make the required corrections in amounts of penalties as held in paragraph *supra*.

— sd —
Chairperson

Dated: 25-8-2025

— sd —
Member

— sd —
Member