BALOCHISTAN SALES TAX ON SERVICES
APPELLATE TRIBUNAL, QUETTA

Sales Tax Appeal No. 60/2025

M/S Lucky Phone, Islamabad.....Appellant

versus

Assistant Commissioner, Balochistan Revenue Authority (BRA), Quetta

and

Commissioner (Appeals), BRA, Quetta.....Respondents

ORDER

Date of hearing: 25.8.2025 Announced on: 10.09.2025

Appellant by: Mr. Amjad Ali Siddiqui, Advocate

Respondents by: Barrister Wasil Jan, Advocate

DOSTAIN KHAN JAMALDINI, MEMBER: The appellant has raised this instant appeal against Order-in-Appeal (OIA) No. 20/2025 of learned Commissioner (Appeals), Balochistan Revenue Authority (the respondent) dated 25-6-2025.

2. The appellant/registered person is registered with the Balochistan Revenue Authority (the Authority) under tariff headings 9809.0000 for services provided or rendered by persons engaged in contractual execution of work or furnishing supplies. Balochistan Sales Tax on Services (BSTS) rate of 15% is applied for such taxable services and taxpayers/registered persons registered under these tariff headings are allowed to claim, reclaim, adjust or deduct input tax subject to conditions as provided u/s 16, 16A, 16B, 16C, and 16D of Balochistan Sales Tax on Services Act, 2015 (the Act) and corresponding rules of Balochistan Sales Tax on Services Rules, 2018 (the Rules).

3. The facts of the appeal are that the relevant tax assessment officer/respondent of the authority from available record discovered that the appellant/registered person has claimed input tax adjustment in his e-filing during 2023-24, which is not admissible under the law. The assessment officer issued show cause notice (SCN) on 18-12-24 u/s 24(2) of the Act for recovery of under paid/short paid tax followed by reminders and a final notice on 20-02-2025. The appellant requested an adjournment for two weeks, which was allowed. Later, the appellant requested for working but he did not show up. Consequently, the assessing officer issued his order-in-original (OIO) dated 24-4-2025 making the appellant liable to deposit short-paid/under-paid BSTS of Rs. 1,013,766/- u/s 24 (1) along with penalty of Rs. 50,688/- @ 5% u/s 48 of the Act. It was declared that default surcharge shall be imposed u/s 49 of the Act during the time of final payment. Aggrieved by the OIO, the appellant preferred an appeal before the learned Commissioner (Appeals)/the respondent. The impugned OIO was challenged as being unlawful, factually

incorrect and unjust. In the appeal it was contended that the assessment officer/learned Assistant Commissioner, Quetta has wrongly assumed that input tax exceeding 15% have been utilized in taxable activities, rather these have been carried forward and not actually utilized. After hearing the parties in dispute, the learned Commissioner (Appeals) did not endorse the stance that unilateral disclaims/adjustments of excess claims pertaining to previous tax periods through carry-forwards can be done under the Act and the Rules. He declared that the relevant statutes do not permit retrospective offsetting of prior period liabilities in this manner and, thus, upheld the impugned OIO. The appellant was directed to deposit the outstanding BSTS in the treasury within 15 days of the issuance of the impugned (OIA). It was ordered that the matter of penalties and default surcharges should be adjudicated separately, wherein the appellants be given full opportunities to be heard. Dissatisfied with the OIA, it was impugned before this Tribunal.

5. In the facts and grounds set forth in the memo of the appeal, the appellant has taken following pleas:

a. The learned Commissioner (Appeal) has erred in upholding the impugned OIO, which is bad in law and against the facts of the case. Same is ab-initio void and illegal being without lawful authority;
b. He was not provided proper opportunity of being heard as directed by the Supreme Court and Federal Tax Ombudsman (FTO);
c. It was not justified to assume that the tax exceeding 15% was inadmissible and was utilized for any taxable activity; whereas, the same amount was carried forward and not utilized for any taxable activity.
d. In compliance of the proceedings initiated by the SCN, he voluntarily disposed of/reversed the excess input tax amounting to Rs. 1,048,570/-, but this fact of the case was not accepted by the respondent.

Based on the above, the appellants prayed for annulment of the impugned order.

5. The learned Commissioner (Appeals) by citing section 16 and 16B (1) (l) of the Act in his impugned OIA, has declared that the law allows input adjustment under certain conditions only and disallows input tax claims in excess of 15% *ad valorem*. Further, rule 27(8) of the Rules bars input tax credit on amounts exceeding 15% on goods/services used for taxable services. He held that the assessment officer has followed due process in issuing the impugned OIO and that the appellant has admitted that he has claimed inadmissible input tax in contravention to section 16B(1)(l) and rule 27(8). The law does not allow retrospective carryforward of such disallowed input tax.

6. During the hearing on 25-8-2025, for *M/S Lucky Phone* Mr. Amjad Ali Siddiqui, Adv. appeared as authorized representative for the appellant. Barrister Wasil Jan, Adv. appeared as authorized representative for the respondents.

7. Learned Counsel for the appellant argued the matter as set forth in the appeal with emphases that the inadmissible input tax amount has already been disposed of/reversed in the subsequent monthly tax return of April 2025. The assessment officer/respondent has erred in assuming that the excess amount (inadmissible adjusted amount towards input tax) has been utilized for any taxable activity. Therefore, on the basis of mere assumptions neither tax liabilities can be raised nor any penalty and default surcharge be imposed. He argued that since the appellant has done inadmissible on the basis of notice issued by the Authority indicating amounts to be done inadmissible, he has cured the default ultimately; so, these amounts cannot be recovered again. If this done, this would be unjust enrichment of the department as it would be holding money of the appellant unjustly to the disadvantage or prejudice of the others. It was stated that after disposal of the excess inadmissible input tax through making entries in the subsequent tax return, recovery of these amounts and their deposition in the government treasury would mean double-taxation, which is illegal under the law. Therefore, the impugned OIO and OIA are void ab-initio and without any legal authority. The learned counsel for the appellant prayed that the impugned orders be annulled by this Tribunal. For advancement of these arguments, reliance was made on honorable Lahore High Court judgment reported as 2014 PTD 1939 titled *Sui Northern Pipelines versus Deputy Commissioner Inland Revenue & others*.

8. Learned counsel for the respondents refuted these arguments and professed that the respondents have judged the matter before them strictly in accordance with the provisions of the Act and the Rules. He posed a question as under what provisions of the Act and the Rules these voluntary adjustments of excess input taxes, being inadmissible, have been made by the appellant in his subsequent tax return of April 2025 instead of deposition into the government treasury? No provisions of the Act and the Rules could be cited appropriately by the learned counsel for the appellant.

9. We heard the learned counsels for the parties, gone through the documents attached with the memo of the appeal, took guidance from provisions of the Act and the Rules. We also referred to the case law relied by the learned counsel for the appellant. Record of the case before us reveals that the appellant has accepted that he has adjusted inadmissible input tax i.e., has held back excess amount above the permissible threshold of 15% and later carried forward/reversed these amounts in his monthly tax return of April 2025. Thus, for us, the crux of these *lis* is whether this path adopted by the appellants is in accordance with the Act and the Rules or otherwise? As regard holding back the excess amount claimed, it is crystal clear that this choice is in contravention of the conditions laid down u/s 16 and16B of the Act and the rules 26 and 27. This unlawful choice was, however, sensed by the appellant soon after receiving a notice as he has admitted during appeal proceedings but instead of depositing excess input tax of 3% to public exchequer he opted unilaterally to disallow himself the excess claim by making entries in the monthly return of April 2025 under category 'non-creditable inputs (relating to exempt, non-taxed supplies/rendering of

services and relating to services provided in other jurisdiction and taxed there)', which is at Sr. No. 4 of BSTS Form-03. This form is governed u/s 35 (Returns) of the Act and rule 15 (Filing of return) and rule 164 (Sales tax on services return form) of the Rules. Serial numbers 1 to 8 of the Form are relevant to 'Sales tax credit'. The entries at Sr. No. 4 are used in determining the 'input tax for the month' (Sr. No. 5) with formula [(Sr. No.1+Sr. No.2+Sr. No. 3)- Sr. No. 4] = Sr. No. 5. The appellant has disallowed himself this input adjustment, which included unlawfully held amount of inadmissible excess input tax pertaining to previous tax period of the year 2023-2024, in his monthly return of April 2025. Being not relevant to the monthly return, as well as not yet verified as per the Act and not permissible under the law. the assessment officer did not endorse this unilateral choice of the appellant and declared it as unlawful. The learned Commissioner (Appeals) upheld order of the assessment officer. Our honorable courts on many occasions have underlined the principle that where a thing is provided to be done in a particular manner, it should be done in that manner and if not so done, the same would not be done considered as lawful[1]. The scheme of taxation under sales tax laws is based on the concept of supply chain: input tax, output tax, and end consumers. Each person in this supply chain may claim input tax while filing monthly sales tax returns subject to limitations prescribed by concerned laws (federal or provincial). The appellant has claimed input tax @ 18% while paying output tax to BRA @ 15%, which is clear violation of the Act. The claim of subsequent reverse entry in April 2025 does not change the fact that the appellant has collected 18% tax and claiming the same against 15% output tax paid to BRA. The stance is, therefore, neither convincing nor permissible under the Act. Since unlawfulness of the action of the appellant has been established, it safely can be determined that the appeal constructed on this unlawful premise has no standings in the eyes of the Act and the Rules. Reliance of the learned Counsel for appellant on *Sui Northern supra* in his arguments that the appellant has been taxed twice and the impugned orders, if not annulled, would *unjustly enrich* the state is out of context. In that case the prime tax regulator (FBR) was trying to recover an amount of tax which had already been paid; whereas, in the instant case the registered person has not yet paid the excess inadmissible input tax that he had adjusted in his tax return during tax periods pertaining to tax year 2023-2024 by contravening provisions of the Act and the Rules and despite accepting the inadmissibility. Rather he is trying to dispose of/reverse these payables in his tax return of April 2025, unilaterally, which is not allowed under the law. Since a remedy is available to avoid a potential double taxation caused by the action of the appellant, we refrain to declare this case as a case of *unjust enrichment*. The tax return of the appellant for April 2025 can undergo the test of verification by the Authority. The appropriate remedy to avoid the double taxation is, thus, revision of the tax return for April 2025 as provided u/s 35 (6) of the Act and rule

[1] *M. Saleem v. Deputy Director FIA/CBC, Multan and another* (PTCL, 2000 CL. 465); *CIT/WT, Companies Zone-I, Lahore v. Hafeez Valqa Industries Pvt. Ltd., Lahore* (2005 PTD 2403).

21 of the Rules after condonation of time limit of 120 days by the Authority as provided u/s 86 of the Act.

10. Above in view, we find no reasons to interfere, therefore, uphold the impugned OIA and dismiss the appeal.

___SD___

Chairperson

___SD___

Member

___SD___

Member

Dated 10th September, 2025