

THE BALOCHISTAN SALES TAX ON SERVICES
APPELLATE TRIBUNAL QUETTA.

Sales Tax Appeal No.46 of 2025
M/s Zarif Khan & Brothers,
Spinny Road, Quetta.
versus
Commissioner III Balochistan Revenue Authority Quetta.

ORDER

Appellants by: Mr. Hassan Salal Adv
Mr. Shaista Khan Adv

Respondents by: Mr. Barrister Wasil Jan

Date of hearing: 04/09/2025

Date of Order: 23/09/2025

JUSTICE (R) NAZEER AHMED LANGOVE, CHAIRMAN. The above titled Sales Tax Appeal has been filed by the appellant calling in question, the order dated 10.07.2025, passed by the learned Commissioner III ('Commissioner') of the Balochistan Revenue Authority ('BRA'), Quetta rejecting claim of the appellant for refund of Balochistan Sales Tax on Services ('BSTS') amounting to Rs.34,769,469 on the basis of recent amendment in the Balochistan Sales Tax on Services Act, 2015 ('Act') through Finance Act, 2025.

2. The relevant facts for disposal of instant appeal are that the appellant having BNTN: 1697191-4 is registered with the BRA and engaged providing

construction services relating to Government civil works specifically for projects funded by the Public Sector Development Program (PSDP) executed under the Federal/Provincial/Local Governments. On the basis of recent amendment in the Act through Finance Act, 2025 reducing rate of deduction from 4% to 1% the appellant claimed refund of said amount. The learned Commissioner on the basis of his interpretation of said amendment and relying of Rule 30(c) of Balochistan Sales Tax Rules, 2018 ('Rules') rejected contention of the appellant and passed the impugned order. The appellant, being aggrieved with the said impugned order has come up before this forum in terms of section 60 sub-section (2) of the Act. The appellant has taken grounds of appeal as per memo of appeal.

3.. On behalf of the appellant, case was argued by Mr. Hassan Salal Adv and Mr. Shaista Khan Adv who contested the impugned order on various grounds. The learned counsel for the appellant contended that after insertion of Proviso in Entry 33 of the Third Schedule to the Act 1% tax rate would apply to all PSDP projects since promulgation of the Act. The learned counsel for the appellant further argued that the learned Commissioner was not justified to reject refund claim on the basis of his own interpretation of said amendment and Rules. He also continued to state that subsequent to said amendment the Finance Department also issued a clarification that rate of 1% will apply from the dated of promulgation of the Act therefore the appellant has rightly claimed refund of excess deducted/paid amount of BSTS. In this regard the learned counsel for the appellant also relied on the honorable Lahore High Court judgment reported as

2024 PTD 265 wherein the honorable court has held that in a taxing statute notifications must be given their ordinary and natural meaning. The learned counsel for the appellant further relied on the decision of the learned Appellate Tribunal Inland Revenue (ATIR) reported as 2017 PTD (Trib) wherein refund due to a taxpayer is held to be a “Ammant” in the hands of public servant which must be paid to the taxpayers with the same speed as is exercised in recovery of taxes due from the taxpayers. The learned counsel also presented a letter from the Finance Department, Government of Balochistan which endorses interpretation of the learned counsel regarding said Proviso of the Third Schedule. The learned Counsel finally requested to set-aside the impugned order.

4. Mr. Barrister Wasil Jan learned counsel appearing on behalf of respondent supported the order of the learned Commissioner and stated that the claim of refund by the appellant is based on misinterpretation of the Proviso in Entry 33 of the Third Schedule to the Act through Finance Act, 2025. The learned counsel also referred to section 13 of the Act which provides that if there is a change in tax rates then taxable service shall be charged to tax at such rate as is in force at the time the service is provided. Therefore, the rate of 1% applies from the first day of July 2025 and for preceding years applicable rates at the time of providing services will apply. The learned counsel for the respondent also referred to section 17 of the Act and relying upon the Honorable Balochistan High judgment passed on 30-05-2024 in CP No.638/2021 in the case of Ghaffar & Company stated that in case of sales tax refund is not allowable unless the

registered person proves that burden of such tax has not been passed on to the end consumer. The learned counsel read paragraph 24 of the said judgment which lays down that section 3B of the Sales Tax Act, 1990 which is *pari materia* to section 17 of the Act, creates a bar on refund or waiver of sales tax paid/ payable, the incidence of which has been shifted to end consumer. The learned counsel contended that in sales tax law the registered person recovers tax paid by passing it on through supply chain hence again claiming the same as refundable is not logical. The learned counsel regarding clarification by the Finance Department contended that it is settled law that any interpretation placed by an executive authority, on a statutory provision cannot be treated as a pronouncement by a forum competent to adjudicate upon such a question judicially or quasi judicially. An executive authority does not figure in the hierarchy of the forums whose interpretation or explanation is binding. In this regard the learned counsel relied upon the judgments reported as 1993 SCMR 1232 [Supreme Court of Pakistan] and 2007 PTD 2521 [Sindh High Court]. The learned counsel for the respondents also referred to this Tribunal decision in Sales Tax Appeal No.41 of 2025 in the case of M/s Agha Construction Company, Quetta and stated that the issue of effective date of application of 1% after insertion of Proviso in Entry 33 of the Third Schedule to the Act has now been settled. The learned counsel for the respondent also contended that if refund is allowed to the appellant then it will open a flood gate of unlawful refunds in innumerable cases. Summing up his arguments the learned counsel prayed for dismissal of appeal.

5. We have gone through the impugned order of the commissioner, examined the relevant provisions of law, gone through the decisions of the superior courts and considered arguments of both the counsels. The crux of the issue involved is whether the rate of 1% would apply from the first day of July 2025 or from the date of promulgation of this Act. If it is applied retrospectively then the appellant would become eligible for refund of excess tax withheld/ paid by the appellant. The said issue has already been decided by this Tribunal in Sales Tax Appeal No.41 of 2025 in the case of M/s Agha Construction Company, Quetta. We deem it appropriate to reproduce operative part of said decision as under:

“17. In the light of above decision and the provisions of section 13 and 17 of the Act, which are on the statute since promulgation of the Act, if the new Proviso in Entry 33 of the Third Schedule to the Act as amended by Finance Act, 2025 is applied as such in letter and spirit then there arises a conflict between said Proviso and sections 13 and 17 of the Act. In such a situation we have to seek guidance from the principles of interpretation emphasized by the Honorable Supreme Court of Pakistan. The first principle is "harmonious interpretation" and the second is "redundancy cannot be attributed to the legislature." We deem it to discuss in following paras.

18. The Supreme Court of Pakistan utilizes the "harmonious interpretation" principle to reconcile conflicting provisions within the law, by aiming for interpretations that avoid contradictions and

maintain consistency across different legal texts. This approach seeks to uphold the overall integrity and purpose of the law by ensuring that all parts work together effectively. The court is not allowed in any case to interpret and to construct a particular provision as to defeat another provision of the same statute dealing with the same subject matter. In Abdul Waheed v. Asma Jehangir (PLd,2004), it was held by Supreme Court of Pakistan that it is well-settled that the court will lean in favour of harmonious interpretation of the statutes/various provisions and would certainly avoid an interpretation which has a potential of conflicting judgments. It has been a time-tested view that all efforts must be directed to save rather than to destroy the law. For reliance, the case of Messrs. Sui Southern Gas Company Ltd. and others Vs. Federation of Pakistan (2018 SCMR 802) can be cited.

19. *The Honorable Supreme Court generally interprets statutes to avoid redundancy, presuming that the legislature intended each provision to have a distinct purpose. A provision deemed redundant by the court is often viewed as unintended, and the court will strive to give meaning to all parts of the law. It is settled law that redundancy cannot be attributed to the legislature. The Supreme Court in the case titled "Haji Tooti and another v. Federal Board of Revenue, Islamabad and others" [2023 PTD 1617] has held as follows:*

"We have heard learned counsel as above and considered the provisions involved. In our view, the appeals must fail for the

following reasons. Firstly, and with respect to the learned High Court, the order made by the concerned officer under section 181 is not in exercise of quasi-judicial functions. It is in exercise of a statutory power, and is in the nature of an administrative or executive order. Secondly, if the submissions made by learned counsel are accepted that would in effect reduce the second proviso of section 181 to redundancy. This would be so because any exercise of the statutory power thereby conferred would "interfere" with the power conferred on the officer of customs under the main part. The result would be that the power under the second proviso could never be exercised, i.e., would be made redundant. It is well settled that redundancy is not to be lightly imputed, and an interpretation that yields such a result is to be avoided if at all possible."

20. *In the light of above we are of the considered view that Proviso in Entry 33 of the Third Schedule to the Act as amended by Finance Act, 2025, sections 13 and 17 of the Act are to be interpreted in a way that all remain operative and none becomes redundant. We therefore hold that the rate of 1% tax on construction services shall apply with effect from July 1, 2025 and for preceding tax periods the rates applicable would be those as were operative at the time services were provided. Hence the contention of the learned counsel of the appellant*

regarding retrospective application of Proviso in Entry 33 of the Third Schedule to the Act is rejected."

6. In the light of above discussion and in view of aforesaid decision of this Tribunal we find no substance in the contention of the learned counsel for the appellant therefore the appeal is dismissed.

Announced
Dated, the 23/09/2025.

___SD___

Chairperson

___SD___

Member

___SD___

Member