BALOCHISTAN SALES TAX ON SERVICES

APPELLATE TRIBUNAL, QUETTA

MA (stay) 06/2025

STA 06/2025

M/S C. M. Pak Limited, Islamabad

Versus

The Commissioner (Operations) & one another, Balochistan Revenue Authority, Quetta

ORDER

Date of hearing: 04.9.2025 Date of issue: 29.9.2025

Appellant by: Mr. Najeeb-ur-Rehman Abbasi, Advocate &

Mr. Assadullah Khan, Advocate

Respondent by: Mr. Wasil Jan, Advocate

DOSTAIN KHAN JAMALDINI, MEMBER: The titled stay application and sales tax appeal have been filed by the appellant against the order-in-original (the impugned order) No. 122/2024 dated 08-11-2024 passed by the Commissioner (Operations), the Balochistan Revenue Authority (BRA), Quetta (respondent No. 1) u/s 24 (1) r/w sections 48 & 49 of Balochistan Sales Tax on Services Act (the Act), and the show cause notice (the impugned notice) issued on 18-3-2024 by the Additional Commissioner, the BRA, Quetta (respondent No. 2) u/s 24(2) r/w sections 48 & 49 of the Act.

2. Brief facts of the case are that the appellant is registered with the BRA having BNTN: B0711579-2 for providing telecommunication services (cellular telephone) under tariff-heading 9812-1210 whereunder BSTS rate of 19.5% is applicable. The impugned order states that the assessing officer (respondent No 1) upon perusal of record available with the BRA has found that during 2018-19 the appellant-registered person had provided services to M/S Universal Service Fund (USF) under a project, namely, “Broadband for Sustainable Development Program” after contesting and wining tenders. The services were related to capital, as well as, operational expenditures (CAPEX & OPEX). It was alleged that despite the fact that the appellant has provided taxable services under tariff-heading 9809.0000 (contractual services) taxable @ 15% BSTS, did not deposit Rs. 59,833,508/- to provincial public exchequer and did not discharge his duty as a registered person. The appellant has neither declared such services in its return nor paid chargeable tax. Consequently, respondent No. 2 issued him the impugned notice on 18-3-2024, which was

not replied. Later a reminder was issued on 04-4-2024, which was replied by the appellant on 16-4-2024 stating that they have not received the impugned notice and requested for copy of the same. Later, another reminder was issued on 17-5-2024 intimating date of hearing on 31-5-2024. However, in response, written replies were submitted on 30-5-2024 and 26-8-2024 proclaiming that since the services in question are subsidized by USF as part of a rural program, no sales tax apply to such services. This contention of the appellant was examined by the BRA and a detailed reply was sent by respondent No. 1 on 26-9-2024 stating that the services rendered by the appellant to USF under a contractual agreement are taxable services u/s 3(1) & (5) as they trigger economic activity as defined u/s 6(1) of the Act. The appellant was asked to show cause for not paying the short-paid tax with documentary evidences. Another opportunity was given to him to justify his contention by 07-10-2024 otherwise he would be liable to recovery of the short-paid tax u/s 24(1) (Rs. 59,833,508/-), penalty u/s 48(3) (Rs. 2,991,675/-) and default surcharge (to be calculated at the time of final payment) u/s 49 of the Act. Ultimately the respondent No. 1 issued the impugned order, and later on 19-12-2024 a notice was issued by him u/s 72 of the Act to the appellant that if the due payables (Rs. 62,825,183/), were not deposited in the revenue account by 03-01-2025 further penalty along with additional tax would be imposed upon him and one or more of the following actions will be taken:

> "a. Place embargo on the economic activities of the person or seal the business of the person till such time as the amount of the tax is paid or recovered in full.
>
> "b. Attach and sell any movable and immovable property of the person from whom the tax is due.
>
> "c. Attach bank account."

3. Consequently, feeling aggrieved of these, the appellant-registered person preferred the instant appeal along with an application for grant of stay u/s 68 (3) of the Act before us on 22-01-2025.

4. This Tribunal fixed the case twice on 28-02-2025 and 18-4-2025 but the case could not be heard due to non-appearance of the learned counsel of the appellant. On 14-7-2025 this Tribunal heard the miscellaneous application for stay. The learned counsel for respondent argued that the appeal is time-barred being filed after statutory limit of 40 days. It was also pointed out that the appeal-memo is defective being not in proper shape as required under regulation 11 of the Balochistan Sales Tax on Services Appellate Tribunal Regulations 2022 and due to non-deposit of the appeal fee, therefore, the application may be rejected. However, the learned counsel for appellant argued that the impugned order is void being heavily time-barred, therefore, no limitation runs against it. After detailed hearing of both sides, stay was granted till next date of hearing, i.e., till 18-8-2025 with direction to the BRA not to take any coercive action against the appellant and to the counsel

for the appellant was directed to remove defects in the appeal-memo and to deposit appeal fee immediately.

5. The appellant's counsel in his main appeal contended that the impugned notice was issued by respondent No. 2 on 20-3-2025 u/s 24(2) read with sections 48 and 49 of the Act alleging that

he has failed to pay BSTS amounting to Rs. 59,833,508/- liable to be paid on rendering services to USF under project "Broadband for Sustainable Development Program". Later-on on 08-11-2024, respondent No. 1 passed the impugned order, without providing ample opportunity of being heard, declaring a recoverable amount of Rs. 62,825,183/-. By quoting section 24(3) of the Act, it was stated that the impugned order was badly time-barred as neither it was issued within 120 (*sic.*) days of issuing the impugned notice nor any reasons were expressly recorded in the impugned order regarding extended period of 60 days. It was further argued that the order has raised the demand for payment of BSTS after five years which is time barred in terms of section 24(2) of the Act. Although this time limit was increased to eight years through an amendment by legislatures on 15-01-2019[1], but such an amendment is not applicable to the appellant as no amendment can be given retrospective effect. For this reliance was placed upon order of this Tribunal dated 01-04-2022. In response, the learned counsel of respondent stated that after taking into consideration the time taken by the appellant in compliance to show-cause notice of the learned commissioner as per section 24(4) of the Act, the impugned order has been passed within the time specified under section 24(3) of the Act. It was contended that the retrospective application of the amendment in the law in 2019 is lawful as the BSTS (Amendment) Act 2019 (hereinafter the Amendment Act 2019) in its section 1 (2) clearly states that its provisions "shall be deemed to have taken effect from 1st July 2015". Further, he argued that the Honorable Supreme Court has repeatedly upheld retrospective legislations where enactment is in clear terms. It was opined by the learned counsel of the appellant that respondent No. 1 has passed the impugned order without jurisdiction and in contravention to sections 39 (Appointment of Authorities) and 41 (Distribution of Powers) of the Act, therefore, same is illegal, null and *void ab initio*. The learned counsel for the respondent stated that the learned Commissioner is holding lawful jurisdiction over the case of the appellant and he acted as per provisions of the Act. The learned counsel for the appellant contended that the respondent has erred in raising tax demand on "reimbursement of cost of network infrastructure equipment setup in specified areas holding the Appellant providing alleged services to Universal Services Funds or the Federal Government……".

[1] Balochistan Sales Tax on Services (Amendment) Act, 2019 (II of 2019), (Assented on 03-01-2019).

The learned counsel for the respondent stated that since the appellant has provided taxable services to USF hence the learned commissioner has lawfully passed the impugned order. The learned counsel for the appellant stated that the respondent No. 1 has erred in holding that the appellant was involved in contractual execution of services under tariff heading 9809-0000. While responding the learned counsel for the respondent stated that the appellant has admittedly provided said services to USF. It was contended by the counsel of appellant the that the respondent No. 1 has erred in imposing penalty and default surcharge under the provisions of the Act. The learned counsel for the respondent defended the imposition of penalty and default surcharge stated that the appellant has committed tax fraud by

not declaring the services provided in return for relevant tax periods hence the learned commissioner was justified to invoke sections 48 and 49 of the Act. Finally, it was stated by the learned counsel of the appellant that, without conceding, the USF who has received services has not been held responsible for discharging his duties as a withholding agent. He neither withheld any tax nor he was show caused. In response the learned counsel for the respondent contended that proceedings against the withholding agent are altogether different matter and it does not absolve the appellant of it's responsibilities as a service provider. Finally, the learned counsel of the appellant prayed that the appeal may be allowed and the impugned order be set aside and the impugned notice be vacated in the interest of justice.

6. Final arguments from both sides were concluded on 04-9-2025. From the appellant side, learned counsel Mr. Asadullah Khan Advocate argued the case and on behalf of the respondents, learned counsel Barrister Wasil Jan Advocate put forward counter-arguments. The learned counsel for appellant submitted written skeleton arguments by referring provisions of the Act and a number of case-laws. The case-laws relied upon are *Honorable Supreme Court of Pakistan judgments in Civil Petition No. 4599 of 2021, those reported as PTCL 2019 CL. 555, 2017 SCMR 1427 (seminal Super Asia case), 2003 PTD 1746, PTCL 2022 CL. 688, & PLD 2001 SC 514; Honorable Sindh High Court judgments reported as SCRA 157/2024, 2024 MLD 644, & 2006 PTD 2207; Honorable Lahore High Court judgments reported as 2023 CLD 879 & 2006 PTD 535; Honorable Islamabad High Court judgment in Writ Petition No. 1598/2021;* and *this Tribunal's order in STA 20/2022*. The learned counsel for respondents filed para-wise comments and written additional arguments by referring various provisions of the Act and relying on different case-laws.

7. During the proceedings learned counsel for appellant, beside what has been contended in the appeal, in his skeleton arguments presented that the impugned order dated 08-11-204 has been passed after 233 days of issuance of the impugned notice dated 18-3-2024. It was argued that any such delays are barred by time in terms of section 24(3) of the Act, which provides "mandatory period of 120 (*sic.*) days", therefore, as ratio settled by our courts such orders are *void*. It is further stated that even if any extension by 60 days, after recording in writing, is allowed by the adjudicating authority, even then the adjudication is time barred by many months. While recognizing the fact that the appeal filed by the appellant is also barred by time, the learned counsel for the appellant defended the matter by arguing that the courts have already settled such matters on the principle that *the limitation does not run against a void order*, therefore, the appeal is not hit by limitation as provided u/s 67(2)(d) of the Act. The learned counsel for the appellant, in matter related to creation of tax liability by respondent No.1, contended that it was grossly erred

to declare the same without indicating the services allegedly provided in contractual execution of work under tariff heading 9809.0000 by the appellant to the service-recipient, i.e., USF. Similarly, both the respondents have erred in not terming the service-recipient as withholding agent, who neither withheld any amount nor he was show caused by them. He further argued that as no offence has been committed by the appellant, the imposition of penalty is against the ratio established by the courts, which have held that an assessee is entitled adjudication in respect of his liability by at least one independent forum outside the hierarchy of tax department. He prayed that in view of law, legal prepositions and *ratio decidendi* observed by the courts, the impugned order may graciously be set aside by allowing the appeal.

8. On his tern, the learned counsel for respondents while submitting written para-wise comments and additional arguments, stated that the impugned order whereby sales tax liability along with default surcharge and penalty was imposed on account of taxable services rendered by the appellant, has been passed by the respondent lawfully, within jurisdiction and after appreciation of the record and the statutory provisions. While submitting his preliminary objections, he emphasized that "mere disagreement with the outcome or re-characterization of contractual arrangements as 'subsidies or reimbursement' does not render the order illegal or invalid under the law." He contended that "the appellant's attempt to avoid tax liability by invoking the nature of funding (i.e., Universal Service Fund) is irrelevant, as no exemption has been granted in respect of such services" (i.e., taxable services) through notification or under section 12 of the Act. It was contended that exemptions must be expressly provided by law and cannot be claimed by implication. It was objected that the appeal is based on incorrect factual assumptions and

selective reading of the provisions of the Act. It was opined that "sales tax is levied on the value of taxable services regardless of whether payments are made directly by the customer or reimbursed by a fund such as USF". Being a registered person and fully aware of the law, the appellant has failed to discharge his legal obligations of declaring the same in it's sales tax returns and paying chargeable tax and depositing the applicable BSTS into public exchequer despite receiving payments from USF under the project. The appellant, as a registered person, is obligated to discharge his responsibilities as provided under sections 3, 11 and 35 of the Act. It was stated that the appellant was given ample opportunity of being heard as reflected in the case record. While explaining the reason for changing the adjudicating officers (impugned notice issued and initial adjudication done by respondent No. 2 and completion of the adjudication and passing of impugned order by respondent No. 2) and crossing the statutory time limit, it was submitted that delay was caused due to fact that the position of Additional Commissioner (as held by respondent No. 2) "was mistakenly abolished through the Finance Act." Efforts were made but no rectification could be made. Later, the auditor who was working with respondent No. 2 resigned and joined another organization, which caused further delay in passing order. To this, it was argued that alleged procedural irregularities cannot vitiate the impugned order as the courts have consistently held that technical defects do not nullify substantive liability. He brought our attention to the fact that the appeal was hopelessly barred by limitation with a delay of 35 days by neither following the statutory provisions of the Act nor any condonation with valid justification was sought. He argued that it is a settled law that limitation with regard to filing an appeal, relevant provisions in fiscal statutes are mandatory and must be strictly construed. Regarding non-issuing a show-cause notice to the service-recipient (USF) being the withholding agent, it was counter-argued that the argument is irrelevant to the appellant's own tax liability as responsibility of remitting BSTS lies primarily with the service-provider, and the tax authority reserves right to proceed independently against any withholding agent, if required. Finally, it was stated that the penalty has been imposed in accordance with section 48 of the Act for not fulfilling statutory obligations of declaring services rendered and discharging tax liability, and default surcharge u/s 49 is a statutory consequence of delayed payment of due tax, which will be imposed at the time of final payment. He prayed that the impugned order be upheld by dismissing the appeal.

9. We heard in detail both the sides, perused record and took guidance from the Act and case-laws. Synthesis of the explanations provided and arguments given by the learned counsels of the two parties, verbally as well as in writing, gives an understanding that core issues of this long tax dispute to be decided are as follows:

a. Available record may suggest that both the parties have disregarded the time limitation as prescribed in the law and consistently held by the courts, thus, the question before us is how to decide the preliminaries of the *lis*?
b. Without prejudice to the above, are the services provided by the appellant liable to tax as envisaged in the law and consequent to this, has the authority lawfully taxed the transactions occurred between the appellant and the USF?
c. If the services are liable to tax under the Act, then failure to declared the same in it's tax returns for relevant tax periods tantamount to tax fraud and gross violations of the statue?

10. Dispute on Time Limitation: In law, the statutes of limitations set time-limits/deadlines for initiating legal proceedings as well as for responses on the outcomes of such proceedings after an injury or breach is occurred contrary to statutory provisions. Such limits are imposed in a law to prevent indefinite litigations and safeguard decisiveness by allowing reasonable time for bringing a legal action before the bar takes place. What constitute a *reasonable time* depends on the nature of the right and the particular circumstances. The legislatures, therefore, fix the bar while looking at both aspects: *access to justice* to the adjudicated-person who has been injured or who has breached, and *practical constraints* of the adjudicator administering the law to provide justice. Nonetheless, a comparative study of limitation provisions in tax and non-tax laws with regard to legislative intents and judicial holdings would make it clear that the tax laws are strictly interpreted by focusing on statutory text and explicit explanations. It is assumed that deadlines are rigid owing to reason that the fiscal policies are time-bound for making fiscal systems maintained, therefore, limited relief is granted and burden of proof is on the shoulders of the taxpayer for making compliances as a registered person under a tax law. For this, the courts prioritize statutory clarity and revenue collection for public good. Whereas, in non-tax laws (e.g., civil cases), the limitation laws are interpreted with flexibility by considering equitable doctrines (e.g., discovery rule where clock starts upon discovering injury) and jurisdictional distinctions. For this, the courts balance finality with fairness, often favoring access to justice. **These two sets of reasoning lead to preference of public finance over individual right while considering a matter of tax law**.

11. Above discussion in view, for examining this case, we set the following framework:

- Which delay (delay on the part of the respondent or delay by the appellant) has caused injury (to the individual or to the public finance)? **(the injury element)**

- How the limitation provisions of the Act have been construed by the parties in this litigation? **(the reading element)**
- Have the respective parties proportionately lessened their burden in proving their cases of delay in this tax dispute? **(the element of burden of proof)**

12. Our examination of this matter, while relying upon the above framework, will start in reverse order: first we will take up the third element, then second, and finally the first element for creating a logical link of the first element with the second matter of the dispute mentioned at "b" in para 9 *supra*.

13. The appellant in his appeal and his learned counsel in his written skeleton of arguments made an attempt to prove while referring provisions of the Act and relying upon the case-laws, that the impugned order is heavily barred by time and is a *void* order, therefore, liable to be dismissed. In his appeal in this case, the appellant has challenged two matters, which in his understanding are barred by time limitations under the Act. These are:

i Limitation as provided u/s 24 (2) for issuance of a show cause notice,
ii Limitation as provided u/s 24 (3) for issuance of an order

14. First, we will take up the statutory provisions referred, and later the case-laws, where required. For convenience, sub-sections (2) (3) and (4) of section 24 are reproduced to look into matter of delay on the part of the respondents and sub-section (2) clause (d) of section 67 for delay on the part of the appellant, respectively, as under:

"**24. Assessment of Tax.--**(1)……..

"(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 within [eight][2] years from the conclusion of the tax period to which the tax assessment relates……

"(3) An order under sub-section (1) or (1A) **shall** be made within one hundred and eighty days[3] of issuance of the show cause notice or within such extended period as the officer **may**, for reason to be recorded in writing, fix provided that such extended period **shall ordinarily not** exceed sixty days.

"(4) In computing the period specified in sub-section (3) any period during which the proceedings are adjourned on account of a stay order or

[2] Substituted with word "five" through BSTA (Amendment) Act 2019 (assented on 03-01-2019)
[3] The legislature **increased** early 120 days to 180 days vide the Amendment Act, 2019 (assented on 03-01-2019).

proceedings under section 69 or the time taken through adjournments by the person **shall** be excluded." (emphasizes added)

"**67. Appeal to the Appellant Tribunal.--**(1) ……..

"(2) An appeal under sub-section (1) shall be:--

(a) to (c) ……..;

(d) preferred to the Appellant Tribunal within forty days[4] of the date of receipt of the order of the Commissioner (Appeals) by the taxpayer or the officer."

15. We carefully went through the record made available to us by both the parties and our findings are as follows:

Impugned Show cause notice

i Effective from 1st day of July 2015, the original text of sub-section 2 of section 24 of the Act specifies date for issuance of a notice not more than 5 years period from the conclusion of the tax period to which the tax assessment relates,

ii Effective from 1st day of July 2015 and by way of a *substitution,* the legislature increased the time period from 5 years to 8 years through the Amendment Act 2019,

iii Respondent No 2 issued the impugned notice on 28-11-2023 for short-paid/not-paid BSTS,

iv During the long proceeding a corrigendum was issued by respondent No.2 on 18-3-2024 for making correction in tariff heading and correct amount of short-paid tax.

16. For convenience, relevant to above, sections 1(2) (Commencement), and 19(b) (amendment in section 24, Act VI of 15) are reproduced as under:

"1. (1) ……..

(2) It shall come into force at once and shall be deemed to have taken effect on or from 1st day of July 2015."

" 19. In the aforesaid Act, in section 24,-

(a) ……..

[4] The legislature **decreased** early 60 days to 40 days vide Amendment Act, 2023 (assented on 04-7-2023.

(b) in sub-section (2), for the word **"five"**, the word **"eight"** shall be substituted;"

17. The learned counsel for respondents has rightly construed the effectiveness/ commencement of the Amendment Act 2019 by having a plain reading as required for fiscal/ taxation legislations and by arguing that the retrospective fiscal legislations by legislature where enacted in clear terms are viewed positively by the honorable Supreme Court of Pakistan. However, applicability of such retrospective effectiveness is tied with the condition that; firstly, vested right have been taken away or destroyed, and secondly, the matter is not a past and closed transaction. The learned counsel for appellant has referred the judgment of this Tribunal dated 01-4-2022 in case *M/S Pak Telecom Mobile Limited Vs Additional Commissioner of Sales Tax (Audit)* (STAs 20 to 23 of 2022) wherein impugned orders were set aside in favor of M/S Pak Telecom and declaring that the applicability of section 16B of the Act (Input Tax Not Allowed) (an insertion made in the Act through the Amendment Act 2019) is prospective being a charging provision despite commencement of the Amendment Act 2019 on or from 1st July of 2015. Then this Tribunal was deciding a matter related to *input tax adjustment and deduction of input tax already paid i.e., a lawful tax liability has been discharged.* While deciding the case a comprehensive explanation of the nature and mechanism of sales tax on services, as an indirect tax, was given, specifically, clarified how a vested right is created and how a transaction becomes a past and closed transaction. Also, a well-reasoned distinction between *an insertion* and *an amendment/substitution* is made. It was opined that amendments/ substitutions are made in an existing provision of law where retrospective application is valid provided it is clearly stated; whereas, an insertion is always of a new provision, which if threats a liability or take away a vested right cannot be applied retrospectively.

18. Above reasoning and holdings are not comparable with the case in hand due to the following:

- The appellant has failed to discharge tax liability for providing services under the USF which is an act of tax evasion and tantamounts to tax fraud. Further being an indirect tax, the appellant must have included it in the cost and passed on to next person in the supply chain hence the appellant has not come to this Tribunal with clean hands. Further a right was accrued to the

respondent Authority which cannot be taken away with the argument of prospective application of amended provision.

- The appellant has been charged for not paying a due tax for rendering a taxable service, thus, neither any past and closed transaction was accrued nor his vested right has been established, as we would see in one of the following paragraphs of this order. Non-payment and non-collection of a lawful liability would lead to injury to public exchequer; and
- The *insertion* made in the Act through the Amendment Act 2019 in the statute is *procedural* in nature, therefore, its retrospective applicability is valid.

19. Above discussion in view, we conclude that the impugned notice has been issued lawfully and in accordance with the provisions of the Act.

Impugned Order-in original

i In this case the impugned SCN was issued to the appellant on 28-11-2023,

ii The impugned order was passed on 20-11-2024,

iii The appellant did not reply to the impugned notice setting date of hearing on or before 12-12-2023 nor any representative from his side joined the proceedings,

iv However, on 15-12-2023 a letter dated 12-12-2023 was received requesting 2 to 3 weeks, which was allowed by intimating the next date of hearing on 02-01-2024,

v No representative attended on 02-01-2024, therefore, another notice was issued on 16-01-2024 scheduling next date of hearing as on 31-01-2024,

vi No person appeared; therefore, another notice was issued 06-02-2024 fixing hearing on 20-02-2024,

vii On 16-02-2024 a letter dated 05-02-2024 was received requesting “reasonable time”,

viii On 17-03-2024, a letter from the appellant, dated 20-02-2024, was received containing irrelevant details not required for adjudication,

ix In reply, respondent No. 2 issued a corrigendum on clarification/ correction of tariff head and applicable rate of 15%, instead of 19.5%. Also, next date of hearing was set on or before 01-04-2024,

x Again, no hearing could be held due to non-appearance. Another notice was issued on 04-4-2024 scheduling 18-4-2024 as hearing date. But no representative from the side of appellant attended,

xi However, on 19-4-2024 a letter from the appellant was received stating that he has not received the impugned notice and asked for the copy,

xii A reminder was issued on 17-5-2024 setting fresh date of hearing on 31-5-2024,

xiii Through a letter dated 26-8-2024, which was received by the adjudicating officer on 07-9-2024, the appellant tried to justify and claimed that they believe that no BSTS is applicable to the services provided by them. He enclosed a copy of his letter dated 30-5-2024 claiming the same, which, probably, has not been received by the adjudicating officer as he has not referred it the impugned order,

xiv The respondent No. 1 did not agree to the assumption and issued a last notice on 26-9-2024 giving a final opportunity of being heard on 07-10-2024. However, this notice went without any response. Record shows that the appellant preferred non-appearance,

xv Consequently, the respondent prepared the impugned order and passed the same on 20-11-2024.

20. Above details plainly suggest that the impugned order has been issued after 357 days of the issuance of the impugned notice (both issue dates excluding) crossing the mandatory time limit of 180 days as initial period and total time limit of 240 days including 60 days for extended period. However, the above details also clearly show negligence on the part of the appellant and his avoidance to respond and share details with the adjudicating officer to proceed the case as required under the law. We are of considered view that the period from 29-11-2023 (one day after issue date of impugned notice) to 03-9-2024 (one day after receipt of denial letter that no BSTS is applicable) falls very clearly within the category of proceedings adjournments caused by adjournment requests and no responses from the appellant and should not be computed while deciding the time consumed in issuing the impugned order. This time-lapse because of the appellant is for 280 days, therefore, we consider that the impugned order has been issued within the mandatory period of 180 days.

21. Above details plainly suggest that the respondent No. 2 issued the impugned order after 233 days of the issuance of the impugned notice (both issue dates excluding) crossing the mandatory time limit of 180 days as initial period, but within the prescribed total time limit of 240 days including 60 days for extended period. For the extended period, the Act

puts a condition that the reason for delay "to be recorded in writing". The reason for opting the extended period is not stated in the impugned order, however, in the written submission by the respondents it has been stated that reason has been recorded on file, separately. Further, the learned counsel for respondents argued in detail that circumstances existed, which were beyond their control, preventing an early decision in the matter within the initial mandatory period of 180 days. Above findings also reflect that during the entire adjudication, the appellant has not been due diligent while prosecuting his remedy. His first reply to the impugned order was sent after more than three months conveying his assumption that the services provided by him were not taxable. This assumption is gross violation of the provisions of the Act because the appellant has itself presumed that services rendered by it are exempt from tax without applying for exemption under section 12 of the Act. Such assumption was not only flawed but also tantamount to tax fraud in terms of section 2 clause (171) which in itself invite serious statutory penal consequences. When this assumption was not accepted by the adjudicating officer by the way of reasoning and referring the relevant provisions of the Act, again the appellant neither provided documentary proofs nor any legal reasoning in support of his presumption that the services provided by him are not taxable. Their second reply too took more than three months just to repeat the same presumption.

22. Above in view we declare that the impugned order is well within the prescribed temporal limits set under the Act with reasons as follows:

i The minute and clear reading of sub-section (3) of section 24 of the Act suggests that this law contains both mandatory as well as directory provisions and, in our view, they are as such as explained below:

   a. Initial time limit of 180 days is mandatory and evident is the word 'shall',
   b. Extended time limit of 60 days is directory and the evident is the word 'may'. The statute has made this an option for the adjudicating officer to consider, if circumstances so required,
   c. Condition of recording the reasons for extension in writing is procedural, and being a fragment of 'b' above, is thus directory in nature. The statute has made it a choice of the adjudicating officer to write the reason in the order or on some other document. The respondents have submitted before us reasons, in writing, for opting for extended time limit of 60 days and we accept the reasoning, and
   d. We see absence of due diligence on the part of the appellant to defend his assumptions before the adjudicating officer, therefore,

not inclined to go along with his arguments. He also could not lessen his burden in proving that the impugned order is barred by time.

e. By self-presumption regarding exemption of services provided, the appellant has committed a serious violation of the law and while coming in appeal before this Tribunal the appellant was not with clean hands hence his objections based on technicalities are not convincing.

23. Now, we take up the matter to examine whether the appellant has filed the appeal within the prescribed temporal limit or otherwise? The case record provides following chronology:

i. The impugned order was passed on 08-11-2024,
ii. The appeal was filed before the previous Tribunal on 22-01-2025,
iii. Two hearings were scheduled on 28-02-2025 and 18-4-2025 but could not be conducted due non-prosecution,
iv. After re-constitution of this Tribunal, first regular hearing was held on 14-7-2025. During the proceedings, a number of deficiencies in appeal were pointed out to the learned counsel of the appellant which included non-deposit of mandatory fee for the appeal, and
v. The defects in appeal were, accordingly, removed and appeal fee was deposited by the appellant on 07-7-2025 as required u/s 67(3) of the Act, but after 6 ½ months.

24. The appeal as well as other additional arguments submitted in writing by the appellant did not provide any evidence for date of receipt of the impugned order, therefore, we have no other option but only to consider the date of passing of the impugned order as starting point of limitation. If the dates of passing impugned order and filing the appeal are excluded, it could be seen that it has taken 75 days for filing the appeal by the appellant, i.e., with a delay of 35 days. While giving his verbal arguments, the learned counsel persistently took position that since impugned order is barred by time, same is *void*, therefore, no condonation application was filed before the Tribunal.

25. Above, we have already held that the impugned order has been passed within the prescribed period in accordance with section 24 (3) of the Act and we have no reason to declare it as a *void* order.

26. <u>Dispute over taxability on the transaction/consideration in lieu of services provided:</u> The appellant provided no details of the project executed under Universal Services Fund (USF), namely, Broadband for Sustainable Development Program (BSD)

neither to the adjudicating authority of BRA, nor presented before us, therefore, we were compelled to search the available information on the official website of the Ministry of Information Technology & Telecommunication, Government of Pakistan at www.moitt.gov.pk and USF website at www.usf.org.pk. Summary of details available is as follows:

i. BSD focusses on the provision of telecommunication services, i.e., highspeed broadband and voice services in unserved and under-served areas through projects under USF,

ii. USF is a fund established and controlled by the Federal Government u/s 33A of the Pakistan Telecommunication (Re-organization) Act 2006, which is exclusively utilized for providing access to telecommunication services to people of un-served, under-served, rural and remote areas of the country. The Fund consists of the following;

   a. Grants made by the federal and provincial governments,
   b. Prescribed contribution by the licensees,
   c. Sale proceeds from the auction of the right to use radio spectrum,
   d. Loans obtained from the federal government, and
   e. Grants and endowments received from other agencies.

iii. The program financed under the Fund, included 12 projects that are executed/ under execution within the tax jurisdiction of BRA, i.e. in Balochistan province,

iv. Executing agency from government side for such projects is the USF Company, which for limited competitive bidding floats “Request for Application (RFA) to Provide USF Telecommunication Services” through the newspapers and USF website,

v. The bidding (RFA process) is held by USF Company in accordance with the PTA (Re-organization) Act 1996 and USF Rules 2006,

vi. For execution of these projects RFAs can only be submitted by holders of telecommunication licenses (USF contributors) issued by the Telecommunication Authority. A USF contributor has an obligation to contribute 1.5% of its annual gross revenue to USF. The appellant is one of the USF contributors and has won a number of such projects for execution,

vii. Paragraph-12 of the RFA explains ‘USF Subsidy Payments’ by stating:

"In order to promote GoP's policy of expending telecommunication services and access in un-served areas, a USF Subsidy shall be paid to the Service Provider to help meet the capital costs of the rolling out the USF Network and providing USF Services in the USF areas. The USF Subsidy payments shall be made in accordance with USF Services and Subsidy Agreement (USF-SSA) enclosed as Annex 6."

viii. A successful bidder/lowest bidder signs a USF-SSA/contract as USF Service Provider with USF for a contract/bid price submitted during a RFA process,

ix. Paragraph-27 of the RFA clearly states, "A USF Service Provider shall be required to comply with all laws of Pakistan applicable to its USF Services activities at all times,….."

x. Paragraph-30 states, "A USF Service Provider will be responsible for paying any fees, taxes or charges otherwise applicable to the USF Service Provider till the term of the contract, in accordance with the Act and other laws of Pakistan and regulations made thereunder."

xi. Paragraph-28 specifies term of USF-SSA (the contract) as 10 years and any other extended period due of force majeure or delay in project.

27. Above details clarify that the services provided by the appellant to USF Company, Government of Pakistan come under tariff-heading 9809.0000 (contractual execution), which is a taxable under the Act.

28. For its own definition of *telecommunication service*, the Act u/s 2 (178) borrows and amalgamates definitions of 'telecommunication service' and 'telecommunication system' from the PTA (Re-organization) Act 1990 and 'wireless communication' from the Wireless Telegraphy Act 1933. Further, the definition under the Act also includes "*transfer, assignment or sharing of the right to use capacity for transmission, emission or reception of signals and provision of access to global or local information network*".

29. Under section 2 (v) of PTA (Re-organization) Act, 1990, a *telecommunication service* "*means a service consisting in the emission, conveyance, switching or reception of any intelligence within, or into, or from, Pakistan by any electrical, electro-magnetic, electronic, optical or optio-electronic system, whether or not the intelligence is subjected to rearrangement, computation or any other process in the course of the service;".* The Universal Service Fund Rules 2006, under rule 2 (xxiii) defines 'universal service' as *"provision or coverage of telecommunication service including at least voice and data to the whole of Pakistan*;"

30. A plain reading of the above two sets of definitions show that they are parallel and consistent and we do not find any contradiction in concepts of 'telecommunication service', therein. Therefore, we conclude that the services provided by USF Service Provider (the appellant) to the service-recipient (the USF Company/PTA), under the USF Services and Subsidy Agreement (USF-SSA), are taxable services as provided u/s 3 of the Act and listed in Second Schedule under tariff-heading 9809.0000 and subject to BSTS rate of 15%. This taxpaying obligation is in addition to it's responsibilities as a registered person for providing telecommunication services within the jurisdiction of BRA as a matter of routine business (in his capacity as a licensee of PTA) under tariff-heading 9812.1210 which is subject to BSTS applicable rate of 19.5%. The appellant is liable to pay BSTS as required u/s 11 of the Act. The appellant was also liable to declared said services rendered in it's returns for the relevant tax periods and to voluntarily pay tax under the statute. In contrast the appellant has opted to itself decide that such services were not only exempt but also not liable to be declared in sales tax returns. These acts are gross violation of the statutory provisions and tantamount to tax fraud. Therefore, the respondents have lawfully initiated proceedings and passed impugned order.

31. As on the penalty charged upon the appellant; while examining the entire record of the case and observing conduct of the appellant during the proceedings, we have observed an evasive and tax avoidance behavior not expected from a registered person being a well reputed limited company. This case has been prolonged unnecessarily by the appellant with unfounded assumptions contrary to the legal provisions, and by avoidance in sharing the required details with an intent to evade and avoid due tax under the Act. In our considered opinion such conduct establishes clear *mala fide* intentions on the part of the appellant, and the penalty @ 5% u/s 48 as listed at serial No. 5 of the table has been imposed correctly.

32. For the foregoing reasons, we decide that the appeal is heavily barred by time and devoid of merit, therefore, liable to be dismissed, and the impugned order passed by the respondent No. 1 is upheld accordingly.

Chairman

____SD___

Member

____SD___

Member

____SD___

Dated: 29th September, 2025.