BALOCHISTAN SALES TAX ON SERVICES

APPELLATE TRIBUNAL, QUETTA

STA 80/2026

M/S Izhar Construction (Pvt) Ltd.

Versus

The Commissioner (Appeals) & Assistant Commissioner (Quetta),

Balochistan Revenue Authority.

ORDER

Date of last hearing: 06.4.2026 Date of issue: 15.4.2026

Appellant by: Mr. Tariq Najib Choudhry, Advocate & Others

Respondent by: Mr. Amin Ullah Khan, Advocate & Others

DOSTAIN KHAN JAMALDINI, MEMBER: The titled sales tax appeal, have been filed by the appellant-registered person against the consolidated Appellate Order No. 2/2026 of the Commissioner (Appeals), the Balochistan Revenue Authority (BRA), Quetta (respondent) issued under section 63(1) of Balochistan Sales Tax on Services Act (the Act), confirming the Orders-in-Original (OIOs) bearing Nos. INPUT 12/2025-26, INPUT 11/2025-26 and INPUT 13/2025-26 all issued on 14-11-2025 by Assistant Commissioner, BRA, Quetta. These orders alleged that the registered person has violated and contravened the provisions of section 16B (1) (j), (k), & (l) of the Act and rules 26 (2) & 27 (8), (9), & (10) of Balochistan Sales Tax on Services Rules, 2018 (the Rules) by claiming Rs. 1,216,665/-, 1,839,937/- & Rs. 815,188/- in his tax returns for the tax years 2019-22, 2022-23 and 2023-24, respectively, as input tax adjustments not provided in the law. Based on these allegations, it was ordered that these amounts be deposited into government treasury. It was further decided that penalties and default surcharges shall be imposed upon under sections 48 and 49 of the Act, respectively, at the time of final payment. Aggrieved of these OIOs, the appellant-registered person agitated

and preferred appeals before the respondent, who after considering record of the cases and arguments from both sides decided the case through a single order on 23-01-2026 against the appellant. The decision of the respondent was, consequently, challenged before us on 23-02-2026 through the instant appeal on the same grounds as agitated before the respondent during the first appeal cycle.

2. Brief facts of the case are that the appellant is registered with the BRA having BNTN: B0683998 with principal activity as *construction services* under tariff heading 9284.0000 subject to 15% BSTS. The record of the case states that the respondent, upon perusal of record available with the BRA, has found that during 2019-20, 2022-23 and 2023-24, the appellant had adjusted inadmissible input tax (above and/or below 15%) against the taxable output services provided.

3. In view of above, the respondent issued three separate notices on 01-01-2025 to the appellant u/s 52(1) of the Act for recovery of Rs. 1,216,665/-, Rs. 1,839,937/- and Rs. 815, 188, respectively, alleging unlawful adjustments made against the output tax in his sales tax returns. According to the respondent, no compliance was made by the appellant either by remitting the adjusted amounts of inadmissible input tax or by submitting documents in his defense despite providing ample opportunities on at least five hearing dates. Instead of submitting documents and pleading his case before the adjudicating officer, the appellant preferred adjournments. In order to allow time to the appellant, the Authority, in both cases, extended time for adjudication for 60 more days over and above 180 days relying on section 52(3) of the Act and communicated the same in writing to him. Since no defense came before him, the respondent decided these cases and issued the impugned orders on 14-11-2025. Records show that the impugned orders were delivered to the appellant through courier on 24-11-2025 and received at the given address on 27-11-2025.

4. Through the appeal, the appellant raised two major objections:

   a. The impugned OIOs were barred by time as prescribed u/s 52(4) of the Act, and were without lawful jurisdiction, therefore, the impugned appellate order issued by the respondent confirming the impugned OIOs is unlawful, too;

   b. Section 16B of the Act is an exceptional and restrictive clause and cannot supersede the main substantive right of input tax adjustment provided to registered-person under section 16 of the Act. Therefore, limiting input tax adjustment to only 15% (not above and below 15%) 'is inconsistent with the charging and adjustment mechanism provided under Section 16 of the Act and is *ultra vires* to the statutory structure of the Sales Tax.

5. In the instant appeal it has been contended that during the assessment adjudication neither orders for adjournments nor orders of extension have ever been served on the appellant. In support of first above objection, some facts were stated showing that the respondent instituted these cases on 01-01-2025 and handed over the impugned orders through courier on 27-11-2025 after being announced on 14-11-2025, thus took 326 days instead of 180 days as mandatorily required u/s 52(4) of the Act, extendable only up to 60 days for recorded reasons. According to him the respondent has 'illegally invoked section 53(3) (*sic.*), which does not authorize extension of limitation'. In support of his objection and arguments he referred the Honorable Supreme Court's judgment reported in *PTCL 2019 CL 555*[1]. With regard to his second major objection, the appellant submitted that he has correctly filled the monthly returns and nothing has been concealed. Further, if there is any shortage of BSTS while adjustment of input tax by him against his taxable output services within the provincial tax jurisdiction, the Authority may claim the same from the Federal Board of Revenue, instead of ordering double taxation. It is also argued that he was subject to adjudication proceedings in five separate cases; each involving different tax periods, factual matrices and

[1] M/S Mujahid Soup and Chemical Industries Pvt. Ltd. VS Customs Appellate Tribunal, Bench-I Islamabad & others.

independent SCN. It is stated that these five cases were decided by two different adjudicating officers, but the contents are *verbatim* identical, except for tax period and quantum of demand indicating that the impugned order in appeals and OIOs lack reasoned findings as required under Article 4 and 10A of the Constitution of Islamic Republic of Pakistan and passed in a mechanical manner.

6. Both the parties were heard. From appellant side Advocate Rashid Khan and from respondent side Advocate Aminullah appeared and argued their cases. Learned counsel for appellant stated that the show cause notices in this case were issued on 01-01-2025 and the impugned orders were issued on 14-11-2025 after 326 days. From the impugned orders he quoted the following table titled as "adjournments/time frame":

Adjournment request	**Duration**
09-January-2025	15 days
29-January-2025	30 days
27-February-2025	20 days
14-May-2025	10 days
Total	**80 days**

7. He challenged that no adjournments were requested by appellant on 09-01-2025 and 14-5-2025, therefore, the impugned orders have misstated facts and are defective. Thus, if the remaining two adjournment requests for 50 days are excluded from total time taken in completing the adjudication, the days would be 276 days which again are 96 days extra. For 60 days' time extension, he took position that this has been done with reference to section 53(3) (*sic.*) of the Act, which does not authorize extension of time, therefore, same is illegal. He also contended that observation of the respondent during first round of appeal is against the principle laid down by the Honorable Supreme Court in *M/s Mujahid Soap*. He submitted the referred case law (*PTCL 2019 CL 555*) as well as *PTCL 2017 CL 736*[2], *and PTCL 2026 CL 8*[3] in support of is contention. On his second major objection, he reiterated arguments given

[2] Collector of Sales Tax, Gujranwala VS M/S Super Asia Mohammed Din & Sons
[3] M/S Commander Agro (Pvt.) Ltd. VS Customs Appellate Tribunal, Bench-I, Lahore etc.

in writing in the Memoranda of Appeals. The learned counsel further contended that since the impugned orders are *void ab initio*, and out of jurisdiction, and since monthly tax returns are lawful filed, there is no *mens rea* hence imposition of penalty and default surcharge are illegal. He prayed that the impugned appellate order and OIOs may be set-aside/annulled and the show cause notices be vacated.

8. Learned counsel for the respondent argued on fairness and legality of the impugned appeal order and orders-in-original. He stated that the adjudicating processes have been as per the Act, specifically in accordance with provisions of section 52 of the Act. He explained that the appellant contravened provisions under section 16B, 48 and 49 by adjusting inadmissible input tax in his monthly returns. He further submitted copies of requests for adjournments by the appellant after receiving show cause notices along with details of inadmissible input tax adjusted by the appellant against his taxable output services. He concluded that the impugned orders have been issued within the prescribed mandatory time-frame after granting extension in time as per law due to non-cooperation of the appellant to appear before the adjudication officer with documentary evidences that lawful input adjustments have been made and correct tax returns have been filed. He submitted copies of the following documents as evidences that the impugned orders are lawful:

a. Appellant's letter dated 09-01-2025 for adjournment and for provision of copies of annexure to the SCNs dated 01-01-2025 **(we have noted that against this letter 15 days adjournment allowed)**;

b. Appellant's Authorized Representative (M/S Chartered Accountant) letter dated 29-01-2025 for adjournment/extending the date for compliance **(we noted that against this letter compliance date extended to 28-02-2025, hence 30 days adjournment granted)**;

c. New AR of the appellant (Mr. Tariq Najib Choudhary, Adv.) letter dated 27-02-2025 requesting copy of the annexure to SCNs dated 01-01-2025. Same was provided with new compliance scheduled on 14-03-2025 (neither adjournment requested nor granted, expressly);

d. Respondent's letter dated 14-5-2025 wherein new date for compliance fixed as on 26-5-2025 (no adjournment allowed);

e. Respondent's letter dated 26-5-2026 for extending compliance date for 10-6-2025 on the request of the appellant **(that is, 15 days adjournments allowed)**; and,

f. Respondent's letter dated 19-9-2025 intimating to the appellant the condonation of time limit of mandatory180 days for deciding the case u/s 52(3) and extending the time limit for completing adjudication and passing order in writing, for another period not exceeding 60 days u/s 52(4) of the Act.

9. For deciding this tax dispute, we have to address following two fundamentals based on objections raised in the instant appeal by the appellant:

i) Do the impugned orders hit by mandatory time-limit?

ii) If above question is answered affirmatively, what should be fate of the impugned appeal order and OIOs? If not, what will be the merit of these tax dispute under the law and overall scheme of the sales tax regime?

10. After hearing both the parties, examining facts of the cases, going through the referred case laws and relevant provisions of the Act and the Rules, our analyses and conclusions are as follows:

Question on Time-limit: For safe-guarding the public as well as registered-persons' rights, the Act and the Rules put limit on time taken for mandatory discharge of responsibilities by both the tax officials/authorities and tax-

payers/registered-persons. One of such bars is imposed u/s 52 on adjudicating officers appointed by the Authority in determining and recovering BSTS not paid or short-paid by a registered-person. This section of the Act lays down a framework for initiating, proceeding, and deciding any *recoverable* amount of BSTS wrongly levied or not levied at all. In a number of cases (for example, *Super Asia*) our courts have held that this section is mandatory and jurisdictional, and not administrative because public functionary is empowered to create liability against a citizen. Government departments cannot be put at higher pedestal in matter of limitation, rather they are supposed to act **within** statutory limits and not beyond at in delivering justice and fair play. Since, currently, we are looking into the temporal aspect of the law and its application relevant to these two cases, it is appropriate to reproduce sub-sections 3, 4 & 5 of section 52 of the Act:

> "***52. Recovery of the Tax not Levied or Short-levied.***—*(1)*.....
>
> *(2)* .....
>
> *(3) The officer shall, after considering the objections of the person served with a notice under sub-sections (1) or (2) or if the objections are not received within the stipulated period, determine the amount of the tax or charge payable by him and such person shall pay the amount so determined.*
>
> *(4) Any order under sub-section (3) shall be made within one hundred eighty days of issuance of the notice to show cause or within such extended period as the officer may, for reasons to be recorded in writing, fix provided that such extended period shall not ordinarily exceed sixty days.*
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> *(5) In computing the period specified in sub-section (4), any period during which the proceedings are adjourned on account of a stay order or proceedings under section 69 or the time taken through adjournments by the petitioners shall be excluded"*

In the instant case the respondent, on 01-01-2025 issued notices to the appellant u/s 52(1) of the Act determining that amounts of BSTS have been improperly adjusted by him against the output tax and same may be remitted to the government treasury by 15-01-2025. Details of calculations for determined amount was sent to the appellant, however, neither objections on the determined/calculated amounts of adjustments, nor objections on legality of the notices were raised by the appellant, in writing as well as by way of attending the hearings/compliance days. The appellant on a number of occasions sought extensions in compliance dates and the respondent kept on re-scheduling these dates for either remitting the public money into exchequer or replying as why this determined tax amount should not be remitted by him under the law? As is evident from section 52(4) as quoted above, the respondent was mandatorily responsible to decide the case and issue order **within 180 days of issuing notices** (that is, on or before 30-6-2025) extendable by the competent authority for a further period **not more than 60 days** (that is, on or before 29-8-2025). On 19-9-2025 (that is, after 260 days of issuing the notices when, legally speaking these were not in field and had lived their lives given under the law), the respondent communicated to the appellant that time for deciding the case has been extended beyond 180 days for a maximum period of additional 60 days. Legally speaking these time extensions are without any legal foundation as they were issued after the expiry of the show cause notices, which are the very foundation upon which these cases have been built upon. Thereafter, the impugned orders were issued on 14-11-2025 (that is, after 316 days of the issuance of impugned notices instead of 180+60 (240) days). The impugned orders at their para-13 state that adjudication proceedings were adjourned for 80 days upon the appellant's request. However, during the current proceedings the learned counsel for respondent could only provide the evidentiary documents as listed above at para-8 of this order; suggesting only 60 days of adjournments as expressly requested and expressly granted. By excluding these 60 days, time taken in deciding this case by the respondent and issuing order is 256 days (316 days minus 60 days) against mandatory provision of 240 days. While considering 60 days of adjournments, the show cause notices issued on 01-01-2025,

legally expired on 27-8-2025. Therefore, the time condonation and extension of time for deciding these cases for a further period not exceeding 60 days granted u/s 52(4) is outside the jurisdiction of the respondent and not as per the law. Further to this; the orders were kept in the office of the respondent till the time when dispatched, through courier, to the appellant on 24-11-2025 and properly communicated to him personally on 27-11-2025 causing an additional time-lag of 13 days. The appellant has rightly referred *Mujahid Soap* in his objections pleading that the impugned orders be declared as out of jurisdiction. The Honorable Supreme Court of Pakistan, in case *supra*, has decided the principle that a decision cannot said to have been taken without announcement or communication thereof to the parties. During the first appeal cycle, the learned Commissioner (Appeals) has observed contrary to the spirit of time-limitation as envisioned u/s 52 (4) & (5) and not in accordance with principle laid down by the Apex Court. In the instant cases two decisions are taken after expiry of limits prescribed u/s 52(4) & (5) of the Act; *first* on time extension beyond 180 days, and *second* on merit of the case. Our courts have consistently held that an order passed beyond mandatory time limit is *void ab initio* and a nullity in the eyes of the law. In these cases, the fact that the registered person took adjournments and did not file a written reply, does not resurrect the limitation period. The statutory time limit is a mandatory duty imposed on the adjudicating officer, not a procedural benefit for the tax-payer. The only reason given for time extension u/s 52(4) by the respondent, in these cases, is that the appellant failed to submit requisite documents and records. The taxpayer's silence or adjournments cannot confer jurisdiction where the statute has taken it away. By failing to issue the decision within 180 days, the respondent, thus, became *functus officio* (having performed his office, his authority ceased). Even though the law allows a maximum of 60 days extension, but such extension must be granted before the original 180-day period expires. If an extension is sought or granted after expiry of (that is, day 181 onward), the notice is already dead. A legal authority cannot revive a notice that has already exhausted its legal life—no power remains with the authority to extend it retroactively unless the statute explicitly says so, which is rare. The Act and the Rules, which govern the impugned notices do not

explicitly allow retroactive extension after expiry, therefore, the doctrine of *functus officio* in these cases allows the determination that the impugned orders are invalid and *ultra vires*. Therefore, these impugned orders are void in the eyes of law, as the appellant's failure to reply does not validate an invalid act.

11. Above analyses and discussion in view, we opine that since the impugned orders are *void ab initio*, the merits of the input tax adjustments are irrelevant; therefore, we do not hesitate in setting aside them as nullities. Appeal succeeds.

__SD__
CHAIRPERSON

__SD__
MEMBER

__SD__
MEMBER

Dated: 15th April, 2026.