THE BALOCHISTAN SALES TAX ON SERVICES APPELLATE TRIBUNAL QUETTA.

Sales Tax Appeal No.13 of 2025
(M/s. Cnergyico Pakistan Limited vs. Commissioner-II Balochistan Revenue Authority)

Appellants by: Mr. Suneel Ali Memon Advocate

Respondents by: Mr. Wasil Jan Advocate

Date of hearing: 26/06/2025

Date of Order: 17/07/25

ORDER

SAIF ULLAH KHAN. The above titled Sales Tax Appeal has been filed by the appellant/ registered person on the grounds set-forth in the memo of appeals calling in question, the order in original No.12/2024-25 dated 31-01-2025 passed by the learned Commissioner-II, Balochistan Revenue Authority (BRA), Quetta wherein the appellant was required to pay Balochistan Workers Welfare Fund (BWWF) amounting to Rs.118,428,220 in terms of BWWF Act, 2022.

2. The relevant facts for disposal of the instant appeal are that the appellant is a public limited company quoted on Pakistan Stock Exchange. The appellant was incorporated on 09-01-2015 and got certificate of commencement of business on 13-03-1995. The appellant is registered with Federal Board of Revenue (FBR) with NTN 0815616-6 and engaged in running of oil refinery at Hub, Balochistan. The learned commissioner issued notice dated 04-06-2024 asking the company to pay BWWF being an industrial establishment in Balochistan. In response the appellant contended that since the company is a trans-provincial entity having its

refinery at Balochistan and head office at Karachi Sindh hence it was not liable to pay BWWF relying on the decision of the honorable Supreme Court of Pakistan reported as 2018 SCMR 802 and the honorable Sindh High Court decision reported as 2018 CLD 1088. The learned commissioner was not convinced with the contention of the appellant hence after some correspondence the impugned order was passed. Being aggrieved with the order of the Commissioner, the appellant has now come up before this forum on grounds set forth in memo of appeals.

3. On behalf of the appellant, case was argued by Mr. Suneel Ali Memon Advocate who mainly emphasized four grounds. Firstly, he contended that since the appellant is a trans-provincial entity hence it is not liable to pay BWWF under the BWWF Act, 2022 but such amount was payable to FBR. Secondly, he argued that in the light of the decision of the Council of Common Interests dated 23-12-2019 the Workers Welfare Fund Ordinance, 1971 applies to the appellant being a trans-provincial entity. Thirdly, he argued that even the honorable Balochistan High in the decision reported as 2024 PTCL 106 (H.C. Bal.), following the decision of the honorable Sindh High Court reported as 2018 CLD 1088 (H.C. Sindh), has held that in the case of trans-provincial entities workers welfare fund will be distributed among the provinces in the ratio of workers engaged in the trans-provincial entities in respective provinces. Lastly the appellant referred to the order of the Honorable Constitutional Bench of the Apex Court passed on 02-05-2025 wherein status quo is to be maintained.

4. In support of his first ground he argued that the appellant's refinery is at Balochistan but it has head office in Sindh, regional offices in Islamabad and Punjab, and Storage and oil terminals in Punjab and Sindh. He further contended that workers of the appellant are scattered all over the country hence demanding BWWF is not justified. Therefore, being a trans-provincial entity, it is covered under the Workers Welfare Fund Ordinance, 1971 and all proceedings by the BRA are unlawful. He relied on the decision of the honorable Supreme Court of Pakistan reported as 2018 SCMR 802 and the honorable Sindh High Court decision reported as 2018 CLD 1088.

5. In support of his second ground he referred to decision of the Council of Common Interests dated 23-12-2019 wherein it was agreed that:

> *"WWF shall remain with the Federal Government till such time a mutually agreed mechanism is developed."*

6. He further stated that till reversal of said decision BWWF is not leviable on the workers of the appellant.

7. In support of his third ground the learned counsel argued that even if BWWF Act, 2022 is applicable to the appellant then in the light of honorable Balochistan High decision reported as 2024 PTCL 106 (H.C. Bal.) and the decision of the honorable Sindh High Court reported as 2018 CLD 1088 (H.C. Sindh) BWWF can only be levied on the workers employed by the appellant on proportionate basis to the extent of workers employed at Balochistan.

8. Lastly the learned counsel argued that the Honorable Constitutional Bench of the Apex Court has on 02-05-2025 ordered that status quo be maintained in the matters of workers welfare fund. He contended that consequently all proceedings under the BWWF are to be stopped till final decision by the Honorable Apex court.

9. Mr. Wasil Jan Advocate learned counsel appearing on behalf of respondent supported the order of the learned Commissioner-II BRA and stated he has lawfully charged BWWF. He argued that the BWWF Act applies on all establishments doing business in Balochistan. He further argued that the contention of appellant being a trans-provincial entity need to be established by providing details of workers in the three provinces. He contended that the appellant main business of oil refinery is located in Balochistan where majority of the workers are employed. The head office and regional offices are mostly staffed by executive employees rather than workers. The claim of appellant that it has storage facilities, petrol pump and oil terminals in Sindh and Punjab which are run by the workers is yet to be established with corroborative evidences.

10. The learned counsel of the respondent also referred to the decision of the honorable Balochistan High decision reported as 2024 PTCL 106 (H.C. Bal.) and contended that it is still in field as the honorable Apex court has not suspended the same. He further added that if the appellant can prove that workers are employed in more than one province then as per the decision of the honorable Sindh High Court reported as 2018 CLD 1088 (H.C. Sindh) payable amount of WWF may be apportioned accordingly.

11. We have gone through the impugned order, examined the available records, relevant provisions of law, case laws relied upon by the appellant and considered arguments of both the parties. The crux of the issues involved in the instant appeals is whether the appellant is a trans-provincial establishment or not and if so then which revenue authority/ Board may recover WWF. This fact is not threshed out properly during proceedings.

12. The appellant has merely insisted on being trans-provincial entity without providing details of workers in each province and the learned Commissioner has rejected the contention without convincing arguments and covering all aspects of the issue. The contention of the appellant that the Workers Welfare Ordinance, 1971 is applicable in its case is misplaced because after omission of the Concurrent list in the 1973 Constitution and its entries (1 to 47) the following entry also got omitted:

> *"Entry 26. Welfare of labor; conditions of labor, provident funds; employer's liability and compensation, health insurance invalidity pensions, old age pensions."*

13. Consequently, all the matters related to labour welfare stand devolved to the provinces which also include workers welfare fund (WWF) and workers profit participation fund (WPPF). The Federal Legislature is no longer competent to legislate in matters related to labor welfare or collection of WWF or WPPF. Our view is supported by sub-articles 7 and 8 of Article 270AA of the Constitution which is reproduced as follows:

> *"7. Notwithstanding anything contained in the Constitution, all taxes and fees levied under any law in force immediately before the commencement of the Constitution (Eighteenth Amendment) Act, 2010, shall continue to be levied until they are varied or abolished by an Act of the appropriate legislature.*
>
> *8. On the omission of the Concurrent Legislative List, the process of devolution of the matters mentioned in the said List to the Provinces shall be completed by the thirtieth day of June, two thousand and eleven."*

14. Further the reliance of the learned counsel of the appellant on decision of the Council of Common Interests dated 23-12-2019 is misplaced for the reason that said decision was based on conditions prior to enactment of the BWWF Act, 2022 repealing the Workers Welfare Ordinance, 1971 to the extent of Balochistan. This view is also supported by sub-articles 7 and 8 of Article 270AA of the Constitution quoted supra.

15. The learned counsel reliance on the decision of the Apex Court reported as 2018 SCMR 802 is also misplaced because the said decision relates to the Industrial Relations Act (X of 2012) and particularly law relating to trade unions. The honorable apex court has held that:

> *"23. For the foregoing reasons, the appeals as also the petition are dismissed and it is held as under: -*

(1) the Federal Legislature has extra-territorial authority but no such extra-territorial authority has been conferred to the Provincial Legislature by the Constitution;

(2) the Federal legislature does, but the Provincial Legislature does not, have legislative competence to legislate to regulate the trade unions functioning at trans-provincial level;

(3) the matters relating to trade unions and labor disputes, etc., having been dealt with and protected under the International Conventions, are covered under Entries Nos.3 and 32 of Part-I of the FLL. Thus, the Federal Legislature has legislative competence to legislate in this regard;

(4) under the command of Entry No. 13 in Part-II of the FLL, the Federation has competence to enact laws relating to the inter-provincial matters, Entry No. 18 thereof further enlarges the scope of the said Entry; therefore, the Federal Legislature has legislative competence to legislate in this regard too;

(5) the IRA 2012 neither defeats the object of the Eighteenth Amendment to the Constitution nor does it destroy or usurp the provincial autonomy;

(6) the IRA 2012 has been validly enacted by the Parliament and is intra vires the Constitution;

(7) ………,,

(8) ………,,

(9) …….,,

(10) ……..,,

16. From the above it is evident that the decision of the honorable Apex court relates to trade unions and not to labor welfare.

17. Now coming to the learned counsel of the appellant reliance on the of decisions of the honorable Balochistan High reported as 2024 PTCL 106 (H.C. Bal.) and honorable Sindh High Court reported as 2018 CLD 1088 (H.C. Sindh) we are in agreement with the learned counsel of the respondent that said decisions are still in field because the Honorable Constitutional Bench of the Apex Court has on 02-05-2025 ordered that status quo be maintained without suspending the said decisions. We deem it appropriate to reproduce relevant parts of said decisions. The Honorable Sindh High has held that:

> *"34. In view of the foregoing discussion, we therefore answer the issue specified in para 2 above, which relates to the third category identified in the ORDER: of 19.09.2017, as follows. In the case of trans-provincial companies, it is the Sindh Act that applies, but interpreted, read and applied such that the obligation under the Act is only to make distribution to the workers in this Province, and only of an amount that is proportionate to their number here. It is irrelevant where the registered office and/or the industrial undertaking of the trans-provincial company are located, i.e., they could be located in this Province or elsewhere. Furthermore, in making the computation, the whole of the profits made by the company are to be used, regardless of where they were earned in the country."*

18. The honorable Balochistan High has held that:

"10. In view of the foregoing discussion, the petition is allowed in the following terms:

(1) Respondents are directed to immediately constitute the governing Body under section 8(1) of the Balochistan Worker's Welfare Fund Act, 2022 by notification in the official gazette;

(2) To constitute the committee under sub section 1 of section 5 of the Balochistan Companies Profits (Workers Participation) Act 2022;

(3) Respondent No. 4 is directed to immediately start making necessary recoveries from all the establishments in accordance with law and the Act in question;

(4) The trans-provincial companies should be dealt with in the light of judgment, passed by the Honorable Sindh High Court in the case of "Shafiq Uddin Moinee v. Federation of Pakistan" reported in 2018 CLD 1088 Sindh;

(5) The present WWB is restrained from making important decisions, including any sort of appointments till constitution of new governing body under the provisions of Act of 2022.

Copy of this judgment be sent to the Chief Secretary, the Secretary Labour and Manpower Department, the Secretary Workers' Welfare Board and the Chairman Balochistan Revenue Authority, Government of Balochistan for information and compliance."

19. Respectfully following the above decisions of the honorable High Courts, we hold that in the case of the appellant running a refinery in Balochistan, it is the BWWF Act that applies, but interpreted, read and applied such that the obligation under the Act is only to make distribution to the workers in Balochistan Province, and only of an amount that is proportionate to their number in this Province. It is irrelevant where the head office, or the regional offices or terminals of the company are located. Furthermore, in making the computation, the whole of the profits made by the appellant company are to be used, regardless of where they were earned in the country. Since the status of the appellant company as trans-provincial entity on the basis of workers' location is yet to established with verifiable documentary evidences hence the matter is remanded back to the commissioner. Only those employees are to be considered who qualify as "workers" defined in section 2 clause (f) of the BWWF Act. After deciding the status of the appellant liability of the BWWF is directed to be calculated as per decisions of the honorable Balochistan High reported as 2024 PTCL 106 (H.C. Bal.) and honorable Sindh High Court reported as 2018 CLD 1088 (H.C. Sindh).

20. The learned commissioner is directed to provide sufficient opportunity of being heard to the appellant, ensure proper service of notices, examine relevant evidences and then come up with a judicious order in the light of above observations and directions. The appellant is also directed to appear before the Commissioner, participate in the proceedings and provide all supporting evidences in the light of our observations and directions.

21. Before parting we deem it appropriate to emphasize That the sole purpose of WWF acts passed by the provincial legislatures is to ensure welfare of the workers irrespective of their location. The appellant is therefore further directed to pay WWF in each province in the ratio of locations of workers in such province and provide evidence of payment to the commissioner if it is established that workers are scattered in Balochistan and other provinces.

22. The STA No.13 stands disposed of as above.

Announced
Dated, the 17 July, 2025.

—sd—
Chairperson

—sd—
Member

—sd—
Member