

BALUCHISTAN SALES TAX ON SERVICES

APPELLATE TRIBUNAL, QUETTA

Sales Tax Appeal No. 12/2025

National Logistic Corporation (Formerly, National Logistic Cell)

Versus

The Commissioner (Operations), Baluchistan Revenue Authority, Quetta

ORDER

Date of hearing: 26.6.2025

Announced on: 03.7.2025

Appellant by:

Mr. Sajid Mehmud, FCMA/ACCA

Respondent by:

Mr. Wasil Jan, Advocate

DOSTAIN KHAN JAMALDINI, MEMBER: The Petitioner, having BNTN: 9013102 registered with the Baluchistan Revenue Authority (BRA) under tariff heading 9824.0000 (Construction Services), has impugned STS Order-In-Original No. 62/2025, dated 10th January, 2025 (hereafter referred as the impugned order) issued by learned Commissioner-III (Operations), BRA (the Respondent) under section-60 of the Baluchistan Sales Tax on Services Act, 2015 (the Act) and Chapter XIII (Adjudication) of the Baluchistan Sales Tax on Services Rules, 2018 (the Rules).

2. The impugned order opined that since the Petitioner has been non-compliant and not willing to defend his case, it was established that it had short paid BSTS¹ and violated and contravened the provisions of section 10(1) read with section 3(1), 18(1), 19(1) and 35(1) of the Act; hence, he declared the following amounts as recoverable from the Petitioner for tax period 2019-20:

Short paid tax	Rs. 7,930,000
Penalty U/S 48 of the Act ²	Rs. 395,500
Total recoverable amount	Rs. 8,326,500

3. The Respondent further ordered that the default surcharge U/S 49 of the Act shall be imposed at the time of final payment of the recoverable amount.

4. The Petitioner assailed the impugned, through the instant Appeal submitted by his Authorized Representative, by indicating the following errors:

- a. Principle of natural justice denied as no opportunity provided for hearing and the impugned order issued in a summary manner;
- b. Erred by raising a duplicate sales tax demand as the recoverable amount has already been recovered from the bills of the Petitioner by the Project Director, Dirgai Shabozai to Taunsa

¹ Baluchistan Sales Tax on Services

² Serial No.3 of Section 48

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Sharif Road Project of C&W Department, Government of Balochistan (the service recipient);

- c. Confirmation letter and certificate issued by the service recipient, to the effect that the tax demand raised have been recovered and deposited, have been ignored and not considered by the Respondent while issuing the impugned order;
- d. Imposing default surcharge and penalties is baseless; thus
- e. The impugned order is bad in law and against the facts and circumstances.

5. The Petitioner, prayed that the impugned order, which is in contravention of the provisions of the Act, the Rules, and the BSTS Withholding Rules, 2018 (the Withholding Rules) be quashed/annulled by this Tribunal.

6. Based on the same arguments, the Petitioner also submitted an application before this Tribunal for granting stay u/s 68(3) of the Act.

7. Mr. Sajid Mehmud appeared as Authorized Representative of the Petitioner as provided in rule-78 of the Rules. He argued the case in line with the application and the petition. He also submitted a Tax Holding Certificate from the Withholding Agent (Project Director, Dirgai Shabozai to Taunsa Sharif Road, Communication and Works Department) bearing No. Pkg # 10&11/RDST/451/PD, dated 05-11-2024 along with documents indicating that the Withholding Agent has already deducted the required BSTS from the running bills of the Petitioner and deposited the same in the Provincial Government's Exchequer. Since the Withholding Agent (the service recipient) has deposited the liable tax charged on the service provided, the proceedings against the Petitioner (the service provider) are a double-jeopardy and against the law.

8. Mr. Wasil Jan appeared to defend the impugned order as the learned Counsel for the Respondent. He supported the impugned order and argued that the Petitioner neither properly replied to the show cause notice issued by Commissioner-III (Ops), BRA u/s 52(1) of the Act on 10-9-2024 and two subsequent reminders issued on 15-10-2024 & 31-10-2024, nor attended the adjudication process and hearings scheduled on 25-9-2024, 30-10-2024, and 15-11-2024. In view of this persistent non-compliance behavior of the Petitioner, the impugned order was announced on 10-01-2025 by the learned Commissioner-III (Ops). The learned Counsel for the Respondent, however, expressed his ignorance on the receipt of any proper reply and the Withholding Certificate issued in reference to the SCN and/or during the proceedings. The learned Counsel for the Respondent reiterated that the registered person (the Petitioner) has violated the Act and the Rules.

9. We have gone through the contents of the impugned order issued by the learned Commissioner-III (Ops), the application for granting stay, the petition for appeal, the documents attached to these, and additional information & documents submitted by the learned Counsel for the Petitioner during the hearing by this Tribunal. We also took guidance from the relevant provisions of the Act, the Rules, and the decisions of the Tribunals and honorable courts in similar matters. Arguments of the two sides were heard, accordingly. The nucleus of this appeal is the question whether the

Respondent has violated section 10(1) read with sections 3(1), 18(1), 19(1), and 35(1) of the Act and the Rules or not? Secondly, is this case a case of a double-jeopardy?

10. The Petitioner, National Logistic Corporation, is holder of BNTN:9013102-9 and registered with BRA under tariff heading-9824.0000 for classification "construction services" (Second Schedule of the Act). Being a registered person, while providing a construction service to a service recipient, he provides taxable services and is bound to furnish a true, correct, and properly filled-up return in a prescribed and notified manner (BSTS FORM-03). The tax return should indicate the tax due and paid during a tax period and such other information or particulars as may be notified by the Authority. Further, the tax return in prescribed manner filed by a person who is only obliged to deduct, or withhold tax, shall be treated as a return of that person, provided that such a statement shall not be substitute for the return required to be filed by a person providing a taxable service.³ In this particular case the Petitioner/registered person provided construction services to the Project Director, C&W Department as a service provider. The construction service is a taxable service, therefore, the registered person/the petitioner cannot absolve his obligations under the Act as a taxpayer. Section-2(168) defines the Taxpayer as follows:

"Taxpayer" means any person who, in the course of an economic activity, provides taxable services for consideration and includes any person who is liable or is paying tax or any sum under the Act or rules made thereunder;"

11. Record of the case reveals that the Petitioner provided construction services to the service recipient (Project Director, C&W Department) during the tax period 2019-20. It was found that neither the Petitioner discharged his obligation as the registered person/service provider u/s 11(1), nor the C&W Department as the service recipient deducted/withhold and deposited the liable tax to the government exchequer. It was only when the government Audit Team observed during 2021-22 that the service recipient Department failed to deduct/withhold Rs 7,930,000/- BSTS from the bills of the Petitioner and did not deposit the amount to government exchequer during the tax period 2019-20. Later-on, as an audit observation compliance, the service recipient deducted the liable tax from the subsequent bills of the Petitioner and deposited to government accounts. Despite the fact that the liable tax amount, as observed by the Audit Team, has been deposited in the public exchequer, the Petitioner as a taxpayer has not filed the required return under section-35. In our considered opinion, the assessment of liable tax in this case u/s 24 of the Act is yet to be made by competent officers of the Authority (BRA) after having examined the tax returns for the tax period (s) during which this service provider (the Petitioner) provided taxable services to the Road Divisions of C&W Department (the service recipient).

12. Above discussion in sight, the position of the Appellant that the SCN (erroneously mentioned as OIO in the appeal) issued by the Respondent u/s 51 (1) (not u/s 52(3) as stated in the appeal) is bad in law and against facts and circumstances, is not maintainable. Section-51 (1) reads as follows:

³ Chapter-VI of the Act.
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“52. Recovery of the Tax not Levied or Short-levied.—(1) Where by reason of inadvertence, error, misconstruction, or for any other reason, any tax or charge has not been levied or has been short levied, the person liable to pay such amount of the tax or charge shall be served with a notice, within five years from the end of the financial year to which the relevant tax period relates, requiring him to show cause for payment of the amount specified in the notice.”

The SCN was issued by the Respondent on 10-9-2024 (that is, within the imposed time limit of 5 year from the end of financial year to which the tax period relates—from 30 June 2000). On 15-10-2024 first reminder was issued and on 31-10-2024 the second reminder. In response, the Petitioner, on 04-11-2024, sought extension in time for submission of reply to the Notice till 02-12-2024. The request for extension in time was not accepted, wholly. The learned Counsel submitted before this Tribunal a letter of the Respondent dated 11-11-2024 allowing 15 days for adjournment by fixing the next date of hearing on 26-11-2024. During the adjudication, adjournments are granted under rule 154 of the Rules, which is reproduced as follows:

“154. Adjournments.—Adjournments shall be given only in such situations

Where request thereof has been made on genuine and *bonafide* grounds. The

frivolous requests for adjournments aimed at avoiding early or timely conclusions

of adjudication shall be declined by recording reasons.”

Additionally, three notices were issued for holding proper hearings on 25-9-2004, 30-10-2024, and 15-11-2024, but the Petitioner opted for non-appearances. The Petitioner submitted additional documents to his Petition to Appeal before this Tribunal containing a letter of Project Director, C&W Department dated 12-7-2024 addressed to the Respondent requesting that instead of issuing notices to his office for STS recoveries, notices be issued to the contractors (the registered persons) as per law. The additional documents also included a Withholding Certificate issued on 05-11-2024 by the office of the PD certifying that Rs. 7,930,000/- have been deducted from eight running bills (four each of the two road packages assigned to the Petitioner under the project). These additional documents could have been presented before the learned Commissioner-III (the Respondent) and their only option was to be absent.

The Petitioner has not pleaded any lawful point for non-compliances as mentioned above, which shows his deliberate negligence towards compliance of the law as a registered person. This clearly establishes existence of “*mens rea*” (Latin for “guilty mind”). Strictly speaking in legal terms, for civil consequences (like penalties and default surcharge under tax laws), the prosecution is not required to establish existence of “*mens rea*” and failure to make compliances under the law is sufficient for imposing penalties and default surcharge⁴. In this case, therefore, the penalty, imposed u/s 45 and default surcharge u/s 49 of the Act, by the Respondent, are lawful.

Thus, the learned Commissioner-III (Ops) on the basis of available record announced his judgment on 10-01-2025 (the impugned order) and declared that the Petitioner has short paid BSTS and

⁴ High Court of Sindh in SSTR 191/2018 and Peshawar High Court in STR 25/2024.
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violated and contravened section 10(1) read with section 3(1), 18(1), 19(1), and 35(1) of the Act. We have carefully read these provisions, as well as, section-154 of the Act, and opine that there are no evidences for holding adjudication in a summarily manner and that the impugned order holds the ground strongly. Therefore, the impugned order is as per provisions of the Act.

13. As regard to the second question as to whether issuing of notices and adjudication in a case when BSTS liability of a service provider has been already been withhold/deducted and deposited to the provincial exchequer by the service recipient government department (withholding agent⁵) tantamount to be a double-jeopardy? As it is known that withholding of taxes (both income tax and sales tax) are fundamentally an administrative tool for the tax administration to ensure optimal, efficient, and effective tax collection for welfare of people and for running a government. Therefore, it does not absolve a taxpayer/service provider from filing his/her tax returns, in a proper manner, under the Act. Both the withholding agent and the service provider have their separate obligations. Withholding agent for BSTS under the Act and the Rule have an obligation to withheld/deduct a portion of the sales tax (1/5 of the total BSTS under the Act and the Rules) at source and remit it to the public exchequer. Whereas, the service provider is still responsible for filing of his own sales tax return on the prescribed form of BRA declaring total sales/services, calculating their BSTS liability, and account for any BSTS already withheld by their clients (service recipients). Such withheld BSTS are claimable as an adjustment or credit against total BSTS dues by end of the tax year or final tax return. Since BSTS is an indirect tax and ultimately payable, in real terms, by the end-consumers, avoidance of BSTS returns by registered persons of BRA is uncalled for. During the entire adjudication no element of double-jeopardy is observed by this Tribunal. We have, therefore, consensus on declaring the Petitioner as a violator of the provisions of the Act as rightly ordered by the learned Commissioner-III, BRA in the impugned order.

14. The Petitioner, in his appeal has challenged the *ex-parte* impugned order pronounced by the learned Commissioner-III (Ops), BRA. Circumstances of this impugned order has been explained in detail in paragraph-12 of this judgment. Several court judgments have addressed the validity and correctness of *ex-parte* decisions, by emphasizing procedural fairness while acknowledging circumstances where such orders are legally justified.⁶ In the instant case notices have been issued properly as per provisions of the Act and opportunities have been provided to the Petitioner to plead his case before the Respondent but same were not availed by him.

15. Above in view, the instant petition for appeal is dismissed along with the application for grant of stay with the following directions to both the parties:

- i) Arrears of BSTS as due for rendering construction services to Project Director, Dirgai Shabozai (N-70) to Taunsa Sharif (N-55) Road Project may be reassessed u/s 24 of the Act while considering deductions already made during execution of the relevant contract packages of the project;

⁵ see Rule 1(2)(a) of Balochistan Sales Tax Special Procedures (Withholding) Rules, 2018

⁶ PLD 2016 Supreme Court 581; 2020 SCMR 1629; PLD 2018 Lahore 1; 2019 MLD 1557 (Sindh HC); PLD 2015 Peshawar 12

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- ii) The penalty and surcharge as per section-48 & section-49 of the Act to be calculated and conveyed to the Petitioner;
- iii) The Petitioner shall assist the Authority in the tax assessment as per the law by providing all information, documents, and explanations;
- iv) The Petitioner shall pay the arrears (the tax due and other payables) by depositing the same in the provincial exchequer in the prescribed manner;
- iv) The Respondent and the Authority shall not use any coercive action against the Petitioner during the tax assessment, payment of the arrears and submission of a final report to this Tribunal, and
- v) The Respondent shall submit the final report by 20-7-2025 to Registrar of this Tribunal for our perusal.

Announced

Dated: the 3rd July, 2025

— sd —

Chairperson

— sd —

Member

— sd —

Member