BALOCHISTAN SALES TAX ON SERVICES

APPELLATE TRIBUNAL, QUETTA

Sales Tax Appeal No. 43, 44 & 61/2024

M/S CAMEOUS Consultants, Quetta

Versus

The Commissioner (Operations), Balochistan Revenue Authority, Quetta

ORDER

Date of hearing: 14.7.2025 | Announced on: 14.7.2025

Appellant by: Mr. Mohammed Ilyas, Advocate

Respondent by: Mr. Wasil Jan, Advocate

DOSTAIN KHAN JAMALDINI, MEMBER: The appellant, having BNTN: 2522032-2 registered with the Balochistan Revenue Authority (BRA) under tariff heading 9815.5000 (Technical, scientific and engineering consultants), has impugned STS Orders-In-Original (hereafter referred as the impugned orders), being of similar nature but pertaining to different Tax periods of verism Years (hereafter for a single year TY and for more TYs), issued by learned Commissioner-III (Operations), BRA (the Respondent), bearing numbers and dates, respectively, as follows:

i No. 04/2024, dated 19th August, 2024, pertaining to TY 2021-22

ii No. 05/2024, dated 19th August, 2024, pertaining to TY 2016-17, and

iii No. 25/2024, dated 06th November, 2024 (rectified on 29th November, 2024), pertaining to TY 22-23.

2. Above impugned orders, through the instant appeals, have been assailed under section-67 of the Balochistan Sales Tax on Services Act, 2015 (the Act) with the following grounds and, accordingly prayed, for their dismissal:

i The tax arrears (short-paid sales tax and penalties) are not legally tenable as the Balochistan Development Authority (the service-recipient) assigned the services to the Appellant, through two different work orders during the months of May and July of fiscal year 2011-12, which predate the enforcement of the Act, i.e., from 1st Day of July, 2015;

ii Two impugned orders (Sr Nos i & iii of paragraph-1 of this Order) related to BDA work orders issued on 6th May, 2011 for provision of services for detailed designing and detailed supervision of the project "construction of Zhob Mir Ali Khel, Kajuri Kach (length 91+000 KM)" have been issued beyond legal jurisdiction of the

Respondent as these serves have been rendered in the Tribal Area of Balochistan (Zhob), which is exempted from taxes under the laws of Pakistan[1];

iii The registration classification of the Registered Person, i.e. the Appellant, mentioned in the Show Cause Notices and that in the impugned orders, are inconsistent; therefore, they are legally defective and have caused him serious prejudice; and

iv There are various other illegalities, irregularities and improprieties in these impugned orders.

3. Learned Counsel of the Appellant, during the proceedings, reiterated his position and relied on the judgment of Honorable Supreme Court of Pakistan in Civil Appeal No. 24 of 2015 (M/S Pakistan Telecommunication Company Ltd versus Collector of Customs, Karachi) and order of Honorable High Court of Balochistan in C.P. No. 2026/2022 (M/S Sara Enterprises Government Contractor versus Secretary Finance, Government of Balochistan and others) on question of prospective or retrospective application of the law. However, in support of his arguments on exemption of BSTS in tribal areas of Balochistan, including Zhob, he submitted no evidence.

4. Learned Counsel of the Respondent objected the grounds of appeal and affirmed that the impugned orders have been issued in accordance with the provisions of the Act and no law has been violated in the adjudication by the Respondent. Regarding exemption of the tribal areas from BSTS he informed that this provision of section 1 (2) of the Act was omitted by the Balochistan Sales Tax on Services (Amendment) Act 2019 (II of 2019) assented on 3rd January, 2019 hence exemption to tribal area included stood withdraw from 3.1.2019 after becoming taxable and no specific notification, for exempting was once issued by the Authority under section 12 of the Act.

5. We have heard both the parties, examined the case record in light of the provisions of the Act and took guidance from court orders and judgments on similar points. Two fundamental questions emerge in these three petitions, *viz.* (i) what is/are tax-point(s) at which liabilities have occurred legally in these cases under the Act? and (ii) what would be the relationship of these tax-points on Zhob being an exempted area from BSTS?

6. Some of additional facts related to these matters are as follows:

i The petitioner, during the financial year 2010-11, got two work orders/award of works on 6th May, 2011 and 6th June, 2011from Balochistan Development Authority (BDA) for rendering consultancy services in execution of two projects under Public Sector Development Program (PSDP), namely, "Construction of Zhob Mir Ali Khel-Kajuri Road 91 KM" (later revised by enhancing cost and renaming as "Construction of Remaining Works of ICB-5 I.E Zhob Mir Ali Khel-Kajuri Road 91 KM, Zhob &

[1] The second BDA work order, dated 6th June 2011, pertains consultancy services for detailed designing of project "construction/black topping of road from Ziarat Cross to Saraghurgai, Quetta.

Sherani") with Project ID Z2010.0845 and "Construction/Black Topping of Road from Ziarat Cross to Saraghurgai, Quetta" (later revised by enhancing cost and renaming as "Construction of Black Topping of Road from Ziarat Cross to Sharan Tangi, Quetta" Length 11+234 KM) with Project ID Z2010.1016;

ii The road project in Zhob-Sherani districts initiated during 2010-11 was completed during 2024-25; whereas the works on the road project of Quetta are still on-going;

iii Under Article 246(b)(ii) of the Constitution of Islamic Republic of Pakistan, Zhob district used to be part of Provincially Administered Tribal Area of Balochistan. This was so immediately before the commencing day of the Constitution;

iv The Federal Legislature, through 25th Constitutional Amendment, 2018, added a new paragraph (d) in Article 246(b) declaring merger of the Tribal Areas of Balochistan into province of Balochistan from the commencing day of the amendment. Also, Article 247 (Administration of the tribal Area) was omitted. This was assented by the President of Pakistan on 31st May 2018 and notified on 4th June 2018;

v The authority of the provinces to legislate Sales Tax on Services was clarified and declared by adding the words, "except sales tax on services" in the entry 49 of the Part-I of the Federal Legislative List by the Federal Government Act No. 10 of 2010 from commencing day of 18th Constitutional Amendment, assented by the President on 19th April 2010 and notified on 20th April 2010;

vi Consequently, the federating units enacted sales tax on services laws. Balochistan Sales Tax on Services Act, 2015 (the Act) was passed by Balochistan Provincial Assembly on 25th June, 2015 and assented by the Governor on 3rd July 2015 by repealing Balochistan Sales Tax on Services Ordinance, 2000 (II of 2000) (the Ordinance);

vii Earlier, the Ordinance was notified on 29th June, 2000 by the Governor of Balochistan on the instructions of the then Chief Executive of Pakistan,

viii The Ordinance exempted the tribal areas of Balochistan from sales tax on services, and

ix Initially, the Act too had a provision for exemption of BSTS for the erstwhile Tribal Areas of Balochistan from its effective date, i.e. from 1st July 2015; however, in view of the 25th Constitutional Amendment (i.e., merger of the Trible Areas into the province of Balochistan), same was omitted through Balochistan Sales Tax on Services (Amendment) Act 2019 (II of 2019), for which a bill was passed on 24th December 2018, assented by the Governor on 3rd January 2019 and notified on 15th January 2019;

7. Above sequential facts answer to the question two, that is, the sales tax on services was exempted in erstwhile Tribal Areas of Balochistan from 20th April, 2010. These areas of PATA existed as such in the territorial framework of the Federation but later merged with the province of

Balochistan from the commencement day of the 25th Constitutional Amendment (i.e. from 31st May 2018). Thus, constitutionally speaking there were no "Tribal Areas" of Balochistan upto 31st May 2018. The BSTS (Amendment) Act 2019, however, didn't omit the words "except Tribal Areas" from section 2 of the Act, retrospectively, from 31st May 2018. Hence, this lacuna and gap seems to have been created. Nonetheless, in line with several judgments of our honorable courts on constitutional amendment timeline viz-a-viz respective provincial legislative changes we consider applicability of the Act in the erstwhile Tribal Areas of Balochistan from 15th January 2019. In *Mustafa Impex v. Federation of Pakistan (PLD 2016 SC 808)* the Honorable Supreme Court of Pakistan laid down the principle, in light of which it can safely be construed that the provincial laws do not automatically extend to tribal areas with effectiveness of the 25th Constitutional Amendment. without express legislative action.by the provincial Assembly in *Engro Polymer v. Federation of Pakistan (2016 SMR 1179)* another principle related to tax laws was laid down stating that, unless the legislature explicitly provides retrospectively, the tax laws are presumed prospective. The 2019 Amendment in the Act uses phrase "*deemed to have come into force on and from the first day of July 2019*" show clear intent of legislature not to make it retrospectively despite 25th Constitutional Amendment and let the exempted status of its tribal areas continue till the commencement date of 2019 Amendment of the Act. In *Collector of Customs v. S.S. Industries (2000 SCMR 286)*, the honorable court held that a "deemed" effective date applies prospectively from the specific date, not earlier periods, unless the text shows contrary intent of the legislature. As regards ambiguities in applicability of tax laws, in *Commissioner Inland Revenue v. Pakistan Industrial Credit (reported in 2019 PTD 30)*, it is held that that in such situation the matter be resolved in favor the taxpayer/registered person as the revenue authority bears the burden to prove taxability. Thus, in this context, we arrive to a conclusion that no tax liability, under the Act, arises before 15th July 2019 in the tribal areas of Balochistan, however, they are subject to BSTS from 1st July,2019. Thus, the impugned Orders, mentioned at serial I & iii of paragraph 1 of this Order are lawful as far as applicability of the Act in the erstwhile Tribal Areas with effect from 15th July 2019 is concerned in Zhob-Sherani. The third impugned Order is not relevant to this discussion being related to services provided during execution of a project in Quetta district from the commencement date of the Act.

8. For question one, we probed to determine **the tax point/tax event** in these matters, which attracts taxability. Since BSTS was taxable only on certain types of services as enumerated in the Schedule of the Ordinance excluding services provided or rendered by professionals and consultants from the commencement date of the Ordinance, the Petitioner was not liable to the tax during the operation of the Ordinance of 2000. However, the Act of 2015, after repealing the Ordinance, made the services provided or rendered by professionals and consultant taxable under tariff heading 98.15 and, relevant to the Petitioner the tariff heading 9815.5000 (tech[illegible]al, scientific and engineering consultants). Thus, registered persons who are registered under this tariff

heading and carry out an economic activity are liable to pay BSTS under the provisions of the Act and the Rules. In view of above discussion, the Petitioner, being a registered person, has to act in accordance with the law even for services rendered or provided in the erstwhile Tribal Areas but only from 1st July,2019, when such areas were merged with the Balochistan Province through 25th Constitutional Amendment.

9. In all three petitions, it was contended that since the Work Orders were issued by the service-recipient (BDA) for designing and execution of the two projects during 2011, the services provided/rendered stand exempted from BSTS being predated to application of the Act from 1st July 2015. This way, for the Petitioner, the tax-point/tax event is the issuance of the Work Orders, however, in support of this argument he failed to convince us legally.

10. While dilating on this aspect of the case (tax-point/tax event which attracts taxability), we refer to section 3 of the Act, which is reproduced as under:

> "**Taxable Service.**--(1) subject to such exclusion as mentioned in Second Schedule, a taxable service is a service listed in Second Schedule, which is provided by a person from his office or place of business in Balochistan in the course of an economic activity, including the commencement or termination of the activity."

Likewise, we draw attention to section 6 of the Act, which states:

> "**Economic Activity.**--(1) An economic activity means any activity carried on whether continuously, regularly or otherwise by a person that involves or is intended to involve the provision of services to another person and ....
>
> ....
>
> (2) Anything done or undertaken during the commencement or termination of an economic activity shall be construed as part of the economic activity."

Furthermore, section 9 of the Act brings more clarity on tax-point/tax event relevant to this case. This section is reproduced as follows:

> "**Provision of Services Over a Period of Time.**--(1) Where a service is provided over a period of time and payments for the same is made on periodic basis, the service shall be treated as comprising two or more separate and distinct services each corresponding to the part of the service to which each separate part of the consideration relates."

Upon reading of the Awards of Work (the Work Orders), annexed with the Petitions, it can be seen that these are communications from the service recipient (BDA) to the service provider (the Petitioner) accepting offer of the later and directing the Petitioner "for getting of further instruction for starting and execution of work, and completion/Signing of contract documents/list ....as required under the rules." Relevant to this are interpretations under section 2(a) to (d) of The Contract Act, 1872, which are stated below:

> "(a) When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal:
>
> (b) When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted becomes a promise:
>
> (c) The person making the proposal is called the "promisor," and the person accepting the proposal is called the "promise":
>
> (d) When, at the desire of the promisor, the promise.... has done........, or promise to do....... something, such act.... or act is called a consideration:
>
> (e) Every promise and every set of promises, forming the consideration for each other, is an agreement:"

The ibid Act is the fundamental law for all contracts/agreements in Pakistan. This in view, the Awards of Works issued by BDA (the promisor) to the Petitioner (the promise) for rendering certain consultancy and engineering services is just a promise, as defined/interpreted in the *ibid* Act, not a tax-point/tax-event. Issuance of an award of work is one of the phases of bidding process, which starts from bid announcement and terminates at signing an agreement with the selected bidder, after evaluating all received bids and accepting the best bid proposal, with due process as prescribed in the law. A bidding process, thus, in itself is not an economic activity subject to some taxation, but is a procedural step towards winning a contract to render a service or group of services, as the case may be. However, the underlying transaction (consideration) facilitated by the bidding process (e.g., provision of services) is an economic activity. Under provisions of the Act, BSTS is levied on the taxable services in the course of furtherance of a business when services are rendered at a single point of time or over a period of time. Therefore, the tax-point/tax-event is when a service has been rendered and an invoice is generated.

11 We have carefully gone through the contents of the two law cases, submitted by the Counsel for the Petitioner during the proceedings, and found that the facts and circumstances of those two disputes match with the case in hand. Rather, the impugned orders are well in line with the opinion reflected at para 3 of the Order of the Honorable High Court of Balochistan, in M/S Sara Enterprises, regarding application of charging section of the Act, i.e., section 3. In PTCL, the Honorable Supreme Court, on the basis of the doctrine of rebuttal presumption (procedural law) versus irrebuttable presumption (substantive law), held that the appellant (PTCL), after submitting the required evidences, was entitled to claim refund of custom duty paid, retrospectively (as same has not been passed on fully or partly by way of sale in the market),

from the commencement date of insertion of section 19A in the Customs Act 1969 through Financial Act 2005 as the new insertion in the Custom Act contained rebuttable presumption falling in the realm of procedural law of evidence. The apex Court further held that the substantive law for refund of custom duty is section 33, which at the time of refund claim did not expressly require a claimant to show that the incidence of the paid custom duty has not passed on to the buyer as part of the price of the imported goods; therefore, any amendment in this section would have force only prospectively under principal of irrebuttable presumption. The Court referred to its earlier judgment reported in 2005 PTD 2286 (M/S Fecto Belarus-Tractor v. Government of Pakistan), which was decided on the principle of fair play and equity while applying common law doctrine of unjust enrichment. In *Fecto Belarus*, it was declared that an indirect tax (in our case BSTS) cannot be pocketed by a registered person when same has already been passed on to buyer. The principle of passing on the burden of indirect tax has nexus with doctrine of unjust enrichment, according to which windfall gains are prohibited to a person in respect of an amount, which is not owned by him nor he has sustained any loss in respect thereof. In the present case, the Petitioner cannot benefit legally from these important case laws, which go against his own standings.

12 Above analysis in view, the claim of the Petitioner that winning a contract in 2011 does not attract BSTS, has no legal standing. Since 2011, they have been rendering services, under the two contracts, and all taxable services that they have rendered from 1st July, 2019 for the road project in Zhob-Sherani (i.e., from the commencement day of Amendment Act 2019 and for the road project in Quetta from 1st July 2015 (i.e., from the commencement day of the Act) are subject to BSTS. As regard to the inconsistencies in the impugned show cause notices and orders, these are clerical mistakes and need not to be elaborated much. Nonetheless, the Respondent is directed to make correction of these clerical mistakes as required under section 81 of the Act.

13 All three impugned orders are upheld as we see no infirmity therein and appeals filed by the appellant are dismissed with no cost.

<u>Announced</u>

Dated: the 14 July, 2025

— sd —
Chairperson

— sd —
Member

— sd —
Member