

THE BALOCHISTAN SALES TAX ON SERVICES
APPELLATE TRIBUNAL QUETTA.

Sales Tax Appeal No.49 of 2024
(M/s Pioneer Cables Limited,
RCD Highway Hub, Balochistan.
versus
Commissioner II, Balochistan Revenue Authority, Quetta.

ORDER

Appellants by: Mr. Sufiyan Zaman Adv

Respondents by: Mr. Wasil Jan Adv

Date of hearing: 14/07/2025

Date of Order: 16/07/25

SAIF ULLAH KHAN, MEMBER- The above titled Sales Tax Appeal has been filed by the appellant calling in question, the order-in-original No.9/2024-2025 dated 30.10.2024, passed by the learned Commissioner II of the Balochistan Revenue Authority ('BRA'). In the impugned order the Commissioner has imposed penalty of Rs.5,709,200 under section 48(2) of the Balochistan Sales Tax on Services Act, 2015 ('Act') on the ground that the appellant has failed to file withholding statements in violation of section 35 of the Act. Notice under section 48 of the Act was issued to the appellant on 05-03-2024 which was followed by a couple of reminders. In response the appellant contended that although it's factory is located at RCD Road Hub but it has not provided or received any services in Balochistan hence it is neither required to get registered with the BRA nor liable to file return of sales tax on services or statement of withholding taxes. The Commissioner did not agree with said contention on the

grounds that the appellant has received services in Balochistan hence liable to withhold sales tax on such services and file statement of such withheld amount. The commissioner accordingly imposed penalty. Being aggrieved with the impugned order-in-original the appellant has come up in appeal to this Tribunal.

2. The relevant facts for disposal of instant appeal are that the appellant having BNTN:0711658-6 is registered with the BRA as a "withholding agent" under sub-rule 2 of Rule 1 of the Balochistan Sales Tax Special Procedure (Withholding) Rules, 2018 ('Rules') read with sections 14 and 25 of the Act. Accordingly, the commissioner was of the view that appellant was required to file monthly withholding statements under section 35 of the Act. However, record showed that the person has failed to file its monthly withholding statements. Penalty proceedings were initiated and ultimately impugned order was passed.

3. On behalf of the appellant, Mr. Sufiyan Zaman Adv appeared who contested the case and stated that the appellant was prevented from filing of withholding statements due to blocking of BRA online portal for the appellant over the dispute regarding payment of Balochistan Workers Welfare Fund which matter has been stayed by the Islamabad High Court. He further explained that prior to that the appellant was regularly filing withholding statements. The appellant further contended that it is conducting its business activities through head office which is located in Sindh and it got registered with Sindh Revenue

Board ('SRB') for paying sales tax on services. Since the appellant was neither receiving nor providing any service Balochistan hence it was not required to file monthly return of Balochistan sales tax on service or withholding statements. The learned counsel accordingly challenged penalty imposed on the basis of said facts and prayed for setting aside the impugned order.

4. Mr. Wasil Jan Adv learned counsel appearing on behalf of respondent supported the order of the learned Commissioner and stated that the appellant failed to file withholding statements for the months of June 2020 to February 2024 despite ample opportunity of being heard. Therefore, the learned commissioner was justified to pass impugned order to impose penalty. He also contended that it is illogical that despite running factory at Hub the appellant is neither providing nor receiving services in Balochistan.

5. We have gone through the impugned order of the Commissioner, examined the relevant provisions of law and relevant record and considered arguments of both the parties. The crux of the matter involved in the instant appeal is whether the appellant was required file returns / withholding statements with the BRA as a service provider or as service recipient/ withholding agent or not.

6. It is admitted fact that the appellant has factory at RCD Road Hub and is registered with the BRA as withholding agent. It is also admitted that the appellant has statedly deducted sales tax on services in Sindh and paid such tax to

SRB. The learned commissioner has imposed impugned penalty for failure to file withholding statements. Although the appellant has admitted non filing of said statements due to technical hurdles in filing. But we find that both the learned commissioner and the appellant have misread the Act and Rules.

7. Before deciding the appeal, we deem it appropriate to reproduce sections 2(148), 3(5) and 4(1)(2)(3) of the Act as under:

“2(148) “Service Provider” means a person who is engaged in the provision or providing of service or services in the course or furtherance of any economic activity;”

“3(5) For purposes of this Act and the rules, providing of service shall, where the context requires, include rendering, supply, initiation, origination, execution, reception, consumption or termination of service whether in whole or in part.;”

“4. Application of Principles of Origin and Reverse Charge in Certain Situations. - (1) Where a person is rendering or providing taxable services in Province other than Balochistan but the recipient of such services is resident of Balochistan or is otherwise availing such services in Balochistan and has charged tax accordingly, the person providing such services shall pay the amount of tax so charged to the Government.

(2) Where the recipient of a taxable service is person registered under the Act, he shall deduct the whole amount of tax in respect of the service received and pay the same to the Government.

(3) Where a person is rendering or providing taxable services in more than one provinces or territory in Pakistan including Balochistan, such person shall be liable to pay tax to the Government to the extent the tax is charged from a person resident in Balochistan or from a person, who is otherwise availing such services in Balochistan."

8. When read together the above provisions of the Act, the appellant qualifies both as service provider and as a withholding agent. The appellant is required under section 25 of the Act to get registered with BRA both as a service provider and as a withholding. The appellant was also required to file both return of sales tax and withholding statement as per section 35(1) of the Act. But the appellant has opted just to get registered as a withholding agent and file withholding statement under section 35(1A) of the Act which applies to those persons who are only withholding agents. Both the appellant and the commissioner are directed to follow the provisions of the Act referred in Para 7 above.

9 As far as imposition of penalty is concerned the learned Commissioner has not conclusively determined that the appellant was required to withhold tax and file withholding statement. If tax was liable to be deducted but the withholding statement was not filed then the appellant was liable to penalty. In that case too penalty is imposed as a deterrent against non-filing but penalty can never be made a source of revenue generation. The Supreme Court of Pakistan has consistently held that penalties are not a source of revenue. They are imposed as a consequence for violating the law or failing to meet obligations, and are not intended to generate income for the government. Further the Apex Court has also held that penalty is always dependent on the amount of tax payable under the law. We are supported in our view by the Honorable Supreme of Pakistan judgement reported as 2019 PTD 2072 besides ^{hr}may other decisions of the superior courts.

10. In the light of above discussion, the order of the learned commissioner is modified and amount of penalty is reduced to Rs.5,000 per tax period from June 2020 till June 2023 and Rs.10,000 per tax period from July 2023 till February 2024.

Announced
Dated, the 16/07 2025.

— sd —

Chairperson

— sd —

Member

— sd —

Member