

THE BALOCHISTAN SALES TAX ON SERVICES
APPELLATE TRIBUNAL QUETTA.

Sales Tax Appeal No.02 of 2024
(M/s National Highway Authority,
Regional Office, Airport Road, Quetta.
versus
Commissioner Operations Balochistan Revenue Authority Quetta.

ORDER

Appellants by: Mr. Shahzia Ilyas ACA
Mr. Muhammad Haroon khan Adv

Respondents by: Mr. Wasil Jan Adv

Date of hearing: 14/07/2025

Date of Order:

JUSTICE (R) NAZEER AHMED LANGOVE, CHAIRMAN. The above titled Sales Tax Appeal has been filed by the appellant calling in question, the order in original No.17/2024 dated 03.01.2024, passed by the learned Commissioner Operations ('Commissioner') of the Balochistan Revenue Authority ('BRA'), Quetta under section 52(6) of the Balochistan Sales Tax on Services Act, 2015 ('Act') wherein the appellant has been required to pay Balochistan Sales Tax on Services ('BSTS') amounting to Rs.5,256,018/- which was deducted while making payment to service provider M/s Associated Consulting Engineers registered with BRA vide BNTN No.B0709753 ('service provider'). The Commissioner has also charged 5% penalty amounting to Rs.262,800/- under section 48 serial No.3 of the Act. The appellant, being aggrieved with the impugned order passed by the Commissioner has come up before this forum in terms of section 60 sub-section (2) of the Act. The appellant has taken following grounds of appeal:

1. *That the Order-In-Original No.17/2024 dated January 03/2024 issued by the learned Commissioner (Operation) Balochistan Revenue Authority, Quetta under Section 52(6) of the Balochistan Sales Tax on Services Act 2015 is bad in law and in the circumstances and facts of the case and thereby illegal null and void.*
2. *The learned Commissioner (Operation) Balochistan Revenue Authority, Quetta has erred in issuing the Notice No BRA/AC/OPS/23-24/421 Dated September 22,2023 and the impugned order dated January 3, 2024 under Section 52(6) of the Balochistan Sales Tax on Services Act 2015 for the Tax Period July 2017 through June 2018. Which is Barred by time under the provisions of Section 52(1) of the Balochistan Sales Tax on Services Act 2015 (Reema industries-Lahore High Court -Judgment on Time Limitation).*

3. Without prejudice to Above Grounds of Appeal

- 3.1 *The learned Commissioner (Operation) Balochistan Revenue Authority Quetta has further erred in requiring your appellant to pay Balochistan Withholding Seles Tax which Action is contrary to the provisions of Article 165 of the Constitution since your Appellant falls under the Communication Division of the Federal Government in terms of Article 99 of the Rules of Business,1973.*
- 3.2 *The learned Commissioner (Operation) Balochistan Revenue Authority Quetta has Further erred in requiring your Appellant to pay Balochistan Withholding Sales Tax which action is contrary to the provisions of Article 77 and Article 142(a) & (c) of the Constitution read with Serial No.34 and Serial No.59 of part 1 of the Federal*

legislative list since majlis-e-Shoora has exclusive powers to make laws in respect of your Appellant.

3.3 The learned Commissioner (Operation) Balochistan Revenue Authority Quetta has further erred in requiring your Appellant to pay Balochistan Withholding Sales Tax which action is contrary to the judgments of the Honorable Supreme Court of Pakistan in 2017 SCMR 1344 dated May 29,2017.

3.4 The Learned Commissioner (Operation) Balochistan Revenue Authority Quetta has further erred in requiring your Appellant to pay Balochistan Withholding Sales Tax without appreciation of the fact that the action of Associated Engineering Consultants of charging Balochistan Seles Tax on Services on its invoices issued to your appellant puts the burden of Balochistan Sales Tax on Services on your Appellant which act is contrary to the provisions of article 165 of the Constitution of Islamic Republic of Pakistan.

3.5 The learned Commissioner (Operation) Balochistan Revenue Authority, Quetta has further erred in levying penalty under section 48 of the Balochistan Sales Tax on Services Act 2015 against the facts and circumstances of the case.

4 Your Appellant craves leave to add to, amend or alter the above grounds of appeal.

2. The relevant facts for disposal of instant appeal are that the appellant is a body corporate established under section 3 of the National Highway Authority Act, 1991, being assigned the task of planning, development, operation, repair

and maintenance of National Highways and strategic roads throughout the country. The Commissioner observed from the data of withholding taxes that the appellant has failed to pay BSTS deducted from the service provider while making payments on services received. The Commissioner issued notice dated 22-09-2023 under section 52(6) of the Act which was followed by a couple of reminders. In response the appellant filed replies dated 24-10-2023 and 08-11-2023 wherein it has been explained that since the appellant is a Federal Government Authority hence, it is not liable to BSTS deducted from service provider in view of Article 165 of the Constitution of the Islamic Republic of Pakistan ('Constitution'). The Commissioner did not agree with the contention of the appellant on that the appellant had deducted BSTS from the service provider but did not pay to the BRA whereas the service provider had claimed said amount while filing returns. The Commissioner accordingly rejected the contention of the appellant and passed the impugned order wherein the appellant has been required to pay the amount withheld from the service provider.

3. On behalf of the appellant, case was argued by MS Shahzia Ilyas and Mr. Muhammad Haroon khan Adv who contested the case mainly on three grounds i.e. Article 165 of the Constitution of the Islamic Republic of Pakistan, decision of the Apex Court in the case of Civil Aviation Authority reported as 2017 SCMR 1344 = (2020)122 TAX 467 and the impugned order barred by limitation in terms of provisions of Section 52(1) of Act.

4. The learned counsel contended that the appellant being a Federal Government Authority is covered under Article 165 hence she is not required to

pay BSTS withheld while making payments to service provider because the appellant herself is consumer of such services.

5. The learned counsel relying on the decision of the Apex Court reported as 2017 SCMR 1344 = (2020)122 TAX 467 further contended that it has been held that the Federal Government Authorities are not liable to pay provincial taxes.

6. The learned counsel while concluding her arguments contended that the impugned order is also barred by limitation in terms of Section 52(1) of the Act because for tax periods from July 2017 to June 2018 show-cause notice could be issued within 5 years from the end of financial year 2018.

7. Mr. Wasil Jan learned counsel appearing on behalf of respondent supported the order of the learned Commissioner and stated that the appellant having deducted BSTS while making payments to the service provider was liable to pay it to the BRA. The learned counsel also stated that the learned Commissioner detected from the data of the service provider that the appellant has deducted whole amount of BSTS while making payments to service provider but the appellant did not pay deposit the said deducted amount into the government exchequer therefore proceedings under section 52(6) were initiated by the Commissioner. The learned counsel further contended that Article 165 exempts income and property of Federal Government Departments/Authorities from Provincial taxes but said Article does not extend such exemption to their responsibilities as withholding agent while making payments to service providers who are not exempt from provincial taxes. He further contended that if

contention of the appellant's counsel is accepted then all the Federal Government Departments/Authorities will not be required to withhold provincial taxes which is both illogical and contrary to the provisions of law. The learned counsel also submitted that onus regarding claim of exemption from the withholding responsibilities is on the appellant which has not been discharged. The learned counsel also stated that neither the Constitution provides any exemption from withholding responsibilities to the appellant nor the Government of Balochistan has issued any exemption certificate in favour of either the appellant as a withholding agent or to the service provider. The learned counsel also contested appellant's counsel reliance on the Apex Court decision reported as 2017 SCMR 1344 = (2020)122 TAX 467 in the case of Civil Aviation Authority and stated that the said decision is distinguishable. The learned counsel continued that in the said case the Sindh Revenue Board ('SRB') had directly imposed Sindh Sales Tax on Services ('SSTS') on services provided by the Civil Aviation Authority ('CAA') which is a Federal Government Authority hence the Apex Court held it against Article 165 of the Constitution whereas in the case of appellant the BRA has not imposed BSTS on the services provided by the appellant. The learned counsel while concluding his arguments contended that since the appellant has failed to discharge responsibilities as withholding agent and to pay amount deducted from the service provider therefore the learned Commissioner has lawfully passed the impugned order.

8. We have gone through the impugned order of the commissioner, examined the relevant provisions of law, gone through the decision of the Apex Court and considered arguments of both the counsels. The crux of the issues involved is

whether the appellant is legally entitled to claim exemption from responsibilities of withholding agent or not, and whether the BSTS deducted from the service provider can be retained by the appellant instead of paying the same to BRA. It is admitted fact that the service provider M/s Associated Consulting Engineers is liable to BSTS and is a registered person of BRA which while filing their BSTS returns has claimed amount deducted by the appellant as discharge of liability under the Act. The appellant has not paid deducted amount on the basis of Article 165 and the decision of the Apex Court in the case of CAA. Before deciding the issue, we deem it appropriate to reproduce Article 165 of the Constitution as follows:

“165. (1) The Federal Government shall not, in respect of its property or income, be liable to taxation under any Act of Provincial Assembly and, subject to clause (2), a Provincial Government shall not, in respect of its property or income, be liable to taxation under Act of 1 [Majlis-e-Shoora (Parliament)] or under Act of the Provincial Assembly of any other Province. (2) If a trade or business of any kind is carried on by or on behalf of the Government of a Province outside that Province, that Government may, in respect of any property used in connection with that trade or business or any income arising from that trade or business, be taxed under Act of 1 [Majlis-e-Shoora (Parliament)] or under Act of the Provincial Assembly of the Province in which that trade or business is carried on. (3) Nothing in this Article shall prevent the imposition of fees for services rendered”

9. We also deem it appropriate to reproduce relevant operative part of the decision of the Apex Court in the case of CAA as follows:

43. We therefore hold and declare:

a. CAA performs functions mentioned in the Federal Legislative List and is also a federal regulatory authority envisaged in item 6 of Part I of the Federal Legislative List.

b. The functions and regulatory duties performed by CAA are within the exclusive sphere of the Federal Legislature and the appellants cannot impose sales tax on the purported services provided by CAA.

c. Matters of common concern to the federating units of Pakistan are attended to by the Federal Legislature and the Federal Government has the power to exercise executive authority in respect of all such matters itself or through an authority (like CAA) in terms of Articles 97 and 98 of the Constitution.

d. Amongst the objectives of the Eighteenth Amendment was to further strengthen the Federation and institutions therefore it cannot be interpreted to weaken the Federation and institutions like CAA.

e. The Sindh Sales Tax on Services Act (Sindh Act No. XII of 2011) and the Sindh Sales Tax on Services Rules, 2011 to the extent that they impose on CAA sales tax on services are contrary to the provisions of the Constitution, are void ab initio and of no legal effect.

f. The Sindh Sales Tax on Services Act and the Sindh Sales Tax on Services Rules, 2011 to the extent that they tax CAA violate Article 142(a) since only the Federal Legislature can make laws with respect to matters pertaining to CAA."

10. From perusal of above it is evident that Article 165 provides exemption from Provincial taxes to the Federal Government entities on services provided by

such entities. The Apex Court has also held that the functions and regulatory duties performed by CAA are within the exclusive sphere of the Federal Legislature and the SRB cannot impose sales tax on the purported services provided by CAA. However, neither Article 165 of the Constitution nor the Apex Court's decision provide exemption to the Federal Government entities regarding their responsibilities as a withholding agent.

11. The appellant's claim in the instant appeal is that being a Federal Government entity it is exempt from withholding BSTS from the service provider and if such tax is withheld then the appellant is not required to pay the same to the BRA. Article 165 of the Constitution provides exemption to income and property of the Federal Government entities in respect of Provincial taxes but such exemption cannot be extended to the withholding responsibilities of said entities. Further the case of CAA is distinguishable because in the said case the SRB has levied SSTs on the services provided by the CAA whereas in the instant appeal the BRA has not charged BSTS on services provided by the appellant. It is settled principle of tax law that claim of exemption is to be based on unambiguous provision of a tax statute or a specific exemption certificate in favour of the claimant. The apex court has a number of times held that provisions of exemption are to be strictly interpreted and the onus lies with the claimant. We find that there is Article of the Constitution and no provision of the Act or a specific exemption certificate in support of her claim of exemption from withholding BSTS from the service provider or from paying deducted tax to the BRA.

12. During the course of proceedings, the appellant's counsel contended that since the appellant is consumer of services provided by service provider therefore recovering amount of tax withheld tantamount to taxing the appellant. This argument is neither convincing nor compatible with the scheme of sales tax law. The amount of tax liable to be deducted by the appellant from the service provider is tax paid by the service provider and termed as output tax of the service provider which it can claim in return filed under the Act. In accordance with the scheme of sales tax law as provided in the Act entitles only the service provider to claim said amount. Such tax of the service provider cannot be claimed by the appellant as a tax on services provided by the appellant and exempt in terms of Article 165 of the Constitution read with the Apex Court's decision in the case of CAA. If the appellant is allowed to retain said amount, then the service provider will have to again pay such amount to BRA notwithstanding the fact that said amount was firstly deducted by the appellant which tantamount to double taxation of the service provider and violation of fundamental rights of the service provider provided in Article 13 of the Constitution.

13. As far as the argument of the appellant regarding impugned order being barred by limitation as per section 52(1) of the Act is concerned the learned counsel has ignored Proviso to section 52(2) which is as follows:

"Provided that the time limit of five years will be applicable to returns related to tax period from July, 2023 and onwards. For returns for all other tax periods, whenever filed, time limit of eight years will be applicable."

14. In view of the above facts and discussion we find no infirmity in the impugned order therefore we are not inclined to interfere and the impugned order is upheld.as a result the appeal filed by the appellant is dismissed.

Announced

Dated, the 22/07 2025.

— sd —

Chairperson

— sd —

Member

— sd —

Member