

**THE BALOCHISTAN SALES TAX ON SERVICES**  
**APPELLATE TRIBUNAL QUETTA.**

Sales Tax Appeal No.41 of 2025  
M.A. (Stay) No.14 of 2025  
M/s Agha Construction Company,  
Natha Singh Street, Quetta.  
versus  
Commissioner III Balochistan Revenue Authority Quetta.

**ORDER**

Appellants by: Mr. Usama Zaheer Adv

Respondents by: Mr. Wasil Jan Adv

Date of hearing: 21/07/2025

Date of Order: 23/07/2025

**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.2215/2025 dated 21.03.2025, passed for tax periods related to 2018-19 by the learned Commissioner III ('Commissioner') of the Balochistan Revenue Authority ('BRA'), Quetta under section 52(3) 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.51,550,000. The Commissioner has also charged 5% penalty amounting to Rs.2,577,500/.

2. It is second round of appeal as the order in original No.137/2024 passed by the Commissioner Operation BRA Quetta on 10-01-2024 was remanded back by this Tribunal vide judgement STA No.16(A)/2014 dated 18-10-2024 wherein the Commissioner was directed to provide sufficient opportunity of being heard. In pursuance said directions fresh proceedings were initiated which led to passing of impugned order.

3. The relevant facts for disposal of instant appeal are that the appellant having BNTN: 3678980-1 is registered with the BRA under tariff heading 9824.0000. Perusal of the record available with the BRA revealed that the appellant has rendered services to Commissioners/PD, Development Packages, Quetta and Sibi divisions and failed to make payment of BSTS into government treasury. The Commissioner accordingly issued show-cause. In response the appellant denied providing said services to Commissioners/PD. But a tax deduction certificate submitted by the appellant revealed to the Commissioner that income tax was deducted by the office of the Project Director, Development Package Quetta but no deduction was made on account of BSTS. The Commissioner accordingly rejected contention of the appellant and passed impugned order. The appellant, being aggrieved with the said impugned order has come up before this forum in terms of section 60 sub-section (2) of the Act. The appellant has taken grounds of appeal as per memo of appeal.

4. On behalf of the appellant, case was argued by Mr. Usama Zaheer Adv who contested the impugned order on various grounds. Firstly, he argued that the project was advertised in 2016-2017 when Balochistan Sales Tax Special Procedure (Withholding) Rules, 2018 were not on the statute. In support he relied on the honorable Supreme Court decision reported as PLD 2024 SC 1168 wherein it has been held that law cannot be applied retrospectively. Secondly, the learned counsel stated that the show-cause notice pertains to 2018-19 but the impugned order proceeds to impose liability based on audit paras covering three financial years which tantamount to expanding scope of the show-cause notice. The learned counsel also contended that proceedings under the Act and by the Public Accounts Committee are simultaneously conducted which is against the principles of re sub judice and natural justice. He further contended that the appellant was registered in 2020 hence proceedings prior to said year are unlawful. The learned counsel further argued that withholding is responsibility of the withholding agent and the appellant being a service provider cannot be held responsible for negligence of the agent. He further contended that the learned commissioner did not confront any corroborative evidence to the appellant regarding payments, financial transactions and tax payable thereon.

5. The learned counsel also referred to amendments made in the Act through Balochistan Finance Act, 2025 and contended that after insertion of Proviso in Entry 33 of the Third Schedule to the Act 1% tax rate would apply to all PSDP projects since promulgation of the Act. Therefore, the appellant is now required

to pay tax @1% for the impugned period and the appellant has already paid said amount. The learned counsel also presented a letter from the Finance Department, Government of Balochistan which endorses interpretation of the learned counsel regarding said Proviso of the Third Schedule. The learned Counsel finally requested to set-aside the impugned order.

6. Mr. Wasil Jan Adv learned counsel appearing on behalf of respondent supported the order of the learned Commissioner and stated that the appellant being a service provider was required to file returns and to pay impugned tax. The learned counsel stated that though the Balochistan Sales Tax Special Procedure (Withholding) Rules, 2018 were made on 27-06-2018 but section 14(2) and 35 of the Act were on the statute since 03-07-2015 which required the appellant to file return and pay tax while appellant's withholding agent was liable to withhold tax. Besides the impugned proceedings are against the appellant as service provider and not against the appellant's withholding agent. Regarding registration in 2020 the learned counsel referred to Section 2 Clause (134) of the Act and stated that a person liable to be registered is to be treated as registered person for all purposes of the Act. The learned counsel also referred to section 13 of the Act which provides that if there is a change in tax rates then taxable service shall be charged to tax at such rate as is in force at the time the service is provided. Therefore, the rate of 1% applies from the first day of July 2025 and for preceding years applicable rates will apply. Summing up his arguments the learned counsel prayed for dismissal of appeal.

7. We have gone through the impugned order of the commissioner, examined the relevant provisions of law, gone through the decisions of the Apex Court and considered arguments of both the counsels. There are three issues to be addressed. The first issue is whether the rate of 1% would apply from the first day of July 2025 or from the date of promulgation of this Act. The second issue is whether the learned commissioner was justified to pass impugned order for 2018-19 when the appellant was registered with the BRA in 2020. The last issue is whether the learned Commissioner was justified to pass the impugned order for 2018-19 based on audit paras covering three financial years which tantamount to expanding scope of the show-cause notice.

8. Before deciding the first issue, we deem it appropriate to reproduce the Proviso in Entry 33 of the Third Schedule to the Act as amended by Finance Act, 2025 as follows:

*"Provided that 1% shall be applicable on all projects inserted in the PSDP since promulgation of this Act including all the taxes due to be paid against these projects."*

9. Perusal of above Proviso shows that it does not start with a non-obstante clause which mean it has no overriding effect and other provisions of the Act will simultaneously operate despite said amendment. We also deem it appropriate to reproduce the clarification letter issued by the Finance Department Government of Balochistan as follows:

*"I am directed to refer to your letter No.BRA/Ops/2025-26/01 Dated July 02/2025 on the captioned subject and to state that the Balochistan Finance Act 2025 has been promulgated with effect from first day of July 2025, in this regard the following is explained against your queries namely:*

*a. The 1% Balochistan Sales Tax on Services (BSTS) shall be applicable on all payments made from Federal, Provincial or Local Government development budgets within Balochistan, effective from July 1 2025 until such time it is revised, reduced or withdrawn. Additionally, any outstanding tax liabilities related to projects under the Public Sector Development Programmes (PSDP) from July 1, 2025, to June 30, 2015 to June 30,2025 Shall also be subject to tax at the reduced rate of 1% only to the extent for unpaid liabilities.*

*b. That 1% tax shall be effective from July 01, 2025 as explained above.*

*c. There is no question of any differential rate as the new reduced rate of 1% shall apply uniformly from July 1, 2025 onward. Further more as a special incentive, any pending liabilities from the prior period (July 2015 to June 2025) shall also be payable at the reduce rate of 1% instead of the previously applicable rates of 4%, 6% or 15% as the case may have been.*

*The amended provisions of the BSTS Act, 2015 may be applied in letter and spirit."*

10. The above clarification also explains the Proviso in Entry 33 of the Third Schedule to the Act as amended by Finance Act, 2025 without referring any other provision of the Act.

11. Now coming to other related provisions, we deem it appropriate to reproduce sections 13 and 17 of the Act as under:

***"13. Effect of Change in the Rate of Tax.-If there is a change in the rate of tax, the taxable service shall be charged to tax at such rate as is in force at the time the service is provided."***

12. The above provision lays down the principle that in case of change in rate, the taxable service shall be charged to tax at the rate which is in force at the time of providing service. The construction services have been charged to tax at following rates:

| <b>Tax Periods</b>     | <b>Tax Rate</b> | <b>Input status</b>   |
|------------------------|-----------------|-----------------------|
| July 2015 to June 2019 | 15%             | Input tax allowed     |
| July 2019 to June 2023 | 6%              | Input tax not allowed |
| July 2023 to June 2025 | 4%              | Input tax not allowed |
| July 2025 onward       | 1%              | Input tax not allowed |

13. As per section 13 the above tax rates are applicable for tax periods from July 2015 till 2025 onwards.

14. Section 17 of the Act places responsibility on a person who collects excess tax for any reason to pay such amount to the Government if burden of tax has

been passed on to the person who receives such service. This section is reproduced as follows:

*"17. Collection of Excess Tax.-(1) Any person who has collected or collects the tax or charge, whether under misapprehension of any provision of this Act or otherwise, which was not payable as tax or charge or which was in excess of the tax or charge actually payable and the incidence of which had been passed on to the person to whom the service was provided, shall pay the amount of tax or charge so collected to the Government.*

*(2) Any amount payable to the Government under sub-section (1) shall be deemed to be an arrear payable under the Act and shall be recovered accordingly.*

*(3) The burden of proof that the incidence of tax or charge referred to in sub-section (1) has been or has not been passed to the person to whom the service is provided shall be on the person collecting the tax or charge."*

15. The above provision lays down that once excess tax is collected for whatever reason and the burden thereof has been passed on to service recipient then such amount has to be paid to the Government. It also provides that such amount may be recovered as arrears under the Act. Further the onus to prove that burden of such tax has been or has not been passed on to the service recipient lies

with person collecting such tax. In this regard we deem it appropriate to refer recent judgement of the Honorable Balochistan High Court on CP No.638/2021 announced on 30-05-2024 in the case of M/s Ghaffar & Company Gaddani Versus the Federation of Pakistan & 5 others. In the said judgment the Honorable High Court held that:

*"22. Now coming to the prayer of the petitioner that the sales tax paid/ payable on import of retired ships may be refunded / waived off, we are of the considered view that both under the Special Procedure for ship breakers as well as under normal procedure of the Sales Tax Act, 1990 the sales tax paid/ payable by an importer is passed on to the next person in the supply chain by adding the same in selling price and so on which is ultimately shifted to and born by the end consumer from general public. Once sales tax is paid/ payable and its burden is shifted in the supply chain to the end consumer from general public then Section 3B of the Sales Tax Act, 1990 comes into operation....."*

*23. The above provision creates a bar on refund or waiver of sales tax paid/ payable, the incidence of which has been shifted to end consumer. In the instant case the petitioner is admittedly an importer of retired ships which have been dismantled by the petitioner and the scrap thereof has been sold out. The petitioner was liable to pay sales tax under the Special*

*Procedure and while selling the scrap the burden of such sales tax has been passed on through supply chain by adding the same to selling price till end consumer therefore plea of the petitioner for refund/ waiver of the said sales tax, on the ground of Special Procedure Rules declared ultra vires, is both illogical and barred by the express provisions of section 3B of the Sales Tax Act, 1990. Such sales tax has already been recovered by the petitioner by passing it on through supply chain hence again claiming the same as refundable is not logical."*

16. The honorable Court has rejected claim of refund of the petitions on the basis of section 3B of the Sales Tax Act, 1990 which is identical to section 17 of the BSTS Act, 2015.

17. In the light of above decision and the provisions of section 13 and 17 of the Act, which are on the statute since promulgation of the Act, if the new Proviso in Entry 33 of the Third Schedule to the Act as amended by Finance Act, 2025 is applied as such in letter and spirit then there arises a conflict between said Proviso and sections 13 and 17 of the Act. In such a situation we have to seek guidance from the principles of interpretation emphasized by the Honorable Supreme Court of Pakistan. The first principle is "harmonious interpretation" and

the second is "redundancy cannot be attributed to the legislature." We deem it to discuss in following paras.

18. The Supreme Court of Pakistan utilizes the "harmonious interpretation" principle to reconcile conflicting provisions within the law, by aiming for interpretations that avoid contradictions and maintain consistency across different legal texts. This approach seeks to uphold the overall integrity and purpose of the law by ensuring that all parts work together effectively. The court is not allowed in any case to interpret and to construct a particular provision as to defeat another provision of the same statute dealing with the same subject matter. In *Abdul Waheed v. Asma Jehangir* (PLD,2004), it was held by Supreme Court of Pakistan that it is well-settled that the court will lean in favour of harmonious interpretation of the statutes/various provisions and would certainly avoid an interpretation which has a potential of conflicting judgments. It has been a time-tested view that all efforts must be directed to save rather than to destroy the law. For reliance, the case of *Messrs. Sui Southern Gas Company Ltd. and others Vs. Federation of Pakistan* (2018 SCMR 802) can be cited.

19. The Honorable Supreme Court generally interprets statutes to avoid redundancy, presuming that the legislature intended each provision to have a distinct purpose. A provision deemed redundant by the court is often viewed as unintended, and the court will strive to give meaning to all parts of the law. It is settled law that redundancy cannot be attributed to the legislature. The Supreme

Court in the case titled "Haji Tooti and another v. Federal Board of Revenue, Islamabad and others" [2023 PTD 1617] has held as follows:

*"We have heard learned counsel as above and considered the provisions involved. In our view, the appeals must fail for the following reasons. Firstly, and with respect to the learned High Court, the order made by the concerned officer under section 181 is not in exercise of quasi-judicial functions. It is in exercise of a statutory power, and is in the nature of an administrative or executive order. Secondly, if the submissions made by learned counsel are accepted that would in effect reduce the second proviso of section 181 to redundancy. This would be so because any exercise of the statutory power thereby conferred would "interfere" with the power conferred on the officer of customs under the main part. The result would be that the power under the second proviso could never be exercised, i.e., would be made redundant. It is well settled that redundancy is not to be lightly imputed, and an interpretation that yields such a result is to be avoided if at all possible."*

20. In the light of above we are of the considered view that Proviso in Entry 33 of the Third Schedule to the Act as amended by Finance Act, 2025, sections 13 and 17 of the Act are to be interpreted in a way that all remain operative and none

becomes redundant. We therefore hold that the rate of 1% tax on construction services shall apply with effect from July 1, 2025 and for preceding tax periods the rates applicable would be those as were operative at the time services were provided. Hence the contention of the learned counsel of the appellant regarding retrospective application of Proviso in Entry 33 of the Third Schedule to the Act is rejected.

21. Now coming to the second issue i.e. whether the learned commissioner was justified to pass impugned order for 2018-19 when the appellant was registered with the BRA in 2020, we deem it appropriate to reproduce definition of registered person and Explanation to Section 25 sub-section 5 as under:

*"2(134) "Registered Person" means a person who is registered or is liable to be registered under the Act 19 and includes a services provider and a withholding agent, or any other person or class of persons notified by the Authority in the official Gazette:*

*Provided that a person liable to be registered but not registered under the Act, shall not be entitled to any benefit available to a registered person under any of the provisions of the Act or the rules made thereunder;"*

**"Section 25 Registration:-**

(5) .....

***Explanation:*** *Unless otherwise specified, no person shall be absolved of any tax liability for want of registration under this Act or the rules."*

22. The above provisions clearly provides that a person liable to be registered will be treated as a registered person and no person shall be absolved of any tax liability for want of registration under the Act or Rules. Once a person provides taxable service then he/she/it will be a registered person for all purposes of the Act. Otherwise, all persons providing taxable services will never get registered to avoid tax liability under the Act. We are supported in our view by the recent judgment of the Honorable Lahore High Court in STR No.35/2022 in the case of M/s Astral Constructions (Pvt.) Limited Versus Province of Punjab, etc. which was announced on 06-03-2025 wherein on the basis of definition of registered person in the Punjab Sales Tax Act, 2012 it is held that:

*"10. Process of registration is dealt with under Chapter IV of the Act. Before discussing provision relating to registration, it is appropriate to highlight definition of a 'registered person' through Section 2(33) of the Act, which reads as:-*

*"(33)"registered person" means a person who is registered or is liable to be registered under the Act but the person liable to be registered and has not registered shall not be entitled to any benefit*

*available to a registered person under any of the provisions of the Act or the rules”.*

*In follow-up to the definition of registered person, Section 25 of the Act deals with registration process, which provision is reproduced hereunder along with Explanation thereto:-*

*“25. Registration.-.....*

*Explanation.--Unless otherwise specified, no person shall be absolved of any tax liability for want of registration under this Act or the rules.”*

*12. The applicant is a registered person for all intent and purposes, having place of business in the Province of Punjab, which provides taxable services in the context of sub-section (1) of Section 3 of the Act; hence same is liable to pay the tax under sub-section (1) of Section 11 of the Act.”*

23. In the light of above discussion, the contention of the learned counsel for the appellant regarding registration in 2020 is devoid of merits hence rejected and the action of the learned commissioner is upheld.

24. Now coming to the last issue i.e. whether the learned Commissioner was justified to pass impugned order for 2018-19 based on audit paras covering three financial years. We are in agreement with the learned counsel of the appellant that it tantamount to expanding scope of the show-cause notice. In sale tax law

each and every tax period (one month) is separate. Even if 12 tax periods of a financial year are clubbed together the law operate on the basis of tax periods. The learned commissioner has clubbed 12 tax periods of 2018-19 but the information based on audit paras related to tax periods of three financial years. We therefore direct the learned commissioner to obtain tax period-wise and financial year-wise data, confront the same to the appellant and then come up with a judicious order for the tax periods related to only tax periods of financial year 2018-2019. The appellant is also directed to provide invoices of tax periods related to financial year 2018-19 to assist the learned commissioner in This behalf.

25. In view of above, the appeal stands disposed of accordingly.

Announced

Dated, the 23/07 2025.

— sd —

Chairperson

— sd —

Member

— sd —  
Member