

THE BALOCHISTAN SALES TAX ON SERVICES
APPELLATE TRIBUNAL QUETTA.

Sales Tax Appeal No.47 of 2025
M/s KSS Engineering Private Limited,
Shahbaz Town Quetta, Balochistan.
versus
Commissioner II, Balochistan Revenue Authority, Quetta.

ORDER

Appellants by: Mr. Syed Hammas Ahmed Shah Adv

Respondents by: Mr. Wasil Jan Adv

Date of hearing: 28/07/2025

Date of Order: 31/07/25

SAIF ULLAH KHAN, MEMBER- The above titled Sales Tax Appeal has been filed by the appellant calling in question, the order-in-original No.127/2024-2025 dated 24.06.2025, passed by the learned Commissioner II ('Commissioner') of the Balochistan Revenue Authority ('BRA') for the tax periods July 2016 to June 2017. In the impugned order the Commissioner has charged BSTS at Rs.25,137,664 being inadmissible input tax under section 24(1) and imposed penalty of Rs.1,256,547 under section 48 of the Balochistan Sales Tax on Services Act, 2015 ('Act').

2. The relevant facts for disposal of instant appeal are that the appellant is a steel contractor, fabricator and service center and is duly registered with BRA as

service provider in contractual execution of work or furnishing supplies having BNTN 3324181-3. The learned Commissioner initiated proceedings on 18-12-2024 against the appellant regarding assessment of tax for the period July 2016 to June 2017 and also issued notice under section 24(1) of Act stating that the appellant has claimed inadmissible input tax adjustment during the tax periods of July 2016 to June 2017. A couple of reminders were issued and finding no response ultimately passed the impugned Order-In-Original No.127/2024-25 dated 24th June, 2025 on an ex-parte basis. 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.

3. On behalf of the appellant, Mr. Syed Hammas Ahmed Shah Adv appeared who contested the impugned order mainly on two grounds. Firstly, he stated that the impugned order is passed without proper service of notices and providing sufficient opportunity of being heard which is in violation of Article 10-A of the constitution of Islamic Republic of Pakistan, 1973 and dictums laid down by the Hon'ble Supreme Court which requires fair opportunity of being heard to everyone before any coercive action is taken against them. Secondly, he challenged on the ground of being barred by limitation of time. He contended that for impugned tax periods an order under section 24 could be passed within a period of 5 years. The learned counsel relied on the Judgment of Hon'ble Supreme Court reported as 2024 SCMR 700 and the Judgment of Hon'ble

Balochistan High Court reported as 2024 PTD 196. He contended that the amendment in section 24(2) was brought on the Act through BSTS Amendment Act, 2019 extending the period of five years to eight years hence it cannot be applied retrospectively in the light of said judgements. The learned counsel accordingly challenged impugned order 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 respond to notices issued hence the impugned order was passed ex-parte. The learned commissioner was justified to pass impugned order within 8 year which was extended from 5 years in 2019 and it was provided in the Amendment Act of 2019 that it will apply from July 1, 2015. Further being a procedural provision said extension in time from 5 years to 8 years will apply retrospectively. Finally, he prayed for dismissal of appeal.

5. We have gone through the impugned order of the Commissioner, examined the relevant provisions of law and relevant record, gone through the judgements of the superior courts and considered arguments of both the learned counsels. The crux of the matter involved in the instant appeal is whether the impugned order was lawfully passed during the extended period of 8 years as provided by the amended provisions of section 24(2) of the Act. It is admitted fact that the impugned order for tax periods from July 2016 to June 2017 could not be passed

on 24.06.2025 if section 24(2) of the Act was not amended. Without said amendment the impugned order could at best be passed upto 2022.

6. The general principle of the interpretation of statutes on which the arguments of the learned counsel for the appellant proceeds is unexceptionable. Although the power of the Legislature to enact retrospective law is well-recognized, but it is equally well-settled that in the absence of any express provision or necessary implication even the laws which have been made retrospectively applicable can neither be applied to the transactions which are past and closed nor can vested rights be taken away or destroyed. There is also merit in the contention of the learned counsel for the appellant that by discharging the liability in accordance with the law then applicable not only the transactions in respect of that period became past and closed but the appellant also acquired vested right which cannot be taken away by merely giving retrospective operation to the law. This argument of the learned counsel is supported by the following observations of the Hon'ble Supreme Court of Pakistan in the case of Molasses Trading and Export (Pvt.) Limited v. Federation of Pakistan and others, (1992 SCMR 1905) which are instructive:

"There seems to be a great deal of force in this submission. Before the insertion of section 31-A the position was that upon the presentation of a bill of entry, by virtue of section 30 of the Act the levy of duty was crystallized. As explained in the case of Al-Samrez Enterprise, the liability to tax was created under section 18 with reference to this date, because it is the rate of

duty by application of which the tax liability can be quantified or assessed. Simultaneously, any benefit of exemption also takes effect on the same date because in the very nature of things, the liability is wiped off by virtue of the exemption at the same time. Therefore, this is the crucial point of time at which by operation of law the liability is discharged. In other words, the rights and liabilities of the importer attained fixity on the said crucial date. Inevitably, therefore, a vested right has been created and the transaction is closed by the quantification of the tax, if any, or by the discharge of liability on that date.”

7. It is also pertinent to mention here that a statute, which is procedural in nature, can operate retrospectively unless it affects an existing right on the date of promulgation or causes injustice or prejudice to a substantive right. Similarly, if it is of such a character that will tend to promote justice without any consequential embarrassment or detriment to any of the parties concerned, the Courts would favorably incline towards giving effect to such procedural statutes retrospectively. However, if existing rights are affected or the giving of retrospective operation causes inconvenience or injustice, then the Courts will not even in the case of a procedural statute, favor an interpretation giving retrospective effect to the statute. While holding this view, we are fortified from the dictum laid down by the Hon'ble Supreme Court in the case of Adnan Afzal v. Capt. Sher Afzal (PLD 1969 SC 187), relevant part whereof reads as under:

“The next question, therefore, that arises for consideration is as to what are matters of procedure. It is

obvious that matters relating to the remedy, the mode of trial, the manner of taking evidence and forms of action are all matters relating to procedure. Crawford too takes the view that questions relating to jurisdiction over a case of action, venue, parties pleadings and rules of evidence also pertain to procedure, provided the burden of proof is not shifted. Thus a statute purporting to transfer jurisdiction over certain cause of action may operate retroactively. This is what is meant by saying that a change of forum by a law is retrospective being a matter of procedure only. Nevertheless, it must be pointed out that if in this process any existing rights are affected or the giving of retroactive operation cause inconvenience or injustice, then the Courts will not even in the case of a procedural statute, favour an interpretation giving retrospective effect to the statute. On the other hand, if the new procedural statute is of such a character that its retroactive application will tend to promote justice without any consequential embarrassment or detriment to any of the parties concerned, the Courts would favorably incline towards giving effect to such procedural statutes retroactively."

8. Further the Hon'ble Supreme Court in judgement reported as 2024 SCMR 700 has held that:

"As a cardinal principle of interpretation of statutes, tax statutes operate prospectively and not retrospectively unless clearly indicated by the legislature, therefore, retrospectivity cannot be presumed. Where an insertion or deletion of any

provision in the rules or the law is merely procedural in nature, the same would apply retrospectively but not if it affects substantive rights which already stood accrued at the time when the un-amended rule or provision was in vogue. A provision curtailing substantive rights does not have retroactive operation unless the legislature elects to give it retrospective effect. Thus, where existing rights are affected or giving retroactive operation causes inconvenience or injustice, the Court will not favour an interpretation giving retrospective effect even where the provision is procedural .Applying this to the instant case, and having established that the Explanation added in Section 111 of the Ordinance divests and affects a substantive right of the taxpayer to a separate notice and proceedings under Section 111, the same would not have retrospective effect and would apply prospectively. Therefore, the Explanation would not be applicable to the matters at hand as they pertain to tax years before the Explanation was introduced in Section 111”.

9. The Hon’ble Balochistan High Court in judgment reported as 2024 PTD 196, has also held that:

“Needless to mention here that according to the settled rules of interpretation of a fiscal part of a statute, the charging section is the key and pivotal provision which imposes a fiscal liability

upon a taxpayer/person, thus it should be strictly construed and applied. If a person does not clearly fall within the four corners of the charging section of such a statute he cannot be saddled with a tax liability."

10. Admittedly, the appellant had acquired a vested right under Sections 24(2) of the then BSTS Act, 2015 (as were available on statute prior to promulgation of the Amendment Act, 2019) to claim entire input tax adjustment. That vested right could not, therefore, be taken away merely on the strength of deeming clause of Amendment Act of 2019. Giving retrospective effect to the amended provision to Section 24(2) of the BSTS Act, 2015 would certainly be completely destructive of the rights vested in the appellant.

11. The Sale Tax on Services under BSTS Act, 2015 is an indirect tax being collected in Value Added Tax [VAT] mode and being indirect tax, the burden of tax shall always be borne by the end consumer. Taxable businesses do not bear the burden of indirect taxes as opposed to the direct tax e.g. Income Tax where burden of tax shall be borne by the businesses themselves. Sale Tax is not part of cost of business. In case, the legislature makes amendments which affects input tax adjustments, the same has to be applied prospectively, so that the incidence is incorporated timely for passing it to the end consumer in the future transactions.

12. In view of the above while following the dictum laid down by the Hon'ble Superior Courts, the applicability of amended section 24(2) of BSTS Act, 2015 is prospective, as such, appeals are allowed and the impugned show cause notices as well as impugned order passed by learned Commissioner is set aside.

Announced
Dated, the 31/07 2025.

— sd —

Chairperson

— sd —

Member

— sd —

Member