

BALUCHISTAN SALES TAX ON SERVICES
APPELLATE TRIBUNAL, QUETTA

STA 42/2005

M/S Latif Petroleum and Engineering Services Pvt Ltd., Islamabad

Versus

The Commissioner (Appeals), Balochistan Revenue Authority, Quetta

MA 15/2025 and STA 21/2025

M/S Latif Petroleum and Engineering Services Pvt Ltd., Islamabad

Versus

The Commissioner-II, Balochistan Revenue Authority, Quetta

ORDER

Date of hearing: 28.7.2025

Date of Judgment: 05.8.2025

Appellant by:

Mr. Nasir Rashid (ACMA) & Sajid Ali
(ACMA)

Respondent by:

Mr. Wasil Jan, Advocate

DOSTAIN KHAN JAMALDINI, MEMBER: This single Order will rule disposal of above one application and two appeals that have been preferred by the appellant as common question of law is involved.

2. The appellant/registered person, having BNTN: 4163293-1 is registered with the Balochistan Revenue Authority (BRA) under tariff heading 9809.0000 (services provided or rendered by persons engaged in contractual execution of work or furnishing supplies). The appellant has impugned Order-in-Appeal No. BRA-CA/BSTS App: 31/2025/72 passed by the learned Commissioner (Appeals), BRA on 02-6-2025 and Order-in-Original No. Input/96/2024-25 passed by the Commissioner-II on 23-4-2025 (herein after both referred to as 'impugned orders').

3. As a background of STS 42/2025, earlier while feeling aggrieved from order-in- Original (OIO) of learned Assistant Commissioner, BRA Quetta bearing No. Input/70/2024-25, dated 24-4-2025, the appellant filed first appeal on 13-5-2025. The learned Commissioner (Appeal); after examining the facts, circumstances of the case, hearing arguments from both parties and taking guidance from the law, partially allowed the appeal. Also, the impugned OIO of Assistant Commissioner, BRA Quetta was upheld. The learned Commissioner (Appeal) determined that as the appellant had admitted to claim excess input for the tax period July 2023 to June 2024, surpassing the statutory threshold of 15%, in contravention of section 16B (1)(j),(k) & (l) of Balochistan Sales Tax on Services Act, 2015 ('the Act') and rules 27(8),(9) & (10) of Balochistan Sales Tax on Services Rules, 2018 ('the Rules'), the learned Assistant Commissioner, BRA Quetta, has rightly assessed short payment of BSTS worth Rs.1,666,325/-. However, the learned

Commissioner (Appeal) ordered that no *mens rea* in the case has been established and that the learned Assistant Commissioner has not properly proceeded as required u/s 48 of the Act, and without adjudication has imposed penalty, therefore, waived off Rs.83,316/-. Thus, only an amount of Rs.1,666,325/- was considered recoverable from the appellant as an excess amount adjusted as input tax not admissible under the law.

4. As a background of MA 15/2025 and STA 21/2025, wherein the appellant has challenged the Order-in-Original of Commissioner-II (hereinafter 'impugned order') declaring that during tax year 2023-24 the registered person has made short payment of BSTS by adjusting inadmissible input tax amounting to Rs. 6,720,176/-. It was ordered that since provisions of section 16B sub-section (1) clauses (k) & (l) of the Act read with rule 27(8) have been violated and contravened a total of Rs.7,056,185/- (short payment of BSTS assessed as Rs.6,720,176/- plus penalty of Rs.336,009/- imposed u/s 48 of the Act @5% of the assessed amount) is recoverable from the appellant.

5. While pleading the stay application, the learned Counsel for appellant informed that recovery proceedings has already been initiated against the appellant and his bank account has been attached by Balochistan Revenue Authority ('BRA') despite the fact that the appeal is pending before this Tribunal. It was also contended that the appellant has a strong *prima facie* case and balance of convenience is in his favor. Learned Counsel for Respondent rebutted the same and stated that section 52A allows recovery of short-paid BSTS including attachment of the bank account of the defaulting registered person even without a notice. Nonetheless, for recovery of penalty imposed under section 48 prior show cause notice is required. Neither, the appellant nor the respondent produced copy of the notice or letter under which the bank account of the appellant has been attached. After hearing both the parties, in detail, on 14-7-2025 this Tribunal granted conditional stay on recovery proceedings and ordered de-attachment of the bank account, if any, considering it a very coercive measure. The order was passed subject to condition that the appellant would deposit 25% of the alleged tax arrears. The order was, however, partially complied as the appellant deposited only Rs.700,000/- instead of Rs.1,680,045/- (i.e., 25% of the short-paid BSTS).

6. The learned counsel of the appellant contended that the respective impugned orders are bad in the eyes of law and contrary to facts and circumstances of the case, that the learned Respondents have erred in establishing short payments of BSTS by adjusting inadmissible input tax, and that they have erred in declaring him a willing violator and contravener of the provisions of section 16B (1). Both the appeals, however, have no prayer clause, neither for setting-aside the impugned orders, nor, waiver of the penalty. We, nevertheless, consider this aspect as an unintended mistake on his part and presume that the coveted prayer clause as part of the appeals.

7. While arguing the main petitions (STA 21/2025 and STA 42/2025), the learned Counsel for appellant stated that the learned Respondents have erred in establishing that the registered person has willingly violated and contravened the provisions of section 16B sub-section (1) clauses (k) and (l). He has not willfully made a short payment of BSTS by adjusting inadmissible input tax,

therefore, not violated and contravened section 16B of the Act and rule 27(8) of the Rules. He opined that it is BRA's system error/ issue which automatically did not disallow the excess amount of input tax. To this, the learned Counsel for Responded took the position that while making input tax adjustments, it is responsibility of the registered person to follow the provisions of section 16B, in letter and spirit, without violating and contravening the law. Therefore, the Respondents have rightly determined that provisions u/s 16B (1) read with rule 27(8) have been violated and contravened.

8. We heard in detail both the sides, went through the impugned orders passed by the Respondents and documents attached, and relevant provisions of the Act and the Rules and consider that the crux of the dispute is whether, under the Act and the Rules, input tax adjustments are allowed to the appellant for services or goods rendered/ sold to him by different service providers/ suppliers having sales tax rates of 18% and 19.5% or otherwise? Secondly, is the registered person at fault if BRA tax return digital system allows him input tax adjustments that are barred under the law and liable to penalty u/s 48?

9. On perusal of record and attached annexures with the two show cause notices, both dated 18-12-2024, it is stated that the appellant has claimed 17% and 18% input tax for supply of construction material from different suppliers and 19.5% from a communication service provider (Pakistan Mobile Communications Ltd.). The learned Respondents, in their respective impugned orders, held that the applicable legal provisions cap the input tax claim at 15%. This pronouncement has been made while reading section 16B (1) clauses (j), (k), and (l) of the Act and rule 27 (8), (9) and (10) of the Rules.

10. In order to find out scope of input tax adjustments, that is, to determine as up to what percentage of input tax can be claimed by a registered person in his tax returns, and for convenience, a reading of relevant provisions of section 16B is required.

“16B. Input Tax Credit Not Allowed.-- Notwithstanding anything contained in this Act, a registered person shall not be entitled to claim, reclaim, adjust or deduct input tax in relation to:

(a) -----

(b) -----

.....

(j) goods or services used or consumed in a service liable to sales tax at ad valorem rate lesser than fifteen per cent or at specific rate or at fixed rate or such other rates not based on values;

(k) goods or services as are liable to sales tax, whether a federal sales tax or a provincial sales tax, at specific rate or at fixed rate or such other rates not based on value or at rate lesser than fifteen

per cent ad valorem and are used or consumed as inputs in the provision of a taxable service under the Act;

Provided that in case of telecommunication services paying sales tax at a rate not less than nineteen and a half per cent ad valorem, the amount of sales tax paid on goods and services at ad valorem rates not exceeding seventeen percent, can be claimed by the person providing the taxable communication services.

(1) the amount of sales tax paid on the telecommunication services in excess of nineteen and a half per cent ad valorem and the amount of sales tax paid on other taxable goods or services in excess of fifteen percent ad valorem;"

An input tax is the tax paid by a registered person on the taxable goods and services purchased or acquired by him from local market or imported from international market. Section 2(86) of the Act gives a comprehensive definition of the input tax.¹ Provisions under Chapter-V of the Rules apply to registered persons who may claim adjustments or deductions under provisions of section 16 of the Act in respect of the sales tax paid on purchase or receipt of goods and services used or consumed in any taxable services provided or rendered by them.² In the case in hand, the appellant is registered under tariff heading 9809.0000 under First Schedule (classification of taxable services) and Second Schedule (rates applicable to taxable services) of the Act. Tariff heading classified as 9809.0000 (services provided or rendered by persons engaged in contractual execution of work or furnishing supplies) is subject to BSTS rate of 15% on the value of the services provided or rendered as laid u/s 10 of the Act. Other taxable services (classified under different tariff headings) provided or rendered by a registered person or a class of registered persons are subject to BSTS to *higher, lower, fixed or specific rates*³. For example, telecommunication services (tariff heading 98.12) are subject to BSTS @ 19.5% of the value of the service (*higher rate*); services provided or rendered by travel agents who are authorized to transact business on behalf of others (tariff heading 9805.5000) are subject to BSTS @ 6% of the value of the service (*lower rate*); services provided or rendered by medical practitioners and consultants (tariff heading 9815.1000) are subject to BSTS @ Rs. 3,000/- per month (*fixed rate*) or 2% of the gross services provided (*lower rate*) whichever is higher; and construction services

¹ The Act considers Input tax as tax levied under the Act, under the Sales Tax Act 1990, other provincial sales tax laws and under the Islamabad Capital Territory (Tax on Services) Ordinance 2001. According to Proviso of section 2(86) the Balochistan Revenue Authority (the Authority) has been authorized to 'specify that any or all of the aforementioned tax shall not be treated as input tax for the purposes of the Act subject to such conditions and limitations as the Authority may specify in the notification.' However, related to this no notification, as yet, has been issued by the Authority, therefore, any tax levied under these laws on the goods and services received locally and/or imported by the person may be adjusted as input tax subject to provisions of the Act.

² Rule 25 of the Rules.

³ The original Second Schedule of the Act contained only two rates (viz., 19.5% for telecommunication services and 15% standard rate for all other services), which was substituted with a new Second Schedule through BSTS (Amendment) Act 2019, which contains higher, lower, fixed, and specified rates. The Second Schedule is a dynamic chart of BSTS rates, which is updated by the Provincial Legislature as part of its Fiscal Policy as and when required.

(tariff heading 9824.0000) are subject to BSTS @ 4%, 0%, or exempted (*specified rates*). On perusal of the Second Schedule of the Act, one may quickly gather that the Provincial Legislature has allowed input tax adjustments to only those registered persons who are registered under tariff headings having the BSTS rate of 15% and 19.5%; all other class of registered persons registered under tariff headings having BSTS *lower* than 15%, or *fixed* and *specified rates* have been disallowed input tax adjustments and capped at 15%. This is with a logical reason i.e. the BRA generally receives output tax on services provided at 15%, any input tax claimed over 15% would mean the BRA is paying more tax to a registered person than the registered person has paid to the BRA. There are two exceptions to this general rule, firstly in case of output tax exceeding 15% the input tax is allowed at 17% (as in the case of telecommunication service recipients and service providers) and secondly the service providers paying output tax less than 15% are barred from claiming any input tax altogether.

Furthermore, the input tax, as defined u/s 2(86), means not only tax(-es) levied under the Act, but also those taxes charged under other provincial and federal sales tax on services or goods laws like the provincial sales tax on services acts and the Sales Tax Act 1990. Such later taxes may have *higher rates* than standard BSTS rates of 15% and 19.5% for such class of registered person who are allowed input tax adjustment subject to the Act⁴. Similarly, for same class of goods and services rates may be different amongst the provinces.

Above provisions of the Act and the Rules, and example are important in understanding the entire scheme of 'input tax adjustment' in Balochistan. This scheme serves critical economic, legal, and fairness objectives, primarily driven by the principle of tax neutrality and the core value added tax (VAT) mechanism essence of which is that the services tax should be borne *only* by the end-consumer (the final consumer which is not required to get registered, or file a sales tax return or pass on the burden of sales tax to any person). Businesses acting as intermediaries should be able to recover tax paid on their inputs (goods and services) used or consumed in providing or rendering taxable services through legally allowed adjustment of input tax and tax paid. If not allowed reasonably by the Provincial Legislature and not practiced diligently by tax officials in the province, it would lead to additional cost and tax-on-tax (cascading) effects which in turn would distort prices (price increases and inflation), as well as, harm business competition, and violate the principle that only the final consumption should be taxed. Contrary to this, if allowed unreasonably by the law, and practiced irrationally by tax officials it may lead to *unjust enrichment* as the registered person would be allowed to retain the tax collected by him from its customer without remitting the same in public exchequer for greater socio-economic benefits of people (the end-consumer). This essence of sales tax on services in the province of Balochistan is reflected, in section 16 through section 16D of the Act, as well as, in rules 25 through 36.

⁴ For example, standard rate of sales tax on services in the Punjab under the provincial law is 16% and standard rate under Sales Tax Act 1990 under the federal law is 18%.

11. Section 16B(1) clause (j) disallows input tax adjustment to a registered person who provides or renders services liable to sales tax at *ad valorem* rate (rate according to value) lesser than 15%. The registered person, in the case in hand, is registered under tariff heading 9809.0000, which is liable to BSTS @ 15% (*ad valorem* rate), therefore, learned Commissioner (Appeal) has erred in determining that the appellant has violated and contravened section 16B(1) clause (j). However, the learned Commissioner-II in his judgment did not determine so despite the fact that the relevant show cause notice issued (dated 18-12-2024) did mention this provision of the Act. We conclude that the appellant has not violated and contravened section 16B(1) clause (j) as he is allowed under the Act to claim, reclaim, adjust or deduct input tax subject to the Act.

12. Section 16B(1) clause (k) disallows input tax adjustment on goods and services that are liable to sales tax (whether federal or provincial) at *specific rate*, or at *fixed rate*, or at *such other rates not based on value*, or at a *rate lesser than 15% ad valorem* AND are used or consumed as inputs in the provision of a taxable service under the Act. Proviso of this section allows input tax adjustment for sales tax paid on telecommunication services at a rate not less than 19.5% *ad valorem*, AND for purchasing goods and rendering telecommunication services at *ad valorem* rates not exceeding 17% and other services not exceeding 15%. From the documents available in the case in hand it is determined that the appellant/registered person, who is allowed input tax adjustment under the Act, has claimed 17% and 18% for purchase of goods and services, and 19.5% for rendering telecommunication services, therefore, he has **contravened** this provision of the Act as far as purchase of goods and services are concerned. We restrain to declare this act of the Petitioner as a **violation** of the law, which, otherwise, may have serious consequences. Orders of the learned Respondents, in this regard, are partially upheld.

13. Section 16B(1) clause (l) disallows input tax adjustment on the amount of sales tax paid on the telecommunication services in excess of 19.5% *ad valorem* (under any provincial sales tax law) AND on **other** taxable goods, **or** services (that is excluding the telecommunication services) in excess of 15% *ad valorem* (under federal law of Sales Tax 1990 any provincial/ICT sales tax law other than the Act). In the case in hand, the appellant has contravened this provision of the Act as far as the claim for excess amount of sales tax paid by him. The orders of the learned Respondents, therefore in this regard, are upheld.

14. Rule 27(8) of the Rules disallows input tax adjustment on the amount of sales tax paid in excess of 15% on the taxable goods as are used or consumed in providing of a taxable service. The appellant has claimed input tax adjustment on the amount of sales tax paid in excess of 15% (i.e., 18%) on taxable goods that he used in providing services in contractual works or supplies, for which BSTS rate is 15%. Thus, both the learned Respondents have rightly held that the Petitioner has contravened this law. However, we abstain from declaring this act of the appellant as a violation of the law as it would be having serious legal consequences.

15. The learned Commissioner (Appeal) has declared that the appellant has contravened provisions of rule 27(9) & (10) of the Rules.

Sub-rule 9 of rule 27 disallows input tax adjustment on goods and services used or consumed for providing a service liable to tax at a *reduced rate*, or *specific rate* where incidence of tax in *ad valorem* is less than the incidence of tax on the standard rate (i.e., 15%). Since the services provided by the appellant are subject to standard BSTS rate of 15%, we conclude that the learned Respondent has erred in declaring that the appellant has contravened rule 27(9).

Sub-rule 10 of rule 27 disallows input tax adjustment on services liable to tax at *reduced rate* or at *specific rate* where incidence of tax in *ad valorem* is less than the incidence of tax on the standard rate (of 15%) when used for providing or rendering **any service**. Here, the words 'any service' also include services subject to the standard BSTS rate of 15%. This provision of the Rules disallows the appellant input tax adjustment, if he has claimed amounts paid for rendering services liable to tax at *reduced rates* and/or at *specific rates*.

16. The appellant has claimed that due to 'a system error/issue' the excess/inadmissible input tax was allowed by the computerized tax filing system of the Authority, which is not a fault of him. We probed this and found that at the time of filing tax returns, the system was not fully automatic but semi-automatic. The registered person was required to insert the amount in excess of 15% in the column "Non-Creditable Input" to disallow the same as per law. However, the registered person did not utilize the same column and hence claimed excess input tax. This could be done intentionally to claim excess input tax and, consequently, pay less BSTS. It is important to mention here that the system was in initial stages and was not fully automatic. However now the check is implemented in the system and the registered person can claim the input tax as allowed in the Act and not beyond that. Due to this excess claim, the taxpayer paid less tax with the returns of the respective months. Nonetheless, after receiving the show cause notice the appellant did not refund the excess amount to the public exchequer, but opted for litigation.

17. In STA 21/2025, the appellant has neither challenged the penalty imposed by the learned Commissioner-II u/s 48 of the Act, nor has prayed for setting aside the impugned order in this regard. As far as STA 42/2025 is concerned, since the learned Commissioner (Appeal) who's order has been impugned under the appeal has already waived off the penalty imposed by lower adjudicating forum, the appellant has not touched this aspect of the case. However, as the justice and fair play demands, we should examine this aspect of the case in both the appeals.

18. Under section 48 of the Act, if a person commits any offence described in column 2 of the given table shall be liable to a penalty mentioned against that offence in column 3. Column 4 of the table mentions the sections of the Act that have been violated and/or contravened. The impugned order of the learned Commissioner-II does not mention as which specific offence mentioned at which serial number of the table u/s 48 has been violated by the appellant for which a penalty @ 5% of the short-paid BSTS, nor the impugned order mentions any *mens rea* and *mala fide* in payment of less BSTS due to excess input tax adjustment by the appellant. However, the impugned order does mention that the appellant has 'violated and contravened' section 16B(1) clauses (k) & (l) of the Act read with rule 27(8) of the Rules. In the impugned order, issued by the

learned Commissioner (Appeal), it has been remarked that the lower forum has imposed penalty without establishing the *mens rea*, therefore, not justified. The intent of the lower forum to impose default surcharge at the time of final payment is too considered as unjustified as it was opined that the imposition of penalty and default surcharge requires proper adjudication by affording sufficient opportunity of hearing to contest allegations of willful non-compliance, non-payment and the existence of *mens rea*. Based on this the learned Commissioner (Appeal), without establishing that **no mens rea** has occurred, waived off the penalty imposed by the lower forum of learned Assistant Commissioner, BRA, Quetta.

19. Since no default surcharge has been assessed and imposed on the appellant u/s 49 of the Act we avoid to take up this matter. However, we deem it appropriate to mention that default surcharge is rate of interest which the appellant is required to pay on the amount held and used by the appellant in business which was payable to the exchequer. If the appellant borrowed such amount from a bank then it would have been paid interest to the bank.

20. On the matter of penalties imposed in both the cases, we heard arguments, perused the impugned orders and took guidance from provisions of the Act. Section 48(3) (offences and penalties) of the Act reads as under:

"(3) The penalty specified under sub-section (1) shall be applied in a consistent manner and no penalty shall be payable unless an order in writing is passed by an officer of the Authority not below the rank of an Assistant Commissioner, the Commissioner (Appeal) or the Appellant Tribunal after providing an opportunity of being heard to the person concerned.

Provided that where the taxpayer admits his fault, he may voluntarily pay the amount of penalty due under this section."

21. On perusal of record it is revealed that the appellant was not only issued notices that failure to make compliance may lead to imposition of penalty and default surcharge, he was also offered ample opportunity of being heard personally, but he failed to do so. Hence the conditions laid down u/s 48(3) have been fulfilled on the orders-in-original. In the Act there is no provision for initiation of another proceedings after determination that some violation or contravention has been made by a registered person. Tax management, including monitoring, assessment, and adjudication are time-bound and public exchequer should not suffer due to unnecessary delays in tax management outcomes. Each tax period demands that revenues are met as estimated through lawful collection of taxes in order to discharge obligations of the state for socio-economic prosperity of people. When revenues and expenditures are, consistently, not in conformity and expenditures are much more than the revenues, despite having good potentials in revenue collections, economies derail: prices rise, currencies devalue, production becomes expensive, unemployment rises and social life become miserable with high discontent. This aspect of our social and economic

life is enough to declare that every taxpayer/registered person is responsible to discharge his duties as provided in tax laws of the Country. Similarly, the tax officials should be competent enough to read the law perfectly and implement it ideally without affecting the economic activities and businesses and without compromising interest of public.

22. Above statement in view, we conclude that the appellant has not discharged his obligations under the Act and under the Rules. He has contravened many provisions of the law, specifically provisions u/s 16B. He has been non-responsive to many notices of the Authority and, even did not fully comply order of this Tribunal to deposit 25% of short-tax as assessed in the two orders-in-original. These acts tantamount to be willful and the hidden *mens rea* speaks well of its existence in the behavior of the appellant. However, in both impugned orders, wherein penalties have been imposed, as well as in the impugned order of the learned Commissioner (Appeal) whereunder the penalty imposed by the learned Assistant Commissioner, BRA, Quetta has been waived off, the exact offences under column 2 with serial number under column 1 have not been mentioned. Both impositions, as well as, waiver off, the penalties have been decided in a stereotype manner u/s 48 of the Act.

23. A quick reading of the table would reveal that 5% penalties are mentioned for offences at Sr. No. 1 (fail to get registration), 3 (fail to deposit of tax due or any part thereof in the time or manner as laid down in the Act), and 5 (fail to maintain record as required). The cases in hand exclude Sr No. 1 & 5 being irrelevant; therefore, a probability would be that the learned Respondents have Sr. No 3 in their minds while imposing or waiving off the penalties. If so, then the corresponding sections of the Act mentioned at column 4 that have been violated and/or contravened are sections 3,4,10,11,17,18, and 68. However, this probability drops from our sights and minds as the learned Respondents have alleged that the appellant has violated and contravened provisions u/s 16B of the Act, which are not mentioned under column 4 of the offences mentioned at Sr No 5. Therefore, we exclude this too. Now the question arises as what should be the penalty on the appellant for his acts/behavior as stated above? With a premise in our view that a case for "non-deposit of the tax due or any part thereof in the time and manner laid down in the law" is different from a case for "non-payment, non-deposit of the actual amount of tax, or adjustment of inadmissible tax credit (input tax)". Former set of tax cases demand more leniency while considering a penalty than the later one, which requires a serious contemplation. This in view, before us are available two options; either consider act of the Petitioner as offence listed at Sr No 6, or that at Sr No 12. These entries in the tables u/s 48 read as follows:

<i>Sr No</i>	<i>Offences</i>	<i>Penalties</i>	<i>Section</i>
6	Any person who knowingly or fraudulently: (a).....	Such person shall be liable to pay a penalty of fifty thousand	General

	(b)..... (c)..... (d) fails to pay, recover or deposit the actual amount of tax, or claims inadmissible tax credit or adjustment or deduction or refund.	rupees or one hundred percent of the tax payable for the tax period to which the offence relates, whichever is higher. Such person shall be further liable, upon conviction by a Special Judge.....	
12	Where any person who contravenes any provision of this Act or the Rules for which no penalty has specifically been provided in this section	Such person shall be liable to pay a penalty of ten thousand rupees or three percent of the tax payable for the tax period to which the offence relates, whichever is higher.	General

24. In the given facts and circumstances of these two cases in hand, we consider that imposition of penalty on the appellant u/s 48 (Sr. No 12 of the table) would be just and appropriate.

25. Above analyses and findings in view, both the appeals filed by the Petitioner stand dismissed. Both the impugned orders are partially upheld. Our interference in these two impugned orders is on matter of penalty only. We set-aside decision of the learned Commissioner (Appeals) to waive off the penalty imposed by the learned Assistant Commissioner, BRA, Quetta in his order-in- Original dated 24-4-2024. In both the case, the penalty imposed shall be as per Sr. No. 12 of the table u/s 48.

— sd —

Chairperson

— sd —

Member

— sd —
Member

Dated 11 August, 2025