THE BALOCHISTAN SALES TAX ON SERVICES APPELLATE TRIBUNAL QUETTA.

Sales Tax Appeal No.20 of 2024
M/s Techno Consultant International (Pvt) Limited,
PECHS, Karachi.
versus
Commissioner Balochistan Revenue Authority Quetta.

ORDER

Appellants by: Mr. Nadeem Iqbal Adv

Respondents by: Mr. Barrister Wasil Jan

Date of hearing: 18/08/2025

Date of Order: 26/08/25

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.133/2024 dated 21.05.2024, 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') for tax periods related to 1st July 2018 to 31 December, 2021 wherein the appellant has been required to pay Balochistan Sales Tax on Services ('BSTS') amounting to Rs.3,145,522 and penalties of Rs.157,276 and Rs.3,145,522 under section 48(3) Sr. No.1 and Sr. No.6 respectively of the Act..

2. It is second round of appeal as the order in original No.24/2022 passed by the Commissioner on 26-10-2022 was remanded back by this Tribunal vide judgement STA No.56/2022 dated 02-06-2023 wherein the Commissioner was directed to provide proper opportunity of being heard, examine details already filed and then come up with a judicious order. In pursuance of said directions the Commissioner conducted fresh proceedings which led to passing of impugned order.

3. The relevant facts for disposal of instant appeal are that the appellant having BNTN: B7121791-1 is registered with the BRA under tariff heading 9815.5000. On the basis of record available with the BRA the Commissioner observed that the appellant has rendered services to HASKONINGDHV UK LIMITED but failed to make payment of BSTS into government treasury. The Commissioner accordingly issued show-cause. In response the appellant contended that due tax has been paid and furnished supporting documents regarding payment of said tax. The Commissioner however rejected contention of the appellant and passed first order in original. The appellant, being aggrieved with the said order filed appeal before this forum in terms of section 60 sub-section (2) of the Act. This Tribunal directed as follows:

"We have heard both the learned counsel for the parties and observed that the matter relates to non-examination of details and proper reconciliation. With the consent of both the counsels, ***we deem appropriate to remand the case to the concerned Commissioner with the directions to ensure proper opportunity of hearing to both the***

parties and then come up with a judicious order. The appellant is also directed to provide the details to the concerned Commissioner, which have been provided before this Tribunal and assist the Commissioner in passing of a judicious order".

4. The Commissioner initiated fresh proceedings which were again responded by the appellant with explanations and reconciliation supported by documentary evidences. The learned commissioner has reproduced said explanation and reconciliation in the impugned order but rejected the same. Being aggrieved the appellant has again come to this forum with grounds as per memo of appeal.

5. On behalf of the appellant, case was argued by Mr. Nadeem Iqbal Adv who contested the impugned order on various grounds. He argued that the learned commissioner has outrightly ignored the directions of this Tribunal and initiated de-novo proceedings. As per directions of the Tribunal the appellant filed all the required explanations and reconciliation duly supported by documentary evidences which are reproduced in the impugned order. But the same were considered unsatisfactory by the commissioner without assigning any reasons or rebutting the same. The learned commissioner again issued notice which was properly responded which is again reproduced in the impugned order but rejected without assigning any reasons or rebutting the same and passed impugned order creating tax liability of Rs.3,145,522/- which was not only repetition of earlier order in original but the learned commissioner has travelled an extra mile by imposing penalty u/s 48(3) Table Serial No. 01 amounting to Rs.157,276/- and penalty u/s 48(3) Table Serial No.06 amounting to

Rs.3,145,522/-. These penalties are not only based on irrelevant premise but also without establishing mens rea.

6. The learned counsel also argued that it is a well-established principle of law, as enunciated in a plethora of judicial pronouncements, that in de novo proceedings, the subordinate authority is duty-bound to restrict its deliberations to the original issues canvassed and adjudicated upon and is precluded from venturing into fresh and novel issues that fall beyond the purview of the original decision. Reliance was placed on case law reported as 2012 CLD 1623 (Sindh High Court.

7. The learned counsel of the appellant also challenged imposition of penalties in the impugned order and argued that mens rea is a fundamental concept in all legal proceedings, regarding proof of ill intention, gross negligence, or recklessness involving willful evasion to establish liability. The element of mens rea is a pre-requisite for ascertaining gross criminal culpability. A similar approach has been adopted in laws of taxation. Mens rea stands a necessary condition where the taxpayer has been charged for tax evasion or monetary loss to the exchequer. The learned counsel relied on may decisions of the superior courts including Gharibwal Cement Limited v ITAT and others reported as 2005 PTD 1 2004 PTCL, D.G.KHAN Cement reported as 2004 SCMR 456 =2004 PTD 1179, Bli Pakistan (Pvt) v Government of Pakistan reported as 2017 PTD 2050, CIR Sparrow spinning mills Ltd 2016 reported as PTD 786, CIT v Habib Bank reported as 2007 PTD 901 and many others.

8. Finally, the learned counsel stated that tax liability pertaining to the impugned period has already been paid which is more than the amount of tax determined by the learned commissioner in both the orders hence the impugned order may be set-aside and the illegal penalties charged may be deleted.

9. Barrister Wasil Jan 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 file returns and to pay impugned tax. The appellant failed to discharge his responsibility to provide reconciliation and corroborative documentary evidences, therefore, the learned commissioner was justified to pass impugned order for recovery of BSTS and to impose penalties. Summing up his arguments the learned counsel prayed for dismissal of appeal.

10. We have gone through the first impugned order of the commissioner, directions of this Tribunal and subsequent fresh proceedings. We have also gone through the fresh impugned order, examined the relevant provisions of law, gone through the decisions of the superior courts relied upon by the learned counsel of the appellant and considered arguments of both the counsels. We are surprised to note that although the learned commissioner has twice reproduced the detailed replies of the appellant in the impugned order but failed to point out defects in said replies. The learned commissioner has brushed aside the same as unsatisfactory and did not bother to rebut the same. Instead, the learned commissioner has repeated the first impugned order ignoring the directions of

his Tribunal. Further the learned commissioner has invoked penalty provisions without giving any reasons. The learned commissioner has gone out of the scope of first order in original by imposing penalties for nonpayment of tax and committing tax fraud without giving any show-cause or establishing mens rea on the part of the appellant.

11. The appellant has properly reconciled the amount of tax payable on the basis of invoices and exchange rate applicable at the time of issuance of such invoices resulting in tax liability at Rs.3,888,669/- which is more than the tax charged by the learned commissioner at Rs.3,145,522/-. Since the penalties charged in the fresh impugned order were neither part of original impugned order nor mens rea has been established hence such penalties are not sustainable.

12. In the light of above discussion, we set-aside the impugned order and hold the appellant liable to pay tax liability at Rs.3,888,669/-. The penalties imposed under section 48(3) Table Serial No. 01 amounting to Rs.157,276/- and penalty under section 48(3) Table Serial No.06 amounting to Rs.3,145,522/- are deleted.

13. The appeal stands disposed of accordingly.

Announced
Dated, the 26/08/ 2025.

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Chairperson

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Member

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Member