BALOCHISTAN SALES TAX ON SERVICES

APPELLATE TRIBUNAL, QUETTA

Sales Tax Appeal No. 63/2025

M/S D TAR International, Lahore............ Appellant

VERSUS

Assistant Commissioner, Balochistan Revenue Authority, Quetta

AND

Commissioner (Appeals), Balochistan Revenue Authority (BRA), Quetta...Respondents

ORDER

Date of hearing: 25.8.2025 Announced on: 10 .09.2025

Appellant by: Ghulam Dastgir & others

Respondents by: Barrister Wasil Jan, Advocate

DOSTAIN KHAN JAMALDINI, MEMBER: The above titled sales tax appeal has impugned order-in-appeal (OIA) No. 14/2025 of learned Commissioner (Appeals), Balochistan Revenue Authority (the respondent) dated 19-6-2025, which has upheld three orders-in-original (OIOs) bearing Nos. Input 19/2025, 20/2025, and 21/2025 all dated 10 March 20125 passed by Assistant Commissioner, BRA, Quetta. The OIOs shared identical facts and legal issues, therefore, were decided through a single OIA.

2. The appellant/registered persons is registered with the Balochistan Revenue Authority (the Authority) under tariff heading 9824.0000 for 'construction services'. Balochistan Sales Tax on Services (BSTS) rate of 15% is applied for such taxable services and registered persons registered under these tariff headings are allowed to claim, reclaim, adjust or deduct input tax subject to conditions as provided u/s 16, 16A, 16B, 16C, and 16D of Balochistan Sales Tax on Services Act, 2015 (the Act) and corresponding rules of Balochistan Sales Tax on Services Rules, 2018 (the Rules).

3. The facts of appeal are that the relevant tax assessment officer of the authority (AC, Quetta) from available record discovered that the appellant/registered person has claimed input tax adjustments in his e-filings during different tax periods (2021-22, 2022-23, and 2023-24) which are not admissible under the law. The AC Quetta issued notices u/s 24(2) of the Act for recovery of under paid/short paid tax followed by reminders. The appellant did not reply to these correspondences. Consequently, the assessing officers/Assistant Commissioners issued the impugned orders-in-original (OIOs) making the appellant liable to deposit short-paid/under-paid

BSTS along with penalties and default surcharge under the provisions of the Act. Cumulative short-paid BSTS was assessed as Rs. 1,458,858/-. It was also declared that penalty u/s 48 and default surcharge u/s 49 of the Act is liable to be paid at the time of final payment. Aggrieved by this, the appellant preferred appeal before the learned Commissioner (Appeals)/the respondent. The impugned OIO was challenged on multiple grounds including being factually incorrect, arbitrary, injudicious, punitive, and contrary to law and factual circumstances of the cases. In those appeals, before the learned Commissioner (Appeals)/ the respondent, it was contended that the exceeding input tax from the permissible threshold of 15% was declared inadmissible in January 2025 after receiving the show cause notices (SCNs) by him. It was contended that the inadmissible excess input tax amounts were *available as carry forwards in the returns, which were adjusted against the demand/recovery raised in SCNs*. It was argued that this option was available before him because of well settled law by the Superior Courts under which tax liabilities should be adjusted against any refund or carryforward available. However, the learned Commissioner (Appeals) did not endorse this view by holding that neither unilateral disclaims/adjustments of excess claims pertaining to previous tax periods through carry-forwards conform to any legal requirement or authorized adjustment mechanism under the law. He declared that the relevant statutes do not permit retrospective offsetting of prior period liabilities in this manner and, thus, upheld the impugned OIOs. The appellant was directed to deposit the outstanding BSTS in the treasury within 15 days of the issuance of the impugned order-in-appeal (OIA). The respondent/learned Assistant Commissioner was directed to allow the appellant to revise the relevant Sales Tax Returns for purpose of proper reporting and lawful claims. It was ordered that the matter of penalties and default surcharges should be adjudicated separately, wherein the appellant be given full opportunity to be heard. Dissatisfied with this, the OIA was impugned before this Tribunal.

4. The appeal filed before us is with 2 days delay. The appellant has provided receipt of the impugned OIA dated 19-6-2025. The document submitted indicates date of receipt as 27-6-2025. The appellant filed his appeal before this Tribunal on 08-8-2025. By excluding these 2 days (date of receipt of impugned OIA and date of submission of the appeal), the filing has taken 42 days; whereas the statutory provision u/s 67 (2)(d) is 'forty days of the receipt of the order of the Commissioner (Appeals)'. No Condonation Application is submitted with the main appeal that may provide some plausible reason(s) for consideration by the Tribunal. This validly indicates disinterest of the appellant to properly pursue his case before us. Leaving this important matter aside, we will examine the case whether it holds ground or otherwise?

5. In the facts and grounds set forth in the memo of the appeal, the appellant has taken following pleas:

a. In compliance of the proceedings initiated by the notices, the appellant voluntarily disposed of/reversed the excess input taxes in his tax return, but this fact of the case was not accepted by the respondents;

b. He has already declared the input tax exceeding the 15% threshold as inadmissible or reversed the input taxes claimed in his subsequent tax return by complying the legal requirements. According to him, if the impugned OIA is upheld, it will result in double taxation. He has opined that the Superior Courts have consistently held that tax liabilities must be adjusted against available refunds/carry-forward amounts. According to him the respondent's impugned order ignores this settled principle.

Based on the above, the appellant prayed for annulment of the impugned OIA being ab-initio void, illegal and without lawful authority.

5. We have perused record of the case and did not see any advice/direction from the respondents for any voluntary disposal/reversal the excess input taxes in the subsequent and latest tax return of the appellant. However, found that appellant,s unilateral decision has been disallowed by the respondents. The respondents in their impugned orders have held that no provision exists in the Act or the Rules that permit a taxpayer to adjust previously disallowed or excess input tax claims against carried forward input in subsequent periods. Therefore, unilateral adjustments do not conform to any legal requirements under the law as relevant statutes do not permit retrospective offsetting of prior period liabilities in such manners.

6. During the hearing on 25-8-2025, for the appellant Mr. Musawar Sajjad, Adv. appeared as authorized representative. For the respondents, Barrister Wasil Jan, Adv. appeared as authorized representative.

7. Learned Counsel for the appellant argued matters as set forth in the appeal with emphases that the inadmissible input tax amounts have already been disposed of/reversed in the tax returns of January 2025. The respondents have erred in assuming that the excess amounts/inadmissible adjusted amounts towards input tax have been utilized for any taxable activity. Therefore, on the basis of mere assumptions neither tax liabilities can be raised nor any penalty and default surcharge be imposed. He argued that since the appellant has done inadmissible on the basis of notices issued by the Authority indicating amounts to be done inadmissible, they have cured the default ultimately; so, these amounts cannot be recovered again. If this done, this would be unjust enrichment of the department as it would be holding money of the appellant unjustly to the disadvantage or prejudice of the others. It was stated that after disposal of the excess inadmissible input tax through making entries in the subsequent tax return, recovery of these amounts and their deposition in the government treasury would mean double-taxation, which is illegal under the law. Therefore, the impugned OIA is void ab-initio and without any legal authority. The learned counsel for the appellant prayed that the impugned order be annulled by this Tribunal. For advancement of

these arguments, reliance was made on honorable Lahore High Court judgment reported as 2014 PTD 1939 titled *Sui Northern Pipelines versus Deputy Commissioner Inland Revenue & others.*

8. Learned counsel for the respondent refuted these arguments and professed that the Learned Commissioner (Appeals) has judged the appeals before him strictly in accordance with the provisions of the Act and the Rules. He posed a question as under what provisions of the Act and the Rules these voluntary adjustments of excess input tax, being inadmissible, have been made by the appellant in his subsequent tax returns in 2025 after a long time instead of deposition into the government treasury? No provisions of the Act and the Rules could be cited appropriately by the learned counsel for the appellant.

9. We heard the learned counsels for the parties, gone through the documents attached with the memo of the appeal, took guidance from provisions of the Act and the Rules. We also referred to the case law relied by the learned counsels for the appellant. Record of the case before us reveals that the appellant has accepted that he has adjusted inadmissible input taxes in the relevant tax periods, i.e., have held back excess amounts above the permissible threshold of 15% and later during January 2025 carried forward/reversed these amounts in his monthly tax return. Thus, for us, the crux of the *lis* is whether the path adopted by the appellant is in accordance with the Act and the Rules or otherwise? As regard holding back the excess amount claimed, it is crystal clear that this choice is in contravention of the conditions laid down u/s 16 and16B of the Act and the rules 26 and 27. This unlawful choice was, however, sensed by the appellant soon after receiving the notices as he has admitted during appeal proceedings but instead of depositing excess input tax of 3% to public exchequer he opted unilaterally to disallow himself the excess claims by making entries in the monthly return of January 2025 under category 'non-creditable inputs (relating to exempt, non-taxed supplies/rendering of services and relating to services provided in other jurisdiction and taxed there)', which is at Sr. No. 4 of BSTS Form-03. This form is governed u/s 35 (Returns) of the Act and rule 15 (Filing of return) and rule 164 (Sales tax on services return form) of the Rules. Serial numbers 1 to 8 of the Form are relevant to 'Sales tax credit'. The entries at Sr. No. 4 are used in determining the 'input tax for the month' (Sr. No. 5) with formula [(Sr. No.1+Sr. No.2+Sr. No. 3)- Sr. No. 4] = Sr. No. 5. The appellant has disallowed himself these input adjustments, which include unlawfully held amounts of inadmissible excess input taxes pertaining to previous tax periods of the years 2021-2024, in his monthly return of January 2025. Being not relevant to the monthly returns, as well as not yet verified as per the Act and not permissible under the law, the assessment officer did not endorse this unilateral choice of the appellant and declared it as unlawful. The respondent No. 1 upheld orders of the lower forum. Here we must underline that our honorable courts on many occasions have accentuated the principle that where a thing is provided to be done in a particular manner, it should be done in that manner and if not so done, the

same would not be done considered as lawful[1]. Sales tax law is based on the concept of supply chain: input tax, output tax and end consumer. Each person in this supply chain may claim input tax while filing monthly sales tax returns subject to limitations prescribed by concerned laws (federal or provincial). The appellant has claimed input tax @ 18% while paying output tax to BRA @ 15%, which is clear violation of the Act. The claim of subsequent reverse entry in January 2025 does not change the fact that the appellant has collected 18% tax and claiming the same against 15% output tax paid to BRA. The stance is, therefore, neither convincing nor permissible under the Act. Since unlawfulness of the action of the appellant has been established, it safely can be determined that the appeal constructed on this unlawful premise has no standing in the eyes of the Act and the Rules. Reliance of the learned counsel for appellant on *Sui Northern supra* in his arguments that the appellant has been taxed twice and the impugned OIA, if not annulled, would *unjustly enrich* the state is out of context. In that case the prime tax regulator (FBR) was trying to recover an amount of tax which had already been paid; whereas, in the instant case the registered person has not yet paid the excess inadmissible input tax that he had adjusted in his tax returns during tax periods pertaining to tax years 2021 to 2024 by contravening provisions of the Act and the Rules and despite accepting the inadmissibility. Rather he is trying to dispose of/reverse these payables in his tax return of January 2025, unilaterally, which is not allowed under the law. Since a remedy is available to avoid a potential double taxation caused by the action of the appellant, we refrain to declare this case as a case of *unjust enrichment*. The tax return of the appellant for January 2025 can undergo the test of verification by the Authority. The appropriate remedy to avoid the double taxation is, thus, revision of tax returns of January 2025 as provided u/s 35 (6) of the Act and rule 21 of the Rules after condonation of time limit of 120 days by the Authority as provided u/s 86 of the Act.

10. Above in view, appeal is dismissed by upholding the impugned OIA.

___SD___

Chairperson

___SD___

Member

___SD___

Member

Dated 10th September, 2025

[1] *M. Saleem v. Deputy Director FIA/CBC, Multan and another* (PTCL, 2000 CL. 465); *CIT/WT, Companies Zone-I, Lahore v. Hafeez Valqa Industries Pvt. Ltd., Lahore* (2005 PTD 2403).