

THE BALOCHISTAN SALES TAX ON SERVICES
APPELLATE TRIBUNAL QUETTA.

Sales Tax Appeal No.24 of 2025
M/s Uch-II Power Private Limited,
Islamabad.
versus
Commissioner I, Balochistan Revenue Authority, Quetta.

ORDER

Appellants by: Mr. Taqi Ud Din Ahmed FCA
Mr. Muhammad Ahmad Adv

Respondents by: Mr. Barrister Wasil Jan

Date of hearing: 18/08/2025

Date of Order:

SAIF ULLAH KHAN, MEMBER- The above titled Sales Tax Appeal has been filed by the appellant calling in question, the order-in-original No.84/2025 dated 04.04.2025, passed by the learned Commissioner I ('Commissioner') of the Balochistan Revenue Authority ('BRA') for tax periods July 2022 to June, 2023. In the impugned order the Commissioner has charged Balochistan Sales Tax on Services ('BSTS') at Rs.1,904,136 being inadmissible claim of input tax on the basis of credit notes and also imposed penalty of Rs.95,206 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 M/s Uch-II Power (Private) Limited having BNTN: B3239640-6 is registered with principal activity as "electric power transmission or distribution services" under tariff heading 9840.0000. On perusal of the record the learned Commissioner

observed that the registered person has issued credit notes against sales invoices reported under the output tax section of the Balochistan Sales Tax Return, with the apparent intent of claiming input tax adjustment in respect of services acquired from an unregistered vendor located outside Pakistan, resulting in a short payment of tax amounting to Rs.1,904,136. The learned Commissioner accordingly initiated recovery proceedings on September 06, 2024 and issued show-cause notice to the appellant under section 52(1) of the Act for the recovery of said short paid amount. In response the appellant defended the issuance of credit notes for claiming input tax adjustment but the Commissioner did not agree with appellant's contention and disallowed input tax adjustment on the basis of credit notes through impugned order. Being aggrieved with the impugned order the appellant has come up before this forum in terms of section 60 sub-section (2) of the Act. The appellant has taken grounds as per memo of appeal.

3. On behalf of the appellant, Mr. Taqi Ud Din Ahmed FCA and Mr. Muhammad Ahmad Adv appeared who contested the impugned order on various grounds. Firstly, he argued that the learned Commissioner has misinterpreted the provisions of the Act particularly sections 4, 16(1)(p) and 16(1)(q) of the Act and the Balochistan Sales Tax Special Procedure (Withholding) Rules, 2018 ('Withholding Rules') while passing the impugned order. Secondly, he contended that the appellant was justified to pass credit notes in order to claim input tax adjustment against output tax due to limitation of BSTS return form on BRA e-portal which does not allow claim of input tax adjustment against the tax paid under section 4 of the Act. The learned counsel also claimed that credit notes

were issued with the approval of the then Commissioner BRA/ Member Policy BRA hence the learned Commissioner was not justified to reject the said credit notes. He continued to argue that the Commissioner has failed to appreciate that the appellant had already discharged tax liability in respect of confronted invoices in Annexure C of respective sales tax returns under reverse charge mechanism and no provision of the Act restricts claiming of input tax against output tax discharged under reverse charge mechanism. Thus, tax liability in respect of taxable services received from foreign service providers outside Pakistan stands discharged by the appellant being service recipient in terms of section 4(5) of the Act. Section 4(5) of the Act. The appellant being service recipient from outside Pakistan was accordingly required to get registered with the BRA as service provider in terms of section 4(6) of the Act. The learned counsel while referring to the judgement of the honorable Sindh High Court in CP No 4651 to 4661, all of 2014 dated October 27, 2020, contended that the learned Commissioner has grossly erred in misinterpreting the said judgement relied upon by the appellant in support of the contention that input tax can be claimed against taxable services obtained by a withholding agent from an unregistered person. The learned counsel also challenged levy of penalty and default surcharge under sections 48 and 49 of the Act and prayed for setting aside the impugned order.

4. Mr. Barrister Wasil Jan learned counsel appearing on behalf of respondent supported the order of the learned Commissioner. The learned counsel stated that the appellant issued credit notes against self-generated sales invoices purportedly to adjust input tax allegedly claimed in respect of services acquired from

unregistered vendors located outside Pakistan which resulted in loss of revenue to the exchequer. He continued to argue that the appellant has misinterpreted the law and also violated the accounting principles because credit notes are passed only in case of return of goods sold/ cancellation of services contract for some reason. The appellant has passed credit notes to convert input tax into output tax and to avoid payment of tax under section 4 of the Act. The appellant has grossly misinterpreted provisions of sections 4 and 16B of the Act. The learned counsel finally prayed for dismissal of appeal.

5. We have gone through the impugned order of the Commissioner, examined the provisions of law and relevant record, gone through the judgement of the honorable Sindh High Court in CP No 4651 to 4661 all of 2014 dated October 27, 2020 and considered arguments of both the learned counsels. We have also gone through the sales tax on services laws of Punjab, Sindh and KP. The crux of the matter involved in the instant appeal is whether the appellant was eligible to claim as input tax, the amount of tax paid under section 4 of the Act under reverse charge mechanism in respect of taxable services received from foreign service providers located outside Pakistan, on the basis of credit notes or not.

6. The province of Sindh follows the principle of taxation on origin of services only, although Section 3(2) of the Sindh Sales Tax on Services Act, 2011 treat services provided by a non-resident to a resident person as taxable but through Circular No.6 of 2020 dated 10-07-2020 tax on such services is conditionally allowed as admissible input tax.

7. The judgement of the honorable Sindh High Court in CP No 4651 to 4661, all of 2014 dated October 27, 2020, in the case of unregistered service provider located inside Pakistan, wherein the honorable Court held that:

"13. The reading of the above proviso clearly indicates that taxable services could be obtained from an unregistered person and the withholding agent is only required to obtain a copy of CNIC of the said unregistered person, if he is an individual but if it is a company or NTN holder, a copy of the NTN certificate, meaning thereby there is no restriction for obtaining taxable services from an unregistered person and the only responsibility assigned to a person obtaining taxable services from an unregistered person is with regard to obtaining CNIC (in the case of an individual) and NTN certificate (in the case of a company). Thus when the law does not put a bar upon receiving taxable services from an unregistered person, there cannot be any bar on claiming input adjustment in respect of the taxable services obtained from the unregistered person also, as the learned counsel appearing for the department (respondents), as stated above, have failed to point out any provision of the law which specifically bars denial of the input adjustment in respect of the taxable services obtained by a person, being withholding agent, from an unregistered person but the only requirement is with regard to obtaining a copy of CNIC or NTN certificate as the case may be The above

provisions of law also clearly stipulate entering the name, CNIC and NTN of the unregistered persons in the sales tax form which also supports the contention of the petitioners that even if they have obtained taxable services from the unregistered persons, they are entitled for input adjustment and since the form so designed by the department (respondents is not accepting and recognizing unregistered persons for input adjustment, there appears to be a defect in the said form which needs to be corrected."

8. It is clear from above findings of the Honorable Sindh High Court that the petitioners in the case pleaded allowance of input tax adjustment on account of services procured from an unregistered Pakistani individual or company. Through Sindh Sales Tax on Services (Amendment) Act, 2021 section 15A(1)(bb) has been inserted in the Sindh Sales Tax on Services Act, 2011 which disallows input tax against services acquired or procured from unregistered persons which now makes the judgement of the honorable Sindh High Court in CP No 4651 to 4661 ineffective from tax periods 2021 onwards. The appellant reliance on same judgment is therefore misplaced and not convincing.

9. The sales tax on services laws of Balochistan, Punjab and Khyber Pakhtunkhwa ('KP') follow the principle of taxation on origin as well as destination of services. The BSTS Act, 2015, the KP Finance Act, 2013 (later on replaced by KP Sales Tax on Services Act, 2022) and the Punjab Sales Tax on Services Act, 2012 follow the principle of taxation both on origin and destination

of services. Normal procedure for taxation on origin under the said three acts is such that the services provided are subjected to sales tax and the service provider is liable to pay such tax. However, the said three acts also provide procedure for charge of tax on reverse charge basis where service recipient is liable to pay sales tax on services received or procured. All the said three acts provide reverse charge taxation mechanism under section 4 of said three acts. The section 4 of the Acts of Punjab and Balochistan are identical while section 4 of the KP Act is slightly different. Before proceeding ahead, we deem it appropriate to reproduce section 4 of the BSTS Act, 2015 as follows:

“4. Application of Principles of Origin and Reverse Charge in Certain Situations. - (1) Where a person is rendering or providing taxable services in Province other than Balochistan but the recipient of such services is resident of Balochistan or is otherwise availing such services in Balochistan and has charged tax accordingly, the person rendering or providing such services shall pay the amount of tax so charged to the Government.

(2) Where the recipient of a taxable service is person registered under the Act, he shall deduct the whole amount of tax in respect of the service received and pay the same to the Government.

(3) Where a person is rendering or providing taxable services in more than one provinces or territory in Pakistan including Balochistan, such person shall be liable to pay tax to the Government to the extent the tax is charged from a person resident in Balochistan or from a person, who is otherwise availing such services in Balochistan.

(4) Where rendering of a taxable service originates from Balochistan but terminates outside Pakistan, such person shall be required to pay tax on such service to the Government.

(5) Where a taxable service originates from outside Pakistan but is received or terminates in Balochistan, the recipient of such service shall be liable to pay the tax to the Government.

(6) The persons who are required to pay the tax to the Government in terms of sub-sections (1), (2), (3), (4), and (5) shall be liable to registration for purposes of this Act and the rules.

(7) All questions or disputes relating to the application of the principle of origin given in this section shall be resolved in terms of the already recorded understanding between the Federal Government and the Provincial Governments on the implementation of reformed General Sales Tax provided that pendency of any such question or dispute shall not absolve the concerned person from his obligation to deposit the tax.

(8) The provisions of this section shall apply notwithstanding any other provision of this Act or the rules and the Authority may specify special procedure to regulate the provisions of this section." (Emphasis is ours)

10. It is evident that the above provision of the Act has a non-obstante clause in sub-section (8) which gives section 4 an overriding effect over other provisions of the Act which do not have non-obstante clauses. Section 4 subsection (5) provides that any resident of Balochistan who receives services from outside Pakistan shall pay tax to the Government on such services received. Whether such tax may be claimed as input tax or not we have to refer to section 16(1) of the Act which provides mechanism for claim of input tax. We deem it

appropriate to reproduce section sub-sections (1) and (4) of section 16 of the Act as under:

“16. Adjustments of Input Tax.-- (1) A person required to pay tax under this Act shall be entitled to deduct from the payable amount, the amount of tax paid or payable by him on the receipt of taxable services exclusively used in connection with the taxable services he provides, subject to the condition that he holds a true and valid tax invoice not older than six tax periods, showing the amount of tax charged under the Act on the services so received, but the Authority may disallow or subject to additional conditions may restrict such deduction in cases or with respect to taxable services or goods specified in section 16A or section 16B or the rules.

(2)

(3)

(4) Notwithstanding anything contained in this Act or the rules made thereunder, the Authority, with the approval of the Government, may, by notification in the official Gazette and subject to such conditions, limitations or restrictions as may be specified therein, allow a registered person or class of persons to deduct such amount of input tax from the output tax as may be specified in the notification.

(5).....”

11 When section 4 and section 16 of the Act are read together then it is evident that section 4 will override provisions of section 16 of the Act. However, under section 16 subsection (4) the Authority may with approval of the Government and through official gazette allow any person to claim any input tax from output tax. The appellant could not provide such notification issued by the Authority in its favor. Thus, tax paid by the appellant on account of services acquired from outside Pakistan are not allowable as input tax under section 4 of the Act.

12. Now coming to the issuance of credit notes by the appellant we deem it appropriate to analyze it both under the accounting principles and under the Act read with the Sales Tax on Services Rules, 2018 ('Rules'). The credit notes in accountancy are commonly issued following the cancellation of an order for goods/ services, invoice error, or lost or damaged goods. Such credit notes may be used to refund a transaction either in whole or in part. In the Act credit notes are mentioned under section 31 with reference of record only. Under the Rules, Rule 28 provides mechanism for issuance of debit and credit notes in case any service or part thereof has been cancelled or there is any invoice error. It is a fact admitted by the appellant that services were received from persons located outside Pakistan and none of order for services or part thereof was cancelled. Therefore, the issuance of credit notes is neither permissible under the accounting principles nor under the Act read the Rules in absence of non-cancellation of order for services procured from outside Pakistan.

13. As far as contention of the appellant regarding permission by the then Commissioner BRA/ Member Policy BRA is concerned we agree with the contention of the respondents that no position of Member Policy ever existed since inception of BRA. The contention of the learned counsel for the appellant has no substance.

14. In view of the above facts and discussion we find no substance in contentions of the learned counsel for the appellant hence issuance of credit notes by the appellant is held unlawful. The appeal stands dismissed and the impugned order passed by the learned Commissioner is upheld.

Announced
Dated, the 11/09/ 2025.

____SD____
Chairperson
____SD____
Member