BALOCHISTAN SALES TAX ON SERVICES

APPELLATE TRIBUNAL, QUETTA

MA 31/20 26

&

STA 81/2026

M/S Otsuka Pakistan Ltd.

Versus

The Commissioner (Operations)-II, Balochistan Revenue Authority, Quetta

ORDER

Date of last hearing: 27.4.2026 Date of issue: 13.5.2026

Appellant by: Mr. Muhammed Mudassir, FCA & Others

Respondent by: Mr. Amin Ullah Khan, Advocate

DOSTAIN KHAN JAMALDINI, MEMBER: The Appellant-Registered Person through the instant Appeal has contested order-in-original (the impugned order) bearing No. 2/HUB/2025-26 dated 22-01-2026 issued by the learned Commissioner (Operations)-II, Balochistan Revenue Authority (the Authority), Quetta (Respondent) under section 52(6) r/w sections 48 & 49 of Balochistan Sales Tax on Services Act (the Act), alleging that the Registered Person has violated and contravened the provisions of section 14 (2) r/w sections 18(1) and 35(1) of the Act and rule 3 of the Balochistan Sales Tax Special Procedure (Withholding) Rules, 2018 (the Withholding Rules). Through the impugned order, it is held that an assessed amount of Rs. 2,451,351/- is recoverable from the Appellant in his capacity as a withholding agent for services received from different service-providers during the tax year 2019-20. Consequently, it has been ordered that the recoverable amount be deposited into government treasury. It has further been ordered that penalties and default surcharges shall be imposed upon under sections 48 and 49 of the Act, respectively, at the time of final payment. It was also advised to the Appellant-Registered Person that if he feels aggrieved of the impugned order, an appeal can be preferred before this Tribunal within 40 days from the date of its receipt. The Registered Person opted for the latter, and filed the instant

Appeal on 13-3-2026. The TCS tracking documents submitted through the Memo indicate that the impugned order has been received in TCS facility, Hub (Balochistan) on 04-02-2026 and delivered to the registered person's address at Karachi (Sindh) on 06-02-2026. On 05-3-2026, the Authority issued a notice u/s 72 of the Act for recovery of the due taxes by 09-3-2026 intimating that if no compliance made by due date proceedings would be initiated for placing embargo on his economic activities, attach & sell his properties, and/or attach his bank account. The Appellant submitted applications for urgent hearings on his appeal and granting stay on recovery. Through the main Appeal, the Appellant has prayed the following:

i. the impugned order be declared as void, illegal (being passed beyond statutory timelines as mandated u/s 52), unwanted, and *ultra vires* to the Act (due to misreading of different provisions and miscalculation of due tax);
ii. the recovery notice issued u/s 72 be stayed till finalization of the case; and
iii. award any relief to him, as deemed appropriate.

2. Brief facts of the case are that the Appellant is a limited company registered under the Companies Act, 2017 engaged in manufacturing and supplies of pharmaceutical and nutraceutical products with manufacturing premises located in Hub, Balochistan. He is also registered with the Authority having BNTN: B0823578-3. The record of the case states that the Respondent, upon perusal of record available with him, found that during 2019-20, the Appellant had incurred expenses under the head salaries & wages and purchases to the tune of Rs. 747,948,000/-. As is evident from content of the impugned order and based on the presumption that the such expenses may involve services as salaries and wages may include contractual payments and purchases may include transportation, the respondent initially issued a notice u/s 32(2) of the Act on 01-01-2024 seeking explanation for withholding against taxable expenses. The Appellant was requested to provide record and documents related to these payments for the purpose of audit and further proceedings, if required, under the law. Accordingly, certain records were provided and hearing was held on 16-10-2024. After examining and assessing the record and documents, the

learned Commissioner-II/the Respondent found that during the tax period the withholding agent had acquired contractual services under the heads "salaries, wages and other benefits", which attract withholding provisions of the Act. Consequently, on 12-12-2024, a show cause notice (impugned notice) was issued to the withholding agent u/s 52(6) r/w sections 14(3), 48, & 49 of the Act indicating Rs. 15,732,566/- as short withheld BSTS for services received by him under different agreements signed with three separate entities for janitorial, labour/manpower, and canteen services (supplies of food on contract basis). The Appellant during the adjudication contested the valuation done for taxable services provided under janitorial and HR contracts. However, he agreed to pay the due taxes in accordance with the law. With regard to the canteen contract, it was contended that the SCN has misread the provided services by classifying it under tariff heading 9801.3000 leading to imposition of standard rate of 15% BSTW, i.e. tax assessment of Rs. 2,373,090/- on the value of Rs. 15,820.602/-; whereas, the service-provider does not qualify as "caterer" as defined u/s 2(35) of the Act and contract signed with him is not taxable under the Act. Finally, after giving fair opportunity of being heard and accepting contention of the Appellant regarding correct application of law in valuation for janitorial and HR services but rejecting his position taken on canteen services, the impugned order was issued. The impugned assessment order contains the following table for recoverable tax dues reducing the amount of BSTS from Rs. 15,732,566/- to Rs. 2,451,351/-:

S.No	**Service Head**	**Amount**	**Tariff Heading Rate of BSTS under 1st & 2nd Schedule of the Act**	**Amount of BSTS Recoverable**
1.	Janitorial Services	120,000	9822.3000/ 13.04% (fraction formula being unregistered service provider)	15,652
2.	Labour/manpower	6,655,158	9822.3000/ 13.04% (fraction formula	62,609

			being unregistered service provider)	
3.	Canteen Services (catering services)	15,820,602	9801.3000/ 15%	2,373,090
	Total amount recoverable			**Rs. 2,451351**

3. During the proceedings learned Counsel for Appellant argued his case as set in the Appeal and provided certain documents relevant to the canteen related services. Since the revised assessment of tax liability has already accepted his contention for janitorial services and labour/manpower services, he agreed to deposit the dues instantly. Learned Counsel for Respondent opposed the positions taken in the Appeal vis-à-vis the limitation in passing the impugned order, and assessment of tax liabilities on different legal and factual grounds and prayed dismissal of the appeal.

4. We heard both the parties, examined available record of the case, law cases referred by the learned Counsel of the Respondent, and took guidance from the Act and the Withholding Rules. Before us, matter of penalty and default surcharge aside, two contentious points emerged to consider and decide this dispute. First question is, whether any show cause notice issued under section 52(6) of the Act attracts any limitation? If yes, which provision of the Act sets such time-limit for adjudication and deciding the matter? Secondly, whether the activities and supplies provided by canteen contractor to the appellant qualify as "services"? If yes, then are they taxable? If yes again, what should be the correct assessment of the liability? In the following paragraphs we will examine these two points and shape our opinion. Finally, we would deliberate upon the dispute over penalty and default surcharge and decide accordingly.

5. **<u>On time-limitation:</u>** Learned Counsel for Appellant contended that the impugned order should had been issued within 180 days as mandated u/s 52(3) of the Act. Since it is barred by time, it should be declared *void ab initio* and a nullity. For clarity we reproduce the cited section with sub-section (4) as follows:

> "***52. Recovery of the Tax not Levied or Short-levied.*** *(1)……*
>
> *(2)……*
>
> *(3) The officer shall, after considering the objections of the person served with a notice under sub-section (1) or (2)……determine the amount of tax or charge payable……*
>
> *(4) Any order under sub-section (3) shall be made within one hundred and eighty days of issuance of the notice to show cause……*"

6. However, contrary to this opinion, the impugned order was issued, in fact, u/s 52(6) r/w ss 14(3), 48 and 49 and not u/s 52(3). We must mention here that purpose of notices under three sub-sections of section 52 are different and issued for different events. Notice u/s 52 (1) is issued in an event of inadvertence, error, misconstruction or for any other reason any tax or charge not levied or short levied. Purpose of notice issued u/s 52(2) is to probe a case of any tax or charge not levied or short levied due to some collusion, abetment, deliberate attempt, mis-statement, fraud, forgery, false or fake document. Notice u/s 52(6) is issued to a person who is required to withhold tax under the Act and the Rules. Sub-section (6) reads as follows:

> "*(6) Where any person, required to withhold tax under provision of this Act or the rules made thereunder, fails to withhold the tax in the prescribed manner, an officer of the Authority shall determine the amount in default and order its recovery in the prescribed manner.*"

7. Above sub-section indicates no time limits for adjudication of a case for recovery of BSTW, that is, the period between issuing a notice and determining the due amount through an order for recovery, however, since no justice can happen in limitlessness, the Supreme Court of Pakistan in its seminal judgment in Civil Petition No. 1691-L of 2018 (reported as *2022 SCMR 1135*) held that a thing cannot be done in a time that has been barred to be done in that time through a statutory provision. The case before the apex court was an appeal seeking leave against an order of the High Court that had set aside decision of the revenue for recovery on the ground that a taxpayer cannot be asked to

furnish record beyond the period of six years after the end of the tax year to which that related, as provided in the statutory provision (which was section 174(3) of the Income Tax Ordinance,2001). Same principle can be applied in the present case wherein no time limit is prescribed in the specific law under which the withholding tax recovery proceedings can be initiated and concluded u/s 52(6), nor in the general provisions (Chapter-XIII u/s 86). Analogously, the Act specifies time limit u/s 32(1) for seeking of record that the taxpayer should mandatorily keep for a "*period of ten years after the end of the tax period to which such record or document relate or till final decision in any proceedings including proceedings for assessment, appeal, revision, reference or petition, whichever is later.*" Similarly, no time limits are set under the Act for adjudication and its completion. Section 86 is relevant to timelines or periods that are expressly specified in the Act or the Rules. In view of this analysis, we consider that the impugned order is not hit by time limits mentioned u/s 52, therefore, is valid under the provisions of the Act.

8. **On Tariff-Heading and correct assessment:** The learned Commissioner/Respondent, through the impugned order has assessed tax liability under three expenditure heads, namely, janitorial services (TH 9822.3000), labour/manpower services (TH 9832.0000) and canteen/catering services (TH 9801.3000). All these three services are subject to 15% BSTS. However, the dispute between the party is only to the extent of canteen/catering services and for remaining two the Appellant is ready to discharge the liability as determined. The learned Counsel for the Appellant in the main Appeal as well as during the proceedings contended that the applied Tarif-Heading on this account is misplaced, consequently, the assessment is not made in accordance with the law. It was submitted that the Appellant had engaged vendor to cook food items at the factory premises which *prima-facie* falls outside the ambit of catering services in term of section 2(35) of the Act. The learned Counsel for the Respondent, on the other hand, stated that the services received by the Appellant have rightly been considered by the assessment officer, therefore, the liabilities of Rs. 2,373,090/- has been determined in accordance to the Act and the Rules.

9. Prior to Balochistan Finance Act 2025[1], the First Schedule of the Act contained classification of taxable services through tariff-headings/codes with description of each class of service. Under TH 9801.3000 the class of service is described as "*services provided or rendered by caterers, suppliers of food and drinks*.". Earlier through the Balochistan Finance Act, 2019, this class of service was described as "*services provided by marriage halls and lawns*.". Prior to Balochistan Finance Act 2025, the "Caterer" was defined u/s 2(35) as follows:

> "-- *a person who in ordinary course of business and in relation to events, functions, ceremonies, parties, get-together, occasions, etc., provides or supplies, either directly or indirectly, various services including food, edible preparations, beverages, entertainment, furniture or fixture, crockery or cutlery, pandal or shamiana, ornamental or decorative accessories or lighting for illumination.*" (emphases are ours)

10. During the course of proceedings, the learned Counsel for Appellant submitted copy of agreement between the Appellant and the service-provider. Primarily, the agreement was signed for running of the Appellant's canteen located inside the factory premise by the service-provider. According to clause 14 of the contract agreement the Appellant was responsible to provide free of charge canteen premises, water, gas, electricity, crockery and cutlery. Clause 11 of the agreement clearly mentioned that the Appellant shall withhold/deduct any tax/charge/fees levied by local/provincial/federal government at the rates applicable at the time of making payment of the invoice. The agreement, under clause 3, required split of each bill on 70:30 basis for discharging tax liabilities for supply and provision/render of goods and supply, respectively. The learned Counsel for the Appellant argued that this ratio is done as per international best practices for segregating tax on goods and services. However, he could not provide any legal base for this that is applicable in the country. This contention of the learned Counsel is also contrary to the Explanation-I of section 2(147) of the BSTS Act, 2015, which is reproduced as follows:

> *"(146) 'Service' or 'Services'……..*

[1] The Balochistan Finance Act 2025, introduced the system of negative list of taxable services and replaced the list of taxable services with the list of exempted services in the First Schedule. Section 2 of the Act was accordingly amended by omitting the definitions of taxable services.

Explanation-I: A service shall remain and continue to be treated as service regardless whether or not the providing thereof involves use, supply, disposition or consumption of goods either as an essential or as an incidental aspect of such providing of service;"

In view of the above, the application of 70:30 ratio is unlawful and devoid of merit hence liable to be rejected.

11. The learned Commissioner/Respondent has assessed the tax liability for canteen/catering services on the standard rate (15%) basis and remaining two services (that is, janitorial and labour/HR) on tax fraction bases in accordance with rules 3(3) and 3(4) of the Withholding Rules, being provided by registered persons and free NTN holder, respectively. Further, the learned Commissioner/Respondent, in case of canteen/catering services, has concluded that since the Appellant did not provide details of goods and services and registration status, separately, the total amount of Rs. 15,820,602/- constitute services provided by unregistered person and wholly subject to 15% BSTS making the tax due as Rs. 2,373,090/-. During the proceedings the learned Counsel for Appellant submitted documents related to payments made to the contractor during the tax period 2019-20 and income tax withholdings, which revealed that the service provider is unregistered person. Also, some purchase vouchers for food items, which were in the name of the Appellant (not the contractor) were submitted before us. Copies of some of the bills raised by the contractor were also submitted for finished food products including the amount of raw material. Since it is established that the service provider is unregistered person, the learned Commissioner has rightly charged tax @15% on catering services. The contention of the learned Counsel of the Appellant is devoid of merit hence liable to be disallowed.

12. **On Penalty and Default Surcharge:** The learned Commissioner/Respondent, in his impugned order has decided that the penalty u/s 48 and default surcharge u/s 49 of the Act shall be imposed upon the Appellant at the time of final payment. However, the Appellant in his Appeal has challenged this by arguing that the provisions for penalties and default surcharge have been inserted in ss 14(3) and 48(11a) of the Act through Balochistan Finance Bill 2023 & 2024, respectively and carry no retrospective

effects. We perused the Act. Prior to the said amendments, the original section 14(3), which was added as an additional sub-section of section 14 in January 2019, read as follows:

> "*Where a person or a class of persons is required to withhold full or part of the tax on the provision of any taxable service or class of taxable services and either fails to deduct or withhold the tax or having deducted or withhold the tax, fails to deposit the tax in the Government treasury, such person or class of persons shall be personally liable to pay in prescribed manner.*" (emphases added by us)

13. Section 2(167) defines Tax as follows:

> " ***'Tax'*** *means:*
>
> *a) the sales tax, additional tax or default surcharge levied under the Act;*
> *b) a penalty, fine or fee imposed or charged under the Act; and*
> *c) any other sum payable or recoverable under the provisions of the Act or rules made thereunder."*

14. A coherent reading of above two definitions makes it clear that section 14(3) empowers the revenue to make recovery of tax liabilities in events of failure to withhold or failure to deposit the withheld BSTS in the Government treasury. There is no doubt that S. No. 11a has been inserted in the table of section 48(2) of the Act through Finance Act 2024, yet other penalties exist in the table (for example, S. No. 12) for contravention of any provision of the Act for which no penalties are specifically mentioned. Thus, in the instant case penalty and default surcharge is leviable; but strictly under the law.

15. In view of above discussion, no case for interference against impugned order is made out. The appeal stands as dismissed.

__SD__
CHAIRPERSON

__SD__
MEMBER

__SD__
MEMBER

Date: 13-05-2026