# BALOCHISTAN SALES TAX ON SERVICES

# APPELLATE TRIBUNAL, QUETTA

**MA (condonation) 62/2026**

**STA 126/2026**

M/S Balana Marquees,. Quetta (Appellant)

Versus

The Commissioner (Operations) (Respondent No 1) and Assistant Commissioner Unit-02 (Respondent No 2) , Balochistan Revenue Authority, Quetta

## ORDER

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| Last date of hearing: 31-08-2026 | Date of issue: 07-9-2026 |
| Appellant by: | Dr. Perwaiz Khan, Advocate, & Mr. Muhammed Hanif, Advocate |
| Respondents by: | Mr. Aminullah Khan, Advocate & Mr. Shahid Khan, Inspector. |

**DOSTAIN KHAN JAMALDINI, MEMBER:**

Through this appeal preferred under the Balochistan Sales Tax on Services Act, 2015 (“the Act”), the Appellant, who is a service provider engaged in providing “Marriage Hall and Lawn” services falling under tariff heading 9801.5000, originally called in question: (i) Sealing Order No. BRA/OPS/COM(OPS)/U-2/2026-27/22 dated 21-07-2026 passed by Respondent No.1 under section 59A read with section 72(1)(d) for contravention of section 25 of the Act; (ii) Order-in-Original No. REG/MARR/15/2023 dated 13-03-2023 (penalty of Rs 1,000,000/-) passed by Respondent No.2 u/s 48; (iii) Order-in-Original No. 12/2024 dated 25-11-2024 (penalty of Rs 200,000/-) passed by Respondent No.2 u/s 48; and (iv) the direction/letter dated 30-07-2026 whereby the aggregate penalty of Rs 1,200,000/- was reduced to 30% i.e. Rs 360,000/-. The Appellant prayed following through the Appeal:

i. To declare the imposing of impugned penalty of Rs. 1,200,000/- (Rupees one million) on him for non-registration as illegal, void and of no legal effect;

ii. To set aside the two impugned Orders-in-Original (OIOs) passed by Respondent-2 and the Sealing Order passed by the Respondent-1;

iii. To declare the direction/letter, dated 30-7-2026 as unlawful;

iv. To direct Respondents to register him without any fine or penalty;

v. To direct Respondents to unseal business premise of the appellant till next date of hearing; and

vi. To grant any other relief deemed fit and appropriate under the circumstances of the case, interest of justice, equity and fair play.

The appeal was accompanied by an application for suspension of the sealing order and an application for condonation of delay in filing the appeal.

2. Briefly, the appellant, being unregistered with the Authority, was served with successive notices to register and to discharge its liability; the two impugned OIOs imposing penalty were passed *ex-parte*; and, on the strength thereof, the business premises were sealed on 21-07-2026. Aggrieved, the Appellant approached this Tribunal.

**3.** At the outset, the question of the competence of this Tribunal to entertain the appeal, insofar as it assailed the two impugned OIOs and the direction dated 30-07-2026, was taken up as a preliminary issue. Under the scheme of Chapter IX of the Act, a decision or order passed under section 60 by an officer below the rank of Commissioner is, in the first instance, appealable to the Commissioner (Appeals) under section 63 of the Act. The two impugned OIOs having been passed by the Assistant Commissioner, and the direction dated 30-07-2026 being of like character, the appropriate forum in respect thereof is the Commissioner (Appeals) and not this Tribunal. It is pertinent to note that during the hearing the Appellant could not provide any such letter issued by the Authority, however, the Memo of Appeal had a challan copy (form BST-04) with reduced amount of Rs. 360,000/-

**4.** On the preliminary issue being taken up, the learned Counsel for the Appellant, on instructions, did not press and withdrew prayers 1, 2 and 3 to the extent they relate to the two impugned OIOs (dated 13-03-2023 and 25-11-2024) and the direction/letter dated 30-07-2026, conceding that the remedy in respect thereof lies before the Commissioner (Appeals) under section 63 of the Act. The statement is accepted. Accordingly, the said prayers are disposed of as withdrawn/not pressed, leaving the Appellant at liberty to avail its remedy before the proper forum in accordance with law; and that forum shall be at liberty to deal with the question of limitation, and with the merits, uninfluenced by this order. The Appellant, as agreed at the bar, is further directed to apply for registration with the Authority forthwith and to discharge its statutory obligations in accordance with law. Hence, prayer at serial number 4 is also stand as settled.

**5.** There remained, for consideration, the challenge to the Sealing Order dated 21-07-2026, passed by Respondent No.1, an officer of the rank of Commissioner. Both the parties were heard and a short a order was announced in the court room on 31-8-2026 and for that effect a reasoned and detailed order following is determined after considering arguments of the parties, relevant provisions of the law and principles laid down by the honorable courts of the country.

**6.** The provisions of law bearing on the matter are reproduced as follows. Section 59A of the Act provides:

> *"59A. Power to Seal the Business Premises. — When an officer of the Authority not below the rank of Commissioner has <u>reason to believe</u> that the Act or the rules made thereunder are not obeyed and observed <u>at a business premises</u>, he may by an order in writing, seal that premises for <u>a period which may extend to one month</u> upon giving a notice in writing to this effect."* (emphases are our)

Section 60 (Powers of Adjudication) provides:

> *"60. (1) In respect of cases involving determination of tax liability, assessment of the tax, charging of default surcharge, imposition of penalty and recovery of amount erroneously refunded <u>or any other contravention or violation</u> including tax fraud under this Act or the*

*rules, the jurisdiction and powers of adjudication of the officers shall be as follows:—*

*(a) [Deputy Commissioner]: Cases without any restriction as to the amount of the tax involved or the amount erroneously refunded;*

*(b) [Assistant Commissioner]: Cases where the amount of the tax involved or the amount erroneously refunded does not exceed five million rupees;*

*(c) * * *;*

*(d) Other officers of the Authority: Such cases, other than those mentioned above, as may be prescribed.*

*(2) <u>The Commissioner may adjudicate any case falling in the jurisdiction and powers of any officer subordinate to him and appeal against the order passed by the Commissioner in such cases shall lie to the Appellate Tribunal.</u>"* (emphasis added by us)

**7.** The competence of this Tribunal to entertain the challenge to the Sealing Order turns on the scheme of section 60. Section 60(1) vests the power to adjudicate cases involving, among others, the imposition of penalty and "any other contravention or violation ... under this Act or the rules"; and section 60(2) provides, in terms, that appeal against the order passed by the Commissioner in such cases shall lie to the Appellate Tribunal. The impugned Sealing Order was passed by the learned Commissioner (Operations) upon his professed satisfaction that the Act and the Rules were not being obeyed and observed by the Appellant — that is, upon an alleged contravention or violation of the Act, a matter within the adjudicatory field of section 60(1). Being an order passed by the learned Commissioner in such a matter, and no appeal lying to the Commissioner (Appeals) against an order of a Commissioner, the appeal against it lies to this Tribunal under section 60(2) read with section 67. Even were the power of sealing under section 59A to be regarded as a distinct enforcement measure standing apart from section 60, the appellant could not be denied a forum against a learned Commissioner's order attended with such serious civil consequences; and this Tribunal, being seized of the connected adjudication matters, is the appropriate forum to prevent multiplicity and denial of remedy. We accordingly hold the challenge to the Sealing Order to be maintainable before us.

**8.** Before proceeding to the merits, we record a matter that considerably shortens the controversy. During the hearing the learned Counsel for the Respondents candidly stated that the period of one month specified in section 59A had already expired and that no further or fresh order in this behalf had been passed by the learned Commissioner (Operations). Section 59A permits the sealing of premises only "for a period which may extend to one month." The statutory period having admittedly run out without any further order, the sealing order has, by its own terms and by operation of law, spent itself and ceased to have effect; the continued closure of the premises, if any, is without lawful authority. On this short ground alone the appellant is entitled to relief.

**9.** Lest it be said that the matter has been decided on a technicality, we have also examined the legality of the Sealing Order on the merits. Reading section 59A with section 72(1)(d) — which empowers the officer to "*place embargo on economic activity of the person or seal the business premises of the* *person till such time as the amount of tax is paid or recovered in full*" — we find the impugned Sealing Order unsustainable, for the following reasons:

**(i)** Non-speaking order. Section 59A is not a mechanical power. It requires the competent officer first to form, and to record, a "reason to believe" that the Balochistan Sales Tax on Services Act 2015 or the rules framed thereunder are not being obeyed and observed at the business premises, and thereafter to pass a reasoned order in writing. The impugned Sealing Order discloses no such independent satisfaction or reasons; it merely narrates the history of the notices and the two penalty orders and proceeds to seal without proceedings for recovery of rightful penalty (s) as a logically option under the law. An order affecting a person with serious civil consequences must be a speaking order reflecting application of mind; the requirement to record reasons is a component of due process and of section 24A of the General Clauses Act, 1897 (Exercise of power under enactments), and its absence, of itself, vitiates the order.

**(ii)** In excess of the statutory limit. Section 59A permits sealing "for a period which may extend to one month." The impugned order, however, directs that the premises shall remain sealed "until a month or until the outstanding liabilities are fully paid and the requisite compliances including registration, BSTS and penalty payments, are done." It thereby converts a time-bound, preventive measure into an indefinite, open-ended coercive lock keyed to recovery, which is beyond the plain terms of section 59A and is therefore *ultra vires*. That the Legislature intends such coercive measures to be strictly time-bound is confirmed by section 64(4), which confines even an appellate stay of recovery to defined short periods.

**(iii)** Colourable exercise of power. The sealing rests wholly upon the two impugned penalty orders, which are themselves to be pursued before the proper forum, and upon the object of recovering penalty, and not upon any independent finding that the Act or the Rules were being disobeyed at the premises at the relevant time. Section 59A cannot be pressed into service as a substitute mechanism for recovery, bypassing the safeguards provided in the law. So the power exercised stands vitiated.

**(iv)** Want of proportionality. Sealing an operating business is a drastic measure, with the inevitable consequence of crippling the person's capacity to earn and thereby to discharge even a legitimately determined liability. Such a power must be exercised sparingly and proportionately. The impugned Sealing Order betrays no consideration of proportionality or of any less-drastic course.

**10.** Although the challenge to the penalties stands relegated to the Commissioner (Appeals) and is not before us for decision, we consider it appropriate to observe — without prejudice to that adjudication and without recording any finding thereon — that the record reflects an approach to penalty which, if left unchecked, tends towards the unjust enrichment of the State rather than adherence to the letter and spirit of the penalizing provisions of the Act and the settled view of the superior courts, in the following respects. First, penalty under section 48(1), Serial No.1 of the Table is quantified as the higher of ten thousand rupees or five per cent of the tax that would have been payable had the person been registered; a penalty of Rs 1,000,000/-, however, appears to have been equated with the very figure of estimated tax, in plain departure from that formula — a matter going to legality, not merely to quantum. Secondly, a penalty under section 48 is quasi-penal in character and, unlike default surcharge (which our courts have treated as attracting strict liability), is not to be imposed mechanically or as an instrument of revenue (e.g., *2025 TAX 472*[1]*; 2026 PTD 696*[2]*;PLD 1967 SC1*[3]*)* its imposition ordinarily calls for a conscious or contumacious default and must bear a reasonable nexus with the gravity of the breach.

As a statement of principle, penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law, or was guilty of contumacious or dishonest conduct, or acted in conscious disregard of its obligation (see *Special STRA 191 & forty-three other SSTRAs of 2018, 2015, 2019 & 2020 Sindh HC; 2004 SCMR 456*[4]*; 2006 SCMR 626*[5]*; and CIR v Byco Petroleum Pakistan Ltd*[6]). Thirdly, every order imposing penalty must be a speaking order disclosing reasons, as required by section 24A of the General Clauses Act, 1897.

[1] *M/S New Era Fabrics, Karachi V. CIR Zone-II, CTO Karachi (Sindh HC)*
[2] *M/S Pakistan Accumulator (Pvt) Ltd. V. Federation of Pakistan through Ministry of Finance, Islamabad & Others*
[3] *Federation of Pakistan V. Hardcastle Waud (Pakistan) Ltd., Karachi*
[4] *DG Khan Cement Company Ltd. & Others V. Federation of Pakistan & Others*
[5] *Deputy Collector of Customs V. ICI Pakistan*
[6] *Sindh HC judgment announced on 06-5-2022 in SSTRA 191 of 2018 & subsequent Supreme Court of Pakistan decision dated 05-7-2024 in CP No. 122-K of 2022*

Discussion on above leads to a testing regime based on the principles established by superior courts persistently: No Assessment-No Penalty; No Revenue Loss-No Penalty; and No Intent-No Penalty.

These observations are made for guidance alone; the Commissioner (Appeals) shall decide the matter independently and on its own merits and circumstances of this case.

**11.** For the foregoing reasons, we hold and order as under:

(a) The impugned Sealing Order No. BRA/OPS/COM(OPS)/U-2/2026-27/22 dated 21-07-2026 passed by respondent No.1 is declared to be non-speaking and not in accordance with law, and is hereby set aside.

(b) It is further declared that the said impugned Sealing Order has, in any event, ceased to operate upon the expiry of the period of one month prescribed by section 59A, no further or fresh order having been passed; and the business premises of the Appellant, if still under seal, shall be de-sealed forthwith, their continued closure being without lawful authority.

(c) The application for suspension of the impugned Sealing Order does not survive and is disposed of as having become infructuous.

(d) Prayers 1, 2 and 3, to the extent they relate to the two impugned OIOs dated 13-03-2023 and 25-11-2024 and the direction/letter dated 30-07-2026 (if any), stand disposed of as withdrawn/not pressed, with liberty to the Appellant to approach the learned Commissioner (Appeals) under section 63 of the Act; and the application for condonation of delay, relating to those orders, is likewise disposed of as not pressed, the question of limitation being left to the first appellate forum.

(e) The Appellant is directed to apply for registration with the Authority forthwith, as required in the law and to discharge its statutory obligations in accordance with law.

**12.** The appeal is allowed to the extent of the impugned Sealing order, and is otherwise disposed of as not pressed; the accompanying applications are disposed of in the terms aforesaid. There shall be no order as to costs.

**__SD__**
**Chairman**
**__SD__**
**Member-I**
**__SD__**
**Member-II**

Dated: 07-09-2026