

BALUCHISTAN SALES TAX ON SERVICES

APPELLATE TRIBUNAL, QUETTA

STA 117/2026

M/S Defence Housing Authority Quetta (Appellant)

Versus

The Commissioner (Appeals) and Assistant Commissioner (Respondents),

Baluchistan Revenue Authority, Quetta

Last date of hearing: 14-09-2026

Date of issue: 24-09-2026

Appellant by:

Mr. Sher Baz, ITP of M/S Avais
Haider Liaquat Nouman Chartered
Accountant

Respondents by:

Mr. Aminullah Khan, Advocate.

ORDER

DOSTAIN KHAN JAMALDINI, MEMBER: This appeal under Section 67 of the Baluchistan Sales Tax on Services Act, 2015 (*"the Act"*), is directed against Order-in-Appeal No. BRA-CA/AO-11/2026 dated 21-04-2026 (*"the OIA"*) passed by Respondent No. 2, whereby the Order-in-Original No. 79/U-06/2025-26 dated 18-11-2025 (*"the OIO"*) passed by Respondent No. 1 was modified to the extent that the penalty imposed under Section 48 of the Act for failure to obtain registration u/s 25 was reduced from Rs. 500,000 to Rs. 150,000, while the direction to obtain registration and to file returns was maintained.

2. Briefly, the appellant is a body corporate engaged, *inter-alia*, in the development of land and the sale of developed residential and commercial plots. On the allegation that it was providing taxable services relating to immovable property and had failed to obtain registration u/s 25, Respondent No. 1 issued a notice dated 20-10-2025 and a reminder dated 06-11-2025, and, on the appellant's non-appearance, proceeded *ex-parte* and, by the OIO, imposed a penalty of Rs. 500,000 u/s 48(3) read with Section 48(1) of the Act. Significantly, no amount of sales tax was assessed or quantified, and no specific taxable service was identified.

3. In appeal, Respondent No. 2 upheld the obligation to register, treating it as a threshold duty *"independent of the final determination of tax liability,"* and expressly relegated the question of the taxability of the appellant's activity to assessment

proceedings; the penalty, however, was reduced to Rs. 150,000. Still aggrieved, the appellant has preferred the instant appeal.

4. The grounds urged by appellant are, in substance, that the impugned orders are bad in law; that no taxable service was identified; that registration u/s 25 and penalty u/s 48 cannot be sustained in the absence of a taxable service; that the development of the appellant's own land and the sale of the resulting plots is a transfer of immovable property and not a service; that, following the Eighteenth Amendment, the Province lacks competence to tax the transfer of immovable property; and that the penalty is founded on assumption and is, in any event, mis-computed. The appellant placed reliance upon two judgments of the Appellate Tribunal, Punjab Revenue Authority — *M/s Noor Pak Developers v. Commissioner (Appeals-I), PRA* (Appeal No. 282/2024, decided 23-10-2025), and *M/s Life City (Housing Scheme) v. Commissioner (Appeals-II), PRA* (Appeal Nos. 25 & 26/2025, decided 25-11-2025).

5. The learned Departmental Representative supported the impugned orders, contending that the appellant's activities fall within the property-developer/promoter entries of the Schedule and that the obligation to register is independent of any final tax determination. During the course of argument, it has come on record that the appellant is not only a service provider but a service recipient as well, and according to the learned DR, is liable to be registered in both accounts. On the question of limitation, he relied upon the transmission of the OIA to the appellant through WhatsApp on 24-04-2026; no other proof of service was produced.

6. We have heard the parties, and examined the record, the impugned orders, the statutory provisions and the case law relied upon. The following issues arise for determination: (i) whether the appeal is within time and competent; (ii) whether the appellant was liable to be registered as a service provider u/s 25 — that is, whether it provides a "taxable service" under the charging scheme as recast for the period 2025-26 — in respect of (a) the sale of developed plots and (b) its development and construction activity; (iii) whether, independently of the provider limb, the appellant is obliged to be registered as a withholding agent / recipient of taxable services, and the bearing of that obligation upon these proceedings; (iv) the effect of the appellant's stand that it is presently in a "development phase" upon its liability to register as a service provider; (v) whether the penalty is lawful — in particular, whether the appellant was shown to be a person required to apply for registration u/s 25, by the identification of a taxable service or by recourse to compulsory registration u/s 27,

and whether the ground and quantum of the penalty are in any event sustainable; and (vi) whether the proceedings are vitiated for want of valid service and opportunity of hearing.

Issue (i): Limitation and competence

7. An appeal u/s 67 lies, in terms of clause (d) of sub-section (2) thereof, "*within forty days of the receipt of the order of the Commissioner (Appeals) by the taxpayer or the officer.*" The period is thus tied to receipt by the taxpayer/registered person, and not to dispatch by the department. The department, which asserts that the appeal is barred, has produced no evidence of service of the OIA in any mode recognized u/s 80 of the Act; its sole reliance is upon an informal forwarding of the order through WhatsApp on 24-04-2026. Even taken at its highest, that transmission would establish only that the order was sent, not that it was received in law by a duly authorized representative of the appellant; an informal electronic forward — not being a mode of service prescribed by law and carrying no acknowledgement of receipt — does not amount to "*receipt of the order*" within the meaning of Section 67(2)(d) so as to set the forty-day period running. The starting point of limitation having thus not been established, the appeal cannot be dismissed as time-barred on this record.

8. Even otherwise, and without prejudice to the above, if the forty-day period u/s 67(2)(d) were reckoned from 24-04-2026, it would have expired in the first week of June 2026, and the appeal filed on 22-07-2026 would in that event be beyond time by about seven weeks; but that delay is attributable wholly to the department's failure to communicate its order in a manner known to law, which furnishes ample and sufficient cause for its condonation. The appellant, upon coming to possess a proper and authenticated copy, appears to have acted with reasonable diligence, and, in the interest of substantial justice, any such delay is condoned. We may add that the department cannot, on the one hand, insist upon strict proof of service (courier/TCS tracking) to sustain its *ex-parte* proceedings against the appellant and, on the other, rest the service of its own appellate order upon a mere WhatsApp message. The appeal is held to be competent and is entertained on merits.

Issue (ii): Liability to register as a service provider and the existence of a taxable service

9. Sections 48 and 25 do not operate in a vacuum and in exclusivity. The penalty u/s 48 for failure to register presupposes an obligation to register u/s 25; and Section 25,

in the limb invoked by the department, is predicated upon a person who "*provides any taxable service.*" It is necessary, however, to notice the charging scheme as it stands for the tax period in question. By the Balochistan Finance Act, 2025 (Act XVIII of 2025, assented on 27-06-2025) — which governs the period 2025-26 — the Schedules to the Act were recast into a negative-list regime: the First Schedule now lists the services exempt u/s 10(2); the Second Schedule lists the services chargeable at the higher rate u/s 10(3); and the Third Schedule lists the services chargeable at reduced or specific rates u/s 10(4). Under this scheme a service provided in the course of an economic activity is chargeable unless it is exempt; it is no longer the case that a service is taxable only if it is positively enumerated. What has not changed is that the levy, and with it the provider-registration duty u/s 25, presupposes the existence of a "taxable service." The existence of a taxable service thus remains the jurisdictional fact that triggers both: a) the charge, and b) the correlative duty to register as a provider; and whether the appellant provides a taxable service is not, as the OIA supposed, collateral to registration — it is antecedent and indispensable to it. To hold the appellant liable to register while declining to determine whether it provides any taxable service is to place the cart before the horse, and to that extent the OIA proceeds upon an erroneous view of the law.

10. On the substantive question, the appellant relied upon the two judgments of the Appellate Tribunal, Punjab Revenue Authority, in *Noor Pak Developers* and *Life City* (supra), rendered upon the Punjab Sales Tax on Services Act, 2012. Those decisions were delivered upon the earlier, positive-list architecture, and we do not adopt them for the broad proposition that the development and sale of plots can never be taxed; that proposition does not survive the negative-list regime now in force (as to which, see paragraph 12 below). Their enduring reasoning, however, remains persuasive and is unaffected by the change of regime, namely: (a) the charge flows from the charging provision, and a Schedule entry may specify the rate for a service otherwise taxable but cannot itself create a charge upon that which is not a service; (b) "economic activity" includes the supply of immovable property by way of lease, licence "*or such similar arrangements,*" and, applying the rule of *ejusdem generis*¹ (as noticed in the cited decisions, with reference to PLD 2000 SC 111), that residuary expression is confined to juridical arrangements of the same genus — those in which ownership is retained while limited possessory or usufructuary rights are conferred; an outright sale, being a conveyance of proprietorship, falls outside that genus and is

¹ From Latin meaning "of the same kind"

not a "service"; and (c) upon the constitutional distribution of legislative competence following the Eighteenth Amendment (as explained in the cited decisions with reference to Entry 49 of the Federal Legislative List and Article 142(a) of the Constitution), the taxation of immovable property and of the capital value of assets lies outside the Province's competence, which is confined to the taxation of services, so that a transaction which is, in substance, a transfer of immovable property cannot be characterized as a service. It follows, conversely, that where the appellant lets/leases or rents out immovable property within its scheme — an arrangement squarely within the very genus of lease and licence, and a service now expressly enumerated in the Third Schedule (renting of immovable property) — such activity would be a taxable service; the reasoning that saves an outright sale does not extend to a letting, in which ownership is retained.

11. Applying the foregoing to the transactions in question: in so far as the appellant develops its own land and thereafter transfers the developed plots by outright sale, that transfer is a conveyance of title to immovable property and not the provision of a "service." It lies outside the Province's competence to tax, and it is not saved by the change of regime, for the negative list operates only upon that which is a service in the first place. This construction is reinforced by the Third Schedule itself, which separately taxes, at Serial No. 7, "*services on purchase or sale ... of immovable property*" — that is, the estate-agency or facilitation service connected with a sale — thereby indicating that the transfer of title is not itself the taxed service. To that extent the sale of developed plots cannot found either a provider-registration duty or the impugned penalty.

12. The development and construction component stands, however, on a materially different footing under the regime now in force, and candour requires that this be stated. The Third Schedule (Section 10(4)), at Serial Nos. 10 and 15, expressly subjects to tax "*services provided or rendered by property developers or promoters for — (a) development of purchased or leased land for conversion into residential or commercial plots*" (at Rs. 100 per square yard of land)" and "*(b) construction of residential or commercial units*" (at Rs. 50 per square foot of covered area), the value of the land being excluded. The department's own orders invoked these very entries. On their face, therefore, the development and construction activity of a property developer is an enumerated taxable service for the period 2025-26. Whether the appellant's activity answers that description turns upon a question this record does

not resolve — whether a person who develops its own land for its own sale thereby "provides or renders" a service, the enduring reasoning in *Life City* (supra) that a service must be "*provided ... to another*" bearing upon it — and upon the availability of any exemption, including the exemption of construction relating to low-cost affordable public housing sponsored and funded by Government (First Schedule, Serial No. 21(iii), subject to the plot-size and covered-area thresholds), which the appellant's welfare housing — the Defence Housing Authority Quetta Act, 2015 (as amended by the Balochistan Act II of 2024) now formally recognizing a distinct category of "*Welfare Activities*" (Section 3(r)) for the rehabilitation of armed-forces personnel and affected residents of Balochistan — may attract; and, in so far as any such welfare allotment is made without consideration, the anterior question whether it amounts to an "economic activity" at all may equally arise. These are questions of chargeability, exemption and quantification for proper assessment. What is decisive for the present appeal is narrower: the department identified no such service, undertook no such classification, and quantified no tax; the impugned penalty was imposed for an unspecified failure to register "*as a provider of taxable services relating to immovable property*," and a penalty must be tested on the ground on which it was passed. On this record the penalty is without lawful foundation. The registrability of the appellant as a provider in respect of its development and construction activity, and the taxability and quantification of that activity, are, however, live matters which this order leaves to be determined in accordance with law; they are not foreclosed in the appellant's favour.

Issue (iii): Registration as a withholding agent / recipient of taxable services

13. The foregoing issue concerns the appellant's liability to register as a service provider. It does not exhaust Section 25, which contains a distinct and independent trigger: a person who is a withholding agent is obliged to register irrespective of whether it itself provides any taxable service. On this limb the position is not open to doubt. Under rule 1(2) of the Balochistan Sales Tax Special Procedure (Withholding) Rules, 2018, the specified "withholding agents" include, at clause (c), "*public sector organizations including public corporations, state-owned enterprises, regulatory bodies and authorities*," and, at clause (e), "*companies as defined in sub-rule (7) of rule 2*" — which, by rule 2(7)(d), means "*a body corporate formed by or under any law in force in Pakistan*." The appellant, being constituted a body corporate by Section 4(b) of the Defence Housing Authority Quetta Act, 2015, and being a

statutory authority, answers both descriptions (and, being **self-governed** through its own Governing Body and Fund, is in any event an "autonomous body" within clause (b)); and the closing proviso to rule 1(2), which confines the status to a person "*resident in Balochistan or [having] a place of business in Balochistan,*" is plainly satisfied, the appellant's seat being at Quetta. It follows that the appellant is a withholding agent, and rule 3(2) obliges every such agent not already registered to apply for "Sign-Up as Withholding Agent" in Form BSTW-01. This is a subsisting statutory obligation, independent of whether the appellant provides any taxable service.

14. That obligation cannot, however, be adjudicated — still less penalized — in the present proceedings. The show-cause notice, the OIO and the OIA rested exclusively upon the appellant as an alleged provider of taxable services; no default in registering, deducting, withholding or depositing tax as a withholding agent was ever alleged, and nothing was quantified on that footing. A penalty order must be tested on the ground on which it was passed, and the appellant cannot be visited with consequences on a case never put to it. This is so notwithstanding that Serial No. 1 of the Table to Section 48, as amended in 2024 and 2025, now in terms embraces "*a withholding agent*" who fails to apply for registration "*before ... receiving any services*"; the widening of the offence makes it the more necessary that such a default be specifically alleged, put to the appellant and quantified before any penalty can follow. Moreover, the machinery by which the obligation is to be discharged — whether in the appellant's own name by self-deposit under rule 3(7) and (8), or, given its defence character, through the Military Accountant General under rule 3(6)(iv) — turns on how its payments are in fact disbursed, a matter not on this record. Upon raising this issue (the second limb) by the learned counsel of the respondent/DR, arguments were held by both the parties and, ultimately, the learned counsel for the appellant agreed for his registrability as service recipient. We, however, record that the appellant is a withholding agent obliged to obtain registration as such, but leave the enforcement of that obligation, and the mechanism of its discharge, to be dealt with by the Authority in appropriate proceedings, strictly in accordance with law and after due notice.

Issue (iv): The "development phase" stand and provider-registration

15. During arguments, when the range of the appellant's statutory functions was put to it, learned counsel candidly stated that the appellant presently regards itself as

being in a "development phase" and, on that account, does not at present consider itself obliged to register as a service provider; he undertook that, as and when the appellant commences the provision of taxable services, it will obtain registration as a service provider as well. We take the concession on record and hold the appellant to its undertaking. Two matters should, however, be noticed. First, under the regime now in force the "development" of land for conversion into plots is itself an enumerated taxable service (Third Schedule, Serial Nos. 10 and 15, as discussed in paragraph 12 above); the "development phase" characterization does not, therefore, of itself establish that no taxable service is being provided, and the appellant's registrability as a provider is a live question for assessment rather than one necessarily deferred to some future commencement of services. Secondly, the concession is an acknowledgement that the appellant's functions extend beyond the sale of plots: the Defence Housing Authority Quetta Act, 2015 contemplates the renting out of property (Section 6(b)(10)) — now a service expressly enumerated in the Third Schedule — the imposition of transfer fees and "other charges" (Section 6(b)(5)), the exercise of municipal functions (Section 14) and the operation of a club (Section 3(d)). Of these, the renting, leasing or letting of immovable property, and the operation of a club, stand on a distinct footing, being services squarely within the charge; the remaining heads may, when performed for consideration, answer the description of taxable services, each to be judged on its own facts. Nothing in this order shall preclude the Authority from requiring the appellant to obtain registration — including, where appropriate, by recourse to compulsory registration u/s 27 — and from raising demand in accordance with law, in respect of any such service. For the avoidance of doubt, and since the point was neither raised nor developed by the department on this record, we express no view on whether any amenity or allied charge — for utilities, security, maintenance or the like — presently levied within the scheme is severable from the sale of plots and independently taxable; that question is left entirely open.

Issue (v): Penalty and quantum

16. We hold the penalty unsustainable on two independent grounds, each sufficient in itself. The penalty is imposed under Serial No. 1 of the Table to Section 48, which visits "*a person who is required to apply for registration under this Act*" who "*fails to make an application for registration before providing [or receiving] any services.*" The Balochistan Finance Act, 2025 omitted "taxable" before "services" and added "or

receiving"; but that neither enlarges the class of persons on whom the penalty may fall — which remains confined to one "*required to apply for registration under this Act*" — nor makes a provider's registration turn upon the provision of any service whatever, as the same Serial No. 1 confirms, its imprisonment limb still speaking of one who "fails to get registered within ninety days of providing taxable services." The added "or receiving" limb reaches only the distinct registration duty of a recipient or withholding agent. The first ground is structural and goes to the foundation of the proceeding. The requirement to apply for registration is not created by Section 48; for a provider it arises u/s 25 upon the provision of a taxable service, and where such a person has not applied, the statute's mechanism for bringing it onto the register is compulsory registration u/s 27 — the two provisions named in the fourth column of the Table, and in the exercise of which the person's liability to be registered is to be determined. The foundational fact for any penalty under this entry is thus that the person was, in law, required to apply for registration; and that fact the department established by neither route the statute affords. It identified no taxable service that the appellant provides, and it did not invoke Section 27 or issue any notice for compulsory registration; it proceeded straight to penalty under Section 48(3) read with Section 48(1), assuming the very obligation it was bound first to establish. A penalty for failing to register cannot rest upon an un-adjudicated assumption that the person was liable to register, when the Act furnishes a specific procedure — Section 27 — for making that determination and the department chose not to employ it; on this ground the penalty is without jurisdictional foundation. The second ground is that, in any event, a penalty must be tested on the ground on which it was in fact passed, and the sole ground here was an alleged failure to register "as a provider of taxable services relating to immovable property" — a failure neither specified nor established, no taxable service having been identified and no tax quantified. On either ground the penalty cannot stand.

17. Even if both grounds were put aside and a bare default assumed, the quantum could not have been sustained as fixed. The ordinary measure under Serial No. 1 is a penalty of fifty thousand rupees, or five percent of the tax the person would have been liable to pay had he been registered, whichever is higher. The higher, fixed minimum for which the entry provides — one hundred thousand rupees for a company, and fifty thousand rupees for a person other than a company — operates, by its express words, only "*in case of non-compliance of a notice for compulsory registration, after lapse of 15 days*"; and, no notice for compulsory registration u/s 27 having been issued, that

enhanced minimum never came into operation. The most the statute could have yielded on this record — no tax being quantified, so that five percent of it is nil — was therefore the base figure of Rs. 50,000. It follows that the impugned Order-in-Original, imposing Rs. 500,000, and the impugned Order-in-Appeal, reaching Rs. 150,000 by adding to a base of Rs. 50,000 a "minimum" of Rs. 100,000 that had never been triggered, were each without statutory warrant, and by a wide margin. That a penalty was fixed first at Rs. 500,000 and then at Rs. 150,000, neither a sum the statute sanctions on this record, is itself telling, for Section 48(3) requires that the penalties under sub-section (1) "*be applied in a consistent manner*" and that none be payable save under a written order passed "*after providing an opportunity of being heard*" to the person concerned — a safeguard the *ex-parte* imposition of the impugned OIO did not observe. Nor could any default surcharge u/s 49 arise as aimed in the notice, that levy being a function of tax due, of which there is none.

Issue (vi): Service and opportunity of hearing

18. Having decided the controversy on the grounds aforesaid, the plea of want of valid service of the antecedent notices and of denial of opportunity of hearing is rendered academic and need not be separately adjudicated — save to observe that the record does not reflect the standard of service which the department has itself demanded elsewhere in these very proceedings.

19. Before parting, we clarify that the ratio of this decision is confined to the penalty impugned and to the transactions and tax basis on which the impugned orders proceeded. It is not, and shall not be read as, a ruling that the appellant stands outside the Act generally, or that it is absolved of the obligations and liabilities, present and future, recorded in paragraphs 12 to 15 above. The setting aside of the penalty rests, independently, upon two grounds — the department's failure to establish, whether by identifying a taxable service or by invoking compulsory registration under Section 27, that the appellant was a person required to apply for registration; and the untenability, on the record and in law, of the ground and quantum of the penalty as imposed — and it is not a holding that the appellant is not liable to be registered, that question, and the Authority's recourse to Section 27, remaining open.

Disposition

20. For the foregoing reasons, the appeal is **partly allowed**. The impugned Order-in-Appeal No. BRA-CA/AO-11/2026 dated 21-04-2026 and the impugned Order-in-Original No. 79/U-06/2025-26 dated 18-11-2025 are modified so far as they impose penalty; the penalty of Rs. 150,000 (and, to the extent it may be said to survive, the originally imposed Rs. 500,000) is annulled and deleted from the record. Save as aforesaid, the directions to obtain registration and to file returns are not disturbed, and this order does not absolve the appellant of — (a) its registrability as a provider of taxable services in respect of its development and construction activity, together with the taxability, exemption and quantification of that activity, all of which are left to be determined in proper assessment proceedings in accordance with law (paragraphs 12 and 15); (b) its subsisting obligation to obtain registration as a withholding agent / recipient of taxable services (paragraphs 13 and 14); and (c) its undertaking to obtain registration as a service provider and to account for tax as and when it provides any taxable service (paragraph 15). There shall be no order as to costs.

__SD__

Chairman

__SD__

Member-I

__SD__

Member-II

Dated: 24th September, 2026