BALOCHISTAN SALES TAX ON SERVICES
APPELLATE TRIBUNAL, QUETTA

MA (stay) 35/2026

STA 83/2026

M/S Pakistan Telecom Mobile Limited, Islamabad

Versus

The Commissioner (Operations), Balochistan Revenue Authority, Quetta

ORDER

Last date of hearing: 22-06-2026 Date of issue: 07-07-2026

Appellant by:	Mr. Aimal Khan Kakar, Advocate, Mr. Aazar Abdul Hameed FCA & Others, M/S Ferguson & Co.
Respondent by:	Mr. Aminullah Khan, Advocate

DOSTAIN KHAN JAMALDINI, MEMBER: The Appellant, Pak Telecom Mobile Limited (Ufone), is registered with the Balochistan Revenue Authority (BRA) under tariff heading 9812.1210 (cellular mobile telephone services). The dispute arises from the matter of taxability of transactions of a total amount of Rs. 296,288,616/- received during the tax periods July 2018 to June 2019 from the Universal Service Fund (USF), an entity of the Federal Government for deployment of telecom infrastructure in un-served/under-served areas of Balochistan.

2. The Respondent issued Show Cause Notices dated 01.01.2025 (post-remand by this Tribunal vide order dated 06.12.2024) under Section 24(2) of the BST Act, alleging that the payments received by the Appellant from USF constituted consideration for taxable services rendered under a "contractual execution of work" tariff heading 9809.0000 (contractual execution of work) and demanded sales tax, penalty, and default surcharge. Later, on 24-9-2025

an addendum was issued alleging that being a registered person and despite being fully aware of the statutory obligation u/s 35 of the Act, deliberately concealed and failed to declare returns related to USF for the tax periods of 2019-20. The notice opined that such concealments and non-compliances fall within the ambit of "tax fraud" as defined u/s 2(171) of the Act. The Appellant contested the SCNs, raising several legal and factual objections. The Respondent, after multiple hearings and exchanges of correspondence, passed the impugned OIO bearing No. 545/2026 dated 23.01.2026 confirming the tax demand of Rs. 296,828,616/- along with Rs. 14,841,431/- penalty u/s 48 and default surcharge u/s 49 to be imposed at the time of final payment. The impugned OIO declares that the Appellant has contravened sections 3(1) (*every service provided in the course of an economic activity is a taxable service*), 18(1) (*the tax for taxable service provided or rendered to be paid at the time of filing the returns*), 19(1) (*joint and several liability of persons where tax unpaid*), and 35(1) (*mandatory filing of true, correct and proper returns containing details of tax due and paid and such other information as prescribed by due date*).

3. Being aggrieved, the Appellant filed the instant appeal on multiple grounds.

<u>GROUNDS OF APPEAL (Summarized)</u>

1 Impugned Order in Original is bad in law, without jurisdiction, and barred by time.

2 Show Cause Notice issued by an officer whose appointment violated section 39 of Balochistan Sales Tax on Services Act, 2015 (the Act).

3 No valid invocation of section 24(1) of the Act — no audit, inquiry; mere USF financial statements insufficient in terming a transaction as taxable and in determination of tax liability.

4 No taxable service were ever provided to the USF; subsidies are reimbursements/grants for infrastructure costs.

5 Wrong tariff heading application as no composite contract between the appellant and the USF involving supplies.

6 No *mens rea* proved for penalty and default surcharge.

The Appellant prayed for annulment of the impugned OIO. During the proceedings, the Appellant filed detailed written arguments (42+ pages) with precedents.

4. **<u>ARGUMENTS OF PARTIES</u>** During the current proceedings, the learned counsel for Appellant (Adv. Aimal Khan Kakar) sought multiple adjournments on different occasions which were allowed, and finally on last date of hearing came with verbal statement that the documents in the Memo of Appeal which also included the written arguments, be considered as final arguments before this Tribunal. Similarly, the learned counsel for the Respondent stated that the impugned order which has been issued with due process and as per the directions of this Tribunal while remanding the matter on 06-12-2024, may be upheld.

5. **Appellant's Contentions (from Memo of Appeal & Detailed Written Arguments):** The learned counsel of the Appellant has raised the following primary arguments:

a. <u>Proceedings Without Jurisdiction:</u> The show cause notice was issued on 18-3-2024 by an officer, namely Additional Commissioner[1], whose appointment was contrary to Section 39 of the BST Act, read with Section 2(118), which required appointments to be made "in the prescribed manner" (i.e., through rules). As no such rules existed, the officer lacked jurisdiction, rendering all subsequent proceedings null and void. Reliance was placed on a judgment of the Lahore High Court on an identical provision of the Punjab Sales Tax on Services Act, 2012. The Appellant argued that the subsequent amendment to Section 39 with effect from 01.07.2024 cannot be given retrospective effect.

[1] This notice was related to the earlier case, remanded for re-adjudication by this Tribunal on 06-12-2024, and not the current one.

b. Illegal Invocation of Section 24(1): The initiation of proceedings under Section 24(1) is unlawful as it was not based on information acquired through an "audit, inquiry, or inspection," as required by the section. The Respondent's reliance on the word "otherwise" is misplaced and cannot be used to circumvent the specific conditions precedent. It was further argued that USF financial statements do not constitute sufficient information to form a belief regarding non-payment of tax.

c. Proceedings Partially Barred by Time: The SCN for the tax periods from July to December 2018 was time-barred. At the time of filing returns for these periods, the limitation period under Section 24(2) was five years. The subsequent amendment extending this period to eight years via the Finance Act 2019 cannot operate retrospectively to revive "past and closed transactions," as a vested right had been created in favour of the Appellant upon the expiration of the original limitation period.

d. Alleged Services to USF: The Appellant is not providing any services to the USF. The transaction is a subsidy/grant to reimburse the cost of network infrastructure equipment. The Appellant argued that reimbursement of costs does not constitute a taxable service, citing judgments of the Sindh High Court and the Supreme Court of Pakistan. The end consumers of the telecom services are the general public, and no subsidy is passed on to them.

e. Scope of Tax and Predominant Nature of Contract: The tariff heading 9809.0000 is inapplicable as it applies only to composite contracts involving both the execution of work and the furnishing of supplies. The Appellant is only executing work and receiving a subsidy. Further, applying the "dominant intention" test, the predominant nature of the contract is for the supply of a finished product (network infrastructure) and not a service.

f. Sections 35 and 2(171) of the Act (deliberate concealments & tax fraud): Since no taxable services have been provided to USF, no question of its declaration in tax returns arise. The allegation of tax fraud is equally unfounded as he has acted in good faith based on its interpretation of the law and mere difference of opinion cannot constitute tax fraud.

g. Penalty and Default Surcharge: The levy of penalty and default surcharge is unjustified as the Appellant acted in good faith based on a genuine interpretation of the law. It is established law that penalty and default surcharge require the establishment of *mens rea* (willful default), which the Respondent has failed to do.

6. **Respondent's Position (from impugned OIO):** The learned counsel for Respondent defended the Impugned Order and advanced the following arguments:

a. The appointment of the officer was valid. The amendment to Section 39 in 2024 was procedural and would apply retrospectively, curing any defect. The judgment of the Lahore High Court is not binding on the Tribunal.

b. The word "otherwise" in Section 24(1) grants the authority wide discretion to act on any credible information. The financial statements of USF constitute sufficient credible information.

c. The show cause notice is within the eight-year limitation period, which is a procedural amendment that applies to all pending proceedings. In cases of tax fraud, limitation does not apply.

d. The subsidies received by the Appellant are consideration for the contractual execution of work, which is a taxable service under the Second Schedule to the BST Act. The judgments cited by the Appellant on reimbursement are distinguishable as they dealt with pure welfare grants, not contractual obligations.

e. The Appellant is liable to pay tax on the entire consideration, including the subsidy, which is the price for the contractual execution of work. The applicable tariff heading is 9806.0000 or 9809.0000.

f. The Appellant has wilfully opted not to declare and offer for tax an amount which was taxable, hence he has committed tax fraud.

g. Penalty and default surcharge under Sections 48 and 49 are mandatory impositions once a contravention of the Act is established.

7. **ISSUES FOR DETERMINATION:** After going through the entire case, the following issues arise for determination by this Tribunal:

i. Whether the proceedings were without jurisdiction due to the non-compliance of Section 39 of the BST Act at the time of issuance of the SCN?

ii. Whether the invocation of Section 24(1) of the BST Act was lawful?

iii. Whether the proceedings are partially barred by limitation under Section 24(2) of the BST Act?

iv. Whether the amount received by the Appellant from the USF for the deployment of network infrastructure constitutes consideration for a taxable service under the BST Act?

v. Whether section 35(1) has been contravened by the Appellant, if yes, was that wilfully?

vi. Whether the levy of penalty under Section 48 and default surcharge under Section 49 is lawful?

vii. What should be the fate of the Appeal?

8. **TRIBUNAL'S ANALYSIS AND FINDINGS** We have heard both the learned counsels, perused the record, including the impugned OIO, Show Cause Notice, remand order dated 06.12.2024, and written submissions. Our findings are in the following paragraphs.

9. Jurisdiction & Validity of Proceedings: The Appellant has unconvincingly tried in demonstrating that the Show Cause Notice dated 18.03.2024 (presumed as basis of the current proceedings) was issued by an

Additional Commissioner whose appointment was not in the "prescribed manner" as required by section 39(1) read with section 2(31) of the Act, 2015 (no rules framed at the relevant time). Nonetheless, this Tribunal finds no copy of any SCN issued on 18-3-2024 by any officer unprescribed/non-prescribed in the law culminating to the impugned OIO. The impugned OIO as well as the Memo of Appeal contain only one SCN that has been issued on 01-01-2025 by the Commissioner (Operation), BRA after remand of the case by this Tribunal after having consent of both the parties without dilating upon the merits. Without prejudice to this fact, we consider it necessary to mention that earlier impugned OIO dated 07-10-2024, remanded back by us for re-adjudicating the present tax dispute, was based on the said SCN issued on 18-3-2023. Circumstances of the impugned OIO are altogether different from the remanded case, therefore, reliance of the appellant on the Lahore High Court judgment in W.P. No. 16217/2020 (dated 06.06.2023) involving *pari materia* provisions of the Punjab Act carry no merit. Principles established by our courts consistently have held that a new SCN issued by an adjudication officer during a *denovo* (fresh) proceedings would be the operative and valid notice, provided it is properly issued. The previous SCN is not automatically revived simply because the court did not explicitly set it aside, as in this case. The previous SCN is, therefore, part of the closed proceedings after being remanded while disposing of the previous appeal. By ordering remand of the case, we wiped the slate clean regarding the adjudication process, which among other included deciding the matter anew through a speaking order by considering facts and evidences afresh. For initiating the fresh proceedings and for ensuring the Appellant's right to a fair hearing under Article 4 and 10A of the Constitution, a new SCN spelling out the specific allegations was required. This was also necessary to make it a valid foundation for building the new adjudication superstructure of the case. We see no illegality in the current SCN issued by the Commissioner (Operation) on 01-01-2025 by using his rightful jurisdiction and declare that same is sufficiently valid to construct a lawful superstructure provided other relevant corners of the laws are met.

10 Invocation of section 24(1) the Act: Section 24(1) requires information acquired during "audit, inquiry, inspection or otherwise" for making a tax assessment. For convenience we reproduce it as follows:

> " **24. Assessment of Tax.--**(1) *Where on the basis of any information acquired during an audit, inquiry, inspection* ***or otherwise****, an officer of the Authority is of the opinion that a registered person has not paid the tax due on taxable services provided by him or has made short payment, the officer shall make an assessment of the tax actually payable by that person and shall impose a penalty and charge default surcharge in accordance with section 48 and 49.*" (emphasis applied)

11. The Appellant heavily relied on his arguments during the assessment process and in the current appeal that in above law the phrase " or otherwise" refers to and be restricted to formal department-initiated proceedings (like a formal audit or a structured inspection) because they precede the words " or otherwise". His argument favours application of *EJUSDEM GENERIS* (common genus/species, of the same kind or nature) in interpretation of the word in section 24(1) of the Act. It is argued that no audit u/s 33 was ever conducted by the Authority and that a wide interpretation of "otherwise" rendering specific modes redundant violates principles of statutory construction (2010 SCMR 354, 2007 SCMR 737). Further that the burden to prove non-payment lies on the Department and not on him (SCP in Civil Appeal No. 1032/2018). Whereas, the Respondent while relying on information acquired from financial statements of the USF, is of the opinion that section 24 (1) grants wide discretion to the Authority to acquire information from any credible source for making an assessment.

12. In our fiscal and tax jurisprudence, the Superior Courts have carefully construed the phrase "or otherwise" to determine the exact boundaries of state taxation powers, penalties, and taxpayer exemptions. Because fiscal statutes must be interpreted strictly based on what is explicitly written, leaving no room for any intendment or equity, the interpretation of this phrase plays a critical role in deciding this case.

13. Above discussion in view, first we have to see whether the data gathering and analysis methods envisaged by the legislature in section 24(1) qualify to belong to same genre or are different in their kind. Technically speaking audit, inquiry, and inspection are all methods of gathering and using data, facts and information, but they are vastly different in their scope, timing, and statutory triggers. An audit is a comprehensive systemic review, an inquiry is an investigation into specific anomaly, and an inspection is an on-site physical verification. Because they do not form a single and narrow "*genus*", the word "otherwise" cannot be restricted to them. Here in above section, the legislative intent is clear in placing "or otherwise" at the end of this sequence in order to create a complete safety net for public money. It ensures that tax authority is not paralysed or barred from acting simply because the incriminating information came through a channel that does not wear the official label of a formal "audit", "inspection" or inquiry.

14. Above analysis in view, we conclude that section 24(1) grants flexibility in acquiring their initial data and information, but this does not absolve them of their duty to ensure that the data is legally verified, credible, and subjected to due process before creating a liability. Therefore, tax assessment made under section 24 (1) is in accordance with the law.

15. <u>Limitation u/s 24(2):</u> Before analysing the positions taken by the parties and reaching to a decision, it is pertinent to exhibit section 24(2) of the Act as it stood on the day when the current SCN was issued by the Respondent to the Appellant. Same is reproduced as follows:

> "*(2) No order under sub-section (1) [or (1A)][2] shall be made unless a notice to show cause is given to the person in default within [eight][3] year from the conclusion of the tax period to which the assessment relates specifying the grounds on which it is intended to proceed against him and the said officer shall*

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[2] Inserted through Balochistan Finance Act, 2023 (assented on 047-2023 and came into force at once)

[3] Substituted for the word "five" by the Balochistan Sales Tax on Services (Amendment) Act, 2019 (assented on 03-01-2019 and came into force at once and deemed to have taken effect on and from 1st day of July 2015.)

take into consideration the representation made by such person and provide him with an opportunity of being heard if the person so desires."

16. The pre-2019 amendments law (the original provision of five years limit) required that a SCN validly should notice a tax liability for assessment which is due for payment within five years time-limit between return filing date and date of issuance of the SCN, whereas the post-2019 Amendment Act extends this time-limit to eight years. Since the 2019 Amendment Act came into force at once (from the date of its assent on 03-01-2019) and effective from 01-7-2015, all notices that are alleging a tax liability due for eight years or less on the date when they are issued, are valid notices. A SCN issued on 01-01-2025 (as is in the present case) is valid to take notice of tax liability payable on or after 02-02-2017. Since these tax liabilities pertain to tax periods of 2019-20, the SCN issued on 01-01-2025 for a fresh (*denovo*) assessment is lawful and in accordance to section 24(2) of the Act.

17. Merit of the Case—Taxability of USF payments: The appellant provided no details of the projects executed under Universal Services Fund (USF), namely, Broadband for Sustainable Development Program (BSD) neither to the adjudicating authority of BRA, nor presented before us. Similar tax disputes came before us earlier (*STA Nos. 1 to 6/2025 all entitled M/S China Mobile (CM) Pak Limited, Islamabad V. Commissioner Operations, BRA, Quetta*). Then, we through a search, hsd found certain information on the official website of the Ministry of Information Technology & Telecommunication, Government of Pakistan at www.moitt.gov.pk and USF website at www.usf.org.pk. Summary of details then found were as follows:

i. BSD focusses on the provision of telecommunication services, i.e., highspeed broadband and voice services in unserved and under-served areas through projects under USF,

ii. USF is a fund established and controlled by the Federal Government u/s 33A of the Pakistan Telecommunication (Re-organization) Act 2006, which is exclusively utilized for providing access to telecommunication services to people of un-served, under-served, rural and remote areas of the country. The Fund consists of the following;

a. Grants made by the federal and provincial governments,
b. Prescribed contribution by the licensees,
c. Sale proceeds from the auction of the right to use radio spectrum,
d. Loans obtained from the federal government, and
e. Grants and endowments received from other agencies.

iii. Out of 63 projects financed under the Fund, 16 projects were executed/ under execution within the tax jurisdiction of BRA, i.e. in Balochistan province,

iv. Executing agency from government side for such projects is the USF Company, which for limited competitive bidding floats "Request for Application (RFA) to Provide USF Telecommunication Services" from telecommunication licence holders (USF contributors) through the newspapers and USF website,

v. The bidding (RFA process) is held by USF Company in accordance with the PTA (Re-organization) Act 1996 and USF Rules 2006,

vi. For execution of these projects RFAs can only be submitted by holders of telecommunication licenses (USF contributors) issued by the Telecommunication Authority (limited bidding). A USF contributor has an obligation to contribute 1.5% of its annual gross revenue to USF. The appellant is one of the USF contributors and has won a number of such projects for execution,

vii. Paragraph-12 of the RFA explains 'USF Subsidy Payments' by stating:

"In order to promote GoP's policy of expending telecommunication services and access in un-served areas, a USF Subsidy shall be paid to the Service Provider to help meet the capital costs of the rolling out the USF Network and providing USF Services in the USF areas. The USF Subsidy payments shall be made in accordance with USF Services and Subsidy Agreement (USF-SSA) enclosed as Annex 6."

viii. A successful bidder/lowest bidder signs a USF-SSA/contract as USF Service Provider with USF for a contract/bid price submitted during a RFA process,

ix. Paragraph-27 of the RFA clearly states, "A USF Service Provider shall be required to comply with all laws of Pakistan applicable to its USF Services activities at all times,….."

x. Paragraph-30 states, "A USF Service Provider will be responsible for paying any fees, taxes or charges otherwise applicable to the USF Service Provider till the term of the contract, in accordance with the Act and other laws of Pakistan and regulations made thereunder."

xi. Paragraph-28 specifies term of USF-SSA (the contract) as 10 years and any other extended period due to force majeure or delay in project.

xii. Relevant notes and tables in the financial statement of USF indicate amounts of liquidated damages (LD) charges imposed upon contractors for contractual defaults and bank guarantees obtained from the contractors for execution of projects as per contractual obligations under the agreement.

18. Above details clarify without an iota of doubt that the services provided by the Appellant to USF Company, Government of Pakistan come under tariff-

heading 9809.0000 (contractual execution), which is a taxable service under the Act.

19. For its own definition of *telecommunication service*, the Act u/s 2 (178) borrows and amalgamates definitions of 'telecommunication service' and 'telecommunication system' from the PTA (Re-organization) Act 1990 and 'wireless communication' from the Wireless Telegraphy Act 1933. Further, the definition under the Act also includes "*transfer, assignment or sharing of the right to use capacity for transmission, emission or reception of signals and provision of access to global or local information network*".

20. Under section 2 (v) of PTA (Re-organization) Act, 1990, a *telecommunication service* "*means a service consisting in the emission, conveyance, switching or reception of any intelligence within, or into, or from, Pakistan by any electrical, electro-magnetic, electronic, optical or optio-electronic system, whether or not the intelligence is subjected to rearrangement, computation or any other process in the course of the service;".* The Universal Service Fund Rules 2006, under rule 2 (xxiii) defines 'universal service' as *"provision or coverage of telecommunication service including at least voice and data to the whole of Pakistan*;"

21. A plain reading of the above two sets of definitions shows that they are parallel and consistent and we do not find any contradiction in concepts of 'telecommunication service', therein. Therefore, we conclude that the services provided by USF Service Provider (the Appellant) to the service-recipient (the USF Company/PTA), under the USF Services and Subsidy Agreement (USF-SSA), are taxable services as provided u/s 3 of the Act and listed in Second Schedule under tariff-heading 9809.0000 and subject to BSTS rate of 15%. This taxpaying obligation is in addition to its responsibilities as a registered person for providing telecommunication services within the jurisdiction of BRA as a matter of routine business (in his capacity as a licensee of PTA)

under tariff-heading 9812.1210 which is subject to BSTS applicable rate of 19.5%. The appellant is liable to pay BSTS as required u/s 11 of the Act.

22. Whether section 35(1) contravened? Being a registered person, the Appellant was also liable to declare contractual services rendered in his tax returns for the relevant tax periods of fiscal year 2019-2020 and voluntarily to pay tax under the statute. In contrast the Appellant opted himself to decide that such services were not only exempt but also not liable to be declared in sales tax returns. Section 35(1) of the Act, as on 30-6-2020 reads as follows:

> "***35. Returns.--****(1) Every registered person shall furnish, not later than the due date, a true, correct and properly filled-up return in the prescribed form to a designated bank or any other office specified by the Authority, indicating the tax due and paid during a tax period and such other information or particulars as may be prescribed by the Authority.*"[4]

23. Further, the Act u/s 2(56) defines **due date** " *in relation to the furnishing of a return or a statement or for payment of tax*" as "*15th day of the month following the end of the tax period to which it relates, or such other date as the Authority may, by notification in the official Gazette, specify"*. Furthermore, the tax return form is prescribed under Rule 164 of Balochistan Sales Tax on Services Rules, 2018. On perusal of this prescribed form, it is evident that declarations, amongst others, at serial numbers 4 and 9 (that is, 'exempt, non-taxed supplies/rendering of services and services provided in other jurisdiction and taxed there' (S. No 4) and 'services provided and rendered' (S. No 9), are necessary to make filling true, correct and proper. Even for sake of debate, if it is accepted that the money received by the Appellant from USF are non-taxed, again it should have been declared at Serial No. 4 of the form, which he did not do leading to filing of untrue, incorrect and improper tax return. Instead of following the law **in letter and**

[4] Current provision of the law, as substituted by the Balochistan Finance Act 2020 effective from 01-7-2020 reads as follows: "***35. Returns.–*** *(1) Every registered person shall [e-file or][a] furnish to the Authority, not later than the due date, a true, correct and properly filled-up return in the form notified by the Authority, indicating the tax due and paid during a tax period and such other information or particulars as may be notified by the Authority.*" ([a] words inserted by Balochistan Finance Act 2025 effective from 01-7-2025

in spirit, the Appellant with fraudulent intent contravened section 35(1) and opted for a prolonged tax litigation.

Thus, we conclude that the Respondents has lawfully initiated proceedings and passed the impugned order.

24. Penalty u/s 48 & Default Surcharge u/s 49: As on the penalty charged upon the Appellant; while examining the entire record of the case and observing conduct of the Appellant during the proceedings, we have observed an evasive behaviour not expected from a registered person being a well reputed limited company. This case has been prolonged unnecessarily by the Appellant with unfounded assumptions contrary to the legal provisions, and by avoidance in sharing the required details with an intent to avoid and evade due tax under the Act. In our considered opinion such conduct establishes clear *mala fide* intentions on the part of the Appellant, and the penalty @ 5% u/s 48 as listed at serial No. 3 of the table has been imposed correctly. Further, default surcharge to be imposed strictly under provisions of sub-sections (1)(b) and (2) of section 49.

25. In view of the above, impugned OIO is upheld. Appeal is, accordingly, dismissed.

__SD__

Chairman

__SD__

Member-I

__SD__

Member-II

Dated: 07-07-2026