APPELLATE TRIBUNAL, PREVENTION OF MONEY LAUNDERING ACT AT NEW DELHI

Date of Judgment: 09.07.2015

FPA-PMLA-457/DLI /2013
&
MP-PMLA-1007/DLI/2014

M/s Muthoot Finance Limited ... Appellant

Versus

The Director, FIU-India,
New Delhi ... Respondent

Advocates/Authorized Representatives who appeared

For the Appellant : Shri S.C. Gupta Tax Consultant

For the Respondent : Mr. Satish Agarwal, Advocate &
Ms. Pooja Bhaskar, Advocate

CORAM

JUSTICE ANIL KUMAR	:	**CHAIRPERSON**
SHRI ARUN KUMAR AGARWAL	:	**MEMBER**
DR. RABI NARAYAN DASH	:	**MEMBER**

JUDGEMENT

1. The Appellant has preferred this Appeal under section 26 of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as Act) against the order dated 14th February, 2013 passed by the Director, FIU-IND in original Number 1/Dir/FIU-IND/2013 holding that the appellant has failed to comply with Section 12 of the PMLA and the rules made thereunder by not filing CTRs in respect of 2697 cash transactions mentioned in show cause notice dated 13th June, 2011 which took place over the period 1st April, 2006 up to 30th November, 2010. The Director,

however, took a lenient view on account of implementation of Act and because the failure had been admitted by the appellant and therefore, impose the minimum penalty of Rs. 10,000 each for 2697 cash transactions which were not reported and thus imposing a penalty of Rs. 2,69,70,000/-

2. The appellant has filed the above noted appeal contending inter alia:

2.1. That the Appellant is a company, known as Muthoot Finance Limited, incorporated under the Companies Act, 1956 having its registered office at Muthoot Buildings, P.B. No.11, Kozhencherry - 689641 and its Head office at Muthoot Chambers, Opp. Saritha Theatre Complex, Banerji Road, Ernakulam - 682 018 and its Corporate office (North) at Muthoot Towers – Alaknanda, New Delhi – 110019. The Appellant Company is working as a Non–Banking Financial Institution (NBFC) under Licence from the Reserve Bank of India and carrying on the business of providing financial solutions to its customers primarily by grant of financial loan against pledging of gold ornaments as security.

2.2. That by letter bearing F. No. 9-69/2010-FIU-IND dated 14-09-2010 issued in the name of the Appellant Company, the details of all cash transactions of the value of Rs. 10 lakhs and above in a month for the Financial Year 2009-2010 and also for the first quarter of Financial Year 2010-2011 were called by the Additional Director of FIU. He also required the appellant to submit Cash Transaction Reports (CTRs) of this period. The appellant company vide its letter dated 21-09-2010 requested for condonation of the omission in furnishing CTRs and the required

information was allegedly submitted by the appellant vide letter dated 14-10-2010. The appellant further alleged that further queries were raised by the Additional Director vide letter dated 02-11-2010 which were allegedly replied vide letters dated 13-11-2010; 15-11-2010; 20-11-2010 and 6-12-2010 again with request to condone the delay in submitting the CTRs.

2.3. The appellant further alleged that the company received a notice dated 13-06-2011 issued by the Director, FIU-India reiterating that there were omissions in furnishing details of cash transactions and CTRs for the period from 01-04-2006 to 30-11-2010 involving 2697 transactions of Rs. 10 lakhs and above. The appellant was directed to show cause as to why fine u/s 13 of Prevention of Money Laundering Act 2002 (PMLA or the Act) should not be levied on the appellant.

2.4. That the appellant filed another reply dated 07-07-2011 requesting that the lapse was inadvertent and not deliberate. The appellant again requested for condonation of the mistake. The appellant alleged that it believed that the matter had been closed by FIU. However, after a gap of more than seven months, a letter dated 08-02-2012 was received by the appellant company from the Deputy Director, FIU-India granting an opportunity for personal hearing to the appellant company. Hearing was given to the Appellant on 12-02-2012. Thereafter, personal hearing was given to the appellant on 28-02-2012 before the Director, FIU-India.

2.5. The Appellant alleged that it clarified all queries raised by the Director, FIU-India. The appellant company also filed a letter dated

23-03-2012 reiterating their submissions and request to condone the delay in filing the CTRs. However a draft order was served on the appellant along with a proposed action vide letter dated 23-10-2012 granting an opportunity of defense to the appellant company. The appellant company, in compliance of the said letter, filed a detailed letter dated 24-11-2012 with a request for final personal hearing and to condone the delay in filing the CTRs. Accordingly a letter was received by the appellant company from Additional Director, FIU-India and a date for personal hearing was fixed for 17.12.2012. At the time of personal hearing, the entire defense of the Appellant Company was allegedly again explained.

2.6. According to the appellant that the PMLA was amended by PML (Amendment) Act 2012 with effect from 03.01.2013. The amendment was regarding quantum and type of action that could be invoked by the Director u/s 13. According to the appellant the scope was enlarged to permit even issue of warning in writing or to issue directions for compliance of specific instructions to close the proceedings.

2.7. The appellant has contended that the respondent, however, ignored the pleas of the appellant for a lenient view and levied the fine of Rs. 2,69,70,000/- vide the impugned order dated 14-02-2013. The plea of the appellant is that the judgments of Supreme Court as reported in AIR 1963 SC 1618 and in AIR 1977 SC 1516 has been misinterpreted by the respondent and the impugned order was passed.

2.8. According to the appellant the respondent wrongly interpreted the term "failure" so as to treat each of the entries as a failure attracting the provisions of the PMLA ignoring the fact that the law has prescribed filing of one return for each month, called the CTR (Cash Transaction Report). The allegation of the appellant is also that the respondent has ignored Rule 3(2) of the Prevention of Money Laundering Rules 2005 which prescribes slabs for payment of appeal fee. The rule fixes a maximum fee payable for filing of appeal at Rs. 5,000 for fine up to Rs. 1,00,000. The rule does not contemplate a levy of a higher fine and therefore has not contemplated appeal fee slab for a higher fine. The contention of the Appellant is that the respondent has far exceeded his authority in levying fine of Rs. 2,69,70,000/-.

3. Aggrieved by the impugned order imposing the penalty of Rs. 2,69,70,000/- the appellant has filed the above noted appeal contending inter alia that the respondent has exceeded its authority in imposing a fine of Rs. 2,69,70,000/- especially in view of amendment to section 13 of the Act. The plea of the Appellant is that the respondent has not given any reasons for ignoring the sub section (a) of the amended section 13 of the Act which contemplates that a warning can be given to ensure compliance without levy of financial penalty. According to the Appellant, the respondent could not rely on AIR 1963 SC 1618 and AIR 1977 SC 1516 while passing the impugned order.

4. The plea of the appellant is that in the absence of definition of failure in the statute, the fine imposed vide the impugned order could have been one failure for delay in submission of CTRs for the entire

period instead of treating each individual transaction as a separate failure, attracting penal provisions for failure and thereby imposing the fine of more than Rs. 2.69 crores in the impugned order. Further plea of the appellant is that submission of CTR being in the nature of monthly compliance, any failure in submitting CTR cannot be treated as failure by way of each individual transaction. The impugned order in the circumstances is alleged to be based on presumptions, conjectures and surmises and is bad in the eyes of law and is liable to be set aside.

5. The plea of the appellant is that the appellant has not been imputed with any other non-compliance under section 12 of the Act and no concealment or misrepresentation has been imputed against the appellant. The appellant has also relied on the decision of this Tribunal in the cases of Bombay Mercantile Bank; Allahabad Bank and Union Bank. In the circumstances, it is prayed that the impugned order be set aside and the penalty levied on the appellant be waived.

6. The respondent had noticed the obligation of the Financial Institution in view of Rules 3, 4, 7, 8 & 9 of the Prevention of Money Laundering (Maintenance of Records) Rules, 2005 (hereinafter referred to as the 'Rules') and section 12 of the Act to maintain records and furnish to Director, Financial Intelligence Unit-India (hereinafter referred to as 'Director, FIU-IND'), information relating to Cash transactions, Suspicious transactions and Counterfeit currency transactions, as prescribed. Rule 3 of the Rules specifies the transactions in respect of which the information should be furnished to Director, FIU-IND and

Rules 7 & 8 prescribe the procedure and manner of furnishing such information.

6.1. The respondent held that it had come to its notice that the Appellant had been transacting in cash but no Cash Transaction Reports (CTRs) as prescribed were filed. The Appellant was asked vide respondent's letter No. 9-69/2010-FIU-IND dated 14th September, 2010 to furnish details of Cash transactions of Rs. 10 lakh and above during the period 1st April, 2009 to 30th June, 2010. The Appellant admitted his failure vide letter dated 21st September, 2010 to submit the required CTRs and requested for condonation. Appellant had also sought more time for submission of information called by respondent. The Appellant had submitted particulars of 1063 transactions of loans of more than Rs. 10 lakhs in cash during the period 1st April, 2009 to 30th June, 2010. Appellant had also filed particulars of cash transaction for the period 1.07.2009 to 30.09.20010 by letter dated 13.11.2010. Later on vide letters dated 15th November, 2010, 20th November, 2010 and 6th December, 2010, Appellant provided further information in respect of cash transactions in excess of Rs. 10 lakh that took place during 1.4.2006 to 31.3.2009. Electronic data was also furnished on 5th January 2011 of cash transactions for the period 1.4.2006 to 30.11.2010 on a Compact Disc to the respondent.

6.2. The respondent also considered RBI Master Circular No. DNBS (PD)CC No. 152/03.10.42/2009-10 dated 1st July, 2009 which prescribes the requirement of filing of CTRs and the format for filing of such CTRs. Since the appellant had failed to file CTRs for 2697

transactions, a show cause notice dated 13.6.2011 asking appellant as to why penalty should not be levied on them under Section 13 of the Act for failure to comply with provisions of Section 12 of the Act read with Rules 3, 7 & 8 of the Rules in failing to report CTRs to Director, FIU-IND in respect of 2697 transactions in excess of Rs. 10 lakhs that took place over the period 1.4.2006 to 30.11.2010 was given. A reply dated 7th July, 2011 was filed by the Appellant seeking apology for the delay in filing the CTRs and requested for condoning the delay, stating it to be an un-intentional and bona-fide mistake. An opportunity for personal hearing was also granted to the Appellant vide letter No. 9-69/2010-FIU-IND dated 8th February, 2012. The hearing took place on 28th February, 2012 at 3.00 PM and was attended by Shri K.R. Bijimon, Chief General Manager, authorized by the Appellant along with Shri Rakesh Mehra, AGM and Shri P.K. Gopan, SFM. Written submission was also filed admitting the failure to file Cash Transaction Reports (CTRs), and condonation of the mistake was sought on the ground that it was unintentional and inadvertent.

6.3. The appellant had also pleaded that the information on CTRs was received by the Head Office of the Appellant from the branches but was not filed with respondent due to failure of the Principal Officer. The Appellant had also contended that CTRs in respect of other two firms of the Appellant Group, namely, Muthoot Vehicle and Asset Finance Limited and Muthoot Exchange Company Pvt. Ltd. were however, filed. The appellant also admitted that their internal review system failure to detect non-filing of CTRs.

6.4. The respondent had also noticed that as per information given by Appellant on 5th Jan., 2011, 2697 Cash transactions in excess of Rs. 10 lakh had taken place between 1.4.2006 and 30.11.2010. But as per their letter dated 13th July, 2011, there were 8,494 cash transactions in excess of Rs. 10 lakh during the same period. Explanation for this anomaly given by the Appellant was that the appellant had not incorporated integrally connected transactions adding up to in excess of Rs. 10 lakh while giving information on 5.1.2011. The appellant had essentially contended:

(a) PMLA being a new legislation, it took some time for Muthoot to put in place the required systems.

(b) The fact of non-compliance was admitted, stating further that reports were being filed regularly from March 2011 onwards.

(c) There was no intention of non-compliance.

(d) Due to lack of understanding regarding the type of transactions to be reported, the integrally connected transactions meeting the stipulated threshold of Rs. 10 lakh during the period 1.4.2006 to 30.11.2010 were not reported but the position was rectified in later submissions.

7. Considering the pleas and contentions of the appellant, the respondent decided,

(i) Whether Muthoot failed to comply with Section 12 of the Act requiring furnishing of prescribed information to Director, FIU-IND and, if so,

(ii) the quantum of fine to be levied under Section 13 of the Act for each failure to comply with obligations as per Section 12 of the Act.

8. The appellant had also raised the following pleas before the respondent which has been decided by the impugned order. The Appellant had raised the following pleas:

(i) there was absence of principles governing the levy of a fine or penalty such as intent, any blatant disregard of law, wanton negligence or lack of due diligence and reasonable cause;

(ii) rule of limitation applies as proceedings had been taken up beyond reasonable time;

(iii) quantum of penalty @ Rs. 10,000/- for each transaction was unreasonable, as Section 13 of the Act refers to fine 'for each failure' which should be related to Muthoot's obligation to file monthly CTR returns;

(iv) in the absence of available precedence u/s 13(2) of the Act for determining the quantum of fine, the general law regarding penalties, as applied in fiscal and economic legislation such as the IT Act, the SEBI Act and RBI Act and other allied legislations as pronounced by the Apex Court and other judicial authority should be followed;

(v) in view of proposed amendments in the Act, fine should be imposed as a last resort after exhausting remedies being provided therein.

9.. After considering the pleas and the law relied on by the Appellant who had been referred to as `Muthoot', the respondent by the impugned order dated 14th February, 2013 has held as under:

- By its own admission, Muthoot has failed to comply with its obligations to file CTRs under Section 12 of the PMLA and Rules made thereunder. Ignorance of law, lack of resources and

negligence of employees etc., as cited by Muthoot, are not valid reasons for non-compliance.

- PMLA and the Rules made thereunder have prescribed time limit for reporting transactions i.e. Cash Transaction Reports (CTRs), Suspicious Transaction Reports (STRs) and Counterfeit Currency Reports (CCRs). Timely submission of reports is crucial for effectively combating money laundering, terrorist financing, tax evasion, security threats and other grave crimes. As time is of essence in such cases, late submission of reports is also a violation of law as much as the non-submission.

- While it is a fact that the Rules prescribe submission of CTRs monthly, the primary obligation is to furnish the report (CTR) in respect of each transaction that falls within the purview of Section of 12 of the PMLA read with Rule 8 of the Rules. Thus, the "failure" in terms of Section 13 of the PMLA relates to failure to file a report in respect of each transaction, and not the failure to file one monthly CTR.

- The culpability of Muthoot is evident in view of Muthoot's admission that CTRs were being filed for other group companies and the fact that the CTRs in respect of the noticee company viz., Muthoot Finance Ltd. were filed only after the failure was pointed out by FIU-IND.

- Muthoot never voluntarily filed the reports, before the failures were pointed out by the FIU-IND.

- The argument of the Muthoot that the use of term 'may' and not "shall" with regard to the Director, FIU-IND's authority to levy a fine under section 13(2) of PMLA indicates that it is not mandatory, is not acceptable. The word 'may' is capable of meaning 'must' or 'shall' in light of the context; where discretion is conferred upon a public authority, coupled with an obligation, the word 'may' denoting discretion should be construed to mean command. (AIR 1963 SC 1618 Textile Commission vs. Sagar Textile Mills, AIR 1977 SC 1516, 1517).

- Muthoot's argument that fine can be imposed under Section 13 (2) (d) as a last resort after exhausting other available persuasive remedies proposed in clauses (a) to (c) of the amended section 13(2) of PMLA, is not acceptable as the non-compliance and the associated sanctions have to be adjudicated under the law in force at the time of adjudication.

- Muthoot's plea that the proceedings are barred by limitation is not tenable as the PMLA does not stipulate a time-limit for initiation of proceedings for non-compliance. On the other hand, sufficient time and opportunity has been given to Muthoot at every stage of the adjudication proceedings to present its defense in accordance with the principles of natural justice.

- The case laws cited by Muthoot are not applicable or germane to the current case, as this adjudication is being made after full consideration given to the facts and circumstances of the case, after following the principles of natural justice and giving full opportunity to Muthoot (the notice) to present its defense

10. In reply to the pleas and contentions raised in the present appeal, the respondent has reiterated the reasons as given in the impugned order dated 14th February, 2013.

11. This Tribunal has heard the learned counsel for the parties and has perused the pleadings and submissions made by the parties. The plea of the appellant that the provision of amended act will be applicable in the case of the appellant cannot be accepted. The amendment to the Act came into force on 15.02.2013 and not on 03.01.2013. The plea of the Appellant that the penalty can be imposed, even under the amended Act after exhausting other sanctions as contemplated under section 13 (2) of the Act cannot be accepted. The respondent has wide discretion to

impose the sanctions as contemplated under Section 13 (2) of the Act. No malafide has been attributed to the respondent. The Act contemplates that sanctions deemed appropriate can be imposed by the respondent as (a) issue a warning, or (b) direct such reporting entity or its designated director on the Board or any of its employees, to comply with specific instructions; or (c) direct such reporting entity or its designated director on the Board or any of its employees, to send reports at such interval as may be prescribed on the measures it is taking and or (d) by an order, impose a monetary penalty on such reporting entity or its designated director on the Board or any of its employees, which shall not be less than ten thousand rupees but may extend to one lakh rupees for each failure. From the perusal of the scheme of the Act, it cannot be inferred that before imposing penalty other sanctions have to be resorted to by the respondent. If the discretion has been given to the respondent to impose certain sanctions, the same cannot be restricted in a manner as has been alleged by the appellant, unless imposition of sanction is tainted by malafide or is a colorable exercise of power by the respondent. All the pleas and contentions of the appellant have been considered. The Appellant cannot contend successfully that before imposing penalty, the respondent should have resorted to other sanctions as given in the amended sections of the Act which will not be applicable to the appellant. The respondent has also imposed minimum penalty for every violation and has exercised discretion without any malafide or in colorable exercise of discretion. In these circumstances, the Appellate Tribunal will have limited jurisdiction and will not substitute its inferences with that of the respondent in the present facts and circumstances of the case.

12. What will be the scope and extent of the power enjoyed by the Appellate Tribunal in interfering with a detailed order which is passed in exercise of discretion by the Statutory Authority and to reverse it in the facts and circumstances? In our considered opinion the Appellate Tribunal exercises a statutory power which is limited, qua an order passed in discretion. It is now well settled that if the discretion exercised in passing the order is sound and judicial, according consideration to all available material on record, conforming to the well established principles governing the passing of a discretionary order and the order does not result in any miscarriage of justice, the Appellate Tribunal would have no scope to exercise its power to reverse the order under appeal even if it has contrary view in the matter. The extent of power of the appellate Court was enumerated by the House of Lords in Evans Vs Bartlam, (1937) 2 All E.R.654 which is extracted for reference:

> "It is clear that the Court of Appeal should not interfere with the discretion of a judge acting within his jurisdiction unless the court is clearly satisfied that he was wrong. But the court is not entitled simply to say that if the judge had jurisdiction and had all the facts before him, the Court of Appeal cannot review his order unless he is shown to have applied a wrong principle. The court must if necessary examine anew the relevant facts and circumstances in order to exercise a discretion by way of review which may reverse or vary the order."

Lord Atkin crystallised the position by rephrasing it thus:-

> "Appellate jurisdiction is always statutory; there is in the statute no restriction upon the jurisdiction of the Court of Appeal; and while the appellate Court in the exercise of its appellate power is no doubt entirely justified in saying that normally it will not interfere with the exercise of the judge's discretion except on grounds of law, yet if it sees that no other grounds the decision will result in injustice being

done it has both the power and the duty to remedy it."

In another matter Charles Osenton & Co Vs. Johnston, 1941 (2) Aller 245, which was a case of breach of contract where one of the questions involved was whether an order passed in exercise of discretion could be interfered with in an Appeal. It was held:-

> "The law as to the reversal by a Court of Appeal of an order made by the judge below in the exercise of his discretion is well-established, and any difficulty which arises is due only to the application of well-settled principles in an individual case. The appellate tribunal is not at liberty merely to substitute its own exercise of discretion for the discretion already exercised by the judge. In other words, appellate authorities ought not to reverse the order merely because they would themselves have exercised the original discretion, had it attached to them, in a different way. If, however, the appellate tribunal reaches the clear conclusion that there has been a wrongful exercise of discretion, in that no weight, or no sufficient weight, has been given to relevant consideration such as those urged before us by the appellant, then the reversal of the order on appeal may be justified."

13. The Apex Court also relying on these principles followed them in The Printers Pvt. Ltd. Vs. Pothan Joseph, AIR 1960 SC 1156 and Wander Ltd. Vs. Antox India Pvt. Ltd, 1990 (Supp) SCC 727. In Printers Pvt. Ltd (supra) it was held:-

> "Where the discretion vested in the court under Section 34 has been exercised by the trial court the appellate court should be slow to interfere with the exercise of the said discretion. In dealing with the matter raised before it at the appellate stage the appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely, on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court

would have taken a different view may not justify interference with the trial court's exercise of discretion. As is often said, it is ordinarily not open to the appellant court to substitute its own exercise of discretion for that of the trial judge; but if it appears to be appellate court that in exercising its discretion the trial court has acted unreasonably or capriciously or has ignored relevant facts and has adopted an un-judicial approach then it would certainly be open to the appellate court-and in many cases it may be its duty-to interfere with the trial court's exercise of discretion. In cases falling under this class the exercise of discretion by the trial court is in law wrongful and improper and that would certainly justify and call for interference from the appellate court."

Whereas in Wander Ltd. (supra) the Apex Court held that in an appeal in exercise of discretion by the Single Judge, the appellate Court will not interfere with the exercise of discretion by the first Court. The relevant observation of the Apex Court is extracted as under:-

" The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion."

14. This leaves a very limited scope for this Tribunal to interfere but to confine itself to these well-demarcated boundaries. All that remains to be seen is whether the impugned order can be reversed or the minimum penalty imposed by the respondent can be interfered with or not. If the minimum penalty has been imposed, this Tribunal cannot carve out another minimum penalty or less penalty in the minimum penalty imposed per transaction on the premise that default has to be construed on the basis of per report and not per transaction. Such a course will lead to very anomalous situations. For example a financial institution committing lapse in reporting one transaction will become equivalent to another financial institution committing a number of lapses/defaults to be reported by one report. The Act contemplates default per transaction and the scope cannot be enlarged or restricted on the basis of any other criteria. Section 12 of the PMLA lays down the obligations of the appellant reads as follows :

> "12. *(1) Every banking company, financial institution and intermediary shall-*
>
> *(a) maintain a record of all transactions, the nature and value of which may be prescribed, whether such transactions comprise of a single transaction or a series of transactions integrally connected to each other, and where such series of transactions take place within a month;*
>
> *(b) furnish information of transactions referred to in clause (a) to the Director within such time as may be prescribed;*
>
> *(c) verify and maintain the records of the identity of all its clients, in such a manner as may be prescribed.*
>
> *Provided that where the principal officer of a banking company or financial institution or intermediary, as the case may has reason to believe that a single transaction or series of transactions integrally connected to each other have been valued below the prescribed limit so as to defeat the provisions of this section, such officer shall furnish information in respect of such transactions to the Director within the prescribed time.*

(2) The records referred to in sub-section (1) shall be maintained for a period of ten years from the date of cessation of the transactions between the clients and the banking company or financial institution or intermediary, as the case may be."

Rule 3 of The Prevention of Money Laundering (Maintenance of Records) Rules, 2005 (hereinafter referred to as Rules) prescribe nature and value of transactions record of which are to be maintained in compliance to section 12(1)(a) which reads as follows :

"3. Maintenance of records of transaction (nature and value) –

(1) Every banking company or financial institution or intermediary, as the case may be, shall maintain a record of :-

(A) All cash transaction of the value of more than rupees ten lakhs or its equivalent in foreign currency;

(B) all series of cash transactions integrally connected to each other which have been valued below rupees ten lakh or its equivalent in foreign currency where such series of transactions have taken place within a month;

(C) All cash transactions where forged or counterfeit currency notes or bank notes have been used as genuine and where any forgery of a valuable security has taken place;

(D) All suspicious transactions, whether or not made in cash and by way of:

....."

Rule 7 prescribes that the Principal Officer of the banking company shall furnish the information referred to in rule 3 to the respondent i.e. Director FIU India on the basis of information available with the banking company.

Rule 8 prescribes the procedure to be followed furnishing the information in respect of transactions referred to in rule 3 which reads as follows :

"8. Furnishing of information to the Director –

> The Principal Officer of a Banking Company, the financial institution and intermediary, as the case may be, shall furnish the information in respect of transactions referred to in rule 3 every month to the Director by the 7th day of the succeeding month other than transactions referred to in clause (C) and (D) of sub rule (1) of rule 3;
>
> Provided that information in respect of transactions referred to in clause (C) and (D) of sub rule (1) of rule 3 shall be promptly furnished in writing or by way of fax or electronic mail to the Director not later than three working days from the date of occurrence of such transactions."

The word transaction is defined in sub rule (h) of rule 2 which reads as follows :

> "2(h) "transaction" includes deposit, withdrawal, exchange or transfer of funds in whatever currency, whether in cash or by cheque, payment order or other instruments or by electronic or other non physical means."

15. A plain reading of section 12(1)(a) read with rule 2(h) and 3 shows that the appellant was required to maintain a record of all cash transactions of the value of more than rules ten lakhs or its equivalent in foreign currency and of all series of cash transactions integrally connected to each other which have been valued below rupees ten lakh or its equivalent in foreign currency where such series of transactions have taken place within a month. Section 12(1)(b) requires that appellant shall furnish information of transactions referred to in clause (a) of sub section (1) of section 12 of PMLA to the Director FIU India within such time as may be prescribed. From a plain and careful consideration of the language employed in section 12(1)(b) it is clear that the primary obligation casted on the appellant was of furnishing information of transactions referred to in 12(1)(a) of PMLA within such time as may be prescribed. Rule 8 prescribes the time by which information in respect of transactions is to be furnished. Thus the appellant was enjoined to

furnish the information in respect of transactions every month to the respondent by the 7th day of the succeeding month. Hence section 12(1)(b) read with rule 3, 7 and 8 enjoined the appellant to furnish the information in respect of transactions as per the prescribed procedure. The substantive statutory obligation of the appellant is in respect of furnishing of information in respect of transactions and furnishing of information of such transactions by way of a monthly Cash Transaction Report is only procedural. Therefore, in our considered opinion, the phrase "each failure" used in Section 13 refers to failure to furnish information in respect of transaction(s) and failure to furnish information in respect of each transaction would tantamount to each failure. Consequently not furnishing information of a transaction is a violation of Section 12 (1) (b) of the Act and a failure on part of the appellant and as per Section 13 (2) of the Act, fine is to be imposed for each such failure and failure to furnish information in respect of 2697 transactions would amount to 2697 failures for imposing fine.

16. This Tribunal in the case of Union Bank of India Vs. Director, FIU India, FPA-PMLA-74/DLI/2011 decided on 17.08.2011, had held that fine is to be imposed for each violation. In Union Bank of India (supra) there were 1095 transactions of large cash deposits as well as transactions of funds transfer of large amount through RTGS over a period of four months. It was alleged that Union Bank of India failed to evolve an internal mechanism to examine, detect, identify and report suspicious transactions over the subject period of four months and also failed to examine 1095 transactions and taking a lenient view, fine of ₹4,00,000/- was imposed for failure to evolve an internal mechanism for a

period of four months. Union Bank of India challenged the imposition of fine on the ground that the transactions were examined and were not found to be suspicious and therefore, no Suspicious Transaction Report was filed. This Tribunal upheld the imposition of fine of Rs. 4,00,000/- under Section 13 of PMLA 2002 and did not interfere with the discretionary order passed by the statutory Authority. In the case of Allahabad Bank Ltd., it filed Cash Transaction Reports which were rejected due to fatal errors in the reports and Director FIU India held that Allahabad Bank Ltd. failed to correctly report 19428 cash transactions over a period of 14 months and taking a lenient view imposed a fine of Rs. 50,000/- per month totaling Rs. 7 lakh. The Director FIU India further held that Allahabad Bank Ltd. failed to put in place a system for examining and monitoring transactions and report suspicious transaction for a period of 51 months and imposed a fine of Rs. 10,000/- per month totaling Rs. 5.10 lakhs. The appeal filed by Allahabad Bank Ltd. was dismissed. In the case of Bombay Mercantile Co-op. Bank Ltd., it was alleged that it failed/filed incorrect Cash Transaction Reports in respect of 4859 transactions during the period from April 2006 to July 2007 and taking a lenient view, Director FIU India imposed a fine of Rs. 1,00,000/- which was though less than the statutory minimum fine prescribed. The appeal filed by The Bombay Mercantile Co-op. Bank Ltd. was dismissed by this Tribunal. The word "failure" in Section 13(2) of the Act has been qualified by the word "each". There is no ambiguity that for each failure to provide information of cash transactions of the value of more than Rs. 10 lakhs, fine can be imposed. When the statute is categorically clear, question of interpreting it so as to restrict or enlarge will not arise. This Tribunal cannot read anything into a statutory

provision which is plain and unambiguous. The Hon'ble Supreme Court in the case of Padmasundara Rao Vs State of Tamil Nadu, (2002) 3 SCC 533 in paras 12 to 14 had held as under:

> "12. The rival pleas regarding re-writing of statute and casus omissus need careful consideration. It is well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the Legislation must be found in the words used by the Legislature itself. The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed not as theorems of Euclid". Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them". (See Lenigh Valley Coal Co. v. Yensavage 218 FR 547). The view was re-iterated in Union of India and Ors. v. Filip Tiago De Gama of Vedem Vasco De Gama.
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> 13. In Dr. R. Venkatchalam and Ors. etc. v. Dv. Transport Commissioner and Ors. etc. it was observed that Courts must avoid the danger of a priori determination of the meaning of a provision based on their own pre-conceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation.
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> 14. While interpreting a provision the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. [See Rishabh Agro Industries Ltd. v. P.N.B Capital Services Ltd.]. The legislative casus omissus cannot be supplied by judicial interpretative process. Language of Section 6(1) is plain and unambiguous."

17. The Appellant has tried to interpret the statute on the basis of rules, but the rules cannot travel beyond the Act and have to be read subject to the provision of the Act. No ambiguity can be ascertained in the concerned statute. The Hon'ble High Court of Delhi in the case of All

India Lakshmi Commercial Bank Officers' Association Vs. Union of India, [1985] 20 TAXMAN 412 (Delhi) had held as under:

> "The dominant purpose in construing the provisions of a statute is to ascertain the intention of the legislature. A cardinal rule of construction is that the legislature speaks its mind by using correct expressions. The Court should thus adopt literal construction unless there are compelling reasons otherwise. If a literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the legislature, then the Court may do some violence to the words and achieve the obvious intention. Another rule of interpretation is that a statute must be construed according to its plain language and neither should anything be added nor subtracted unless there are adequate grounds to justify the inference that the legislature clearly so indicated...
>
> But the Rules cannot travel beyond the Act and have to be read subject to its provisions.... Recourse also cannot be had to the Rules made under the authority of the Act for the purpose of construing the provisions of the statute except where the construction of a statute may be ambiguous or doubtful and a particular construction has been put upon the Act by the Rules."

18. The plea of the Appellant that under Rule 8 of the Rules, it is required to file cash transaction report only once a month and so the penalty has to be imposed on the basis of failure to file the report cannot be accepted. The obligation of the appellant has to be viewed in light of appellant's primary obligation set out in Section 12 of the Act. Rule 8 cannot be read in isolation. It has to be read together with Section 12 of the Act and Rule 3 of the PML Rules. Section 12(1)(b) of the PML Act and Rules 3 and 8 of the PML Rules make it obligatory for a reporting entity to report all transactions of above Rs. 10 lakh (the threshold limits have been prescribed under Rule 3 of the PML Rules) and the same are to be reported by 15th/7th of the succeeding month (Rule 8 of the PML Rules). As long as there is even a single transaction that was reportable but was

not reported, there would be a "failure", even if that entity had filed a monthly cash transaction report. Such cash transaction report will be incomplete, if it does not include all reportable transactions. In the circumstances, it is inevitable to infer that non reporting of each of 2697 transactions, which were above the prescribed threshold, should have been reported as per Section 12(1)(b) of PMLA and each of them will constitute a separate failure as per Section 13(2) of PMLA. Therefore, this plea of the appellant has to be repelled.

19. The Appellant had also raised a plea during arguments that different criteria had been adopted by the respondent for imposing penalty. But no such ground has been raised in the grounds of appeal nor any particulars of imposing different penalty has been raised. The assertion of the appellant is bald. The Appellant, in any case, cannot claim equality on the basis of any alleged irregularity, if committed, earlier. The Hon'ble Supreme Court in case of Chandigarh Administration Vs. Jagjit Singh, (1995) 1 SCC 745, at page 751 had held as under:

> "We are of the opinion that the basis or the principle, if it can be called one, on which the writ petition has been allowed by the High Court is unsustainable in law and indefensible in principle. Since we have come across many such instances, we think it necessary to deal with such pleas at a little length. Generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or

unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. **Merely because the respondent-authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law — indeed, wherever it is possible, the Court should direct the appropriate authority to correct such wrong orders in accordance with law — but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition.** By refusing to direct the respondent-authority to repeat the illegality, the Court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioners' case is similar to the other persons' case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the Court and seeking the relief. Is it not more appropriate and convenient to examine the entitlement of the petitioner before the Court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the case nor is his case. In our considered opinion, such a course — barring exceptional situations — would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. The orders and actions of the authorities cannot be equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world. (What is the position in the case of orders passed by authorities in exercise of their quasi-judicial power, we express no opinion. That can be dealt with when a proper case arises."

20. Therefore on the basis of the orders of the respondent in case no. FIU-IND-3/2010 dated 26.10.2010 in the matter of the Union Bank of India, Order No. FIU-IND-1/2010 dated 25.10.2010 in the matter of Allahabad Bank Ltd. and in the case of The Bombay Mercantile Co-op. Bank Ltd. vide order dated 11.02.2009, the Appellant is not entitled to claim that the fine can be imposed only on the basis of monthly reports not filed by the Appellant and not on the basis of transactions not reported by the Appellant.

21. The Appellant has admitted non reporting of 2697 cash transactions repeatedly without any qualification. The penalty has been imposed on the basis of admission made by the appellant. Appellant, itself had sought condonation of their failures which has not been done. This cannot be construed to be an error in the order passed by the respondent which would require interference by this Tribunal in view of the scope of the power of this Tribunal in appeal. The Appellant had also tried to blame one of its officer leading to failure on the part of the Appellant. However, it has not even been alleged as to what action was taken or proposed by the Appellant against such officer. In the circumstances, such a plea also cannot succeed especially in view of categorical admission made by the appellant of its failure to comply with the requirement of section 12 of PMLA and rules framed under PMLA.

22. The plea of the appellant that since the court fees provided for filing appeal before Tribunal is only for a maximum fine of Rs. 1,00,000/- therefore, fine of more than Rs. 1,00,000/- could not be imposed cannot be accepted. Rules will not control or narrow down the scope of enactment. If the Act contemplates fine of more than Rs. 1,00,000/- same cannot be whittled down on such arguments. For appeal, maximum court fee can be provided but it will not mean that the imposition of fine has also been restricted on that yardstick. The plea of the appellant is not logical and cannot be accepted and is liable to be rejected.

23. During the course of hearing before this Tribunal, it was noticed that out of 2697 cash transactions, there are various transactions which are for Rs. 10,00,000/- and as per rule 3, the appellant is not required to file report in respect of such transactions and the respondent has imposed fine on these transactions also. The appellant vide reply letter dated 2.8.2012 submitted that 256 transactions out of 2697 transaction could not be included as they were less than Rs. 10 lakhs. When this discrepancy was pointed out to the respondent, the respondent after verifications of facts from records submitted that out of 2697 transactions, 250 cash transactions are not reportable as each of them were of Rs. 10,00,000/- or less and therefore the amount of total fine can be reduced to this extent. It was submitted that correct number of failure after correction would be 2447 cash transactions and fine which could be imposed would work out to Rs. 2,44,70,000/-.

24. The Appeal is therefore, without any merit and requires no further interference by this Tribunal except that the amount of fine is reduced to Rs. 2,44,70,000/-. The Appeal is therefore, partly allowed. The application seeking stay of recovery of fine from the Appellant is also dismissed and the stay order granted by this Tribunal is vacated. The appellant shall be entitled to pay the amount of fine of Rs. 2,44,70,000/- within four weeks, failing which the respondent shall be entitled to recover the amount from the Appellant. Considering the facts and circumstances of the case the parties are however, left to bear their own costs.

(Justice Anil Kumar)
Chairperson

(Arun Kumar Agarwal)
Member

(Rabi Narayan Dash)
Member

BY ORDER

REGISTRAR
Appellate Tribunal (PMLA)

New Delhi,
9 July, 2015.
'R'

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3. No. of Pages 28
4. Name of applicant FIU/INDIA
5. Date of completion 9/7/15
6. Date of delivery 9/7/15
7. Signature