

(2023) 12 ATPMLA CK 0002

Appellate Tribunal Under Prevention Of Money Laundering Act

Case No: MP-PMLA-5970/HYD/2019, FPA-PMLA-2136/HYD/2017

Bombay Mercantile Co-Operative
Bank Ltd

APPELLANT

Vs

Director Financial Intelligent Unit

RESPONDENT

Date of Decision: Dec. 21, 2023

Acts Referred:

- Prevention of Money Laundering (Maintenance of Record) Rules, 2005 - Rule 2, 3, 5, 7, 7(3), 8
- Prevention Of Money Laundering Act, 2002 - Section 12

Hon'ble Judges: G.C. Mishra, Member; Balesh Kumar, Member

Bench: Division Bench

Advocate: Vinish Mittal, Satish Aggarwal

Final Decision: Partly Allowed

Judgement

1. This order disposes of the Appeal No.2136/HYD/2017, filed by the Bombay Mercantile Co-operative Bank Ltd. against the Order-In-Original (OIO) No.2/DIR/FIU-IND/2017 dated 04.12.2017 passed by Director, Financial Intelligence Unit, India. This Tribunal had disposed of the Application No. MP-PMLA-4187/HYD/2017 (Stay) on 10.07.2018 in view of the fact that the appellant had deposited 50% of the penalty i.e. Rs.2,00,000/- (Rupees Two Lacs only).

2. In the impugned order (OIO) dated 04.12.2017 failure has been found on the part of the Appellant to file Suspicious Transaction Reports (STRs), either in the name of the three proprietorship firms or in the names of its respective proprietors. The Ld. Director FIU-IND has observed that the accounts of the three firms were opened with the initial deposit of Rs.10 lacs each followed by subsequent high cash deposits totaling Rs.7.25 Crores, which in turn was transferred to one company within a span of two months. He further observed that the accounts were opened and closed on the same date. Further all the three firms were enrolled under the relevant State Sales Tax Laws in the same month. He has further observed that for the three firms viz Kusum Traders, B.D. Suppliers and Tirupati Enterprises and for its Proprietors, three other Banks had raised STRs. The Ld. Director FIU-IND imposed penalty of Rs.1 lakh per account on the Appellant for its failure to comply with these obligations to report, as required under the provisions of Section 12 of the PMLA, 2002 read with Rules 2, 3, 5, 7 & 8 of the Prevention of Money Laundering (Maintenance of Record) Rules, 2005. Ld. Director took into account the reply of the Appellant that the Bank was not fully under CBS System and as there was no AML Software installed, hence no STR was filed. He, therefore, imposed cumulative penalty of Rs.3 Lacs on the Bank for the said contravention.

3. Ld. Director FIU-IND also found failure on the part of the Bank to have internal mechanism for detection and reporting of STRs for the Bank as a whole. The detection of suspicious transactions was being undertaken by the branches manually leading to handling of such transactions in a decentralized manner and branches were left alone to decide on reporting of STRs. The Appellant in its reply accepted that the Bank was not fully under CBS System. Thus, the Ld. Director FIU-IND found this as a reason for not reporting the STRs on account of the aforementioned three business entities. He, therefore, imposed penalty of Rs.1 lakh for contravention of Section 12 of the PMLA, 2002 read with Rule 2, 3, 5 & 7(3) of the PML Rules, 2005.

4. The Appellant in its appeal has prayed for expunging of adverse remarks including caution and for setting aside the impugned order dated 04.12.2017. Among many of the grounds, the Appellant has pleaded that 60% of the Co-operative Banks have been using the manual mechanism over the relevant period of time. Moreover, they have been making Cash Transaction Report (CTR) and, hence not having reported the STR could not lead to adverse finding against them. The Appellant has also pleaded that the fact of generation of STRs by the other Banks against the three aforementioned business entities was not known to them. It was pleaded that the penalty has been harsh and principles of natural justice have not been adhered.

5. During the course of the final hearings on 10.10.2023 and 11.12.2023 the Ld. Counsel for the Appellant reiterated the pleadings made in the Appeal. He further argued that this is the only contravention by the Appellant Bank in forty years of its existence. He has also prayed that in view of the accepted fact that they were running the Bank system manually, a lenient view may be taken and if the appeal is decided against them, 50% of the penalty, which has already been deposited as a pre-deposit, may please be adjudicated as final deposit of penalty.

6. Ld. Counsel for the Respondent pleaded that the Ld. Adjudicating Authority has already taken lenient view. He also pointed out that the Ld. Director, FIU-IND has given them opportunity to present their side of the view and, hence there has been no contravention of principles of natural justice. He, further, argued that OIO dated 04.12.2017 is reasoned and speaking order. In view of that, the appeal may be dismissed, as being devoid of merit.

7. We, have given thoughtful consideration to the rival submissions including the arguments made by both the sides, the Order-In-Original and the appeal filed as well as other pleadings. We find that it is an admitted fact that during the relevant period the Appellant Bank could not have full operation of its CBS System. Hence, the detection of suspicious transactions perforce had to be left to individual branches of the Bank without having the efficacy of centralized automated system. It is therefore not surprising that certain suspicious transactions were left out from being reported. In the present facts and circumstances it is obvious that for viz Kusum Traders, B.D. Suppliers and Tirupati Enterprises and for its Proprietors the Appellant Bank made the omission of generating STRs. The omission becomes glaring in view of reporting of STRs for these business units and its proprietors by three other Banks during the relevant period. The argument of the Ld. Counsel for the Appellant that since CTRs were being generated the obligations cast upon the Appellant Bank was fulfilled does not cut much ice in view of the provisions of the Act and in particular those of the Rules 2, 3, 5, 7 & 8 of the Prevention of Money Laundering (Maintenance of Records) Rules, 2005. We do take into account the pleading of the Appellant that it is a Co-operative Bank and had limitations in its operations at the relevant time.

8. In view of the aforementioned discussions, we find that the interest of justice will be served if 50% of the penalty already deposited by the Appellant Bank is taken as just

and fair for the aforementioned contraventions indulged in by the Appellant during the relevant period. Accordingly, the penalty of Rs.3 lacs plus Rs.1 lac totaling Rs.4 lacs imposed in the impugned order dated 04.12.2017 is reduced to Rs.1.5 lacs plus Rs.0.5 lac totaling Rs.2 lacs against the Appellant Bank. The Appeal and the Applications are, accordingly, disposed of.

Appeal No.FPA-PMLA-2136/HYD/2017 is, accordingly, partly allowed.

Registry is directed to send the order to both the parties.

File be consigned to record room after due compliance.