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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO.2604 OF 2018

Association of National Exchanges
Members of India

....Petitioner.

V/s

Securities and Exchange Board of
India and Others

.... Respondents.

Dr. Birendra Saraf alongwith Mr. Aniket, Lohia, Mr. Nishirt Dhruva,
Mr. Prakash Shinde, Mr. Chirag Bhavsar I/b M/s MDP and Partners
for the Petitioner.

Mr. Gaurav Joshi, Senior Counsel alongwith Mr. T. Francis, Mr. Vivek
Shah I/b M/s Economic Laws Practice for Respondent No.1.

Mr. Jehangir Mistry, Senior Counsel alongwith Mr. Sachin
Chandarana and Mr. Ujwal Trivedi I/b M/s. Manilal Kher Ambalal &
Co. for Respondent No.2.

Mr. Anil Kumar Singh, ASG, alongwith Mr. Parag Vyas and Mr. Suresh
Kumar for Respondent No.3.

**CORAM: B. R. GAVAI &
M. S. KARNIK, JJ.**

DATE: 28th AUGUST, 2018

P.C.:-

1] Petitioner has approached this Court being aggrieved by the communication dated 17th July, 2018 issued by Respondent No.2 – National Stock Exchange of India Limited.

2] By the said Circular, Respondent No.2 had informed the members of the Petitioner – Association that Respondent No.2 has decided to levy Securities Transaction Tax (hereinafter referred to as “STT”) at the rate of 0.10% (i.e. the rate applicable for taxable securities transaction settled by actual delivery in the CM segment) on the settlement price to be paid by the purchaser of the futures contract which are settled by way of physical delivery. The Circular also provided that, in the event if the CBDT issues any clarification or amendment in this regard in addition to or contrary to the above position, Respondent No.2 had reserved the right to recover such additional STT from the members effective from the date as may be notified by the CBDT.

3] It was the grievance of the Petitioner that there was some

anomaly with regard to STT payable on future transactions. It was their grievance that, in the event, CBDT in future comes with a policy that rate of STT on such transaction is higher than what is provided in Circular dated 17th July, 2018, the members of the Association would be put to great prejudice inasmuch as they would not be in a position to recover the said STT from the parties whose transactions were already over.

4] Taking into consideration this anomalous situation, we had requested the learned Additional Solicitor General to appear in the matter and to get clarification from CBDT since we were prima facie satisfied that if such an eventuality arises, things would be beyond the control of the members of the Association and they would be put to great prejudice.

5] Today, Mr. Anil Singh, learned Additional Solicitor General, has placed on record, a copy of the communication dated 27th August, 2018 addressed to Principal Chief Commissioner of Income Tax, Mumbai by CBDT. The same is taken on record and marked "X" for the purpose of identification. It will not be necessary to refer to entire

communication. Suffice it will be to refer to para 4 of the said communication, which reads thus:-

“4. In a nutshell, CBDT is of the view that where a derivative contract is being settled by physical delivery of shares, the transaction would not be any different from transaction in equity share where the contract is settled by actual delivery or transfer of shares and the rates of STT as applicable to such delivery-based equity transactions shall also be applicable to such derivative transaction.”

6] It could thus be seen that the CBDT has clarified that where a derivative contract is being settled by physical delivery of shares, the transaction would not be any different from transaction in equity share where the contract is settled by actual delivery or transfer of shares. It further states that, the rates of STT as applicable to such delivery-based equity transactions shall also be applicable to such derivative transaction. As such, the position is clarified by CBDT that it does not differentiate between present transactions which are delivery based and derivative transactions. It has been clarified that

the rate of both the transactions would be the same.

7] We find that the clarification from CBDT takes care of the situation. Once CBDT has clarified the position, all stake holders including Respondent No.2 and the members of the Petitioner – Association are now aware as to what is the amount of STT payable on the transactions which are subject matter of the present Petition. In that view of the matter, it will not be difficult for the members of the Association to recover the amount of STT from the parties who were engaged in the derivative transactions.

8] Dr. Saraf, the learned Counsel appearing on behalf of the Petitioner, submitted that, however, there may be some difficulty with regard to past transactions.

9] We do not find it necessary to consider the contention of Dr. Saraf inasmuch as CBDT has clearly clarified the amount of STT which is to be paid. The said communication dated 27th August, 2018 sufficiently takes care of the concern of the stakeholders who are

aware of the said communication and they are bound by the directions issued by the CBDT.

10] Petition is therefore disposed of with the aforesaid clarification.

11] Before parting, we must place on record our appreciation for the learned Additional Solicitor General for acting swiftly and getting assistance of CBDT at the earliest possible time.

(M. S. KARNIK, J.)

(B. R. GAVAI, J.)