OD –15

WPO/568/2019

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

MUMTAZ MEHBOOB MUNSHI
VERSUS
THE COMMISSIONER OF CUSTOMS (PORT), KOLKATA AND ORS.

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date: 5th December, 2022.

Appearance:
Mr. Atish Dipankar Ray,Adv.
Mr. Soumyajit Mishra,Adv.
...for the petitioner

Mr. Shaunak Ghosh,Adv.
Mr. Dipak Kr. Bhattacharya,Adv.
...for respondent no. 3

Mr. Rajesh Kumar Shah,Adv.
...for Union of India

Mr. Kaushik Dey,Adv.
...for respondent no. 2

Mr. Kaushik K. Maity,Adv.
....for respondent no. 1

The Court:-Supplementary short notes of argument filed in Court today be kept with the record.

Heard learned Advocates appearing for the parties. This writ petition has been filed by the petitioner on a very limited legal issue involving Section 68 of the Customs Act – both pre amended and post amended where the distinguishing feature is there under the old Act having a provision that in respect of the importer of AB Warehouse goods may be cleared for for home consumption after paying, inter alia, rent and which provision was deleted by way of substituting the aforesaid Section with effect from 14th May, 2016 by the Finance Act, 2016. Admitted position is that the goods in question for which rent has been recovered from the petitioner as a rent pertains to the period prior to the amended or substituted period. Petitioner submits that the period for which rent has been recovered is from 2002 to 2019 which covers both the pre substituted provisions of Section 68 and post substituted provisions of Section 68 of the aforesaid Act.

On a plain reading of the amended and/or substituted provisions of Section 68 by which the term 'rent' has been deleted is prospective in nature and not retrospective which has come into effect from 14th May, 2016. It is a well settled principle of law, particularly relating to fiscal law that Court should neither add anything in a Section nor subtract anything from a Section and, further, it is also well settled principle of law that any provision of law, particularly fiscal law cannot be given retrospective effect unless the nature itself clearly indicates so.

Learned Counsel appearing for the petitioner could not satisfy this Court from the plain reading of the post amended Section that it is retrospective in nature and, as such, in my considered view, the rent recovered by the respondent no. 3/Warehousing Corporation under instruction from the Customs is perfectly justifiable and is in accordance with law and, in so far as, the amount of rent if recovered for the period after 14th May, 2016, the petitioner is entitled for refund of the same since on and from that period onwards the respondent concerned is not entitled to charge rent. On and from 14th May, 2016 the petitioner is entitled for refund of the said amount.

With this observation and direction, this writ petition, being WPO No. 568 of 2019 stands disposed of.

(MD. NIZAMUDDIN, J.)

s.chandra