

Bindeshwari Prasad Vs. Union of India (Uoi) and ors.

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Court : Allahabad

Decided On : Jan-23-1987

Reported in : 1987(13)ECC233; 1989(22)LC548(Allahabad);
1987(31)ELT686(All)

Judge : K.C. Agrawal and ;R.K. Gulati, JJ.

Appeal No. : Review Petition of 1981 in Civil Misc. Writ No. 702 of 1981

Appellant : Bindeshwari Prasad

Respondent : Union of India (Uoi) and ors.

Judgement :

1. This is an application for review of the judgment of this Court dismissing the writ petition summarily on 14-10-1981. We are, After hearing the counsel for the parties, satisfied that since correct facts had not been brought to the notice of the Court, the writ petition resulted in its dismissal. The facts have now been brought to our knowledge through the review application and the papers filed along with this application. The petitioner's counsel also did not bring to the notice of the Court, the papers which have been filed by him along with the writ petition on account of the omission on the part of the counsel and the writ petition was dismissed. Treating this case as a special one on the facts and peculiar circumstances emerging from the record of the present case, we recall the order dated 14-10-1981, dismissing the writ petition and restore the same to its original

number.

2. Coming to the writ petition, the controversy challenged is whether the petitioner was entitled to a challan being issued for enabling him to deposit redemption fine of Rs. 500/- and a penalty of Rs. 50/-

3. The petitioner moved an application to the Collector, Central Excise for being given necessary challan to enable him to make deposit, the challan was not issued on the basis that since within three months of the order of the Collector dated 24-7-1976 such a prayer had not been made, the petitioner's request made for issuance of the challan after disposal of the revision on 17-11-1978 was belated and that deprived him of the right to move application for refund of the gold, seized from his custody.

4. We have heard the learned counsel for the parties and are of the opinion that the appellate authority should have in pursuance of the application made by the petitioner on 11-1-1979 directed for the issuance of the challan so that the petitioner could deposit the funds mentioned above and get back the gold. Even if it is true that the application dated 11-1-1979 did not specifically contain the prayer of a direction to the authorities concerned for withdrawal of gold, in the circumstances, the prayer was to that effect, but as the petitioner has made request for challan being given on account of the fact that he wanted to deposit the fine and to take back the gold, we are satisfied on the materials placed before us that a mandamus be issued to the Assistant Collector, Central Excise, Allahabad to issue the necessary challan to enable the petitioner to deposit the fine. On the fine being deposited within two months, the petitioner will be given back gold taken from his possession. The writ petition is disposed of accordingly.