HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

<u>WRIT PETITION No.5737 of 2016</u>

<u>ORDER :</u> (*Per Hon'ble Sri Justice Ramesh Ranganathan*)

The action of the 1st respondent in issuing the impugned show cause notice dated 11.02.2016, fixing the date of auction of the confiscated goods (522 wrist watches of Timex and Casio make) as 24.02.2016 even during pendency of the appeal and stay application, is being questioned in this writ petition as arbitrary and illegal.

On 17.11.2015 the petitioner's staff were asked to bring the display van, and the 522 pieces of watches available therein, to the office of the 1st respondent. When the goods were so produced, a notice of detention was issued in Form 610 on the ground that the person in-charge of the vehicle had failed to produce the invoice, and there was no mention of vehicle number in the e-way bills. A notice of confiscation was issued by the 1st respondent on 24.11.2015 proposing to confiscate the wrist watches seized and detained on 17.11.2015. An order was passed on 13.01.2016 confiscating the goods, aggrieved by which the petitioner carried the matter in appeal to the 3rd respondent on 11.02.2016. On the very same day, the 1st respondent issued the impugned notice dated 11.02.2016 fixing the date of auction as 24.02.2016. The petitioner filed an application seeking stay on 16.02.2016, and the said application is said to be pending before the 3rd respondent for his consideration.

Sri Bhaskar Reddy Vemireddy, learned counsel for the petitioner, would question the validity of the auction notice on two grounds, firstly that the said notice contravenes Rule 56 (1) of the A.P. VAT Rules in as much the minimum 15 day period was not complied with, nor was the petitioner intimated of the date of the auction proceedings; secondly that, in view of the law declared by this Court in **Anab-E-Shahi Wines and Distilleries Private Limited vs. Appellate Deputy Commissioner, Secunderabad Division, Nampally, Hyderabad**[1]**,** wherein this Court had held that where an appeal along with a stay application is pending before the appellate authority no coercive steps should be taken by the original authority, the auction notice is illegal.

Rule 56 of the A.P. VAT Rules (for short, 'the Rules') prescribes the procedures and powers of Officers at check-posts. Rule 56 (1) (l) of the Rules requires notice of 15 days to be given before the auction is conducted. In the present case, while the auction notice is dated 11.02.2016, the auction is scheduled to be held on 24.02.2016, which is less than the 15 day period prescribed in Rule 56 (1) (l) of the Rules. A copy thereof is also said not to have been handed over to the petitioner, and the petitioner is said to have been communicated the notice only by way of an e-mail. Be that as it may, the fact that the requirement of a notice of 15 days, as stipulated in Rule 56 (1) (l) of the Rules, has not been complied with is not in dispute. Sri Shaik Jeelani Basha, learned Special Standing Counsel for Commercial Taxes, on instructions, would state that the auction scheduled to be held tomorrow is postponed.

As the auction notice dated 11.02.2016 falls foul of Rule 56 (1) (l) of the Rules, it must be, and is accordingly, set aside. It is made clear that this order shall not preclude the 1^{st} respondent from issuing a notice afresh, if she so chooses, in accordance with the law declared by this Court in **Anab-E-Shahi**[1].

The Writ Petition is disposed of accordingly. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

23.02.2016

<u>Note</u>: Issue CC by tomorrow
B/o
v v

[1] 21 APSTJ 98