THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION NO.2688 OF 1998

ORDER:

This writ petition is filed seeking to declare the proceedings of the second respondent in Rc.No.B1/1121/96, dated 12-04-1996, confiscating the tractor and trailor bearing Nos.AAQ 4236 and AAQ 4237 and proceedings of the 3rd respondent in Cr.No.2775/96/DPE/B2, dated 27-01-1997 confirming the order of confiscation, as arbitrary, illegal and consequently direct the respondents to allow the petitioner to possess and use the said vehicle.

2. It is the case of the petitioner that he is the owner of the Tractor and Trailor bearing Nos. AAQ 4236 and AAQ 4237 and the said vehicle was being used by following the law of the land, more particularly under the provisions of the Excise and Prohibition Laws. While the matter stood thus, the vehicle was seized in P.R.No.132/94-95 of Prohibition and Excise Inspector, Kunool on the allegation of transporting the contraband liquor at Guduru village in violation of Section 34(a) of A.P. Excise and Prohibition Act. The second respondent by his proceedings in Rc.No.B1/1121/96, dated 12-4-1996 confiscated the vehicle to the State and that the petitioner preferred an appeal before the 3rd respondent and that the 3rd respondent by his order dated 27-1-1997 passed orders confirming the order of the 2nd respondent.

3. Heard.

4. As seen from the order of the 3rd respondent in the appeal and original order of the 2nd respondent, the *mensrea* of the owner of the vehicle has not been established involving him in the crime. That apart, the respondents have not conducted any enquiry and have not given any opportunity to the petitioner to participate in the enquiry and more so, the appellate authority reiterated the contents of the order passed by the original authority and the appellate authority has not passed the order with open mind. It is not an independent order and it is only incorporation of the order of original authority. When the petitioner has not been furnished with the material, the question of placing any evidence before the appellate authority to reverse the order of the original authority does not arise. The requirements contemplated under Section 46 of the A.P. Excise and Prohibition Act have not been followed by the respondent authorities.

5. In view of the observations made above and also in view of the violation of principles of natural justice, the orders passed by the appellate authority as well as the order of the original authority are liable to be set aside.

6. Accordingly, the writ petition is allowed, setting aside the orders passed by the respondents 2 and 3. No order as to costs. As a sequel, the miscellaneous petitions pending if any shall stand closed.

T.AMARNATH GOUD,J

Date: 13-07-2018
Shr