

**THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

**WRIT PETITION NO.9970 OF 1998**

**ORDER:**

This writ petition is filed seeking to direct the respondents to release the lorry bearing registration No.ADQ 9960 in favour of the petitioner forthwith by declaring the order passed by the 1<sup>st</sup> respondent in Rc.No.B1/1866/97, dated 12-12-1997 as confirmed by the 2<sup>nd</sup> respondent in Cr.No.194/DPE/98/B2, dated 14.2.1998 as arbitrary, illegal and unconstitutional.

2. It is the case of the petitioner that he is the owner of the lorry bearing No. ADQ 9966 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.393/96-97 of Prohibition and Excise Station, Alur on the allegation of transporting the contraband liquor. The first respondent by his proceedings in Rc.No.B1/1866, dated 12-12-1997 confiscated the vehicle to the State and that the petitioner preferred an appeal before the second respondent and that the second respondent by his proceedings in CR.No.194/DPE/98/B2 dated 14-2-1998 passed orders confirming the order of the 1st respondent.

3. Heard.

4. As seen from the order of the second respondent in the appeal and original order of the first 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 1 and 2. No order as to costs. As a sequel, the miscellaneous petitions pending if any shall stand closed.

Date: 13-07-2018  
Shr

**T.AMARNATH GOUD,J**