

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION NO.19218 OF 1998

ORDER:

This writ petition is filed seeking to declare the order of the 1st respondent dated 25-5-1998 as arbitrary, illegal and violative of the principles of natural justice and consequently direct the 2nd respondent not to encash the bank guarantee amount of Rs.25,000/- given in favour of the 2nd respondent by the 3rd respondent.

2. It is the case of the petitioner that he is the owner of the Mahinbdra Van bearing No. AP-10-TC/122 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 Cr.No.115/96-97 of Zaheerabad Police Station on the allegation of transporting the contraband liquor. The second respondent by his proceedings No.B5/3148/96, dated 16-3-1998 confiscated the vehicle to the State and that the petitioner preferred an appeal before the 1st respondent and that the 1st respondent by his proceedings in CR.No.1095/DPE/98/B2 dated 25-5-1998 passed orders confirming the order of the 2nd respondent.

3. Heard.

4. As seen from the order of the 1st 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 1 and 2. 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