

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION NO.8101 OF 1999

ORDER:

This writ petition is filed seeking to call for the records pertaining to the order of the second respondent dated 7-4-1999 in CR.No.823/DPE/B2 and set aside the same and consequently direct the respondents to release tractor and trolley bearing Nos.ATN 2583 and ATN 2584 after declaring the impugned action as arbitrary, discriminatory, null and void and without jurisdiction.

2. It is the case of the petitioner that he is the owner of the tractor and trolley bearing Nos.ATN 2583 and ATN 2594 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.61/94 of Penpahad Police Station on the allegation of transporting black jaggery and alum. The third respondent by his proceedings in CR.No.B2/1455/94, dated 21-7-1998 confiscated the vehicle to the State and that the petitioner preferred an appeal before the 2nd respondent and that the 2nd respondent by his proceedings in CR.No.823/DPE/99/B2, dated 7-4-1999 passed orders confirming the order of the 3rd respondent.

3. Heard.

4. As seen from the order of the 2nd respondent in the appeal and original order of the 3rd 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.

Date: 13-07-2018
Shr

T.AMARNATH GOUD,J