

**THE HON'BLE SRI JUSTICE BATTU DEVANAND****WRIT PETITION No.2286 of 2021****O R D E R:**

This Writ Petition has been filed by the petitioner under Article 226 of the Constitution of India for the following relief/s:

"...to issue a writ order or direction more particularly a writ of Mandamus declare the Proceedings in Cr.No.05/2021/SEB/C1, dated 12.01.2021 passed by the Respondent No.2 by confirming the proceedings of the 3<sup>rd</sup> Respondent vide Rc.No.729/2020/B2, dated 24.11.2020, confiscating the Mahindra Bolero Power + bearing No.AP 39 AX 6547, which was seized by the Respondent No.5 in Cr.No.136 of 2020, dated 22.07.2020, as illegal, arbitrary, violation of Principles of natural Justice, violation of Articles 14 and 21 of the Constitution of India, Section 46 E of the A.P. Excise Act and without jurisdiction of the 5<sup>th</sup> Respondent and consequently direct the Respondents to release the Vehicle, forthwith, and pass necessary order/s in the interest of justice as early as possible."

2) Heard Sri S. Syam Sunder Rao, learned counsel for the petitioner and the learned Government Pleader for Mines & Geology appearing for the respondent Nos.1 to 4 and the learned Government Pleader for Home appearing for Respondent No.5

3) The case of the petitioner is that on 22.07.2020, the 5<sup>th</sup> Respondent seized the vehicle Mahindra Bolero Power +

bearing No.A.P.39 AX 6547 of the petitioner alleging that 108 liquor bottles are illegally transported in it and registered a case in Cr.No.136 of 2020 of (SEB) Station, Narsaraopeta under Section 34(a) of A.P. Excise Act, 1968. A show-cause notice was issued to the owner of the vehicle by 3<sup>rd</sup> respondent in R.C.No.729/2020/B2, dated 24.11.2020 giving an opportunity to the petitioner to submit his explanation within 15 days from the date of the said notice. But, the petitioner failed to submit his explanation to the show-cause notice even after expiry of the stipulated time. The 3<sup>rd</sup> respondent in exercise of powers conferred under Section 46(2) of A.P. Excise Act, 1968, confiscated the seized vehicle.

4) Aggrieved by the proceedings issued by the 3<sup>rd</sup> respondent in Rc.No.729/2020/B2, dated 24.11.2020, confiscating the seized vehicle of the petitioner, the petitioner preferred an appeal before the 2<sup>nd</sup> respondent. The 2<sup>nd</sup> respondent vide proceedings in Cr.No.05/20201/SEB/C1, dated 12.01.2021, in which, the order of the 3<sup>rd</sup> respondent is upheld. Against the order of the 1<sup>st</sup> respondent, dated 12.01.2021 confirming the order, dated 24.11.2020 of the 3<sup>rd</sup> respondent, the petitioner filed this present writ petition.

5) A counter-affidavit has been filed by the respondents.

6) The learned Government Pleader submits that the respondent Nos.2 and 3 after following due procedure without deviating from any provisions of law, the order impugned in the present writ petition has been filed. The learned Government Pleader further submits that the petitioner himself forfeited his right at the stage of confiscation of the vehicle itself in the confiscation proceedings held before the 3<sup>rd</sup> respondent by non-submission of explanation to the show-cause notice. As such, the learned Government Pleader would submit that there are no any valid grounds warranting interference of this Court in this writ petition and sought for dismissal.

7) Having heard the submissions of both the counsel and upon perusing the material available on record, it is an admitted fact that the vehicle Mahindra Bolero Power + bearing No.A.P.39 AX 6547 was seized on 22.07.2020 in connection with Excise case which was registered as a case in Cr.No.136 of 2020. Till then that vehicle was kept in the police station premises and there is every chance for damages of the said vehicle due to exposure of sun and rain. But, the loss caused to this damage to the vehicle

shall not be attributable to the respondent authorities, because, it is the fault of the petitioner for not approaching the respondent authorities at appropriate time seeking release of the vehicle.

8) However, the 3<sup>rd</sup> respondent in the confiscation proceedings by following the procedure, issued a show-cause notice to the petitioner calling his explanation within the stipulated time, but the petitioner failed to do so. It appears, the 3<sup>rd</sup> respondent basing on the material available on record, passed confiscation proceedings of the seized vehicle. The same was confirmed by the 2<sup>nd</sup> respondent in appeal.

9) The learned counsel for the petitioner would submit that the petitioner could not submit his explanation to the show cause notice within the stipulated time by the 3<sup>rd</sup> respondent due to the reason that one of his family members expired at that time and in that sorrowful condition, he could not submit his explanation and if one opportunity is provided by this Court, immediately he will submit the explanation.

10) Having heard the submissions of the learned counsel for the petitioner, this Court is of the considered opinion

that no prejudice will be caused to the respondents, if opportunity is provided to the petitioner to submit explanation. Moreover, this Court considered that the petitioner might have suffered a lot for seizure of the vehicle from the month of July, 2020.

11) In view of the same, the present writ petition is disposed of with the following directions:

(i) The Proceedings issued in Cr.No.05/2021/SEB/C1, dated 12.01.2021 of the 2<sup>nd</sup> respondent and proceedings of the 3<sup>rd</sup> respondent vide Rc.No.729/2020/B2, dated 24.11.2020, are set aside;

(ii) The petitioner shall submit his explanation to the show cause notice issued by the 3<sup>rd</sup> respondent within three (03) days from today;

(iii) The matter is remitted to the original authority (i.e.) 3<sup>rd</sup> respondent to pass fresh orders after conducting denova enquiry; and

(iv) There is no order as to costs.

Miscellaneous petitions pending if any, shall stand closed.

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**JUSTICE BATTU DEVANAND**

Dated: 31.03.2021

**Note: Issue CC by Tomorrow.**

B/o.

PGR

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**WRIT PETITION No.2286 of 2021**

Dt.31-03-2021

Note: Issue CC by tomorrow.

B/o  
PGR