**(1990) 05 GAU CK 0006**

**In the Gauhati High Court**

**Case No :** Civil Rule No. 267 of 1989

Electrical Cables and Conductors APPELLANT

Vs

State of Tripura and Others RESPONDENT

**Date of Decision :** 28-05-1990

**Acts Referred:**
Tripura Sales Tax Act, 1976 — Section 10, 9(4)

**Citation :** (1991) 81 STC 216

**Hon'ble Judges :** H.K. Sema, J;B.P. Saraf, J

**Bench :** Division Bench

**Advocate :** S.M. Chakraborty and T.K. Dey, for the Appellant; M. Chakraborty, Government Advocate, for the Respondent

**Final Decision :** Allowed

## Judgement

B.P. Saraf, J.—The petitioner is a registered partnership firm and a dealer under the Tripura Sales Tax Act, 1976, hereinafter "the Act". It carries on the business of selling and supplying electrical goods. For the year ending 30th June, 1987, the petitioner was assessed by the Superintendent of Taxes by his order of assessment dated 20th March, 1989, summarily u/s 9(4) of the Act. The summary assessment was made on the ground of failure of the petitioner to appear on the date fixed for hearing without any valid reason. Against the order of summary assessment the petitioner filed an application u/s 10 of the Act for cancellation of the best judgment assessment. In the said application it was stated that the petitioner had filed an application for time which was not considered and the best judgment assessment was made. It was further stated that the petitioner was willing to appear and produce his books of account in support of its returns. The Superintendent of Taxes rejected the said application stating that the grounds stated in the petition did not justify cancellation of the summary assessment. The petitioner approached the Commissioner of Taxes by filing a revision petition. The Commissioner of Taxes observed that though the case had been fixed for hearing by the Superintendent of Taxes on three different dates, the petitioner failed to appear on either of the dates and, as such, the Superintendent of Taxes was justified in making the best judgment assessment and that there was no ground for cancellation of the same. Being aggrieved by the aforesaid orders passed by the Superintendent of Taxes and the Commissioner of Taxes, the petitioner has approached this Court by filing the present writ petition.

2. Mr. S.M. Chakraborty, the learned counsel for the petitioner, submits that both the Superintendent of Taxes and the Commissioner of Taxes failed to consider the most relevant fact that before the last date of hearing fixed on 24th February, 1989, the petitioner had filed a petition on 23rd February, 1989, praying for adjournment which was not considered before making the summary assessment in question. A copy of the said petition which bears the seal of the office of the Superintendent of Taxes and signature of the Office Assistant as acknowledgment of receipt thereof, has also been produced before us by the learned counsel. We have considered the submission of the learned counsel for the petitioner. We have also heard Mr. M. Chakraborty, learned counsel for the Revenue. The filing of the petition for adjournment on 23rd February, 1989, a day before the date fixed for hearing, is not disputed. Apparently, this application had not been considered by the Superintendent of Taxes before making the summary assessment u/s 9(4) of the Act.

3. In our opinion, when an application for adjournment was filed by the dealer, it was incumbent on the part of the assessing authority, before proceeding to make a summary assessment to consider the same judiciously and to pass an order thereon. No such order appears to have been passed in the instant case. We do not propose to go into the merits of the grounds of adjournment at this stage. More than one year has already passed in this process. We feel that ends of justice will be met without causing any prejudice to the interest of the revenue if the summary assessment is cancelled and the authorities are allowed to make fresh assessment after giving reasonable opportunity of hearing to the petitioner. We order accordingly.

4. In course of hearing it was also contended by the learned counsel for the petitioner that the dealer is the partnership firm and the assessment could have been legally made only in the name of the firm. But in the instant case it has been made in the name of the partner which is not in accordance with law. We find force in the submission of the learned counsel. However, we do not propose to examine and decide the same in view of our aforesaid Order setting aside the summary assessment. The authorities concerned in their own interest will do well to look into this aspect and act in accordance with law.

5. In the result the impugned orders are set aside, the summary assessment dated 20th March, 1989 is cancelled. The Superintendent of Taxes is directed to make a fresh assessment in accordance with law after giving reasonable opportunity of hearing to the petitioner.

 

6. To avoid delay in making fresh assessment, we direct the petitioner to appear before the Superintendent of Taxes on 25th June, 1990, for the purpose of assessment on which date the Superintendent of Taxes shall hear the petitioner. If it is not possible to conduct the hearing for any reason, he shall fix another date/dates on which date/dates also the petitioner shall appear. No formal notice shall be necessary.

7. With the aforesaid direction this writ petition is allowed. No order as to costs.