

A COMMISSIONER OF CENTRAL EXCISE, GOA AND CHENNAI

v.
M.R.F. LTD., CHENNAI

JANUARY 25, 2005

B [S.N. VARIAVA, DR. AR. LAKSHMANAN AND S.H. KAPADIA, JJ.]

Central Excise Act, 1944; Section 35IL/Central Excise Tariff Act, 1985; Tariff headings 59.02 and 59.06, Chapter Note-4 to Chapter 59 and Note-4 to Section XI of the Act:

Classification—Dipped Tyre Cord Fabric—Levy of excise duty under Tariff Headings 59.02 or 59.06—Held: Neither did the Tribunal examine the scope of Tariff Heading 59.02 nor did the assessing/adjudicating authority examine the matter in the light of Note-4 to Chapter 59 to ascertain rubber content in the product to determine the classifiability of the product—Since Supreme Court in a similar matter held that the product in question is classifiable under Tariff Heading 59.02, it is no more res-integra—Tribunal was wrong in equating the product as Rubberised Tyre Cord Fabric—The product is classifiable under Tariff Heading 59.06—Matters remitted to Department to determine excisability and classification of the product afresh in accordance with law.

The question which arose for determination in these appeals was as to whether Dipped Nylon Tyre Cord Warp Sheet was a High Tenacity Yarn in terms of Tariff Heading 59.02 of the Excise Tariff Act.

F It was contended by the Revenue that Grey Tyre Cord Fabric after dipping was classifiable under Tariff Heading 59.02 as Processed Tyre Fabric; that in terms of Tariff Heading 59.06, Rubberised Textile Fabric other than those falling under Tariff Heading 59.02 alone would fall under Tariff Heading 59.05; thus, Dipped Tyre Cord Fabric would fall under Tariff Heading 59.02; that as per rule (1) of the Interpretation Rules appended to the Schedule to the Central Excise Tariff Act, classification of the product has to be decided according to the terms of the Heading; Since Heading 59.02 covered Tyre Cord Fabric of High Tenacity Yarn, the product was rightly classified by the Department under Tariff Heading

59.02; and that the Tribunal has not examined the "process of dipping" A and it has merely followed the previous judgments which do not have any application to the product in question.

Assessee submitted that Dipped Tyre Cord Fabric was not an independent product in terms of manufacture and marketability; that the assessee did not manufacture the product; that there is no evidence of the product being marketable; that the base fabric after going through the process of dipping loses its identity and becomes a different product commercially; that the product under Chapter Heading 59.02 is the basic product and when dipped it gets shifted from textile to rubber; that in the show-cause notices, there was no allegation to the effect that the product was marketable; and that the product in question was classifiable under Chapter Heading 59.05 of Central Excise Tariff Act, 1985, as held by this Court in the cases of *Falcon Tyres* and *Vikran Tyres*.

Disposing of the appeals, the Court

HELD : 1.1. It is the rubber content of the product, which is the main determinative test to decide whether Dipped Tyre Cord Fabric is classifiable under Chapter Heading 59.02 or 59.05 (now 59.06) of the Excise Tariff Acts. To be categorized as Rubberised Tyre Cord Fabric, the product must have pre-dominance of rubber in proportion to fabric. It is for this reason that Note-4 of Chapter 59 of the Act indicates the requisite parameters. If the parameters mentioned in the Note are satisfied then the product in question would fall under Chapter Heading 59.06 which uses the expression "Rubberised Textile Fabrics", failing which the product would fall under Chapter Heading 59.02. Since classification of the product was not in issue in any of the earlier judgments, the Tribunal was wrong in equating Dipped Tyre Cord Fabric with Rubberised Tyre Cord Fabric. [822-B-C-D]

1.2. The judgments in the cases of *Falcon Tyres* and *Vikrant Tyres* dealt with classification of Rubberised Tyre Cord Fabric with reference to Chapter Heading 40.05 vis-a-vis Chapter Heading 59.05 (now 59.06). Therefore, the prior judgments have no application to the controversy in hand. Lastly, the Tribunal has not examined the scope of HSN Heading 59.02. Moreover, the Adjudicating Authority has not examined the matter in the light of Note-4 to Chapter 59. It has also not examined the problem in the context of Note-4 to Section XI and there is no evidence of marketability of Dipped Tyre Cord Fabric. Hence, the Adjudicating

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- A Authority is directed to examine the matter in the light of the Note-4 to Chapter 59 and Note-4 to Section XI of the Act. The basic question which the Adjudicating Authority is required to decide is - whether Dipped Tyre Cord Fabric is an independent product in terms of manufacture and marketability. Accordingly, the question of excisability and classification of Dipped Tyre Cord Fabric are remitted to the Commissioner (Adjudication) for a fresh determination in accordance with law.

[822-E-F-G-H; 823-A]

Falcon Tyres Limited v. Collector of Central Excise, Bangalore, (1996) 88 ELT 450 and Vikrant Tyres Limited v. Collector of Central Excise, Bangalore, (1997) 90 ELT 178, distinguished.

- C 2. With regard to the question of classification of Rubberised Tyre Cord Fabric, Department issued two show-cause notices proposing to levy additional excise duty on Rubberised Tyre Cord Fabric captively consumed in manufacture of the tyres. The Department sought to classify
- D the product under chapter Heading 59.02. According to the assessee, on rubberization, the rubber content in the product exceeded the prescribed limit vis-à-vis the fabric and, therefore, it was classifiable under Chapter Heading 40.05. However, the Authority came to the conclusion that Rubberised Tyre Cord Fabric was classifiable under Chapter Heading 59.05 (now 59.06) of the Act and proceedings against the assessee were
- E dropped. The order has been confirmed by this Court vide their order dated 27.9.2001 in Civil Appeal Nos. 1494-1495 of 1999. However, in conjoint proceedings, the Authority took a contrary view, vide their order dated 24.10.1997, that the product was classifiable under Chapter Heading 59.02 and, therefore, the assessee was liable to pay the additional excise duty thereon. The order was challenged by the assessee before the Tribunal. By the impugned judgment, the order was set aside by the Tribunal following the judgments of this Court in *Falcon Tyres and Vikrant Tyres*. Hence, the controversy regarding classifiability of Rubberised Tyre Cord Fabric is no more res integra. The product is classifiable under Chapter Heading 59.06. No infirmity is found in the impugned judgment
- G of the Tribunal on this point. [823-B-C-D-E-F-G-H]

Falcon Tyres Limited v. Collector of Central Excise, Bangalore, (1996) 88 ELT 450 and Vikrant Tyres Limited v. Collector of Central Excise, Bangalore, (1997) 90 ELT 178, relied on.

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CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1476-1493 A
of 1999.

From the Judgment and Order dated 20.7.98 of the Central Excise Customs and Gold (Control) Appellate Tribunal, South Zonal Bench at Chennai in F.O. Nos. 1370-1388/98 and Stay Order No. 672/98 in A.Nos. E/Stay/888/98 in E/1307/98, E/492, 241-243, 730-741, 62 and 63/98. B

AND

C.A. Nos. 1087-1088 of 1999.

R. Mohan, Additional Solicitor General, V. Ramasubramanian, A. Subba C Rao, Hemant Sharma, B. Krishna Prasad and P. Parmeswaran for the Appellant.

F.S. Nariman, and Joseph Vellapally, S. Ignatius and K.R. Nambiar for the Respondent.

The Judgment of the Court was delivered by D

KAPADIA, J. The main question which arises for determination in this set of Civil Appeals is - whether Dipped Nylon Tyre Cord Warp Sheet (hereinafter referred to as the "Dipped Tyre Cord Fabric") is a High Tenacity Yarn in terms of Tariff Heading 59.02. E

The facts giving rise to these civil appeals filed by the department under Section 35-L (b) of the Central Excise Act, 1944 are as follows :

M/s M.R.F. Ltd., Goa are manufacturers of tyres excisable under chapter 40 of the Schedule to the Central Excise Tariff Act, 1985. M/s MRF Ltd buys Grey Tyre Cord Warp Sheet (hereinafter referred to as the "Grey Tyre Cord Fabric") which is passed through rollers into a tank containing Dip solution of Latex, which covers the said Grey Tyre Cord Fabric. The Dip solution consists of chemicals. After dipping, the Tyre Cord Fabric is heat stretched and lifted to a height of 15 ft. by small rollers through heat chambers and then brought down for calendering, which is the second stage of the process. Twelve show-cause notices were issued to M/s MRF Ltd. by the Commissioner of Central Excise, Goa under which additional duty of excise was demanded on the ground that the assessee was manufacturing an excisable product, namely, Dipped Tyre Cord Fabric, falling under Tariff Heading 59.02. G

By common written reply, the assessee contended that they did not H

A manufacture Dipped Tyre Cord Fabric; that they manufacture only tyres; that in the course of manufacture of tyres, they use Grey Tyre Cord Fabric as a reinforcing material and before it is so used, the Grey Tyre Cord Fabric is dipped in a solution of Latex and thereafter rubberised on both sides. It was submitted that no manufacture is involved as the Dipped Tyre Cord Fabric is sticky to touch. It was further submitted that the Dipped Tyre Cord Fabric was not marketable.

B The main question before the Commissioner (Adjudication) was - whether the assessee was liable to pay additional excise duty on Dipped Tyre Cord Fabric, which was captively consumed in the manufacture of tyres. By C order dated 31.10.1997, the Commissioner (Adjudication) found that Dipped Tyre Cord Fabric was neither Grey Tyre Cord Fabric nor a Rubberised Tyre Cord Fabric. According to the Commissioner, Dipped Tyre Cord Fabric was an independent product which came into existence out of a process incidental to the manufacture, namely, dipping. The Commissioner held that Tariff Heading 59.02 refers to Tyre Cord Fabric of High Tenacity Yarn of Nylon D whereas Tariff Heading 59.06 refers to Rubberised Textile Fabric. It was observed in the impugned order that in order to be categorized as Rubberised Textile Fabric, the product should have a predominance of rubber in proportion to the fabric. According to the Commissioner, the process of dipping did not bring about a predominance of rubber in the product. According to the E Commissioner, dipping was a process ancillary to manufacture. According to the Commissioner, dipping was a stage prior to rubberising. It was a stage prior to coating of compounded rubber on both sides of the tyre cord. Consequently, it was held that Dipped Tyre Cord Fabric was an independent product classifiable under Tariff Heading 59.02, on which additional excise F duty was payable by the assessee. It was further held that Dipped Tyre Cord Fabric was capable of being marketed and, therefore, additional excise duty could be levied thereon.

G Being aggrieved by the order dated 31.10.1997, M/s M.R.F. Ltd. went in appeal to Customs, Excise and Gold (Control) Appellate Tribunal (hereinafter referred to as "the Tribunal"). At this stage, it may be noted that the assessee challenged similar orders passed by the Commissioner (Adjudication), Goa, dated 15.12.1997 and 20.2.1998 along with the above order dated 31.10.1997. The assessee also preferred appeals against the orders passed by the Commissioner of Central Excise (Adjudication), Chennai, on classification of Rubberised Nylon Tyre Cord Warp Sheet (hereinafter referred to as Rubberised H Tyre Cord Fabric), which will be dealt with separately by us.

By impugned judgment dated 20.7.1998, the Tribunal held that Dipped Tyre Cord Fabric was classifiable under Tariff Heading 59.05 (now 59.06). The Tribunal equated Rubberised Tyre Cord Fabric with Dipped Tyre Cord Fabric and placing reliance on the judgments in *Falcon Tyres Limited v. Collector of Central Excise, Bangalore*, reported in (1996) 88 ELT 450 and *Vikrant Tyres Limited v. Collector of Central Excise, Bangalore*, reported in (19970) 90 ELT 178, allowed the assessee's appeals, holding Rubberised Dipped Tyre Cord Fabric as a product falling under Tariff Heading 59.05 (now 59.06). A

Being aggrieved, the department has come to this Court against the three orders passed by the Commissioner, Goa dated 20.2.1998, 31.10.1997 and 15.12.1997. C

Mr. R. Mohan, learned Additional Solicitor General submitted that Grey Tyre Cord Fabric (base fabric) after dipping was classifiable under Tariff Heading 59.02 as Processed Tyre Fabric. He further submitted that in terms of Tariff Heading 59.06, Rubberised Textile Fabric other than those falling under Tariff Heading 59.02 alone would fall under Heading 59.06. He submitted that because of this exclusion, Dipped Tyre Cord Fabric would fall under Tariff Heading 59.02 which referred to Tyre Cord Fabrics of High Tenacity Yarn. In this connection, learned counsel for the department placed reliance on the description of the product under HSN Heading 59.02 read with the Note appended thereto, which specifies that HSN Heading 59.02 covered Tyre Cord Fabrics, whether or not dipped in rubber or plastics. He further submitted that as per rule (1) of the Interpretation Rules appended to the Schedule to the Central Excise Tariff Act, 1985, classification of the product has to be decided according to the terms of the Heading. According to the learned counsel, the Heading 59.02 covered Tyre Cord Fabric of High Tenacity Yarn and, therefore, Dipped Tyre Cord Fabric was rightly classified by the department under Tariff Heading 59.02. Learned counsel for the department further submitted that in the present case, the Tribunal has not examined the "process of dipping" and it has merely followed the previous judgments which do not have any application to Dipped Tyre Cord Fabrics. D E F G

Mr. F.S. Nariman, learned senior advocate appearing on behalf of M/s M.R.F. Ltd. submitted that Dipped Tyre Cord Fabric was not an independent product in terms of manufacture and marketability. He submitted that the assessee did not manufacture Dipped Tyre Cord Fabric. He submitted that Dipped Tyre Cord Fabric was similar to friction cloth. He submitted that there is no evidence of Dipped Tyre Cord Fabric being marketable. He H

- A submitted that in order to determine whether the product was excisable or not, it was necessary to familiarize oneself with the product as well as with the manufacturing process. He contended that Grey Tyre Cord Fabric after going through the process of dipping loses its identity and becomes a different product commercially. He submitted that the product under Chapter Heading 59.02 was the basic product and when dipped it gets shifted from textile to rubber. He submitted that Chapter Heading 59.02 did not use words, such as, "Impregnated, coated, covered and laminated", whereas these words have been used under other Heading in the same Chapter. He submitted that the reliance placed by the department on the Explanatory Note to HSN was erroneous. He submitted that Chapter Heading 59.02 in the HSN has only persuasive value while reading the Tariff Chapter Heading 59.02. He further submitted that Dipped Tyre Cord Fabric was not marketable as it was made according to MRF specifications. He submitted that in the show-cause notices, there was no allegation to the effect that Dipped Tyre Cord Fabric was marketable. Learned senior counsel further submitted that Dipped Tyre Cord Fabric was classifiable under Chapter Heading 59.06 of Central Excise Tariff Act, 1985, as held in *Falcon Tyres* (supra) and *Vikrant Tyres* (supra).

Mr. Nariman further submitted that the burden was on the department to prove that Dipped Tyre Cord Fabric was an independent product both in terms of manufacture and marketability. He submitted that no such finding has been recorded by the Commissioner (Adjudication).

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In order to appreciate the rival contentions, we quote herein below the relevant provisions:

I. HEADINGS 59.02 AND 59.06 OF 1985 ACT.

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<i>Heading No.</i>	<i>Description of Goods</i>
59.02	Tyre cord fabric of high tenacity yarn of nylon or other polyamides polyesters or viscose rayon.
59.06	Rubberised textile fabrics, other than those of Heading No.59.02.

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II. HEADINGS 59.02 OF HSN

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<i>Heading No.</i>	<i>Description of Goods</i>
59.02	Tyre Cord Fabric of High Tenacity Yarn of Nylon or other Polyamides Polyesters or Viscose Rayon.

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This heading covers tyre cord fabric, whether or not dipped or impregnated with rubber or plastics.

III. NOTE-4 OF SECTION-XI - TEXTILES AND TEXTILE ARTICLES.

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For the purposes of this Section, 'high tenacity yarn' means yarn having a tenacity, expressed in cN/tex (centinewtons per tex), greater than the following :

Single yarn of nylon or other polyamides or of Polyesters ...60cN/tex

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Multiple (folded) or cabled yarn of nylon or Other polyamides or of polyesters ...55cN/tex

Single, multiple (folded) or cabled yarn of viscose rayon. ...27cN/tex

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IV. NOTE-4 OF CHAPTER-59 - IMPREGNATED, COATED, COVERED OR LAMINATED TEXTILE FABRICS; TEXTILE ARTICLES OF A KIND SUITABLE FOR INDUSTRIAL USE.

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For the purposes of heading No. 59.06, the expression 'rubberised textile fabrics' means :

(a) Textile fabrics impregnated, coated, covered or laminated with rubber,

(i) weighing not more than 1,500 g/m²; or

(ii) weighing more than 1,500 g/m² and containing more than 50 per cent by weight of textile material;

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(b) Fabrics made from yarn, strip or the like, impregnated, coated, covered or sheathed with rubber, of heading No.56.04;

(c) Fabrics composed of parallel textile yarns agglomerated with

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A rubber, irrespective of their weight per square metre.

This heading does not, however, apply to plates, sheets or strips of cellular rubber, combined with textile fabric, where the textile fabric is present merely for reinforcing purposes (Chapter 40), or textile product of heading No.58.10."

B On reading above provisions, we find that it is the rubber content of the product, which is the main determinative test to decide whether Dipped Tyre Cord Fabric is classifiable under Chapter Heading 59.02 or 59.05 (now 59.06). To be categorized as Rubberised Tyre Cord Fabric, the product must have pre-dominance of rubber in proportion to fabric. It is for this reason that

C Note-4 of Chapter 59, quoted above, indicates the requisite parameters. Tariff Heading 59.02 is found in section XI of 1985 Act, which has caption "Textiles and Textile Articles". The Heading of Chapter 59 refers to lamination and coating of Textile Fabrics. If the parameters mentioned in Note-4 of Chapter 59 are satisfied then the product in question would fall under Chapter Heading 59.06 which uses the expression "Rubberised Textile Fabrics", failing which the product will fall under Chapter Heading 59.02. Similarly, one has to keep in mind the specifications given under Note-4 to section XI, which defines "High Tenacity Yarn". If the product in question, namely, Dipped Tyre Cord Fabric comes within the specifications prescribed in Note-4 to section XI, then the product may fall under Chapter Heading 59.02. We may further point

E out that the classification of Dipped Tyre Cord Fabric was not in issue in any of the earlier judgments, referred to above. The Tribunal was wrong in equating Dipped Tyre Cord Fabric with Rubberised Tyre Cord Fabric. The judgments in *Falcon Tyres* (supra) and *Vikrant Tyres* (supra) dealt with classification of Rubberised Tyre Cord Fabric with reference to Chapter Heading 40.05 *vis-a-vis* Chapter Heading 59.05 (now 59.06). Therefore, the abovementioned

F prior judgments have no application to the controversy in hand. Lastly, the Tribunal has not examined the scope of HSN Heading 59.02. Moreover, the Adjudicating Authority has not examined the matter in the light of Note-4 to Chapter 59. It has not examined the problem in the context of Note-4 to section XI and there is no evidence of marketability of Dipped Tyre Cord

G Fabric. Although, the adjudication order is a well reasoned order, we want the Adjudicating Authority to also examine the matter in the light of the above Note-4 to Chapter 59 and Note-4 to section XI. We have also given an opportunity to the department to lead evidence, both on the process as well as on marketability. The basic question which the Adjudicating Authority is required to decide is whether Dipped Tyre Cord Fabric is an independent product in terms of manufacture and marketability?

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Accordingly, the question of excisability and the questions of A classification of Dipped Tyre Cord Fabric are remitted to the Commissioner (Adjudication), Goa for a fresh determination in accordance with law.

Now coming to the question of classification of Rubberised Tyre Cord Fabric, we may point out that the Superintendent of Central Excise having jurisdiction over M/s M.R.F. Ltd., Arkonam issued two show-cause notices dated 3.12.1996 and 3.6.1997 proposing to levy additional excise duty on Rubberised Tyre Cord Fabric captively consumed in manufacture of tyres during the period May, 1996 to October, 1996 and during the period November, 1996 to April, 1997 respectively. By the said show-cause notices, the department sought to classify Rubberised Tyre Cord Fabric under Chapter Heading 59.02. M/s M.R.F. Ltd., however, contended that Rubberised Tyre Cord Fabric was classifiable under Chapter Heading 40.05. According to the assessee, on rubberization, the content of rubber in the product exceeded the prescribed limit vis-a-vis the fabric and, therefore, it was classifiable under Chapter Heading 40.05. However, the Commissioner, Chennai came to the conclusion that Rubberised Tyre Cord Fabric was classifiable under Chapter Heading 59.05 (now 59.06). He placed reliance on the judgments in *Falcon Tyres* (supra) and *Vikrant Tyres* (supra). This order was passed by the Commissioner, Chennai on 25.9.1997. By the said order, the proceedings against the assessee were dropped. This order has been confirmed by this Court vide order dated 27.9.2001 in Civil Appeal Nos.1494-1495 of 1999. However, in conjoint proceedings, the Commissioner (Adjudication) took a contrary view, vide order dated 24.10.1997, that Rubberised Tyre Cord Fabric was classifiable under Chapter Heading 59.02 and, therefore, the assessee was liable to pay the additional excise duty thereon. The said order was challenged by the assessee before the Tribunal. By the impugned judgment dated 20.7.1998, the said order is set aside, following the judgments in *Falcon Tyres* (supra) and *Vikrant Tyres* (supra). B C D E F G

In short, the controversy regarding classifiability of Rubberised Tyre Cord Fabric is no more res integra. The said product is classifiable under Chapter Heading 59.06. We do not find any infirmity in the impugned judgment of the Tribunal on this point.

Accordingly, Civil Appeal Nos.1479 to 1481 of 1999 and Civil Appeal Nos.1087-1088 of 1999, filed by the department relating to classification of Rubberised Tyre Cord Fabric are dismissed.

Civil Appeal Nos. 1476 to 1478 of 1999 and Civil Appeal Nos.1482 to H

A 1493 of 1999, filed by the department relating to classification of Dipped Tyre Cord Fabric are allowed; the impugned judgments and orders of the Tribunal as well as of the Commissioner are set aside; and the matters are remitted to the Commissioner (Adjudication), Goa for a fresh disposal in accordance with law.

B In the facts and circumstances of this case, there will be no order as to costs in all the civil appeals.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1676-1678/1999 and 1676-77/2002.

C From the Judgment and Order dated 21.8.2001 of the Central Excise Customs and Gold (Control) Appellate Tribunal, West Regional Bench at Bombay in F.O.Nos. C.II/2196-99/WZB/2001 in Application No.E/Stay-2430 and 2431/2000-Bom, A.Nos. E/3360 and 3361 of 2000-Bom.

D R. Mohan, Additional Solicitor General, V. Ramasubramanian, A. Subba Rao, Hemant Sharma, B. Krishna Prasad and P. Parmeswaran for the Appellant.

Ravinder Narain, Ms. Sonu Bhatnagar, Ajay Aggarwal, Sanjeev Dahiya and Rajan Narain for the Respondent.

The Judgment of the Court was delivered by

KAPADIA, J. For the reasons given in our decision in the conjoint Civil Appeals, entitled *Commissioner of Central Excise v. M.R.F. Ltd.* [Civil Appeal No. 1476 of (1999) etc., both these Civil Appeals filed by the department relating to Dipped Tyre Cord Fabric are also allowed; the impugned judgments and orders of the Tribunal as well as of the Commissioner are set aside; and these appeals are remitted to the Commissioner, Chennai for a fresh disposal in accordance with law.

In the facts and circumstances of this case, there will be no order as to costs.

S.K.S.

Appeals disposed of.