

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH

ANTI-DUMPING APPEAL NO. 53193 OF 2023

(Arising out of Final Finding vide Notification F.No. 6/6/2021-DGTR dated 29.09.2022 issued by the Designated Authority and Customs Notification No. 32/2022-Customs (ADD) dated 27.12.2022 issued by Ministry of Finance)

Essilorluxottica Asia Pacific Pte Ltd.
(Formerly known as Essilor Amera Pte Ltd.)

201 Kallang Bahru, Essilor Building I,
Singapore 339338

.....Appellant

VERSUS

- 1. Designated Authority,
Directorate General of Trade Remedies**
Department of Commerce
Ministry of Commerce & Industry
4th Floor, Jeevan Tara Building,
Parliament Street, New Delhi-110001
- 2. The Union of India**
Through the Secretary,
Department of Revenue,
Ministry of Finance,
North Block, New Delhi-110001
- 3. GKB Ophthalmics Limited**
No. 16-A, Tivim Industrial Estate, Mapusa,
Goa 403526,
- 4. Jiangsu Youli Optics Spectacles Co., Ltd.**
No. 18 South to Reservoir, Yiwei Road,
Economic Development Zone, Danyang,
Jiangsu Province
- 5. Jiangsu Future Vision Co., Ltd.**
Optical Industrial Park, Situ Town, Danyang City,
Zhenjing, Jiangsu Province
- 6. Seeworld Optical Co., Ltd.**
Optical Industrial Park, Situ Town, Danyang City,
Zhenjing, Jiangsu Province
- 7. Shanghai Essilor Optical Co., Ltd.**
Flr. 11, Maxdo Center, No. 8 Xingyi Road,
Changning District, Shanghai
- 8. Chemiglass Corporation**
311, Chungnyeol-ro, Yangsan-si,
Gyeongsangnam-do,
Republic of Korea
- 9. Chemilens (Jiaxing) Co., Ltd.**
No. 89, Changsheng East Road, Jiaxing
Economic Development Zone, Zhejiang Province

- 10. Essilor India Private Limited**
Level 10, Prestige Trade Tower, High Grounds,
Sampangi Rama Nagar, Bangalore
- 11. Essilor Manufacturing India Private Limited**
No. 48, L&M, KIADB Industrial Area,
Doddaballapur, Bangalore
- 12. Vision Rx Lab Private Limited**
P-4 Kasba Industrial Estate, Phase-1,
Kolkata
- 13. Delta Lens (P) Ltd.**
3A, Metro House, M.G. Road, Dhobi Talao,
Mumbai
- 14. GKB Vision (P) Ltd.**
Plot No. 27 & 28, Saligao,
Pilerne Industrial Estates,
Goa
- 15. Rayban Sun Optical India Pvt. Ltd.**
Rayban Sun Optical India Pvt. Ltd.
7th Floor, DLF Building, No. – 9,
Tower B, Phase-III, DLF Cyber City,
Gurugram, Haryana
- 16. Lenstech Opticals Pvt. Ltd.**
Plot No. 17/3, M.I.D.C Taloja,
Dena Bank, Navi Mumbai
Maharashtra, India
- 17. Techtran Polylenses Limited**
Emerald house, 2011,
SD Road, Secunderabad,
Telangana
- 18. Daejeon Daemyung Optical (Hangzhou) Co. Ltd.**
No. 137, No. 10 Stree (East), Hangzhou
Economic and Technological Development Zone
- 19. Conant Optics (Jiangsu) Co. Ltd.**
Jiangfeng Road, Binhai Industrial Park,
Qidong, Nantong City, Jiangsu Province,
China PR
- 20. Shanghai Conant Optics Co., Ltd.**
No. 555 Chuanda Road, Pudong District
Shanghai, China PR
- 21. Zhejiang Weixing Optical Co., Ltd.**
South Side of Railway Avenue Beside the
Village Shaojiadu Road, Linhai,
Zhejiang Province, China PR
- 22. Shanghai Weixing Optical Technology Co., Ltd.**
No. 1338-1, South Huancheng Road,
Nanqiao Town, Fengxian District,
Shanghai, China PR

23. Carl Zeiss

No. 1389, Jiufu Xilu Huangpu District,
Guangzhou, China PR

24. Lenskart Solutions Private Limited

W-123, Greater Kailash, Part-2,
New Delhi

25. Carl Zeiss India (Bangalore) Pvt. Ltd.

Plot No. 3, Jigani Link Road,
Bommasandra Ind. Area, Bangalore

26. M/s. R.K. Optical Services

C-2/8 Mayapuri Industrial Area,
Phase 2, New Delhi

27. M/s Indian Optics Pvt. Ltd.

111, 113, Radha Krishan Gupta Marg,
Model Basti, Karol Bagh,
Central Delhi

28. M/s. Yash Optics & Lens Pvt. Ltd.

70/A, First Floor, Government Industrial Estate,
Besides Hyundai Service Center,
Ganesh Nagar, Charkop, Kandivali (West),
Mumbai

.....Respondents**APPEARANCE:**

Shri V. Lakshmikumar, Shri Devinder Bagia, Shri Ankur Sharma, Shri Gopakrushna Das, Ms. Pareesha Gupta, Ms. Nikita Chauhan and Mr. Baratwaj V., Advocate for the Appellant

Shri Ameet Singh, Shri Neel Nikhar, Ms. Payal Swarup and Shri Ankit Ambasta, Advocates for Directorate General of Trade Remedies

Ms. Reena Asthana Khair, Shri Rajesh Sharma, Ms. Shreya Dahiya and Shri Nikhil Sharma, Advocates for the Domestic Industry

Shri Rakesh Kumar, Authorized Representative for the Central Government

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 14.07.2025**Date of Decision: 26.08.2025****INTERIM ORDER NO. 5/2025****JUSTICE DILIP GUPTA:**

Essilorluxottica Asia Pacific Pte Ltd.¹ has filed this anti-dumping appeal under section 9C of the Customs Tariff Act, 1975² for quashing the final findings dated 29.09.2022 of the designated authority published in the

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1. the appellant
 2. the Customs Tariff Act

Gazette of India-Extra Ordinary on 29.09.2022 in the matter of anti-dumping investigation concerning the import of semi-finished ophthalmic lenses originating in or exported from China PR. The designated authority recommended definitive anti-dumping duty for five years from the date of the notification to be issued by the Central Government on the said product. The appellant has also sought the quashing of the consequential notification dated 27.12.2022 issued by the Central Government. This notification was published in the Gazette of India-Extra Ordinary on 27.12.2022. The said notification recites that the Central Government, in exercise of powers conferred by sub-sections (1) and (5) of section 9A of the Customs Tariff Act read with rules 18, 20 and 23 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995³, has imposed anti-dumping duty on semi-finished ophthalmic lenses for a period of five years.

2. At the time of hearing of this appeal, a preliminary objection was raised by Shri Rakesh Kumar, learned authorized representative appearing for the Central Government that this appeal would not be maintainable before this Tribunal under section 9C of the Customs Tariff Act in view of the amendments made in certain provisions of the Customs Tariff Act by section 134 of the Finance Act No. 8 of 2023⁴.

3. Shri V. Lakshmikumaran, learned counsel for the appellant assisted by Shri Devinder Bagia, Shri Ankur Sharma, Shri Gopakrushna Das, Ms. Paresha Gupta, Ms. Nikita Chauhan and Mr. Baratwaj V. made submissions on behalf of the appellant and contended that the appeal would be maintainable before this Tribunal.

3. the 1995 Anti-Dumping Rules
4. the Finance Act, 2023

4. Shri Ameet Singh, learned counsel assisted by Shri Neel Nikhar, Ms. Payal Swarup and Shri Ankit Ambasta appeared for the Directorate General of Trade Remedies.

5. Ms. Reena Asthana Khair, learned counsel for the domestic industry assisted by Shri Rajesh Sharma, Ms. Shreya Dahiya, and Shri Nikhil Sharma also contended that the appeal would be maintainable before this Tribunal.

6. The contention of the learned counsel for the appellant is that section 134 of the Finance Act, 2023, which amends sections 9A and 9C of the Customs Tariff Act, has not come into force as the Central Government has not issued any notification to bring this section into force. In this connection, learned counsel placed reliance upon section 1(2)(b) and section 134 of the Finance Act, 2023.

7. Section 1 of the Finance Act, 2023 is reproduced below:

- “**1.** (1) This Act may be called the Finance Act, 2023.
- (2) Save as otherwise provided in this Act, –
- (a) sections 2 to 127 shall come into force on the 1st day of April, 2023;
- (b) sections 128 to 163 shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.”

8. Section 134 of the Finance Act, 2023, which seeks to amend sections 9, 9A and 9C of the Customs Tariff Act, is also reproduced below:

- “**134.** In the Customs Tariff Act, 1975, (hereinafter referred to as the Customs Tariff Act), with effect from the 1st day of January, 1995,—
- (i)** in section 9,—
- (a) in sub-section (6), in the first proviso, for the words “in a review”, the words “on consideration of a review” shall be substituted;
- (b) in sub-section (7), the words “and determined” shall be omitted;

(ii) in section 9A,—

- (a) in sub-section (5), in the first proviso, for the words "in a review", the words "on consideration of a review" shall be substituted;
- (b) in sub-section (6), the words "and determined" shall be omitted;

(iii) in section 9C,—

- (a) in sub-section (1), the words "order of" shall be omitted;
- (b) in sub-section (2), for the word "order", the words "determination or review" shall be substituted;
- (c) in sub-section (3), for the word "order", the words "determination or review" shall be substituted;
- (d) after sub-section (5), the following Explanation shall be inserted, namely:—

'Explanation.—For the purposes of this section, "determination" or "review" means the determination or review done in such manner as may be specified in the rules made under sections 8B, 9, 9A and 9B.'

9. Learned counsel for the appellant pointed out that even though section 134 of the Finance Act, 2023 states that the amendment made to sections 9, 9A and 9C of the Customs Tariff Act are w.e.f. 01.01.1995, but when it is read with section 1(2)(b) of the Finance Act, 2023, it becomes clear that sections 128 to 163, which includes section 134, shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. Learned counsel pointed out that the Central Government has so far not issued any notification in the Official Gazette to bring into force section 134 of the Finance Act, 2023. Thus, section 9C of the Customs Tariff Act, as it stood prior to Finance Act, 2023, is still in vogue and this Tribunal continues to have jurisdiction to hear appeals filed under section 9C

of the Customs Tariff Act to assail the notification issued by the Central Government for imposing anti-dumping duty.

10. To substantiate this submission, learned counsel pointed out that section 140 of the Finance Act, 2023 also makes an amendment to section 23 of the Central Goods and Service Tax Act⁵ w.e.f. 01.07.2017 but the Ministry of Finance issued Notification No. 28/2023-Central Tax dated 31.07.2023 to bring into force sections 137 to 162 (except sections 149 to 154) w.e.f. 01.10.2023.

11. Learned counsel also pointed out that the Finance Act, 2021 also contains section 1(2)(b), which is similarly worded as section 1(2)(b) of the Finance Act, 2023, and though section 108 of the Finance Act, 2021 made an amendment to section 7 of the CGST Act w.e.f. 01.07.2017, this amendment in section 7 of the GST Act came into force only on 01.01.2022 when the Ministry of Finance issued Notification No. 39/2021-Central Tax dated 21.12.2021.

12. Learned counsel also pointed out that Finance Act, 2022 also contains section 1(2)(b), which is similarly worded to section 1(2)(b) of the Finance Act, 2023, and though section 111 makes an amendment to section 50 of the CGST Act w.e.f. 01.07.2017, this amendment in section 50 of the GST Act came into force on 05.07.2022 when the Ministry of Finance issued Notification No. 09/2022-Central Tax dated 05.07.2022.

13. Learned counsel, therefore, submitted that though the aforementioned Finance Acts seek to amend certain sections of the Customs Tariff Act and CGST Act with effect from past dates, but notifications were also issued by the Central Government to bring such sections into force from particular dates.

5. the CGST Act

14. Learned authorized representative appearing for the Central Government, however, submitted that it was not necessary for the Central Government to issue any notification under section 1(2)(b) of the Finance Act, 2023 since section 134 of the Finance Act, 2023 itself provides that it shall come into effect from 01.01.1995. After the conclusion of the hearing, learned authorized representative appearing for the Central Government also submitted a synopsis and in paragraph 6 of the said synopsis, reference has been made to a letter dated 16.07.2025 sent by the Director, Tax Research Unit, wherein a distinction is sought to be made between an amendment made in the Customs Tariff Act and an amendment made in the CGST Act. It has been stated that since both, Union and States, have concurrent powers to levy and collect GST, the effective date was notified at a later date "after some changes were carried out by all the States in their State GST Acts". The submission, therefore, is that any amendment made in the Customs Tariff Act cannot be equated with an amendment made in the CGST Act.

15. The submissions advanced by the learned counsel for the appellant, learned counsel appearing for the domestic industry as also learned authorized representative appearing for the Central Government have been considered.

16. Section 1(2) of the Finance Act, 2023 provides in clause (a) that sections 2 to 127 shall come into force from 01.04.2023, but clause (b) provides that sections 128 to 163 shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. Section 134 of the Finance Act, 2023 falls in section 1(2)(b) and, therefore, it shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

17. Though section 134 of the Finance Act, 2023 provides that the amendments to sections 9, 9A and 9C of the Customs Tariff Act are with effect 01.01.1995, but section 134 would still have to come into force and for that the Central Government has to issue a notification for appointing a date on which section 134 shall come into effect and that notification has also to be published in the Official Gazette.

18. It would be appropriate to first deal with the submission advanced by the learned authorized representative appearing for the Central Government in the synopsis submitted after the hearing of the appeal. The distinction sought to be made is dehors the provisions of section 1(2)(b) of the Finance Act, 2023. As noted above, section 1(2)(b) of the Finance Act, 2023, provides that sections 128 to 163 shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. This sub-section (b) of section 1(2) of the Finance Act, 2023, draws no distinction between sections 134 and 140 of the Finance Act, 2023, or any other section of the Finance Act, 2023, which may deal with the CGST Act. The submission advanced, therefore, cannot be accepted.

19. Learned counsel for the appellant has specifically asserted that the Central Government has not issued any notification to bring into force section 134 of the Finance Act, 2023.

20. Learned authorized representative appearing for the Central Government has not disputed this assertion, and in any case has not placed any notification that may have been issued by the Central Government to bring into force section 134 of the Finance Act, 2023.

21. The fact that the Central Government has to issue a notification in view of the provisions of section 1(2)(b) of the Finance Act, 2023 stands

substantiated as the Central Government has been issuing such notifications from time to time.

22. In fact, section 140 of the Finance Act, 2023, which is also contained in section 1(2)(b) of the Finance Act, 2023, also seeks to amend section 23 of the CGST Act with effect from 01.01.2017 and it is reproduced below:

“**140.** In section 23 of the Central Goods and Services Tax Act, for sub-section (2), the following sub-section shall be substituted and shall be deemed to have been substituted with effect from the 1st day of July, 2017, namely:-

“(2) Notwithstanding anything to the contrary contained in sub-section (1) of section 22 or section 24, the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, specify the category of persons who may be exempted from obtaining registration under this Act.” ”

23. The Central Government issued a notification dated 31.07.2023 under section 1(2)(b) to bring into force sections 137 to 162 (except sections 149 to 154) of the Finance Act, 2023 from 01.10.2023. The said notification dated 31.07.2023 is reproduced below:

“NOTIFICATION

New Delhi, the 5th July, 2022

No. 28/2023-Central Tax

S.O. 3422(E).– In exercise of the powers conferred by clause (b) of sub-section (2) of section 1 of the Finance Act, 2023 (8 of 2023), the Central Government hereby appoints, –

(a) the 1st day of October, 2023, as the date on which the provisions of sections 137 to 162 (except sections 149 to 154) of the said Act shall come into force;

(b) the 1st day of August, 2023, as the date on which the provisions of section 149 to 154 of the said Act shall come into force.”

24. What also needs to be noted is that in respect of Finance Act, 2022 and Finance Act, 2021, where similar sections 1(2)(b) exist, the Central Government did issue notifications bringing into force such sections, though the amendments were made in various sections of the CGST Act from a past date.

25. Section 1 of the Finance Act, 2022, is reproduced below:

"1. (1) This Act may be called the Finance Act, 2022.

(2) Save as otherwise provided in this Act, –

(a) sections 2 to 85 shall come into force on the 1st day of April, 2022;

(b) sections 100 to 114 shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint."

26. Section 111 of the Finance Act, 2022 amends section 50 of the CGST Act with effect from 01.07.2017.

27. The Central Government issued the following notification under section 1(2)(b) to bring into force section 111 of the Finance Act:

"MINISTRY OF FINANCE
(Department of Revenue)
 (CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS)

NOTIFICATION

New Delhi, the 5th July, 2022

No. 09/2022-Central Tax

S.O. 3070(E).– In exercise of the powers conferred by clause (b) of sub-section (2) of section 1 of the Finance Act, 2022 (6 of 2022), the Central Government hereby appoints the 5th day of July, 2022, as the date on which the provisions of clause (c) of section 110 and section 111 of the said Act shall come into force.

[F.No.CBIC-20001/2/2022-GST]

RAJEEV RANJAN, Under Secy."

28. Section 1 of the Finance Act, 2021, is reproduced below:

“1. (1) This Act may be called the Finance Act, 2021.

(2) Save as otherwise provided in this Act, –

(a) sections 2 to 88 shall come into force on the 1st day of April, 2021;

(b) sections 108 to 123 shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.”

29. Sections 108 of the Finance Act, 2021 amends section 7 of the CGST Act with effect from 01.07.2017.

30. The Central Government issued the following notification under section 1(2)(b) to bring into force section 108 of the Finance Act, 2021 with effect from 01.01.2022:

“MINISTRY OF FINANCE
(Department of Revenue)
(CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS)

NOTIFICATION

New Delhi, the 21st December, 2021

No. 39/2021-Central Tax

S.O. 5328(E).– In exercise of the powers conferred by clause (b) of sub-section (2) of section 1 of the Finance Act, 2021 (13 of 2021), the Central Government hereby appoints the 1st day of January, 2022, as the date on which the provisions of sections 108, 109 and 113 to 122 of the said Act shall come into force.

[F.No.CBIC-20006/26/2021-GST]

RAJEEV RANJAN, Under Secy.”

31. It is, therefore, apparent that the Central Government has, in respect of certain sections of Finance Act, 2023, Finance Act, 2022 and Finance Act, 2021, issued the relevant notifications under section 1(2)(b) of the respective Finance Acts to bring into force sections which had made amendments from a past date.

32. It is, therefore, not possible to accept the contention advanced by the learned counsel for authorized representative appearing for the Central Government that since the amendments made in section 9, 9A and 9C of the Customs Tariff Act are w.e.f. 01.01.1995, it was not necessary for the Central Government to issue any notification under section 1(2)(b) to bring into force section 134 of the Finance Act, 2023.

33. Thus, section 134 of the Finance Act, 2023 has not come into force since the Central Government has not issued any notification in the Official Gazette appointing a date from which it shall come into force. The un-amended provisions of sections 9, 9A and 9C of the Customs Tariff Act would continue to operate and in such a situation and an appeal would lie to this Tribunal under section 9C of the Customs Tariff Act against the notification dated 27.12.2022 published by the Central Government in the Official Gazette imposing anti-dumping duty.

34. Learned counsel for the appellant also submitted that even if the Central Government now issues a notification to bring into force section 134 of the Finance Act, 2023, the amendments made to sections 9A and 9C of the Customs Tariff Act would not alter the jurisdiction of this Tribunal to hear appeals under section 9C of the Customs Tariff Act. To support this contention, learned counsel placed reliance on a Constitution Bench judgment of the Supreme Court in **Tata Chemicals Limited vs. Union of India and Others⁶ (2)** and contended that an appeal would still lie to this Tribunal in view of the provisions of rule 18 of the 1995 Anti-Dumping Rules. Learned counsel also placed reliance upon the earlier judgments of the Supreme Court in **Tata Chemicals Limited vs. Union of India and**

6. 2008 (224) E.L.T. 519 (S.C.)

Others⁷ and Saurashtra Chemicals Limited vs. Union of India and others⁸.

35. In this connection, learned counsel for the appellant submitted that since the Supreme Court in **Tata Chemicals (2)** held that “determination” is done under rule 18 of the 1995 Anti-Dumping Rules, an appeal would lie before this Tribunal in terms of the Explanation inserted to section 9C of the Customs Tariff Act by section 134 of the Finance Act, 2023 against the said determination. Elaborating this submission, learned counsel pointed out that “determination” or “review” means “determination” or “review” done in such manner as may be specified in the 1995 Anti-Dumping Rules, which includes both rule 17 which deals with final findings and rule 18 which deals with levy of duty.

36. Learned counsel for the appellant also summarized the following situations that may arise concerning the jurisdiction of this Tribunal under section 9C of the Customs Tariff Act, both pre and post amendment.

Scenario		Jurisdiction under Section 9C (pre and post amendment under Finance Act, 2023)
I.	Where Directorate General of Trade Remedies issues affirmative final findings recommending imposition of duty and the Central Government implements it by issuing customs notification.	The Tribunal has jurisdiction to hear appeals in view of the constitution bench judgment of the Supreme Court in Tata Chemicals .
II.	Where Directorate General of Trade Remedies issues negative final findings and terminates the investigation.	The Tribunal has jurisdiction to hear appeals in view of the judgment of the Delhi High Court in Jindal Poly Film Ltd. vs. Designated Authority and another⁹ .
III.	Where Directorate General of Trade Remedies issues affirmative final	The Tribunal has jurisdiction to hear appeals in view of the order of the Tribunal in

7. (2007) 15 SCC 596

8. (2009) 17 SCC 529

9. Writ Petition (Civil) No. 8202 of 2017 decided on 20.09.2018

findings recommending imposition of duty and the Central Government does not implement it by issuing customs notification.	Jubilant Ingrevia Ltd. vs. Union of India¹⁰ and the constitution bench judgment of the Supreme Court in Tata Chemicals.
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37. Learned authorized representative appearing for the Central Government, however, refuted the contentions advanced by the learned counsel for the appellant and submitted that an appeal before this Tribunal after amendments made in section 9C of the Customs Tariff Act would lie only against "determination" or "review" done by the designated authority and not against the notification issued by the Central Government to levy anti-dumping duty.

38. In order to examine these submissions it would be useful to first examine the relevant provisions of the Customs Tariff Act as they stood prior to the amendment made by the Finance Act, 2023 as also post the amendment as well as the 1995 Anti- Dumping Rules.

POSITION PRIOR TO AMEDMENT MADE BY FINANCE ACT, 2023

39. Anti-dumping duty is imposed by the Central Government under subsection (1) of section 9A of the Customs Tariff Act. It provides that where any article is exported by an exporter or producer from any country to India at less than its normal value, then, upon the importation of such article into India, the Central Government may, by notification in the Official Gazette, impose an anti-dumping duty not exceeding the margin of dumping in relation to such article. The margin of dumping, the export price and the normal price have all been defined in the Explanation to section 9A(1) of the Customs Tariff Act. Section 9A is reproduced below:

10. Anti-Dumping Appeal No. 50461 of 2021 decided on 27.10.2021

“9A. Anti-dumping duty on dumped articles.–

(1) Where any article is exported by an exporter or producer from any country or territory (hereinafter in this section referred to as the exporting country or territory) **to India at less than its normal value, then, upon the importation of such article into India, the Central Government may, by notification in the Official Gazette, impose an anti-dumping duty not exceeding the margin of dumping in relation to such article.**

Explanation *****

(2) The Central Government may, pending the determination in accordance with the provisions of this section and the rules made thereunder of the normal value and the margin of dumping in relation to any article, impose on the importation of such article into India an anti-dumping duty on the basis of a provisional estimate of such value and margin and if such anti-dumping duty exceeds the margin*****

(3) *****

(4) *****

(5) The anti-dumping duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition.

Provided that if the Central Government, **in a review**, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, it may, from time to time, extend the period of such imposition for a further period upto five years and such further period shall commence from the date of order of such extension:

Provided *****

Provided *****

(6) The margin of dumping as referred to in sub-section (1) or sub-section (2) shall, from

time to time, be ascertained and determined by the Central Government, after such inquiry as it may consider necessary and the Central Government may, by notification in the Official Gazette, make rules for the purposes of this section, and without prejudice to the generality of the foregoing, such rules may provide for the manner in which articles liable for any anti-dumping duty under this section may be identified, and for the manner in which the export price and the normal value of, and the margin of dumping in relation to, such articles may be determined and for the assessment and collection of such anti-dumping duty.”

(emphasis supplied)

40. Sub-section (5) of section 9A of the Customs Tariff Act provides that anti-dumping duty imposed shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition provided that the Central Government, **in a review**, may extend the period of such imposition. Sub-section (6) of the section 9A of the Customs Tariff Act provides that the margin of dumping has to be **ascertained and determined** by the Central Government, after such enquiry as may be considered necessary and the Central Government may, by notification in the Official Gazette, make rules for the purpose of this section.

41. The relevant portion of section 9C of the Customs Tariff Act is reproduced below:

“9C. Appeal. – (1) An appeal against the order of determination or review thereof shall lie to the Customs, Excise and Service Tax Appellate Tribunal constituted under section 129 of the Customs Act, 1962 (52 of 1962) (hereinafter referred to as the Appellate Tribunal), in respect of the existence, degree and effect of –

(i) any subsidy or dumping in relation to import of any article; or

- (ii) import of any article into India in such increased quantities and under such condition so as to cause or threatening to cause serious injury to domestic industry requiring imposition of safeguard duty in relation to import of that article.

*****"

(emphasis supplied)

42. Thus, under sub-section (1) of section 9C of the Customs Tariff Act, an appeal can be filed before this Tribunal against **the order** of determination or review by the Central Government.

43. In exercise of the powers conferred by sub-section (6) of section 9A and sub-section (2) of the section 9B of the Customs Tariff Act, the Central Government framed the 1995 Anti-Dumping Rules.

44. The duties of the designated authority are contained in rule 4 of the 1995 Anti-Dumping Rules and the relevant portion is reproduced below:

"4. Duties of the designated authority.-

(d) to recommend to the Central Government-

- (i) the amount of anti-dumping duty equal to the margin of dumping or less, which if levied, would remove the injury to the domestic industry, after considering the principles laid down in the Annexure III to these rules; and
- (ii) the date of commencement of such duty;"

45. Rule 5 deals with initiation of investigation to determine the existence, degree and effect of any alleged dumping. Rule 6 deals with the principles governing investigation. Rule 10 deals with determination or normal value, export price and margin of dumping and rule 11 deals with determination of injury.

46. Rule 17 deals with final findings of the designated authority. It is reproduced below:

"Final findings.-

(1) The designated authority shall, within one year from the date of initiation of an investigation, determine as to whether or not the article under investigation is being dumped in India and submit to the Central Government its final finding—

(a) as to, -

(i) the export price, normal value and the margin of dumping of the said article;

(ii) whether import of the said article into India, in the case of imports from specified countries, causes or threatens material injury to any industry established in India or materially retards the establishment of any industry in India;

(iii) a casual link, where applicable, between the dumped imports and injury;

(iv) whether a retrospective levy is called for and if so, the reasons therefor and date of commencement of such retrospective levy:

(b) Recommending the amount of duty which, if levied, would remove the injury where applicable, to the domestic industry after considering the principles laid down in the Annexure III to rules."

47. Rule 18 deals with levy of duty and the relevant portion is reproduced below:

"18. Levy of duty.-

(1) The Central Government may, within three months of the date of publication of final findings by the designated authority under rule 17, impose by notification in the Official Gazette, upon importation into India of the article covered by the final finding, anti-dumping duty not exceeding the margin of dumping as determined under rule 17."

48. Rule 23 deals with review and the relevant portion is reproduced below:

"23. Review.- (1) Any anti-dumping duty imposed under the provision of section 9A of the Act, shall remain in force, so long as and to the extent necessary, to counteract dumping, which is cause injury.

(1A) The designated authority shall review the need for the continued imposition of any anti-dumping duty, where warranted, on its own initiative or upon request by any interest party who submits positive information substantiating the needs for such review, and a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty and upon such review, the designated authority shall recommend to the Central Government for its withdrawal, where it comes to a conclusion that the injury to the domestic industry is not likely to continue or recur, if the said anti-dumping duty is removed or varied and is therefore no longer warranted.

(1B) Notwithstanding anything contained in sub-rule (1) or (1A), any definitive antidumping duty levied under the Act, shall be effective for a period not exceeding five years from the date of its imposition, unless the designated authority comes to a conclusion, on a review initiated before that period on its own initiative or upon a duly substantiated request made by or on behalf of the domestic industry, within a reasonable period of time prior to the expiry of that period, that the expiry of the said anti-dumping duty is likely to lead to continuation or recurrence of dumping and injury to the domestic industry."

49. **Annexure-I** to the 1995 Anti-Dumping Rules deals with the principles governing the determination of normal value, export price and margin of dumping. It provides that the designated authority while determining the

normal value, export price and margin of dumping shall take into account the principles contained in clauses (1) to (8) of the Annexure.

50. **Annexure-II** to the 1995 Anti-Dumping Rules deals with the principles for determination of injury. It provides that the designated authority while determining the injury or threat of material injury to domestic industry or material retardation of the establishment of such an industry, and causal link between dumped imports and such injury, shall inter alia, take the principles enumerated from (i) to (vii) of Annexure II under consideration.

51. **Annexure-III** to the 1995 Anti-Dumping Rules deals with the principles for determination of non-injurious price.

52. In **Saurashtra Chemicals**, the Supreme Court after examining the provision of Customs Tariff Act, observed that the order of the designated authority is purely recommendatory and that an appeal lies to the Tribunal against the determination and that determination has to be made by Central Government.

53. In **Tata Chemical (2)**, the Supreme Court noted that determination as contemplated under rule 18 of the 1995 Anti-Dumping Rules takes place when the Central Government issues a notification and, therefore, an appeal would be maintainable before the Tribunal against the said determination.

54. The maintainability of an appeal under the un-amended section 9C of the Customs Tariff Act was examined at length by this Bench in **M/s. Apcotex Industries Limited vs. Union of India and 38 others**¹¹ and it was held that the appeal would be maintainable against the decision of the Central Government contained in the office memorandum not to impose anti-dumping duty. The Bench also examined whether the determination by

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the Central Government was legislative in character or quasi-judicial in nature and after examining the relevant provisions of the Customs Tariff Act, the 1995 Anti-Dumping Rules and the decisions of the Supreme Court and the High Courts observed that the function performed by the Central Government is quasi-judicial in nature.

POST-AMENDMENT BY FINANCE ACT, 2023

55. Section 9A of the Customs Tariff Act was amended by the Finance Act, 2023. In the first proviso to sub-section (5) of section 9A, for the words "in a review", the words "on consideration of a review" were substituted and in sub-section (6), the words "and determined" were omitted.

56. It would be seen that sub-sections (1), (2), (3) and (4) of section 9A of the Customs Tariff Act were not amended.

57. The amended proviso to sub-section (5) section 9A of the Customs Tariff Act is as follows:

"9A(5) *****

Provided that if the Central Government, **on a consideration of review**, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, it may, from time to time, extend the period of such imposition for a further period upto five years and such further period shall commence from the date of order of such extension:"

(emphasis supplied)

58. The amended sub-section (6) of section 9A of the Customs Tariff Act is reproduced below:

"9A(6) The margin of dumping as referred to in sub-section (1) or sub-section (2) shall, from time to time, **be ascertained** by the Central Government,

after such inquiry as it may consider necessary and the Central Government may, by notification in the Official Gazette, make rules for the purposes of this section, and without prejudice to the generality of the foregoing, such rules may provide for the manner in which articles liable for any anti-dumping duty under this section may be identified, and for the manner in which the export price and the normal value of, and the margin of dumping in relation to, such articles may be determined and for the assessment and collection of such anti-dumping duty.”

(emphasis supplied)

59. As noticed above, sub-section (1) of section 9A of the Customs Tariff Act provides for imposition of anti-dumping duty where any article is exported from any country to India at less than its normal value but such anti-dumping duty cannot exceed the margin of dumping in relation to such article. The first proviso to sub-section (5) of section 9A of the Customs Tariff Act was amended by deleting the words “in a review” by “on a consideration of a review”. This effectively would mean that the review is to be done by the designated authority. Further, under the un-amended section 9A, the margin of dumping was to be **ascertained** and **determined** by the Central Government after such inquiry as it considered necessary. The amendment made to sub-section (6) of section 9A by the Finance Act, 2023 deletes the words “and determined”. The result is that after amendment the margin of dumping has to be only ascertained by the Central Government after such inquiry as it considers necessary and the determination part is that of the designated authority.

60. Section 9C of the Customs Tariff Act was also amended by the Finance Act, 2023, in the following manner:

“(iii) in section 9C, -

- (a) in sub-section (1), the words “order of” shall be omitted;
- (b) in sub-section (2), for the word “order”, the words “determination or review” shall be substituted;
- (c) in sub-section (3), for the word “order”, the words “determination or review” shall be substituted;
- (d) after sub-section (5), the following Explanation shall be inserted, namely:-

‘Explanation.- For the purposes of this section, “determination” or “review” means the determination or review done in such manner as may be specified in the rules made under sections 8B, 9, 9A and 9B.’”

61. The relevant portion of section 9C of the Customs Tariff Act after amendment would read as follows:

“9C(1) An appeal against the [***] determination or review thereof shall lie to the Customs, Excise and Service Tax Appellate Tribunal** constituted under section 129 of the Customs Act, 1962 (52 of 1962) (hereinafter referred to as the Appellate Tribunal), in respect of the existence, degree and effect of -

(2) Every appeal under this section shall be filed within ninety days of the date of **determination or review** under appeal:

Explanation. – For the purposes of this section, “determination” or “review” means the determination or review done in such manner as may be specified in the rules made under section 8B, 9, 9A and 9B.”

(emphasis supplied)

62. It would, therefore, be necessary to examine the meanings assigned to the words **ascertained** and **determined**. The word “determination” pre-

supposes application of mind and expression of conclusion. It connotes the determination and not a mere opinion or finding.

63. In **Law Lexicon** by P. Ramanatha Aiyar, Second Edition, it is stated:

“Determination or order. The expression “determination” signifies an effective expression of opinion which ends a controversy or a dispute by some authority to whom it is submitted under a valid law for disposal. The expression “order” must have also a similar meaning, except that it need not operate to end the dispute, Determination or order must be judicial or quasi-judicial. *Jaswant Sugar Mills v. Lakshmi Chand*, : (1963)ILLJ524SC . [Constitution of India Article 136]”

64. In **Black's Law Dictionary**, 6th Edition, it is stated:

A “determination” is a “final judgment” for purposes of appeal when the trial court has completed its adjudication of the rights of the parties in the action. *Thomas Van Dyken Joint Venture v. Van Dyken*, 90 Wis. 236, 279 N.W. 2d 459, 463.

65. The word “ascertained” has been defined in the **Law Lexicon**, Third Edition to mean “to find out or learn for a certainty”.

66. It is, therefore, clear that the two words “ascertained” and “determined” have different meanings and indeed the legislature used both the words in sub-section (6) of section 9A of the Customs Tariff Act prior to its amendment. The deletion of the words **and determined** in sub-section (6) of section 9A of the Customs Tariff Act, therefore, assumes significance. The Central Government has, after amendment, merely to **ascertain** the margin of dumping, while under the un-amended section the Central Government had to both **ascertain** and **determine** the margin of dumping.

67. Keeping this in mind, the amended provisions of section 9C of the Customs Tariff Act would have to be examined. An appeal lies to this Tribunal only against the **determination** or **review**, while under the un-amended section an appeal could be filed before this Tribunal against the **order** of determination or review.

68. The review talked of in section 9C of the Customs Tariff Act is a review contemplated under the first proviso to sub-section (5) of section 9A of the Customs Tariff Act. Under sub-section (5) of section 9A of the Customs Tariff Act, the anti-dumping duty imposed ceases to have effect on the expiry of five years from the date of such imposition but the first proviso, as it stood prior to the amendment made by the Finance Act, 2023, stipulated that if the Central Government, **in a review**, was of the opinion that cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, it could extend the period of such imposition for a further period of five years. After the amendment, the words **in a review** have been deleted from the first proviso and substituted by **on a consideration of review**.

69. Thus, under the amended sub-section (6) of section 9A of the Customs Tariff Act, the Central Government has only to ascertain the margin of dumping and the power of determination of margin of dumping has been left to the designated authority. Likewise, the power of review is with the designated authority and the Central Government can extend the period of imposition of anti-dumping duty for a further period of five years **on a consideration of review**.

70. Under the amended section 9C of the Customs Tariff Act, an appeal lies to the Tribunal against the **determination** or **review**, which powers as noticed above are exercised by the designated authority.

71. The Explanation added to section 9C of the Customs Tariff Act by the Finance Act, 2023 has defined **determination or review** to mean the **determination or review** done in such manner as may be specified in the 1995 Anti-Dumping Rules.

72. Rule 17(1) of the 1995 Anti-Dumping Rules provides that the designated authority shall within one year from the date of initiation of an investigation, **determine** as to whether or not the article under investigation is being dumped into India and submit to the Central Government its final finding.

73. Rule 18 of the 1995 Anti-Dumping Rules provides that the Central Government may impose by notification in the Official Gazette, upon importation into India of the article covered by the final finding, anti-dumping duty not exceeding the margin of dumping as determined under rule 17.

74. Rule 23 of the 1995 Anti-Dumping Rules deals with review and sub-rule (1B) provides that though anti-dumping duty shall be effective for a period not exceeding five years from the date of its imposition but the designated authority can come to a conclusion **on a review** that the expiry of the said anti-dumping duty is likely to lead to continuation or recurrence of dumping and injury to the domestic industry, in which case it can recommend to the Central Government for its extension.

75. The Explanation that has been added to section 9C by Finance Act, 2023 provides that for the purposes of section 9C(1), **determination or review** means the determination or review done in such manner as may be specified in 1995 the Anti-Dumping Rules. Under the 1995 Anti-Dumping Rules, the determination or review is done by the designated authority. It, therefore, clearly transpires that after the amendment made in sections 9A

and 9C of the Customs Tariff Act by the Finance Act, 2023, an appeal would lie to this Tribunal against the determination or review which, as noticed above, is undertaken by the designated authority.

76. Learned counsel for the appellant, however, placed reliance upon the judgment of the Supreme Court in **Tata Chemicals (2)** and more particularly on paragraph 4. According to the learned counsel for the appellant, since the aforesaid judgment holds that determination is contemplated under rule 18 of the 1995 Anti-Dumping Rules and the Explanation added to section 9C by the amendment applies the 1995 Anti-Dumping Rules, an appeal would be maintainable before the Tribunal since an appeal lies against the determination.

77. It would, therefore, be appropriate to reproduce the relevant paragraphs of the judgment of the Supreme Court in **Tata Chemicals (2)** and they are as follows:

"2. A two-Judge Bench hearing the Special Leave Petitions (Civil) Nos. 9423-9432 of 2000 noted that the challenge before the CEGAT was not only against the determination of the Designated Authority but also against the Customs Notification dated 27th October, 1998 whereby anti-dumping duty was imposed. The Bench noted that this aspect was not apparently brought to the notice of the Bench when it passed the order dated 11th May, 2000, and the order of CEGAT itself does not refer to the Customs Notification dated 27th October, 1998 which was impugned in the present Special Leave Petitions. The Bench observed that because of the same probably the Court was led to believe that the appeal had been filed before the issuance of the notification of determination. Therefore, the notice was issued in the SLPs. When the matter was heard by a two-Judge Bench on 5-3-2002, the following order was passed:

"It is submitted by Mr. Mukul Rohtagi, learned Additional Solicitor General appearing for the respondents that against the impugned order of the CEGAT a two Judge Bench of this Court by order dated May 11, 2000 declined to entertain the S.L.Ps. filed by another party. In respect of the same impugned order S.L.Ps. Nos. 9423-9432/2000 filed by the petitioner, another two Judge Bench by Order dated August 24, 2000 held that the S.L.Ps. would be maintainable and ordered notice. In view of this apparent conflict, submits the learned Additional Solicitor General, the cases may be placed before a three Judge Bench. Mr. Shanti Bhushan, learned senior counsel and the other senior counsel also adopted the same submission. Mr. P. Chidambaram, the learned seniors counsel appearing for the petitioner submits that a writ petition is already filed therefore this question may not be relevant. In view of the importance of the question involved in these cases we think that it would be appropriate to place the cases before a three Judge Bench. **The Registry, is directed to seek orders from Hon'ble the Chief Justice of India and place the cases before a three Judge Bench preferably at an early date."**

3. The Bench felt that there was conflict in the two orders. The order dated 11-5-2000, referred to above reads as follows :

"We see no reason whatsoever to entertain these special leave petitions. It is perfectly clear now that we have seen the provisions of the Act that the order of the Designated Authority is purely recommendatory. The appeal that lies is against the determination and that determination has to be made by the Central Government. For this reason, we decline to exercise jurisdiction under Article 136 of the Constitution of India and dismiss the special leave petitions."

The matter was accordingly referred to a three-Judge Bench and that is how the matter is posted before us.

4. The order dated 24-8-2000 clarified the position as to why notice was issued notwithstanding the earlier dismissal of several SLPs. The distinctive feature was challenge to the Customs Notification

dated 27-10-1998. This aspect was not apparently noted by the two-Judge Bench when the matter was taken up on 11-5-2000. **It is also noted in the order dated 24-8-2000 that determination as contemplated by Rule 18 of the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (in short 'Rules') has taken place with the issuance of the Notification dated 27th October, 1998 and, therefore, the appeal could be maintainable to CEGAT. *****"**

(emphasis supplied)

78. A perusal of the aforesaid judgment of the Supreme Court in **Tata Chemical (2)** indicates that earlier a two Judge bench of the Supreme Court in the order dated 11.05.2000 declined to entertain the Special Leave Petition for the reason that the order passed by the designated authority was purely recommendatory and an appeal lies to the Tribunal against the determination and that determination is made by the Central Government. When another Special Leave Petition was filed against the order of the Tribunal by another party, a two Judge bench of the Supreme Court issued notice for the reason that what was challenged before the Tribunal was not only the determination made by the designated authority but also the consequential customs notification dated 27.10.1998 imposing anti-dumping duty. The bench observed that this fact was not brought to the notice of the earlier bench and even the order of the Tribunal that was impugned did not refer to the customs notification dated 27.10.1998. The subsequent division bench, therefore, referred the matter to a three Judge bench of the Supreme Court. The three Judge bench of the Supreme Court noted that in the order dated 24.08.2000 (by which notice was issued in the second Special Leave Petition) it was observed that determination as contemplated by rule 18 of

the 1995 Anti-Dumping Rules had taken place with issuance of the notification dated 27.10.1998 and, therefore, the appeal would be maintainable. The three Judge bench of the Supreme Court held that the appeal before the Tribunal was maintainable since the challenge before the Tribunal was to the determination by issuance of the notification dated 27.10.1998 by the Central Government. It is, therefore, clear that what was in issue before the Supreme Court was whether an appeal would lie to the Tribunal only against the determination made by the designated authority which was only recommendatory in nature or an appeal would lie to the Tribunal when determination was made by the Central Government by issuance of notification. The Supreme Court held that an appeal will lie to the Tribunal against the notification issued by the Central Government imposing anti-dumping duty.

79. It is in the context of the un-amended provisions of sub-sections (1) and (6) of section 9A of the Customs Tariff Act that the aforesaid observations were made by the Supreme Court in **Tata Chemicals (2)**. After the amendment made by section 134 of the Finance Act, 2023, the determination or review is only by the designated authority and it is against this determination or review that an appeal would lie to the Tribunal under section 9C of the Customs Tariff Act.

80. What, therefore, follows from the above discussion is that:

- (i) Section 134 of the Finance Act, 2023 has not come into force since the Central Government has not issued any notification as contemplated under section 1(2)(b) to bring into force the said section. Consequently, the amendment to sections 9A and 9C of the Customs Tariff Act by section 134 of the Finance Act have not come into force. An appeal would, therefore, lie to this Tribunal under section 9C of the Customs Tariff Act under

the existing provisions of the Customs Tariff Act against the final findings dated 29.09.2022 of the designated authority published in the Gazette of India-Extra Ordinary on 29.09.2022 and the consequential notification dated 27.12.2022 published in the Gazette of India-Extra Ordinary on 27.12.2022 imposing anti-dumping duty; and

- (ii) The contention advanced by the learned counsel for the appellant that even if a notification as contemplated under section 1(2)(b) of the Finance Act, 2023 is now issued to bring section 134 of the Finance Act, 2023 into force, the Tribunal would still continue to have jurisdiction to entertain an appeal against the notification issued by the Central Government imposing anti-dumping duty, as it had before, to hear appeals under section 9C of the Customs Tariff Act cannot be accepted.

81. As noticed above, the Central Government has not issued any notification contemplated under section 1(2)(b) of the Finance Act, 2023 and, therefore, section 134 of the Finance Act has not come into force. This appeal is, therefore, maintainable before the Tribunal.

82. The appeal may, therefore, be listed for hearing on **September 23, 2025**.

(Order Pronounced on **26.08.2025**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(BINU TAMTA)
MEMBER (JUDICIAL)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)