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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 22nd September, 2025

+ **W.P.(C) 14723/2025, CM APPL. 60452/2025 & CM APPL. 60453/2025**

UNION OF INDIA

.....Petitioner

Through: Mr. N Venkataraman, ASG, Mr. Aditya Singla, SSC for CVIC, Ms. Anushree Narain, SSC for CBIC with Mr. Ritwik Saha, Mr. Chandrashekhar Bharati, Mr. Shivshankar G, Mr. Nakul Madhan, Mr. Abhishek R, Advs.

versus

ESSILORLUXOTTICA ASIA PACIFIC PTE LTD. AND
ORS.

.....Respondents

Through: Ms. Charanya Lakshmikumaran, Mr. Yogendra Aldak, Mr. Devindra Bagia, Mr. Ankur Sharma & Mr. Agrim Arora, Advs.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present petition challenges the *interim order No. 5.2025* dated **26th August, 2025** (*hereinafter, 'the interim order'*) passed by the Customs, Excise & Service Tax Appellate Tribunal, Principal Bench, New Delhi (*hereinafter, 'CESTAT'*) in Anti-Dumping Appeal No. AD/53193/2023.
3. The proceedings before CESTAT arise out of the Anti-Dumping Duty which was recommended by the designated authority in respect of imports of



semi-finished ophthalmic lenses (*hereinafter, 'PUC'*), originating from China,PR.

4. After the recommendations of the designated authority dated 29th September, 2022, the Central Government had issued a notification dated 27th December, 2022, imposing definitive Anti-Dumping Duty for a period of 5 years.

5. Various appeals were filed before the CESTAT, challenging both, the determination by the designated authority, as also the order of the Central Government notifying the said Anti-Dumping Duty. The said appeals were pending before CESTAT and during the pendency of the appeals, Finance Act 2023 (*hereinafter, 'the FA 2023'*) came into effect.

6. The said FA, 2023 in Section 134, brought certain amendments to the Customs Tariff Act, 1975 with effect from 01st January, 1995. The said section 134 of the FA, 2023 reads as under:

"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 98.'

7. In effect therefore, Section 9(C) of the Customs Tariff Act, 1975 was amended to the following effect:

Section 9C - Pre-Amendment:

*"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 (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 **order under appeal**:*



Provided that the Appellate Tribunal may entertain any appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(3) The Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the order appealed against. [...]"

Section 9C - Post-Amendment:

"9C. Appeal.— (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 (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:

Provided that the Appellate Tribunal may entertain any appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(3) The Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the



determination or review appealed against. [...]

8. From a plain reading of Section 134 of the FA, 2023, the amendment to Section 9C of the Customs Tariff Act, 1975 had retrospective effect from 01st January, 1995. However, the issue got complicated due to the interim order which has now been passed by the CESTAT, holding that Section 134 of the FA, 2023, was not separately notified by the Central Government and hence, the amended Section 9C has not even come into effect. It is this interim order that is under challenge in the present case.

9. Ld. Additional Solicitor General, Mr. Venkatraman has taken the Court through Section 1 and Section 134 of the FA, 2023 to argue that Section 1(2) of the FA, 2023 starts with the phrase '*save as otherwise provided in this Act*'. Therefore, the minute the FA, 2023 is notified, Section 134 also stands notified.

10. This position is challenged by Ms. Charanya Lakshmikumaran, Id. Counsel, who submits that in the case of amendments to the Income Tax Act, 1961, they came into effect immediately as covered under Section 1(2)(a) of the FA, 2023. However, insofar as Sections 128 to 163 of the FA, 2023 were concerned, they related to indirect taxes and as in the case of GST provisions Sections 137 to 162 & Section 149 to 154, which were subsequently notified, no notification was issued in respect of Section 134 of the FA, 2023. In the absence of the said notification, Section 134 of the FA, 2023 has thus not come into force.

11. The effect of this cauldron would be the question as to whether the CESTAT would have jurisdiction to hear a challenge to the notification by the Central Government imposing Anti-Dumping Duty or not. In the opinion of



this Court, the issue requires consideration as the interim order of the CESTAT holding that the said provisions have not been notified, could have unintended consequences.

12. Section 9C of the Customs Tariff Act, 1975, pre and post amendment does not leave any doubt that insofar as the determination of Anti-Dumping Duty is concerned, the appeal could be heard by CESTAT. It is only in respect of an order by the Government notifying, modifying or not notifying Anti-Dumping duty that the dispute has arisen, owing to the amendment in the FA, 2023. The Central Government's notification dated 27th December, 2022, in this case is the subject matter of the dispute.

13. The appeals arising from the interim order are stated to be listed before CESTAT tomorrow, i.e. 23rd September, 2025.

14. Considering the fact that CESTAT has ruled on whether amendments to the Finance Act itself has come into force or not, this Court would like to examine this matter.

15. In view of the above, there shall be a stay of the interim order No. 5.2025 dated 26th August, 2025 passed by CESTAT. However, CESTAT would be free to proceed with hearing of the appeals, only insofar as they relate to the final findings of the designated authority. The pendency of this proceeding would not affect the final hearing of the appeals in respect of the final findings of the designated authority.

16. Issue notice. Ms. Charanya Lakshmikumaran, Id. Counsel accepts notice.

17. Let the counter affidavit be filed on behalf of the Respondents within 4 weeks. Rejoinder thereto, if any, be filed within 2 weeks thereafter.

18. In addition, it is relevant to mention that last week, this Court had



disposed of several writ petitions in which the lead matter was ***W.P.(C) 11751/2023*** titled “***M/s IG Petrochemicals Limited Vs. Union of India &Anr.***” which had challenged the amendments to the Customs Tariff Act, 1975 i.e. Sections 9, 9A and 9C. In those cases, the Petitioners had themselves made a submission that they do not wish to press the petitions in view of the interim order of CESTAT.

19. In those petitions, this Court had already observed as under:

“7. In effect, the finding of CESTAT is that Section 134 of the Finance Act, 2023 has not been notified under Section 1(2)(b) of the Finance Act, 2023 to bring into force the said Section 134 of the Finance Act, 2023. In view thereof, the CESTAT has held the said appeal to be maintainable before CESTAT. The finding being that Section 134 of the Finance Act, 2023 has not been notified, the amended Sections 9, 9A and 9C of the Customs Tariff Act, 1975 have therefore not come into effect.

8. Ld. Counsel for the Petitioner submits that in view of this order dated 26th August, 2025 of CESTAT, the Petitioners do not wish to press the present petitions. However, if the position changes, they may be given liberty to revive the present petition.

9. The above mentioned position as to the notification, is not contested by ld. Counsel for the Respondent.

10. In view of the above, the present petitions are disposed of as infructuous.

11. The Court has not examined the merits of the challenge in these writ petitions. The same would be examined in an appropriate case if the need arises.

12. Liberty is granted to revive the present petitions if the position as set out above in respect



of the notification of Section 134 of the Finance Act, 2023, changes.”

20. Ld. Counsels for both the parties may file their written submissions.
21. List for hearing on 24th November, 2025.
22. *Dasti* under signatures of the Court Master.

PRATHIBA M. SINGH
JUDGE

SHAIL JAIN
JUDGE

SEPTEMBER 22, 2025/pd/ss