

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. Chemiglas 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**WITH****AD/53192/2023****AD/53196/2023****AD/53199/2023****AND****AD/53194/2023****AD/53197/2023****AD/53200/2023****AD/53202/2023****AD/53195/2023****AD/53198/2023****AD/53201/2023****APPEARANCE:**

Shri V. Lakshmikumaran, Shri Darpan Bhuyan, Ms. Pareesha Gupta, Shri Yashovarham Singh, Advocates for the Appellant

Shri Ameet Singh, Shri Manav Bharti and Shri Anuvrat Bhatnagar, Advocates for Directorate General of Trade Remedies

Ms. Reena Asthana Khair and Ms. Shreya Dahiya, Advocates for the Domestic Industry

Shri Nikhil Mohan Goyal, 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: 17.03.2026****Date of Decision: 27.04.2026****FINAL ORDER NO's. 50783-50793/2026**

JUSTICE DILIP GUPTA:

Essilorluxottica Asia Pacific Pte Ltd.¹ (formerly known as Essilor Amera Pte Ltd.) has filed **Anti-Dumping Appeal No. 53193 of 2023** to assail the final findings dated 29.09.2022 issued by the designated authority to the extent recommendation has been made for imposing anti-dumping duty on "semi-finished ophthalmic lenses"² originating in or exported from China PR by treating the appellant to be non-cooperative. The other Anti-Dumping Appeals have also been filed for the same relief. All the appellants shall be referred to as Essilor Group.

2. The Essilor Group has been considered as non-cooperative because Danyang ILT that was treated to be a related party to the Essilor Group did not participate in the subject investigation. Non filing of responses by non-exporting producers within the group, namely, Jiangsu Wanxin Optical Co. Ltd., Jiangsu Creasky Optical Co. Ltd., and Jiangsu Governor Dragon Optical Co. Ltd. has also been made a ground to treat the Essilor Group as non-cooperative.

3. Regarding the claim of the Essilor Group that Danyang ILT was no longer a group company of Essilor Group after 14.11.2018, the designated authority observed:

"94. The facts available indicate that the rights are conferred on Shanghai Essilor Optical Co. Ltd. under the Equity Pledge Agreement to sale, auction, dispose the pledged equity in event of default of loan repayment by Danyang ILT Optics Co. Ltd. Thus, transfer of shares by Essilor International in Danyang ILT Optics Co. Ltd. was only one part of the full arrangement agreed between Shanghai Essilor Optical Co. Ltd., Danyang ILT Optics Co. Ltd. and Danyang

-
1. the appellant
 2. the subject goods

Shuoshi Optics Co. Ltd. The full arrangement required pledging back of shares sold by Essilor International in Danyang ILT Optics Co. Ltd. to Shanghai Essilor Optical Co. Ltd. **Thus, selling of shares by Essilor International in Danyang ILT Optics Co. Ltd. has not led to cessation of control of Essilor Group in Danyan ILT Optics Co. Ltd. as is ordinarily expected in case of withdrawal of shareholding. Based on facts available, the Authority is of the view that Essilor Group continues to control Danyang ILT Optics Co. Ltd. indirectly.**

96. **In view of the above observations, the Authority holds that the claim of Essilor Group that Danyang ILT Optics Co. Ltd. is an unrelated producer of subject goods cannot be clearly established. Since, Danyang ILT Optics Co., Ltd. has not participated in the present anti-dumping investigation and has not filed questionnaire response the Authority holds that no individual dumping margin and injury margin can be determined for Essilor group."**

(emphasis supplied)

4. The designated authority also held that there were three related entities within Essilor Group in China PR, namely, Jiangsu Wanxin Optical Co. Ltd., Jiangsu Creasky Optical Co. Ltd., and Jiangsu Governor Dragon Optical Co. Ltd. but this fact was not disclosed to the designated authority. The designated authority, therefore, observed:

"99. **Thus, Essilor Group did not provide necessary information to the Authority in the questionnaire response and the Authority had to obtain relevant information from Annual reports, web research and information available in public domain.** In anti-dumping investigations, it is necessary that names of are related parties engaged in production of subject goods in the subject country are provided to the Authority so that Authority can examine independently which of these related parties are

engaged in production and or export of subject goods to India the investigation.

100. **When the fact regarding non-disclosure of other related entities engaged in production/sales of subject goods was brought to the notice of Essilor Group, they accepted that Jiangsu Creaksy Optical Co., Ltd. is engaged in production of subject goods but claimed that it has not exported subject goods to India and therefore existence of Jiangsu Creaksy Optical Co., Ltd. was not disclosed in questionnaire response in reply to Question 6 of Part 1** of Section A in terms of Trade Notice 06/2021. The Authority notes that Trade Notice 06/2021 nowhere specifies that in response to Question 6 of Part 1 of Section A, names of only those related entities who have exported the subject goods to India need to be provided.

101. **Essilor Group also accepted that Jiangsu Wanxin Optical Co., Ltd. is engaged in production of subject goods in China PR but claimed that it has only exported finished lenses to India during the POI.** Essilor Group also provided transaction wise details of finished lenses exported to India by Jiangsu Wanxin Optical Co., Ltd. The Authority has reviewed this information and has noted that Jiangsu Wanxin Optical Co., Ltd. has exported *** refractive index lens to India at an average price of Rs. *** per piece. It is not clear to the Authority how Jiangsu Wanxin Optical Co., Ltd. has exported finished lenses to India at a price even lower than price of semi-finished lenses. Average import price of semi-finished lenses into India during POI is Rs. 70 per piece. **Since the existence of Jiangsu Wanxin Optical Co., Ltd. as a related producer of subject goods was not disclosed upfront and even the information regarding exports by Jiangsu Wanxin Optical Co., Ltd. to India provided at a later stage is doubtful given the extremely low price of such exports, the claim of Essilor Group that exports made by Jiangsu Wanxin Optical Co., Ltd. during the POI are of finished lenses cannot be relied upon.**

102. When the fact regarding non-disclosure of other related entities engaged in production/sales of subject goods was brought to the notice of Essilor Group, **they claimed specifically with regard to Jiangsu Governor Dragon Optical Co. Ltd., that it only manufactures contact lenses. However, the Authority noted from the product list available at the website of the Jiangsu Governor Dragon Optical Co., Ltd. that it also produces semi-finished lenses."**

(emphasis supplied)

5. Shri V. Lakshmikumaran, learned counsel for the appellant assisted by Shri Darpan Bhuyan, Ms. Pareesha Gupta, Shri Yashovarham Singh made the following submissions:

- (i)** The designated authority has wrongly treated Essilor Group as non-cooperative and has imposed anti-dumping duties despite the fact that the exports prices of Essilor Group were non-injuries to the domestic industry. The Non-Injurious Price³ of the domestic industry which was disclosed was Rs. 72 per piece whereas the overall landed import price of Essilor Group as per the verified figures by the designated authority was Rs. 161.83 per piece. Had Essilor Group been considered as cooperative, it would have resulted in negative dumping and injury margin to Essilor Group and as such nil rate of anti-dumping duty would have been imposed;
- (ii)** The designated authority has considered irrelevant facts to draw an adverse inference under rule 6(8) of the of the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for

3. NIP

Determination of Injury) Rules, 1995⁴ and treated Essilor Group as non-cooperative;

- (iii) Existence of the Pledge Agreement is an irrelevant fact to determine relationship because a pledge does not vest any legal or operational control on a pledgee. Even otherwise, the Pledge Agreement and its terms and conditions do not suggest in any manner that ownership control remained with Essilor Group;
- (iv) It cannot be said that Danyang ILT was related to Essilor Group as per the prescription under rule 2(2) of the Custom Valuation (Determination of Value of Imported Goods) Rules, 2007⁵;
- (v) The designated authority could not have drawn an adverse inference on non-production of documents not within the possession of Essilor Group;
- (vi) Information relating to Danyang ILT (unrelated party) and Jiangsu Wanxin Optical Co. Ltd., Jiangsu Creasky Optical Co. Ltd., and Jiangsu Governor Dragon Optical Co. Ltd. (related party) was irrelevant for the purpose of determining dumping margin for Essilor Group;
- (vii) It had been clarified by Essilor Group that Jiangsu Wanxin, Jiangsu Creasky and Jiangsu Governor did not export the subject goods to India during the period of investigation. The filing of information by non-exporting producers is not necessary because it does not affect the normal value;
- (viii) As such, information related to the three related Essilor entities were completely irrelevant in the present investigation and the designated authority was incorrect

4. the 1995 Rules
5. the 2007 Valuation Rules

in holding Essilor Group as non-cooperative on the basis of the same; and

- (ix)** Subject goods produced by Danyang ILT and exported by Essilor Group were irrelevant for determination of dumping margin for Essilor Group.

6. Shri Ameet Singh, learned counsel for the designated authority assisted by Shri Manav Bharti and Shri Anuvrat Bhatnagar made the following:

- (i)** The appellant Essilor Group is not correct in asserting that a pledge of shares does not constitute ownership or control and, therefore, Danyang ILT was an "unrelated" party post November, 2018;
- (ii)** The appellant suppressed the existence of the Equity Pledge Agreement throughout the investigation. It was not disclosed in the initial questionnaire, nor in response to two subsequent deficiency letters. It was only submitted at the very end of the investigation, after designated authority explicitly brought this fact to its notice;
- (iii)** In anti-dumping investigations, "control" is not evaluated merely by strict tenets of property law or shareholding ownership, but by the operational and commercial realities that dictate pricing and export behavior;
- (iv)** The appellant failed to provide any cogent commercial justification as to why it would purchase subject goods from an allegedly "unrelated" entity (Danyang ILT) at a higher price, only to resell them at a loss to its own subsidiary;

- (v)** As the appellant refused to provide the Annual Reports of Danyang ILT, the designated authority was prevented from fully examining the terms, conditions and true nature of this relationship and thus, it determined the fact regarding relationship between Danyang ILT and Essilor Group based on evidence available before it;
- (vi)** The appellant is not correct in asserting that it was not required to disclose details regarding Jiangsu Wanxin Optical Co. Ltd., Jiangsu Creasky Opticals Co. Ltd., and Jiangsu Governor Dragon Opticals Co. Ltd. because related entities allegedly did not export the subject goods to India during the period of investigation;
- (vii)** The questionnaire does not grant the appellant the liberty to unilaterally decide which related producers are “relevant” and withhold the rest. The disclosure of all related producers is an absolute necessity in anti-dumping proceedings to allow the designated authority to independently verify production capacities, prevent circumvention of duties through related channels, and accurately determine costs;
- (viii)** The omission of these related entities by the appellant in Exhibit A-6 of their questionnaire response was a clear violation of the disclosure requirement. The designated authority had to independently uncover the existence of these companies through annual reports, public domain and web research;
- (ix)** Rule 6(8) of the 1995 Rules empowers the designated authority to record findings on the basis of facts available if an interested party refuses access to, or otherwise does

not provide necessary information within a reasonable period, or significantly impedes the investigation; and

- (x) The sequence of events clearly demonstrates that the appellant significantly impeded the investigation. Firstly, the appellant concealed outstanding concessional working capital loans to Danyang ILT. Secondly, the appellant concealed the Equity Pledge Agreement until the ultimate stage of the investigation. Thirdly, the appellant failed to disclose multiple related entities producing the subject goods in China PR. Fourthly, the appellant provided false declarations regarding the absence of financial/contractual links.

7. Ms. Reena Asthana Khair, learned counsel for the domestic industry assisted by Ms. Shreya Dahiya and Shri Nikhil Mohan Goyal, learned authorized representative for the Central Government, however, supported the findings of the designated authority.

8. The submissions advanced by the learned counsel for the appellant, the learned counsel for the designated authority and the learned counsel for the domestic industry have been considered.

9. The product under consideration was defined by the designated authority in the following manner:

"17. Accordingly, the revised scope of product under consideration in the present investigation is as under:

"The product under consideration is semi-finished ophthalmic lenses made up of plastic.

Semi-finished ophthalmic lenses are semi-finished blanks which have the front surface of the lens made of ophthalmic quality and the back surface of the lens made of ophthalmic quality and the back surface unfinished. Semi-finished ophthalmic lenses

come in many forms, single vision, bifocal, and multifocal (progressive) type with different refractive indexes, segment styles and sizes.”

The following types of products are excluded from the scope of product under consideration:

- (i) Semi-finished ophthalmic lenses having refractive index higher than 1.60.**
- (ii) *****
- (iii) *****
- (iv) *****
- (v) *****”

(emphasis supplied)

10. The reasons given by the designated authority for treating the Essilor Group as non-cooperative shall be considered separately.

DANYANG – treated as a related party

11. It transpires from the record that Essilor Group sold the shares of Danyang ILT to Danyang Shoushi Glasses Co., Ltd.⁶ which were pledged to Essilor Group through a Pledge Agreement dated 13.07.2018 which was registered on 16.11.2018. This was to secure repayment of loans amounting to RMB 28,500,000 it had rendered to Danyang ILT prior to 2018 when they were related parties. A perusal of the Pledge Agreement shows that it does not constitute control or ownership, either direct or indirect, of Essilor Group over Danyang ILT since it explicitly provides sole ownership of the pledged equity to DYSS only.

12. The designated authority took note of the Equity Pledge Agreement of 2018 between the un-related purchaser DYSS (pledgor) and the seller Shanghai Essilor Optical Co. Ltd (pledgee) to observe that Essilor Group continues to control Danyang ILT indirectly because rights are conferred on Shanghai Essilor Optical Co. Ltd. under the Equity Pledge Agreement to

6. DYSS

sale, auction, dispose the pledged equity in event of default of loan repayment by Danyang ILT. The designated authority concluded that selling of shares to Danyang ILT has not led to cessation of control of Essilor Group in Danyang ILT as is ordinarily expected in case of withdrawal of shareholding.

13. The existence of the Pledge Agreement is not a relevant factor for determining the relationship between Essilor Group and Danyang ILT because a pledge does not create any ownership or control rights by virtue of pledged shares or equity. A pledge is a bailment of property as security for a debt. A security does not grant ownership rights over the property which is pledged and only grants the pledgee the right to dispose of the property in order to retrieve the dues/debt owed by the pledgor.

14. Under section 172 of the Indian Contract Act, 1872, a "pledge" is a "bailment" of goods as security for payment of a debt or performance of a promise. The said section 172 is reproduced below:

"172. "Pledge", "pawnor", and "pawnee" defined.—

The bailment of goods as security for payment of a debt or performance of a promise is called "pledge". The bailor is in this case called the 'pawnor'. The bailee is called the 'Pawnee':"

15. The term "bailment" is defined under section 148 of the Indian Contract Act, 1872 in the following manner:

"148. 'Bailment', 'bailor' and 'bailee' defined. —

A 'bailment' is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is achieved, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the 'bailor'. The person to whom they are delivered is called the 'bailee':"

16. The difference between rights arising out of pledge and ownership have been discussed at length by the Andhra Pradesh High Court in **Md. Sultan & Ors. vs. Firm of Rampratap Kannayalal, Hyderabad**⁷ and the relevant observation is:

“8. It is thus clear that a pledge is the delivery of goods by the pledgor to the pledgee by way of security upon a contract that they shall when the debt is paid or the promise is performed, be returned or otherwise disposed of according to the directions of the pledgor. **A pledge would, therefore, create an estate which vests in the pledgee, which is distinguishable from ownership since an owner owns (a) the right of possession (b) the right of enjoyment and (c) the right of disposition. But a pledgee does not have the right of ownership though he has the rights of a pledgee which include only the right of possession but not the right of enjoyment.** A pledgee has the right of disposition which is limited to disposition of pledged goods only and of a sale only after notice and subject to certain limitations as is clear from the various provisions of the Indian Contract Act. The distinction between pledge and ownership assumes importance when we consider the difference between pledge and mortgage. I am dealing with it later on.”

(emphasis supplied)

17. The judgment of the Andhra Pradesh High Court was upheld by the Supreme Court in **PTC India Financial Services Ltd. vs. Venkateswarlu Kari & Anr.**⁸. It was observed:

“26. **The decisions in Md. Sultan** (supra) and Sri Raja Kakarklhpuudi Venkata Sudarsana Sundara Narasayamma Garu (died) and others v. The Andhra Bank Ltd. Vijayawada and others **observe that hypothecation and mortgage of movables, though not specifically mentioned in the Contract Act, are valid and enforceable in India as the Contract Act**

7. AIR 1964 AP 201
8. (2022) 9 SCC 704

is not an exhaustive law on the subject. Such transactions beyond the statutory framework are given effect to and interpreted by the courts according to the principles of justice, equity, and good conscience. There is no standard format and incidents in a contract of pledge can be different. A term mutually agreed by the parties is valid as long as it is not contrary to or inconsistent with any provision of the Contract Act. In the context of the present case, the aforesaid principles relating to the law of pledge reflecting flexibility are important in the milieu of a transitional and commercial environment wherein significant changes have occurred across the capital market with inter alia advent of institutional investors, regulatory mechanisms, and the new insolvency regime, albeit the fundamentals of the law of pledge, except when permitted or required to be eschewed, should be applied. This is the principle of interpretation which we have applied to answer the conundrum.

27. **These two decisions highlight distinction between a pledge, which creates an estate or a right that vests with the pawnee, and a wider and general right of an owner; as well as mortgage or hypothecation.** An owner has: (a) right of possession; (b) right of enjoyment; and (c) the right of disposition. A pawnee does not have the right of ownership, but has limited right to retain possession till debt is paid or promise is performed. A pawnee's right of disposition is limited to disposition of the pledge rights only, and the right to sell after reasonable notice. Even when the pawnor makes default in payment of debt or performance of the promise, the pawnor has the right to redeem the pawn till 'actual sale' of the pawn by the pawnee. However, the pawnor in addition to the debt, must pay to the pawnee expenses that have arisen because of the default."

(emphasis supplied)

18. It is, therefore, not possible to accept the contention of the learned counsel for the designated authority that as the appellant had initially

suppressed the Equity Pledge Agreement, the Essilor Group could not claim cooperative status.

19. It has, therefore, to be held that the existence of pledge between DYSS and Essilor did not result in any ownership rights in favour of Essilor Group and neither did it confer any control of Essilor group over Danyang ILT.

20. It is also seen that based on the publicly available data on China National Enterprise Credit Information Publicity System and Qichacha, the designated authority acknowledged the fact of sale of stake of Essilor Group in Danyang ILT as of November, 2018 and that 100% of the shareholding now resides with DYSS. It cannot, therefore, be said that Essilor Group and Danyang ILT were related parties in terms of rule 2(2) of the 2007 Valuation Rules.

21. Trade Notice No. 09/2018 read with rule 2(2) of the 2007 Valuation Rules and Note to rule 2(b) of the 1995 Rules clarifies the definition of "related" in Anti-Dumping Investigation Questionnaires. The existence of control, either legal or operational, by Essilor Group in Danyang ILT is a pre-requisite to ascertain whether they are related.

22. Rule 2(2) of the 2007 Valuation Rules which provides when persons shall be deemed to be related reproduced below:

"(2) For the purpose of these rules, persons shall be deemed to be "related" only if –

- (i) They are officers or directors of one another's businesses;
- (ii) They are legally recognized partners in business;
- (iii) They are employer and employee;
- (iv) Any person directly or indirectly owns, controls or holds five per cent or more of the outstanding voting stock or shares of both of them;

- (v) One of them directly or indirectly controls the other;
- (vi) Both of them are directly or indirectly controlled by a third person;
- (vii) Together they directly or indirectly control a third person; or
- (viii) They are members of the same family.

Explanation I. - The term "person" also includes legal persons.

Explanation II. - Persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other shall be deemed to be related for the purpose of these rules, if they fall within the criteria of this sub-rule.

Note to rule 2:

In rule 2(2)(v), for the purposes of these rules, one person shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter."

23. It cannot, therefore, be said that Danyang ILT is related to Essilor Group under rule 2(2) of the 2007 Valuation Rules.

24. The designated authority held Essilor Group to be non-cooperative because it could not properly examine the relationship between Danyang ILT (un-related producer of PUC in China) and Essilor Group. In this connection, the designated authority observed that it had requested for supply of Annual reports of Danyang ILT in the letter dated 07.06.2022 but the Essilor Group did not provide the Annual reports of Danyang ILT and so designated authority was unable to examine further information about the terms and conditions of the working capital loans extended by Shanghai Essilor Optical Co., Ltd. and other companies to Danyang ILT and also about relationship between Danyang ILT and Essilor Group. The

designated authority, therefore, used facts available under rule 6(8) of the 1995 Rules.

25. The designated authority could not have compelled performance of an impossible task to seek production of a document not within the possession and control of Essilor Group. An adverse inference could have been drawn only if Essilor Group was in possession of or in a position to provide the Annual reports of Danyang ILT.

26. In this connection, reference can be made to the judgment of the Supreme Court in **State of Madhya Pradesh vs. Narmada Bachao Andolan & Anr.**⁹. It was held that where the performance of formalities prescribed by a statute is impossible because of circumstances over which the interested person has no control, the same is a valid excuse.

Whether information relating to Danyang ILT and the three entities within the Essilor Group in China PR were irrelevant for the purpose of determination of dumping margin for Essilor Group.

27. The next issue that arises for consideration is whether information relating to Danyang ILT, Jiangsu Wanxin Optical Co. Ltd., Jiangsu Creasky Optical Co. Ltd., and Jiangsu Governor Dragon Optical Co. Ltd. was irrelevant for the purpose of determining dumping margin for Essilor Group.

28. At the time of initiation of the investigation, facts that were relevant pertained to those of the period of investigation which was for a period of twelve months from 01.04.2020 to 21.03.2021. The past relationship between Essilor Group and Danyang ILT was, therefore, not in issue and was an irrelevant fact at the time of filing Exporter's Questionnaire

9. (2011) 7 SCC 639

Response. There was, therefore, no requirement on Essilor Group to provide any information regarding such irrelevant fact.

29. The designated authority laid much emphasis on the fact that the Essilor Group did not provide necessary information to the designated authority in the questionnaire response regarding these three entities within the Essilor Group and this information was obtained by the designated authority on its own.

30. The Essilor Group made it clear that these three companies did not export the subject goods to India during the period of investigation. Thus, the filing of information by non-exporting producer was not necessary because it would not affect the normal value.

31. For the purpose of comparison of Normal Value and Export Price for determining dumping margin, paragraph 6(i) of Annexure 1 to the 1995 Rules and Article 2.4 of the Agreement on Implementation of Article VI of General Agreement on Tariff and Trade, 1994 provide for comparison of Normal Value and Export Price at ex-factory level, which means the price paid to the producer at the gate of its factory for goods sold for either domestic consumption in the exporting country or export to India.

32. Thus, dumping margin and the rate of anti-dumping duty is producer specific, irrespective of the channel of exports into India. If several producers companies are part of a group i.e. they are related, the dumping margin and the rate of anti-dumping duty is specific to that group as a whole.

33. For making this determination, facts, evidence and information which establish the Normal Value and Export Price for the period of investigation is the information that is relevant and only such relevant facts are required to be furnished.

Normal Value

34. For producers functioning in a market economy, the normal value is determined on the basis of either (i) the selling price of the product under consideration in the domestic market of the exporting country; or (ii) comparable representative price of the production under consideration when exported from the exporting country of origin along with reasonable addition for administrative, selling and general costs, and for profits.

35. For a non-market economy country, however, the normal value for producers is determined in terms of paragraph 7 of Annexure I to the 1995 Rules. Paragraph 7 provides that in case of imports from non-market economy countries, normal value shall be determined on the basis of either (i) price or constructed value in a third country; or (ii) the price from such country to other countries; or (iii) when it cannot be determined by the previous two methodologies, any other reasonable basis.

36. In the present case, as the Essilor Group is based in a non-market economy country, namely, China and has not claimed market economy status, the designated authority determined the normal value on the basis of the cost of production of the domestic industry along with reasonable adding of selling, general and reasonable profit margin.

37. Such construction of Normal Value for a non-market economy country does not require any information to be submitted in connection with non-exporting producers within a group as there is no possibility of manipulation of Normal Value by varying the domestic selling prices of exporting and non-exporting producers within the group. This is also clear from paragraph 8(i) of Trade Notice No. 06/2021 dated 29.07.2021. It reads as under:

"8. In case you are a producer and exporter of the product under consideration which is being exported to India directly or indirectly, you are required to submit the questionnaire response in Part I, Part II and Part III. Also, it should be accompanied by following information as applicable:

- (i) **In case of non-market economy countries, where the participating producers/ exporters have not claimed market economy treatment, only those related producers involved in the production of PUG whose product has been exported to India are required to furnish information in Part I, H and III"**

(emphasis supplied)

38. The filing of information by non-exporting producers is not necessary because it does not affect the normal value. According to Essilor Group, Jiangsu Wanxin Optical Co. Ltd., Jiangsu Creasky Opticals Co. Ltd., and Jiangsu Governor Dragon Opticals Co. Ltd. did not export the subject goods to India during the period of investigation.

39. As information relating to non-exporting producers in a non-market economy is irrelevant for the determination of individual dumping margin and is not required to be furnished, only those related producers whose product was exported to India were required to participate and file the questionnaire response with the designated authority. As such, the responses of Essilor group entities to Question 6, which is in "Part I" of Trade Notice 6/2021, is in line with paragraph 8(i) of Trade Notice No. 06/2021.

40. In this view of the matter, information related to the three related Essilor entities was irrelevant in the investigation and the designated authority was not justified in holding Essilor Group as non-cooperative for this reason.

41. Similarly, the non-filing of information by an un-related producer, namely, Danyang ILT is of no consequence to the determination of normal value for Essilor Group in China.

Export Price

42. The export price, i.e. the price which an importer in India has to pay when importing the product under consideration in India, is the second variable in determining the existence and extent of dumping.

43. Essilor Group producers and related intermediaries had filed information relating to all exports of the subject goods made by the Essilor Group to India.

44. Therefore, complete information with respect to the Normal Value and Export Price was available with the designated authority in order to calculate individual dumping margin for the Essilor Group. The non-participation of Danyang ILT (un-related producer) or Jiangsu Wanxin Optical Co. Ltd., Jiangsu Creasky Opticals Co. Ltd., and Jiangsu Governor Dragon Opticals Co. Ltd. (related parties not exporting product under consideration to India) is, therefore, of no consequence and can be considered as irrelevant for the purposes of determining the dumping margin of product under consideration produced and exported by Essilor Group.

45. The exporting producers within the Essilor Group and related entities forming the supply chain under the Essilor Group did cooperate and submitted questionnaire responses to enable Essilor Group to be granted an individual dumping margin and rate of anti-dumping duty. The Essilor Group had provided all the relevant information with respect to the related party.

46. The contention of learned counsel for the designated authority that the Essilor Group was required to disclose details of the three entities as they were related cannot, therefore, be accepted.

47. As noticed above, the Essilor Group had disclosed all the related producers.

Other factors considered by the designated authority

48. The designated authority also found that the response by the Shanghai Essilor Optical Co. Ltd. to Question No. 7 of Part "I" of section A of the Exporter's Questionnaire Response that there is no such link or joint venture with any other company was incorrect and contrary to the facts disclosed later by Shanghai Essilor Optical Co. Ltd.

49. The contention of the learned counsel for the appellant that Question No. 7 of Part "I" of section A was inapplicable as the working capital loans extended to Danyang ILT by Essilor Group before 2018 does not qualify as a financial or contractual link and joint ventures for the product under investigation deserves to be accepted. Therefore, non-disclosure of working capital loan was an irrelevant fact and could not have used to draw adverse inference.

The goods produced by Danyang ILT and exported by Essilor Group were not relevant for determination of dumping margin

50. It has been found that Danyang ILT and Essilor Group are not related. Thus, price or volume of exports of subject goods produced by Danyang ILT and exported by the Essilor Group could not have been taken into consideration for determining of dumping margin of Essilor Group.

Conclusion

51. Thus, for all the reasons stated above, the recommendation made by the designated authority for imposing anti-dumping duty on Essilor Group by treating it to be non-cooperative is not justified. It is, accordingly, set aside. The designated authority shall consider the cases of the Essilor Group afresh without treating the Essilor Group as non-cooperative. The appeals are, therefore, allowed to the extent indicated above.

(Order Pronounced on **27.04.2026**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(BINU TAMTA)
MEMBER (JUDICIAL)

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