**Ongc Ltd. Vs. Commissioner of Central Excise**

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**SooperKanoon Citation** : sooperkanoon.com/27982

**Court** : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

**Decided On :** Apr-09-2002

**Reported in** : (2003)(159)ELT340Tri(Mum.)bai

**Judge** : J Balasundaram, S T S.S.

**Appellant** : Ongc Ltd.

**Respondent** : Commissioner of Central Excise

**Judgement** :
1. By the impugned order, the Commissioner of Central Excise has confirmed a duty demand of Rs. 16,98,52,336/- and imposed a penalty of Rs. 15,22,51,210/- under Section 11AC of the Central Excise Act and a penalty of Rs. 25 lakhs under Rule 173Q of the Central Excise Rules.

The demand of duty has been confirmed on the ground of under valuation of C2C3 (Ethane Propane) manufactured and cleared by the applicants during the period April, 1994 to January, 2000 at the rate of Rs. 3,300/- P.M.T. while the revised prices, fixed and based on methodology of taking into consideration the prevailing price of natural gas approved by the Ministry of Petroleum, were as under :- 2. The duty has been paid by the applicants and hence the application is confined to waiver of pre-deposit of penalty.

3. We have heard Shri Rajsinghani, ld. Counsel who contends that the demands raised in the show cause notices are barred by limitation since the applicants

never suppressed any material facts and the prices were revised by Ministry of Petroleum with retrospective effect only under communication dated 18-10-99. He also submits that the applicants throughout the period in dispute sold the product in dispute only at the rate of Rs. 3300/- PMT and hence there was no additional flow back of money from their buyer to them. The ld. DR Shri Uma Shankar opposes this prayer reiterating the findings of the Adjudicating Authority that the applicants had not disclosed their efforts to get the prices revised to the Central Excise Department.

4. We have carefully considered the rival submissions and see prima facie substance in the contention regarding time bar. The correspondence between the applicants and the Petroleum Ministry is not prima facie required to have been disclosed to the department, particularly when the prices were ultimately revised with retrospective effect only in October, 1999. Therefore, we are of the view that the applicants have made out a strong prima facie case for waiver on the aspect of limitation and hence waive pre-deposit of penalty and stay recovery thereof pending the appeal.