IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. E/1686/2008-EX[DB]

(Arising out of Order-in-Original No. MP (Dem-65/2007) 43 of 2008 dated 02/05/2008 passed by Commissioner of Central Excise & Customs, Allahabad)

M/s J. R. Organics Ltd. **Appellant**
Vs.

Commissioner of Central Excise, Allahabad **Respondent**

<u>Appearance:</u>

Shri Atul Gupta, Advocate &
Shri Hrishikesh, Advocate, for Appellant
Shri Mohd. Altaf, Assistant Commissioner (AR), for Respondent

<u>CORAM:</u>

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing & Date of Decision : 20/02/2018

FINAL ORDER NO. **71005/2018**

Per: Anil Choudhary

The issue in this appeal is, whether the appellant have undervalued their product Special Denatured Spirit, which they have transferred to other units for manufacture of further products which have also been cleared on payment of duty.

2. The brief facts of the case are as per the Show Cause Notice dated 07/11/2007, relating to the period 2003-04 to 2005-06. It appeared to Revenue that the appellant-assessee have suppressed the vital facts regarding

value of Denatured Ethyl Alcohol or SDS and undervalued it with intention to evade duty amounting to Rs.1,43,34,224/-. Accordingly, the said amount of duty was proposed to be recovered with further proposal to appropriate the amount of Rs.28,12,668/- already paid along with interest and further penalty was also proposed.

3. The said Show Cause Notice was adjudicated on contest vide OIO dated 02nd May, 2008 by which the Commissioner confirming the proposed demand along with equal amount of penalty. Being aggrieved the appellant is before this Tribunal.

4. The ld. Counsel for the appellant states that there is no allegation in the said Show Cause Notice that they have valued their goods/SDS at less than the value as prescribed under Cost Accounting Standards–4 or CAS-4. Wherever goods are transferred from one unit to another, the same are required to be valued as per CAS-4 issued by the Institute of Cost & Works Accountants of India, as adopted and notified by Ministry of Finance (Department of Revenue) CBEC Circular No. 692/8/2003–CX dated 13/02/2003. Further CAS-4 applies, when the goods are removed other than by way of sale or transfer to a third person. In the facts of the present case, the appellant have removed the goods to another unit for further manufacture by way of self-consumption. Under such facts and circumstances, the ld. Counsel states that in absence of any allegation in the said Show Cause Notice, it is vague and the appeal is fit to be

allowed. The ld. Counsel also relies on the ruling of Hon'ble Supreme Court in the case of Commissioner of Central Excise *Versus* Cadbury India Ltd. reported at 2006 (200) ELT 353 (S.C.) wherein it has been held that cost of production of captively consumed goods is to be determined strictly in accordance with CAS-4, as laid down by ICWAI.

5. Heard the ld. A. R. for Revenue, who has relied on the impugned order.

6. Having considered the rival contentions and on perusal of the facts on record, we find that there is no allegation in the Show Cause Notice that the appellant have valued their goods, transferred to other units, at a value lesser than the value as per CAS-4 standards. Accordingly, we hold that the Show Cause Notice is vague and is not maintainable. Accordingly, we set aside the impugned order and allow the appeal. The appellant shall be entitled for consequential benefits, in accordance with law.

(Dictated in Court)

Sd/-	**Sd/-**
(Anil G. Shakkarwar)	**(Anil Choudhary)**
Member (Technical)	**Member (Judicial)**

Ansari