

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 27th day of February, 2009

ORIGINAL APPLICATION NO.321/2007

CORAM :

HON'BLE MR.B.L.KHATRI, ADMINISITRATIVE MEMBER

Subhash Chand Sharma,
Inspector,
Central Excise Commissionerate,
Jaipur.

... Applicant

(By Advocate : Shri Rajendra Arora)

Versus

1. Union of India through
Chairman,
Central Board of Excise & Customs,
Ministry of Finance, Department of Revenue,
North Block,
New Delhi.
2. Chief Commissioner,
Central Excise, Jaipur Zone,
NCR Building, Statue Circle,
C-Scheme,
Jaipur.
3. The Commissioner,
Central Excise, Jaipur-I,
NCR Building, Statue Circle,
C-Scheme,
Jaipur.
4. Addl.Commissioner (P&V),
Central Excise Commissionerate,
NCR Building, Statue Circle,
C-Scheme,
Jaipur.

... Respondents

(By Advocate : Shri Kunal Rawat, Sr.Standing Counsel, with
Ms.Kavita Bhati)

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ORDER

PER HON'BLE MR.B.L.KHATRI

The applicant has filed this OA against the order of the revisionary authority dated 4.9.2006 (Ann.A/1), order of the appellate authority dated 16.6.2005 (Ann.A/2) as well as order of the disciplinary authority dated 31.3.2004 (Ann.A/3). The disciplinary authority, vide Ann.A/3, imposed upon the applicant a penalty of withholding of three increments of his pay without cumulative effect under Rule 11(iv) of the CCS (CCA) Rules, 1965. The appellate authority, vide Ann.A/2, reduced the said penalty to withholding of two increments of pay without cumulative effect. The revisionary authority, vide Ann.A/1, further reduced the penalty to withholding of one increment of pay without cumulative effect. Through this OA, the applicant has prayed for the following relief :

- "a) To set aside the order dated 31.3.2004 passed by the disciplinary authority and modify the order dated 16.6.2005 passed by the Appellate Authority and order dated 4.9.2006 passed by the Revision Authority inter-alia imposing penalty of withholding of one annual grade increment of pay without cumulative effect of the humble applicant.
- b) To direct the respondents to restore the basic pay as he would got but for the orders passed against him or modified on account of Memorandum dated 18.6.2003. The applicant should also be granted all other consequential benefits as he would have got but for the orders passed by the Disciplinary Authority and modified by the Appellate and Revision Authority.
- c) To direct the respondents to continue to pay the salary and grant the increment which he would have got but for these impugned orders."

2. Brief facts of the case are that disciplinary proceedings were initiated against the applicant, who is an Inspector of Customs and Central Excise, Jaipur, under Rule 14 of the CCS (CCA) Rules, 1965, vide memo dated 18.6.2003 (Ann.A/12) and on conclusion of the disciplinary proceedings, a penalty of withholding of three increments of pay without cumulative effect under Rule-11(iv) of the CCS (CCA) Rules, 1965, was

imposed upon him by the disciplinary authority vide order dated 31.3.2004 (Ann.A/3). Facts of the case are that a firm i.e. M/s Nupur International, Jodhpur, had presented two shipping bills bearing No.1953 and 1954 on 22.11.2002 for the export of wooden furniture under DEPB. These shipping bills were presented in Customs Division, Jodhpur, for supervision of stuffing of their export cargo in their factory premises. Examination and supervision of factory stuffing of these containers was assigned to the applicant by Shri H.D.Madan, Superintendent, and accordingly the applicant was issued two bottle seals for the purpose of sealing of the container. The disciplinary authority issued the charge memo dated 18.6.2003 (Ann.A.12) on the ground that the applicant while functioning as Inspector in the Customs Division, Jodhpur, during the year 2002, failed to maintain devotion to duty and acted in a manner unbecoming of a government servant inasmuch as he failed to examine the cargo and remain present during the course of factory stuffing of the export cargo of M/s Nupur International, Jodhpur, despite having been issued the Custom seals. Thus, he had contravened the provisions of Rule-3(1)(ii)&(iii) of the CCS (Conduct) Rules, 1964. After receipt of the bottle seals, the applicant was required to proceed for the factory premises of M/s Nupur International for examination of the export cargo intended to be stuffed in the containers. As per the instructions contained in public notice No.1/95 (Customs) issued by the erstwhile Customs and Central Excise, Collectorate, Jaipur, and Ministry's Circular No.6/2002-Customs dated 23.1.2002, the export goods are required to be stuffed and sealed in the presence of customs officers at the factory of manufacture and will be examined by the Inspector who will verify that the container is empty and thereafter get the aforesaid export goods stuffed into the container under his supervision and will seal the container with the customs bottle seal. However, in the case of container No.APMU 276569-8, the applicant failed to examine the cargo and remain present during the course of factory stuffing rather the container was stuffed in his absence.

3. The inquiry officer submitted his report (Ann.A/7), wherein he had stated that the charges levelled against the applicant are not proved. However, the disciplinary authority issued a show-cause notice giving reasons for disagreement with the inquiry report as per Ann.A/8 and then he imposed the penalty.

4. During arguments, learned counsel for the applicant mainly relied upon the contentions raised through the OA and inter-alia made the following submissions :

- i) That the applicant has not been charged for violation of any specific rule/procedure as per the charge-sheet/memo dated 18.6.2003 (Ann.A/12).
- ii) No action has been taken against the supervisory officer i.e. Superintendent [Shri H.D.Madan], who has been let off, and the applicant who was a subordinate official working under the over all supervision of Superintendent has been penalized.
- iii) There is no allegation that any revenue loss had been caused to the department or any undue favour had been shown to the party or the applicant had misused his official position.
- iv) Shri H.D.Madan, Superintendent, had stated before the inquiry officer that stuffing was postponed for the next day. He had also relied upon the letter (Ann.A/4), written by him to the Joint Commissioner, Customs, Jodhpur, wherein, in sub-para (i), it was stated that the party at S.No.3 viz. M/s Nupur International, though filed the shipping bills in the day but requested for the stuffing to be done on the following day.
- v) Shri Vikram Singh, CHA, in his statement [at page-53] has stated that he received telephonic information from Shri Mahendra, an employee of M/s Nupur International, that the goods had not so far been

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packed and labelled. He also stated that this fact was also brought to the notice of the applicant on telephone.

- vi) In the statement of Shri Mahendra Kumar dated 16.12.2003 [at page-55] it was specifically mentioned that he had inquired from Shri Mohan Das, an employee of Nupur International, whether packing and labelling work was complete, but he replied that the work of packing/labelling was in progress. At page-55 of the statement, it was also stated that how 14 cartons were loaded in the container and it was replied that in order to see the availability of space in the container, 14 cartons were placed in it by Shri Mohan Das.
- vii) The check memo fails to prove that 14 cartons were part of the lot intended to be stuffed in the container. The CBI had neither checked their serial number nor opened the cartons for matching the contents with the export documents. So, it cannot be concluded that the cartons were not placed in the container for checking the space availability. Actually, the cartons were placed only for checking the space availability as has been confirmed by the factory staff in inquiry.
- viii) Lastly, it is also contended that the bottle seals were in custody of the applicant and that customs seals were not recovered from the possession of the party or anyone else related to the party and it cannot be concluded that the export cargo could not be stuffed in the container without the seals having been affixed. All the witnesses confirmed that stuffing had commenced in the absence of the applicant.

4. Notice of this OA was given to the respondents, who have filed their reply opposing the claim of the applicant. Learned counsel for the respondents has mainly relied upon the reply as also the additional-affidavit filed in response to the rejoinder of the applicant, and inter-alia made the following submissions :

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i) That so far as the contents made in para (i) above, the same were not admitted and it was submitted that it has been clearly mentioned in para-4 of the Statement of imputation of misconduct in support of articles of charges framed against the CO (Annexure-II) that; "As per the instructions contained in public notice No.1/95 (Customs) issued by the erstwhile Customs and Central Excise, Collectorate, Jaipur, and Ministry's Circular No.6/2002-Customs dated 23.1.2002, the export goods are required to be stuffed and sealed in the presence of customs officers at the factory of manufacture and will be examined by the Inspector who will verify that the container is empty and thereafter get the aforesaid export goods stuffed into the container under his supervision and will seal the container with the customs bottle seal. It is pertinent to mention that Section-34 of the Customs Act, 1962 provides that goods not to be unloaded or loaded except under supervision of Customs officer. Export procedure has been defined in Chapter 3 of the CBEC's Customs Manual of Instructions. The last para of the above instructions stipulates that the above is the general procedure for export under EDI Systems. However, special procedures exist for specified schemes, details of which may be obtained from the Public Notice/Standing Orders issued by the respective Commissionerate. The relevant Public Notice issued in the matter is 1/95 (Customs) issued by the Collector, Jaipur, and violation of which has been mentioned in Annexure-II of the charge sheet.

ii) That so far as the contents made in para (ii) above, the same were not admitted and it was submitted that the defence is trying to club the word 'examination' with 'stuffing' by relying upon para (c) of the Public Notice No.1/95. It has been mentioned in the above public notice that the export goods will be examined by an Inspector of Central Excise under the Supervision of the Superintendent. The Inspector will verify that the container is empty and thereafter get the aforesaid

export goods stuffed into the container under his supervision and will seal the container with the Central Excise Seal. It is clear from the above that responsibility of examination lies collectively on the Superintendent and Inspector whereas Stuffing is to be supervised by the Inspector only. The Superintendent was required to be present during the examination of the goods as per norms prescribed by the Ministry vide Circular No.6/2002 - Customs dated 23.1.2002. Since in the instant case, no examination was conducted till visit of the CBI officers and stuffing work was being done, only Inspector was penalized. Had the team found the container fully loaded with export goods without presence of the Inspector, the Superintendent would have been charge-sheeted in that case. The case against the CO is regarding his absence during the course of stuffing and not during the examination. Further, examination can be done prior to start of stuffing of export cargo during its stacking position or during the stuffing by choosing export cargo randomly as per prescribed norms.

- iii) That so far as the contents made in para (iii) above, the same were not admitted and it was submitted that all the export goods are subject to some incentive under various scheme which is based upon description/ valuation of the goods. Therefore, if the officer assigned for the supervision work did not perform his duty, nobody would be able to verify the correctness of the description/value of the goods which may result revenue loss to the Government exchequer. Further, supervision work is also performed to ensure that no contraband goods would be concealed in the export cargo. Thus, not performing the supervision work can cause serious loss to the department.
- iv) That so far as the contents made in para (iv), (v) & (vi) above, the same were not admitted and it was submitted that it has been clearly mentioned in the surprise check memo dated 23.11.2002 of the CBI that; "presently

stuffing is taking place at Lalji Handicrafts, Prince Art Exporter and Nupur International". The defence has failed to explain as to what compelled Shri Madan to append his signature on the said memo if he was not in agreement with its contents. Further, the CO has also appended his signature on the surprise check memo and he also failed to explain that what compelled CO to append his signature on the said memo. Further, there is nothing on record which suggest that both Shri Madan and CO had retracted from appending their signatures on the surprise check memo dated 23.11.2002. Mere retracting during the course of enquiry and in the letter dated 23.7.2003 (after 8 months of the incidents) could not be given any credence.

- v) That so far as the contents made in para (vii) above, the same were not admitted and it was submitted that the defence itself is floating contradictory views in the matter. Had the 14 cartons were not the part of export cargo then how they can be used for checking the availability of space consumed in a line by putting them in the container. All the cartons which were required to be stuffed in the container APMU-276569-5 were of different size as evidence from the packing list No.2713/2002 dated 22.11.2002, if stuffed cartons were not part of this packing list then in such a case how the space would be measured correctly by putting different size cartons in a container. This clearly shows that this is an afterthought. Further, the above fact was also not disclosed to the CBI team at the time of preparation of the surprise memo dated 23.11.2002 on which CO has also appended his signature.
- vi) That so far as the contents made in para (viii) above, the same were not admitted and it was contended that availability of customs seals with the applicant had nothing to do with the process of stuffing rather the seals were to be put on the stuffed container. Therefore, this contention of the applicant is of no help.

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5. In the counter reply, learned counsel for the applicant relied upon the statements made before the inquiry officer, as reproduced at page-60 of the charge report. He has specifically relied on point No.8 and 12, which read as under :

"8. PW3 i.e. Shri H.D.Madan stated that he did not tell the CBI team that stuffing was taking place in M/s Nupur International at the relevant point of time.

12. It was also stated by PW3 i.e. Shri H.D.Madan that on the request of party stuffing was postponed for the next day."

Learned counsel for the applicant in rejoinder had also relied upon following finding of the inquiry officer :

- "i) During the course of oral proceedings it has been established that the work of packing and labeling of proposed export cargo was still in process when the CBI team visited the Unit.
- ii) It has been established that the CO has not directed any person of M/s Nupur International or CHA to start stuffing without his presence.
- iii) It has also been established that the CO has not given customs seal to any person of exporter or CHA.
- iv) It has also been established that the stuffing of the goods in the container had been postponed for next day i.e. 23.11.2002. Even the supervisory head i.e. Superintendent (Technical), Custom Division, Jodhpur, who issued the seal to the CO and who was also to supervise the said stuffing at M/s Nupur International, categorically stated that the said stuffing was postponed for the next day morning i.e. 23.11.2002."

6. I have heard learned counsel for the parties and perused the record. From perusal of the charge-sheet it is evident that the applicant has been charged for violation of instructions contained in Public Notice No.1/95, issued by the Customs & Central Excise Collectorate, Jaipur, as per CBEC's Customs Manual of Instructions. Learned counsel for the applicant had relied upon the charge-memo as also the disagreement note of

the disciplinary authority with the inquiry report of the inquiry officer, which reads as under :

"The findings of the inquiring authority that articles of charge framed against the CO vide memorandum dated 18.6.2003 are not proved having been found not agreeable to by the disciplinary authority it is expedient to record the reasons for such disagreement and the findings of the disciplinary authority on article of charge in the following manner :

- (1) The inquiry officer has failed to evaluate the fact that all the prosecution witnesses during the course of oral inquiry proceedings have confirmed the contents of the surprise check memo dated 23.11.2002 which proves beyond doubt that 14 cartons were found stuffed in the container and work of packing and labelling was in progress at the time of visit of CBI officials while the CO was not present at the factory premises of M/s Nupur International, Jodhpur.
- (2) The contention of the CO that stuffing was postponed for next day as the work of packing and labelling of the export cargo was not complete by that time and he had informed this fact to Shri Harjeevan Das Madan, Superintendent, is not correct. Had it been so, Shri Madan certainly would have informed the CBI officials about the same and CBI team would not have paid a visit at the factory premises of M/s Nupur International, Jodhpur. But such did not happen and CBI team paid a surprise visit to the premises of said factory. CBI officials had no idea about the place of stuffing as by that time the stuffing detailing register had not come into the possession of the CBI officials rather the same came into their possession after 11.20 PM of 22.11.2002, whereas the team reached the site at about 11.15 pm of 22.11.2002. This fact clearly

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indicates that the CO had not informed Shri Madan about the fact of postponement of stuffing of export cargo.

- (3) For arriving at the conclusion that articles of charge are not proved against the CO, the inquiry officer has relied upon the statements dated 19.11.2003 of Shri Madan, Superintendent. But statements of Shri Madan cannot be given any credence as the same are full of contradiction. On the one hand he put his signature on the surprise check memo dated 23.11.2002 confirming its contents while on the other hand during the course of oral inquiry he retracted from his earlier statements tendered before CBI but failed to explain that what compelled him to append his signature on the said memo when he was not agree with its contents.
- (4) The presence of 14 cartons in the container in itself proves that the party had started the work of stuffing and version of the defence witnesses namely Shri Vikram Singh and Shri Mahendra were nothing but an after thought as both of them were not present at the place of stuffing to look after the work and check the space availability. Moreover, as per surprise check memo the person present there did not confirm the version of both the witnesses. Had there been any direction regarding checking the availability of the space the person, namely Shri Mohan Das who was present there certainly would have told this fact to the CBI officials. Rather he told the search party that he had received a telephone call that work of stuffing was to be undertaken after visit of the officer as some officers had come from Jaipur.
- (5) The contents of the surprise check memo dated 23.11.2002 are correct as the CO himself has appended his signature on the same confirming its

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contents. Moreover, during the course of oral inquiry also the CO did not raise any question over the contents of the said memo.

- (6) The inquiry officer has accepted the contention of the CO that work of the stuffing was postponed for the next day after having a telephonic talk with Sh.Mahendra on 22.11.2002. But such an acceptance on the part of the inquiry officer is not correct in view of the fact that the CO had also contended that he had intimated this fact to Sh.Madan also, whereas such was not the case as discussed in para-2 above.
- (7) The fact that work of stuffing was going on in the night of 22.11.2002 at the time of visit of CBI team at the factory premises of M/s Nupur International, Jodhpur, is further corroborated from the fact that besides presence of 14 cartons in the container No.AMPU 276569-8, the work of packing and labelling was also in progress which has been confirmed by all the witnesses. This simply means that stuffing of the export cargo was intended on that particular night only for which simultaneous work of stuffing and packing & labelling was in progress."

Thus, the disciplinary authority held that all the articles of charge framed against the CO stand proved and it is established that by way of the above said acts of misconduct the CO has contravened the provisions of Rule-3(1)(ii) & (iii) of the CCS (Conduct) Rules, 1964.

- 7. In this connection, it is pertinent to reproduce the analysis and assessment of evidence as also the finding in respect of articles of charge mentioned in the inquiry report, which read as under:

"Analysis and assessment of evidence :

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The case in question involves two main issues. One issue is to decide as to whether the CO was negligent in the performance of his duty by remaining absent from the place of factory stuffing of the export cargo in containers. The other question that has to be decided is to ascertain as to whether the CO connived with the party to allow them stuffing in his absence and provided them the customs bottle seals. The evidences that have come out during the course of oral enquiry proceedings are being discussed below in order to find out as to whether factory stuffing of the cargo was in progress in absence of the CO and if so whether he had allowed the party to do so with an assurance to the effect that he would provide the bottle seals to them.

During the course of oral enquiry proceedings all the prosecution documents were exhibited. The surprise check memo dated 23.11.2002 states that when the CBI team visited the factory premises of M/s Nupur International, Jodhpur, one container was found to be in the process of being stuffed. The charged officer was not found present on the spot supervising the physical stuffing. This document also states that Shri Madan told CBI that stuffing was taking place in M/s Nupur International at the relevant point of time.

Public Notice No.1/95-Customs issued by the erstwhile Customs and Central Excise Commissionerate Jaipur and Ministry's Circular No.6/2002 Customs dated 23.1.2002 have been produced by the prosecution during the course of oral enquiry proceedings to prove that the export goods are required to be stuffed and sealed in the presence of Customs officer at the factory of manufacturer and will be examined by the Inspector who will verify that the container is empty and thereafter get the aforesaid export goods stuffed into the container under his supervision and will seal the container with the customs bottle seal. Shipping bill no. 1953 & 1954 have also been exhibited by the prosecution which prove that M/s Nupur International, Jodhpur had filed request for factory stuffing of the export cargo on 22.11.02. Bottle seals register was also produced by the prosecution which proves that two bottle seals were issued on 22.11.02 to the CO for the purpose of factory stuffing of the export cargo. As per the documents produced by the prosecution it is evident that request for factory stuffing of the export cargo was received from the party on 22.11.02 and bottle seals issued to the CO prove that he intended to supervise the factory stuffing that day. Surprise check memo dated 22.11.02 proves that 14 cartons were found loaded in one container when CBI team visited the factory.

The loading of 14 cartons in one container has been termed by the prosecution as commencement of stuffing of export cargo in the container and the CO has been charged with absence during the course of factory stuffing of the cargo while the CO has denied the charge.

The prosecution has produced nine witnesses in support of the charge while the CO has cross-examined them on the issue of his direction/permission to stuff the container in his absence. One thing was not explained in the surprise check memo is the whereabouts of the customs bottle seals issued to the CO. the other point that was not clarified in the surprise check memo was readiness of the cargo for being stuffed into the container. During cross-examination the CO has stressed on both these issues.

When examined by P.O. all the prosecution witnesses expect Shri Madan have fully agreed with the contents of surprise check memo. As per their version fourteen cartons were found/stuffed in the container when the CBI team visited the factory. PW, Sh. Ranjeet Kumar Goyal, TC has stated during cross examination that none of the staff of the factory had told the team anything to the effect that the container was being stuffed either on direction or by permission of the CO. This statement makes one thing very clear that the CO had not allowed the party to commence stuffing without examination in his absence. In reply to another question during cross-examination, the PW stated that all the cartons of the consignment were neither verified nor counted by the team. He further added that serial numbers of the cartons found lying in the container were neither verified nor tallied with the Shipping Bill/Packing List. In reply to another question the PW has stated that neither the owner of the factory nor any responsible person in charge of the stuffing affairs was available in the factory at the relevant point of time. As per the statement of this PW the bottle seal was not recovered from the factory or from the possession of any one related to the factory.

Deposition of this PW proves that the CO did not give the customs bottle seals to any one else and he had not asked the party to stuff the container in his absence. Though the question as to whether loading of 14 cartons in the container standing in the factory amounts to stuffing or not cannot be decided on the basis of the evidence of this PW yet it can be concluded that no responsible person on behalf of the exporter was present in the factory when the CBI team visited it.

Sh. Ramesh Chandra Kalia, PW2 has agreed to the contents of the surprise check memo but during the course of cross examination he has stated that Sh. Madan had not made any statement before CBI to the effect that stuffing was going on in the three factories at the relevant point of time. This statement of the PW indicates that there was some confusion or communication gap between Sh. Madan and the CBI team with respect to the fact of factory stuffing actually going at the relevant point of time. This PW has stated that the CBI team did not count the whole consignment that was proposed to be stuffed in the container. Evidence of this PW proves that the CBI team failed to ascertain the fact of readiness of the full cargo for

stuffing of the container in question. This fact is evident in view of the submission of the CO wherein he has stated that the cargo was under the process of packing. Evidence of this PW also makes it clear that Sh. Madan had no information with him which could indicate that factory stuffing was going on in the factory in question at that time. What the CBI team has written in the memo appears to be the result of misunderstanding regarding the actual stuffing and application for stuffing.

Sh.M.M.Ratnu inspector CBI who was also a witness to the proceedings has agreed to the contents of the check memo in question. However when cross examined by the C.O. he has stated that to the best of his memory some manager was present in the factory when they visited it but the memo does not bear any reference to such presence or even the name of any manager. When asked to state as to whether he had counted the cartons and checked their serial number with the shipping bill he admitted that only 14 cartons were counted by them but serial number were not checked. In reply to another question the PW stated that he did not seek any information from the manager present in the factory. The PW has also stated that they did not tally the whole consignment with the shipping bill and the packing list. Deposition of this PW proves that the CBI team did not ascertain the fact as to whether packing of the whole consignment was complete when they visited the factory. His deposition also proves that no responsible person to supervise factory stuffing on behalf of the exporter was present in the factory when the so called stuffing of the container was found to be going on.

Sh.Deepak Gaur, another PW who is also a CBI official has though agreed to the authenticity of the surprise check memo yet he has confirmed that the 14 cartons found in the container were not matched with the Shipping Bill and packing list. In reply to another question he stated that one responsible person was present in the factory but he failed to remember his name. This PW has also stated that he did not make any enquiry from the responsible person as he was busy in counting the cartons stuffed in the container. This submission of the PW appears to be only an after thought as it is almost impossible that any responsible person present in the factory would not be questioned by the CBI in an important matter being examined against the party. Counting of 14 cartons found stuffed in the container was hardly a 5-10 minutes' job and it could not have prevented the CBI team from questioning the factory official had he been present there. This PW has also confirmed that rest of the cartons proposed to be stuffed in the container were not examined by them which fact proves that the CBI team cannot confirm that the full cargo was ready for stuffing of the container.

Shri Vijay Singh Inspector CBI has agreed to the contents of the check memo in question but in cross

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examination he has confirmed that no instruction was given by the CO to the party permitting them to stuff the container in his absence. This PW has further confirmed that the assistant manager present in the factory at the time of CBI visit informed them that Shri Mahendra had informed them that stuffing would be done later on. During cross examination this PW has confirmed that they did not match the cargo with the Shipping Bill as the Shipping Bill was probably in the possession of Shri Mahendra who was not present on the spot. Regarding readiness of the cargo for stuffing the PW stated that almost the goods were ready to be stuffed. This statement proves that the cargo was not completely ready for stuffing otherwise Sh.Vijay Singh could not have used the word "almost" in his statement. Regarding availability of the bottle seal with the party this PW has confirmed that the seals were not recovered from the possession of any of the employees of the factory or from the factory premises. This submission of the PW proves that the CO had no intention to allow stuffing of the containers in his absence as the seals have not been recovered from the possession of the party.

Sh.H.D.Madan, Supdt, who was produced as a PW and who also accompanied the CBI team on 22.11.02 has disagreed with the contents of the surprise check memo. He has clearly stated that packing of the cargo intended to be stuffed in the containers was going on at the time CBI team reached the factory. He has also clarified that he had not told CBI that stuffing was taking place that day in the factory premises of M/s Nupur International Jodhpur. This PW has also disagreed with his statement dt.30.11.2002 recorded by CBI and produced as a prosecution document during oral enquiry proceedings. AS per the statement he had told CBI officials that stuffing was going on in the factory of M/s Nupur International while during the course of oral inquiry proceedings he has stated that he tendered no such statement before CBI officials as they did not pose any such question to him. During cross-examination this PW has stated that nothing came to their notice at the time of factory visit to indicate that the CO had allowed the party to stuff the container in his absence. Regarding readiness of the goods to be exported the PW has stated that the goods were not ready for stuffing as packing of the cargo was still going on when the CBI visited the factory. He also confirmed that the CBI team did not examine the entire cargo intended for stuffing in the container. During the course of examination this witness has stated that two containers of this unit were marked to the CO on the relevant day but on request of the party, stuffing of both the containers was postponed for the next day as the goods to be stuffed were not ready for stuffing. Statement of this witness makes the picture very clear. His statement shows that though initially request by the party for stuffing of containers on that day was received but due to the non-completion of packing of the goods the stuffing was postponed for the next day on

request of the party. This statement of the PW makes a clear difference between the request for stuffing and actual stuffing. His statement proves that request for stuffing was received on 22.11.2002 but actual stuffing was postponed for the next day. As per this statement the CO was not required to visit the factory on 22.11.2002 as the exporter himself had requested for postponement of the stuffing.

The prosecution produced Shri Raghuvir Singh, Constable, Shri Pokar Ram, Constable and Sh. Bhagirath Singh, Head Constable, CBI Jodhpur as witnesses. They were examined and cross-examined during the course of oral enquiry proceedings. All of them have agreed to the contents of the surprise check memo but during cross-examination Shri Raghuvir Singh stated that labour was involved in packing of the cargo when they visited the factory while Shri Bhagirath Ram stated that 14-15 cartons were found in packed condition while rest of the cargo was still under the process of being packed.

The CO has presented Shri Vikram Singh, CHA as a defence witness. During his deposition he has stated that while filing the Shipping Bills for factory stuffing he had not ascertained from the factory the factual position regarding readiness of the goods to be exported. He has explained that Sh. Mahendra Supervisor of the factory had assured him that the goods would be packed by late evening and on the basis of that assurance he had planned the stuffing for that day. The DW has confirmed that on instruction from the CO he had telephonically enquired from the factory the status of readiness of the goods to be exported and availability of the containers and in response Sh. Mahendra Supervisor had informed him that the goods were undergoing the process of packing and labelling. He has further stated that Sh. Mahendra requested the CO to stuff the container in the morning of the next day. On examination by IO, the DW stated that he had also informed the CBI officers that stuffing of the containers was rescheduled for the next day. He has further stated that the 14 cartons were put in the container only for the purpose of ascertaining the availability of the space in the container vis-à-vis the number of cartons planned to be stuffed for export. Statement of this witness reveals that stuffing of the containers had already been postponed for the next morning before CBI officials who reached the factory. Moreover, no stuffing had commenced in the factory when the CBI official visited, rather the cargo was still under the process of being packed and labelled. The 14 cartons found in the container were placed there not as part of the process of stuffing rather it was an exercise undertaken to ascertain the space availability.

Sh. Mahendra Kumar Supervisor of the unit was also produced as a defence witness. He has categorically stated that he had not instructed Sh. Mohan Das to stuff the container. He has also stated that at about 1830

hrs., he had talked to the CO over phone and it was decided that stuffing should be postponed for the next day in the morning in view of the fact that labelling and marking of the goods had not been completed by them. When cross-examined by the PO the witness stated that the 14 cartons in question were placed in the container in order to ascertain as to whether space available in the container would be sufficient to hold the full cargo proposed to be loaded in the container. Statement of this witness also proves that the stuffing had already been postponed for the next day before arrival of the CBI team.

The CO has produced a document in his defence in order to prove that the charges framed against him are not sustainable. The document in question is a letter dated 23.7.2003 from Shri H.D.Madan Superintendent addressed to the Joint Commissioner, Customs, Jodhpur. This is an explanation given by Shri Madan in the matter of failure to supervise subordinate staff. In Para No.3 of the letter the officer has clearly stated that the request of the party for factory stuffing was received on 22.11.2002 during officer hours but the party informed that the work of stuffing would be undertaken the next day. In Para 7 of the letter the officer has clearly stated that no stuffing in respect of the unit in question was pending or due to be done on 22.11.2002. Shri Madan has also corroborated the contents of this letter during the course of oral inquiry proceedings.

During the course of examination under rule 14-(18) of the CCS (CCA) Rules 1965 the CO, has stated that though he had received the customs seals on 22.11.2002 at 1810 hrs yet ye could have proceeded for examination and supervision of the factory stuffing only after the party provided him a vehicle for the purpose. He has further stated that after receipt of the seals he asked the CHA to enquire from the exporter as to whether the goods were ready for stuffing and the container had arrived. As per his statement the CHA informed him that packing of the cargo might take time till midnight and in view of this position the stuffing was postponed for the next day on request of the CHA. He had further submitted that he immediately informed the postponement to Shri Madan and thereafter he proceeded for his residence. He has also clarified that he kept the customs seals in his own possession for stuffing of container on the next day i.e. 23.11.02.

The CO's version that there was no question of his directing the party to stop stuffing is correct. During the whole inquiry proceedings it has been observed that the CO had neither permitted stuffing in his absence nor issued direction to stop stuffing. The CO has also added that the Inspector has to ensure before commencing the stuffing that the container is empty and accordingly he would have got the 14 cartons unloaded from the container on his proposed visit in the next morning. This

version of the CO is also acceptable because the Inspector has to ensure before stuffing that the container is empty and therefore even if the party kept 14 cartons in the container, the CO would have asked them to unload the same before he could proceed to examine the cargo and start stuffing thereafter. Moreover had the CO directed them to stop stuffing he could also have asked the party to unload the 14 cartons and this process would not have taken time of more than 5-10 minutes. This proves that neither the CO allowed the party to commence stuffing in his absence nor the 14 cartons found placed in the container were placed there as part of the process of stuffing.

Findings in respect of the article of charge :

The article of charge framed against the CO states that he failed to examine the cargo and remain present during the course of factory stuffing of the export cargo of M/s. Nupur International Jodhpur despite having been issued the customs seals. I find that there is no denial of the fact that the customs seals were issued to the CO on 22.11.2002 for the purpose of factory stuffing and the same were kept in the possession of the CO when CBI officials visited the factory. In fact the issuance of customs seals to him for stuffing on 22.11.02 cannot prove that there was failure or negligence on the part of CO.

The evidence produced during the course of oral inquiry proceedings both by the prosecution and the defence witness clearly proves that stuffing of the cargo was postponed for the next day and therefore the CO was not required to visit the factory on 22.11.2002. Even the prosecution witness Shri Madan has clarified this position. The fact that packing of the cargo was still going on has been corroborated even by the prosecution witness and in view of this fact as well as the statement of defence witnesses placing of 14 cartons in the container cannot be termed as commencement of stuffing of the export cargo. Even if it is assumed by stretching of imagination that stuffing had started the CO cannot be blamed for the same, as he had not permitted the party to stuff the container in his absence. There is nothing on record to indicate collusion on part of the CO because customs seals were in the possession of the CO and even the prosecution witnesses have stated that customs seals were not found in the possession of the party. Stuffing of the cargo without seals cannot be completed and therefore there is no indication of the CO having allowed the party to stuff the container in his absence because in such a case he would have certainly handed over the bottle seals to the party which is not the case here.

In view of the above, I find that :

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- (i) During the course of oral proceedings it has been established that the work of packing and labelling of proposed export cargo was still in process when the CBI team visited the Unit.
- (ii) It has been established that the CO has not directed any person of M/s Nupur International or CHA to start stuffing without his presence.
- (iii) It has also been established that the CO has not given customs seal to any person of exporter or CHA.
- (iv) It has also been established that the stuffing of the goods in the container had been postponed for next date i.e. 23.11.02. Even the supervisory head i.e. Superintendent (Technical), Custom Division, Jodhpur, issued the seal to the CO and who was also to supervise the said stuffing at M/s Nupur International, categorically stated that the said stuffing was postponed for the next day morning i.e. 23.11.02.

Thus, when the stuffing work had been postponed for the next day, the question of examination of the cargo by CO and remaining present on 22.11.02 for stuffing purpose in the said factory does not arise and as such his failure to maintain devotion to duty also does not arise. Therefore, the charges framed against the CO vide memo dated 18.6.03 have not been established and have not substance."

8. Before arriving at the conclusion, it is also considered necessary by me to reproduce the relevant part of Public Notice No.1/95, dated 12.1.95, which reads as under :

"(c) The export goods will thereafter be examined by an Inspector of Central Excise under the Supervision of the Superintendent. The Inspector will verify that the container is empty and thereafter get the aforesaid export goods stuffed into the container under his supervision and will seal the container with the C & Central Excise Seal."

From perusal of the aforesaid rule, it is evident that the Inspector was entrusted with the work of verifying that the container was empty and was also responsible for getting the aforesaid export goods stuffed into the container under his supervision. However, the Inspector was required to work under the over all supervision of the Superintendent of Customs and Central Excise.

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9. From perusal of the surprise check memo of the CBI, it is evident that Shri H.D.Madan, Superintendent, had put his signature on it. However, before the inquiry officer and also in the letter Ann.A/4, written to the Joint Commissioner, he had stated that stuffing of export goods was postponed for the next day. Shri Vikram Singh, CHA, and Shri Mahendra Singh, employee of M/s Nupur International, had stated that goods were being packed and labelled and this fact was also brought to the notice of the applicant. Shri Mohan Das, who was responsible for packing and labelling work, had also replied that 14 cartons were loaded by him in the container in order to check the availability of space.

10. From perusal of the facts of the case, it is not proved that work of stuffing of goods had started. Even if it is conceded that the work of stuffing of goods had started and the Inspector had violated the procedure laid down by Public Notice No.1/95 issued by the Collector, Customs and Central Excise, even then I am of the opinion that in view of Govt. of India's instruction No.(3) below Rule-11 of the CCS (CCA) Rules, no action could have been taken until and unless it is proved that the CO had misused his official position or to abet and connive at improper and illegal acts. Para-2 of the said instructions reads as under :

"2. While reiterating the instructions issued in the MHA, OM referred to above, it is again stressed that a Government servant must be impartial and must not show undue favour or ill-will in his official dealings. If a Government servant is found to misuse his official position or to abet and connive at improper and illegal acts, he would render himself liable for disciplinary action for violation of Rule 3 of CCS (Conduct) Rules, 1964."

11. Learned counsel for the respondents had vehemently argued that the applicant failed to supervise the work of stuffing because he was not in a position to verify the correctness of the description/value of the goods which could have resulted in revenue loss to the government exchequer. The supervision work is also performed to ensure that no contraband goods would be concealed in the export cargo.

Thus, not performing the supervision work could cause serious loss to the department. No such plea had been taken in the reply and no such charge is mentioned in the charge-sheet or the penalty order. Thus, action of the CO has not resulted in any revenue loss or rendering undue advantage to the party.

13. In such circumstances, I find that the disciplinary authority had not brought any fact on record whereby non-observation of rules of stuffing had caused any revenue loss to the department or had resulted in rendering undue advantage to the Company i.e. M/s Nupur International.

14. In view of the detailed reasons given by the inquiry officer in the inquiry report, as per page 64 to 72 of the OA, and also in view of the factual position explained this order, I am of the opinion that no case for imposing of penalty upon the applicant is made out. Therefore, order of the revisionary authority dated 4.9.2006 (Ann.A/1), order of the appellate authority dated 16.6.2005 (Ann.A/2), order of the disciplinary authority dated 31.3.2004 (Ann.A/3) as well as the charge memo dated 18.6.2003 (Ann.A/12) are quashed and set aside. In the result, the OA is allowed with no order as to costs.

B.L.KHATRI
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MEMBER (A)

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