



OFFICE OF THE COMMISSIONER  
CUSTOM HOUSE, KANDLA  
NEAR BALAJI TEMPLE, NEW KANDLA  
Phone : 02836-271468/469 Fax: 02836-271467

A	फाइल संख्या/ File No.	S/7-37/CB/2016
B	आदेश में मूल सं./ Order-in-Original No.	KND-CUSTM-000-COM-13-2018-19
C	पारितकर्ता/Passed by	<b>SHRI SANJAY KUMAR AGARWAL,</b> PRINCIPAL COMMISSIONER OF CUSTOMS, KANDLA
D	आदेश की दिनांक/Date of order	01.01.2019
E	जारी करने की दिनांक/Date of issue	01.01.2019
F	आदेश एवं दिनांक /Order& Date	F. No. S/7-37/CB/2016 dated 01.05.2018
G	सीईएसटीएट आदेश एवं दिनांक CESTAT Order & Date	A/12130/2018 dated 08.10.2018
H	नोटीसी पार्टी /Noticee/Party	M/s. United Safeway India Private Limited, Gandhidham

1. यह अपील आदेश संबन्धित को नि शुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

2. Any person aggrieved by this Order - in - Original may file an appeal under Section 129A(1)(a) of Customs Act, 1962 read with Rule 6(1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A.-3 to:

**"केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील अधिकरण"**

पश्चिम क्षेत्रीय बेंच

द्वितीय तल बहुमाली भवन आसरवा ,

गिरधर नगर ब्रिज के समीप ००४ ३८० -अहमदाबाद ,गिरधर नगर ,

**Customs Excise & Service Tax Appellate Tribunal,  
West Zonal Bench,**

2nd Floor, Bahumali Bhavan Asarwa,

Nr. Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad - 380004

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within sixty days from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 2/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-

Appeal should be accompanied by a fee of Rs. 2/- under Court Fee Act it must accompanied by -

(i) उक्त अपील की एक प्रति और  
A copy of the appeal, and

(ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं.-6 में निर्धारित 5.00/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए ।  
This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5.00/- (Rupees Two only) as prescribed under Schedule - I, Item 6 of the Court Fees Act, 1870.

5. अपील जापान के साथ इयूटि/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये ।  
Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

6. अपील प्रस्तुत करते समय, सीमा शुल्क नियम (अपील), 1982 और सीमा शुल्क अधिनियम, 1962, के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए ।  
While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्कका %7.5 भुगतान करना होगा।

An appeal against this order shall lie before the Appellate Authority on payment of 7.5% of the duty demanded wise duty or duty and penalty are in dispute, or penalty wise penalty alone is in dispute.

## **BRIEF FACTS OF THE CASE:**

This is a case of *de-novo* adjudication consequent to the order passed by Hon'ble CESTAT, Ahmedabad vide its Order No. A/12130/2018 dated 08.10.2018 under Section 129-A(4) of the Customs Act, 1962, arising out of Appeal No. C/11859/2018-DB filed by the Custom Broker M/s United Safeway India Private Limited, against the Order F. No. S/7-37/CB/2016 dated 01.05.2018 passed by the Commissioner of Customs, Custom House Kandla.

**2.** M/s United Safeway India Private Limited, New No. 07, Old No. 82, Ground Floor, 5<sup>th</sup> Crossway, Najareddy Colony, Murugesh, Bengaluru – 560017, (*Local Business Premises – 210/211, Riddhi Siddhi Arcade, Plot No. 13, Sector -8, Gandhidham-370201*) (hereinafter also referred to as 'USIPL' or 'the CB') were granted permission to work as Custom Broker under Regulation 7(2) of CBLR, 2013 ( now regulation 7(4) of CBLR,2018) on 08.09.2016 by the Commissioner of Customs, Custom House Kandla vide F.No. S/7-37/CB/2016 on the strength of their Parent Custom Broker license NO. CUS/BLR/CB/06/2016 dated 06.07.2016 (PAN No. AABCU1155A) valid upto 05.07.2026 issued by the Commissioner of Customs , Bangalore. The said permission is valid upto 05.07.2026 i.e. till the validity of the parent license.

**3.** The Special Intelligence & Investigation Branch (SIIB), Kandla has booked a case of over valuation against the Exporter M/s. Haresh Fashion, Surat in respect of Shipping Bill No. 6293292 and 6293441 both dated 25.05.2017, claiming benefits under Drawback, Rebate of State Levies (ROSL) and Merchandise Exports from India Scheme (MEIS). After completion of investigation, a Show Cause Notice No. S/43-01/SIIB/2017-18 dated 28.11.2017 was issued by the Additional Commissioner, Custom House Kandla to Shri Balaji Babu Naidu, Director of M/s United Safeway India Private Limited ( Co-noticee in the SCN) for the penal action under Section 114(iii) of the Custom Act,1962.

**3.1** It is brought out in the SCN dated 28.11.2017 that it appeared that M/s. United Safeway India Private Limited, Gandhidham, had knowingly concerned themselves in attempting to export highly overvalued Woven Girl Fancy Frocks-MMF in the name of M/s Haresh Fashion, Surat on the basis of false documents. They knowingly abetted in the attempt of illegal export by way of filing the Shipping Bill No. 6293292 and 6293441 both dated 25.05.2017 in respect of over-valued goods. It appeared they were instrumental in the attempt of export of overvalued goods to claim undue higher amount of drawback frequently. They have admitted that they had not verified the antecedent of the exporter and had not obtained any proper authorization from the exporter. Investigation revealed that they were involved in dubious activities in doubtful manner. They were receiving documents from Shri. Kaustubh Pareek, employee

of M/s. A V Joshi & Co., instead of exporter itself and were filing same with the Kandla Customs. Thereby, they failed to comply the obligation given under regulation 11(a), (d), (e), (f) and (n) of CBLR,2013 ( now regulation 10 (a), (d), (e), (f) and (n) of CBLR,2018 }.

**3.2** In view of the above, the CB - M/s. United Safeway India Private Limited Gandhidham was prohibited by the Commissioner of Custom, Custom House Kandla vide Order dated 01.05.2018 under Regulation 23 of the Custom Brokers Licensing Regulation,2013 (now regulation 15 of CBLR,2018), from transacting their business at Custom House Kandla and other ports under jurisdiction of this Commissionerate.

**3.3** On being aggrieved from the impugned order dated 01.05.2018; the CB has filed appeal before the Hon'ble Tribunal, Ahmedabad. CESTAT, Ahmedabad vide Order No. A/12130/2018 dated 08.10.2018 set aside the impugned order and remanded the matter back to adjudicating authority to decide a fresh after giving sufficient opportunity of the personal hearing to the CB.

#### **4. PERSONAL HEARING:**

**4.1** In pursuance of Hon'ble Tribunal Order No. A/12130/2018 dated 08.10.2018, the Custom Broker - M/s United Safeway India Pvt. Ltd., Gandhidham was granted personal hearing on 06.12.2018. Shri Vikas Mehta, the authorized representative of the Custom Broker appeared for Personal Hearing. During the course of PH, he stated that the CB was prohibited to work in Kandla since April,2018. As per new Regulations prohibition can be maximum for 1 Month. Therefore, he requested that prohibition may be lifted.

#### **5. DEFENCE REPLY:**

**5.1** Shri Balaji Babu Naidu, Director of M/s United Safeway India Private Limited, Gandhidham has filed their defence reply and inter-alia submitted that;

(i) On 01.05.2018, they were prohibited to transact business at Custom House, Kandla for contravention of Regulation 11(a),(d),(e),(f) and (n) of CBLR,2013.Hon'ble Tribunal Ahmedabad passed Order No. A/12130/2018 dated 08.10.2018, set aside the prohibition order and remanded the case back for a fresh decision.

(ii) On the basis of the said prohibition order, Hon'ble Commissioner of Customs, Bengaluru issued Show Cause Notice bearing C.No. VIII/13/03/2016-City-Cus-Tech., dated 02.08.2018 asking them to show cause as to why Custom Broker License No. BLR/CB/06/2016 issued to them

should not be revoked under Regulation 14 of CBLR,2018, security furnished by them should not be forfeited under the said Regulation and penalty should not be imposed on them in terms of Regulation 18 of CBLR,2018.

(iii) The Show Cause Notice issued by Bengaluru Commissionerate not only alleged contravention of Regulation 11(a), (d), (e), (f) and (n) of CBLR,2013 (by making reference to corresponding provisions of CBLR,2018) since invoked in the prohibition order but also went a step ahead and alleged contravention of Regulation 17(9) of erstwhile CBLR,2013, which, as such was not alleged or held against them in the prohibition order.

(iv) The proceedings initiated by the Licensing Authority at Bengaluru under the provisions of Regulation 14, 17 and 18 of CBLR,2018 read with corresponding provisions of CBLR,2013 based on which prohibition order was issued at Kandla, are already in progress before the Licensing Authority at Bengaluru.

(v) In the case involving another Custom Broker, namely, M/s. HMT Clearing Agency, Jamnagar, the prohibition order was issued by Mundra Commissionerate on 08.11.2017 during the currency of CBLR,2013, was lifted by Hon'ble Commissioner of Customs, Mundra by order dated 27.06.2018.

(vi) The facts involved in their case are identical to the case of M/s. HMT Clearing Agency inasmuch as in their case also, pursuant to prohibition order issued by Kandla, proceedings under CBLR,2018 for revocation of license are underway (at Bengaluru) and the period of prohibition has already exceeded one month as stipulated in proviso to Regulation 15 of CBLR,2018.

(vii) In view of above, they have requested to lift the prohibition order against the operation of their CB license at Custom House, Kandla and other ports. They undertake to remain vigilant and fully compliant with the requirements of CBLR,2018 in future.

## **6. DISCUSSION AND FINDINGS:**

**6.1** I have gone through the records of the case, the impugned Show Cause Notice dated 28.11.2017, Prohibition Order dated 01.05.2018, written as well as oral submissions on record made during the present adjudication proceedings.

**6.2** The Hon'ble Tribunal, Ahmedabad set aside the impugned order and remanded the matter back to decide a fresh after giving sufficient opportunity

of the personal hearing to the CB. Pursuant to Hon'ble Tribunal, Ahmedabad Order personal hearing was granted to the Custom Broker.

**6.3** I find that the Custom Broker – M/s United Safeway Private Limited have failed to comply the obligation given under regulation 11(a), (d), (e), (f) and (n) of CBLR,2013 (now regulation 10 (a), (d), (e), (f) and (n) of CBLR,2018 ). In pursuance of this, the CB was prohibited by the Commissioner of Custom, Custom House Kandla vide Order dated 01.05.2018 under Regulation 23 of the Custom Brokers Licensing Regulation,2013 (now regulation 15 of CBLR,2018), from transacting their business at Custom House Kandla and other ports under jurisdiction of this Commissionerate.

**6.4** I find that based on the above prohibition order dated 01.05.2018, the parent Commissionerate of the Custom Broker i.e. Commissioner of Customs, Bengaluru has initiated proceedings against the CB under regulation 14, 17 & 18 of CBLR,2018 (formerly 18, 20 & 22 regulation of CBLR,2013) and served a Show Cause Notice bearing C. No. VIII/13/03/2016-City-Cus-Tech., dated 02.08.2018 to the CB and further enquiry against the said CB is underway.

**6.5** Now, the fresh order is to be passed under the CBLR,2018 which have been issued in suppression of the CBLR,2013. The Proviso to regulation 15 of Custom Brokers Licensing Regulations,2018 prescribes that the Principal Commissioner or Commissioner of Customs **prohibit any Customs Broker from working in one or more sections of the Customs Station, if they has not fulfilled his obligations as laid down under regulation 10 in relation to work in that section or sections: maximum for one month.**

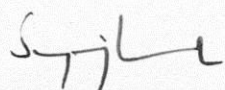
**6.6** I find that in the instant case the Custom Broker M/s United Safeway India Private Limited has been prohibited to transact business at Custom House Kandla and other ports under jurisdiction of Kandla Commissionerate since from 01.05.2018 (more than six month).

**6.7** In view of the above, I am of the view that the CB can be allowed to transact their business at Custom House Kandla and other ports under the Jurisdiction of Kandla Commissionerate, as the enquiry proceedings against the CB has been initiated by the parent Commissionerate under CBLR,2018 and also the period of prohibition has exceeded one month as stipulated in Regulation 15 of CBLR,2018. However, the CB is cautioned to be more careful in future and adhere the obligation under CBLR,2018.

7 Accordingly, pursuant to Hon'ble CESTAT, Ahmedabad Order dated 08.10.2018 , I pass the following order;

**ORDER**

I hereby lift the prohibition imposed vide Order dated 01.05.2018 and the Custom Broker – M/s United Safeway India Private Limited is allowed to transact their business at Custom House, Kandla and the other ports in the jurisdiction of the Commissionerate with immediate effect, subject to further outcome of the proceedings initiated by the Commissioner of Custom , Bengaluru.

  
**(Sanjay Kumar Agarwal)**  
Principal Commissioner

**BY SPEED POST/BY HAND**

F.No. S/7-37/CB/2016

Kandla, Dated : 01.01.2019

To  
**M/s. United Safeway India Private Limited,**  
210, Riddhi Siddhi Arcade,  
Plot No. 13, Sector-8,  
Gandhidham.

Main Office:  
New No. 07, Old No. 82,  
Ground Floor, 5<sup>th</sup> Crossway,  
Najareddy Colony,  
Murugesh, Bengaluru – 560017,

Copy to:

1. The Chief Commissioner of Customs, Ahmedabad Zone, Ahmedabad.
2. The Commissioner of Custom, Custom House Mundra.
3. The Assistant/Deputy Commissioner, Office of the Commissioner of customs, City Commissionerate, Central Revenue Building, Queen's Road, Bengaluru- 560 001.
4. EDI Section (Custom House Kandla) for necessary action.
5. Notice Board, Custom House, Kandla.
- ✓ 6. Guard File