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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 28th August, 2025

+ **W.P.(C) 13092/2025 & CM APPL. 53630/2025**

UDAY JAIN & ANR.

.....Petitioners

Through: Mr. Satvik Verma, Adv.
versus

ADDITIONAL COMMISSIONER CUSTOMS AIR CARGO AND
IMPORT & ANR.Respondents

Through: Mr. Harpreet Singh, SSC

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE SHAIL JAIN

JUDGMENT

Prathiba M. Singh, J.

1. This hearing has been done through hybrid mode.

CM APPL. 53631/2025 (for exemption)

2. Allowed, subject to all just exceptions. The application is disposed of.

W.P.(C) 13092/2025, CM APPL. 53630/2025

3. The present writ petition has been filed by Mr. Uday Jain, who is the proprietor of M/s Dhoomimal Art Gallery, and his employee Mr. Nixit Kothari. The petition has been filed challenging the impugned order dated 23rd July, 2025 passed by the Office of the Principal Commissioner of Customs (*hereinafter, 'the Adjudicating Authority'*).

4. There are interesting sets of facts which have given rise to the present case. An artwork, namely- "The Scarecrow", which is admittedly created by



Late Shri B.C. Sanyal, who is a well acclaimed artist, is the subject matter of this petition.

5. The background giving rise to the case is that way back in 1972 the said artwork created by Mr. Sanyal. However, at some unknown point in time it appears to have been removed from India.

6. The Petitioner, who is an art gallery owner, now seeks to import the same *vide* bill of entry number 958966 dated 9th January, 2024 (*hereinafter, 'the bill of entry'*). As per the said bill of entry, the import was taking place from Dubai. The value of the artwork, as declared during the import, in the bill of entry is 200 USD.

7. However, the case of the Customs Department is that the said artwork is actually from Lahore in Pakistan and its value is of Rs.30 lakhs as per the Report from an art valuer. The Customs has accordingly demanded the following amounts in the impugned order, for releasing the said artwork.

“ORDER

21. In view of the above, I pass the following order:-

a. I reject the classification of the impugned goods as declared under CTH 97019100 and re-classify under CTH 98060000 in terms of Section 17 (4) of the Customs Act, 1962.

b. I reject the declared value of the impugned painting Rs 20,409.56 as mentioned in the import documents under Rule-12 of CVR-2007 and re-determine to Rs 30,00,000/- in terms of Section 14 of the Customs Act, 1962 read with rule-9 of CVR-2007.

c. I order to confiscate the goods having re-determined assessable value of Rs.30,00,000/- under the provisions of Section 111 (m) of the Customs Act, 1962 read along with Section 124 of the Customs Act, 1962 with an option to redeem the goods on payment



of Redemption Fine of Rs. 30,000/- under Section 125 of the Customs Act, 1962 in lieu of confiscation of the said misclassified and undervalued goods.

d. I determine the total differential duty amounting to Rs 83,23,037/--(Rupees Eighty Three Lakh Twenty-Three Thousand Thirty Seven only) under Section 28 (4) along with interest under Section 28AA of the Customs Act, 1962 and the customs duty amounting to Rs 4,963/- already paid in the subject BoE is appropriated.

e. I impose a penalty of Rs 83,23,037/- upon Mis Dhoomi Mal Gallery under Section 114A of the Customs Act, 1962.

f. I impose a penalty of Rs 1,00,000/- upon Mis Dhoomi Mal Gallery under Section 114AA of the Customs Act, 1962.

g. I impose a penalty of Rs 50,000/- upon Shri Nixit Kothari, Sales Manager of Mis Dhoomi Mal Gallery under Section 117 of the Customs Act, 1962, for abetting the impugned import.”

8. Mr. Satvik Verma, Id. Senior Counsel submits that in the impugned order, it is clearly recorded that the artist Mr. Sanyal is a Padma Bhushan awardee and the daughter of the artist, Ms. Amba Sanyal, had given a statement that the artwork was created in India. The circumstances under which the artwork may have been removed out of India is unknown.

9. The Petitioner, being an art gallery owner, had identified the artwork and had entered into a transaction for import of the same. Given that the art work is not in a perfect condition and requires substantial restoration work, the value of the art work was declared as 200 USD.

10. It is submitted on behalf of the Petitioner that the country of origin of artwork in this case is not Pakistan, as it is being imported from Dubai. In



addition, it is also argued that the declared value of the artwork ought to be accepted by the Customs Department and if the same is not being accepted in terms of Rule 12 of the Customs Valuation (Determination of Value of imported goods) Rules, 2007, the Department had to proceed in a sequential manner, which also has not been done.

11. Ld. Counsel for the Customs Department, on the other hand, firstly objects to the writ petition being entertained on the ground that the impugned order is an appealable and a well-reasoned order, therefore, the Petitioner should be made to avail of the Appellate remedy. Thus, the present writ petition shall not be entertained at the outset on this ground itself.

12. In any case, he further submits that the tube in which the artwork is imported itself reveals that the same comes from Lahore though being imported into India from Dubai.

13. Ld. Counsel for the Respondent Department thus submits that the valuation of the artwork is also done by the valuer and thus, the impugned order, does not warrant any interference.

14. The Court has heard the submissions made and has considered the matter.

15. The first and foremost fact in the present case is that it is an admitted position on record that the artwork is one, which was created by Late Shri B.C. Sanyal, who was an acclaimed artist in India. Late Shri B.C. Sanyal is stated to be one of the founders of the Lahore College of Fine Arts which was founded before Partition.

16. The bill of entry itself reveals that the import is being effected from



Dubai, but the impugned order records that the packaging material reveals that the same is from Lahore, Pakistan and, thereafter through Dubai, the import is being effected.

17. The impugned order has been perused by this Court and the same clearly records that there is no conclusive evidence to show that the painting was made in Pakistan. The relevant portion of the impugned order reads as under:

“20.2 Origin: It is clear from the written submission of the importer that BC Saniyal was a renowned Indian painter and his daughter in her written letter cleared it that the painting is made in India in the year 1972. Furthermore, there is no conclusive evidence in the SCN that the painting was made in Pakistan. Therefore, the origin of the painting is not necessarily Pakistan. However, the classification under CTH 98060000 covers: “All goods originating in or exported from the Islamic Republic of Pakistan”. In this case, the origin of the painting is not conclusively Pakistan but it is pertinent to decide whether the painting was exported from Pakistan and was routed through Dubai to India deliberately to avoid payment of Customs Duty @ 200% leviable under CTH 98060000.”

18. The question therefore, that arises for consideration of this Court is three-fold:

- (i) Whether the country of origin given by the Petitioner deserves to be accepted?
- (ii) Whether the valuation that has been done by the valuer is correct and proper? and
- (iii) What would be the terms on which the artwork deserves to be



released?

19. Before this Court proceeds to decide this matter, the Customs Department ought to be given an opportunity to raise its objection and file a counter affidavit. However, the Court has considered two facts:

(i) Firstly, that the artwork is an old artwork of Late Shri B.C. Sanyal, which, if allowed to continue to lie with the Customs Department, has a potential of being damaged further and not preserved properly.

(ii) Secondly, the Court has also *prima facie* perused the report of the valuer, where substantial difference exists between the valuation given to the present artwork and to earlier artworks of the same artist, which have been sold in the market.

20. Thus, *prima facie*, the amount of Rs.30 lakhs could be a figure which the valuer arrived at on an approximation basis without any concrete evidence to support the same.

21. Under such circumstances, *prima facie*, the Court is of the opinion that since the Petitioner is a well-established art gallery owner in Delhi, the artwork deserves to be released to the Petitioner, subject to certain amounts being deposited with the Customs Department and subject to further orders of this Court.

22. Accordingly, it is directed that the artwork be released to the Petitioner subject to the following conditions:

(i) The Petitioner shall deposit a sum of Rs.2 Lakhs as an *ad-hoc* deposit towards differential duty.

(ii) The amount of Rs.30,000/- imposed as redemption fee under Section 125 of the Customs Act, 1962, shall also be deposited by the



Petitioner.

23. Upon the said deposits being made, the artwork shall be released to the Petitioner, on or before 10th September, 2025.

24. The above terms shall however, be subject to further orders of this Court.

25. Let a counter affidavit be filed by the Customs Department within four weeks. Rejoinder, thereto, if any, be filed within four weeks thereafter.

26. List on 11th November, 2025.

PRATHIBA M. SINGH
JUDGE

SHAIL JAIN
JUDGE

AUGUST 28, 2025

pd/ss