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T.C.No.47 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving the Order	Date of Pronouncing the Order
23.02.2026	29.04.2026

CORAM:

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
AND
THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

T.C.No.47 of 2011
and
M.P.No.1 of 2011

M/s.Josco Rubber Industries
No.4, Romain Rolland Street
Puducherry
rep.by its Managing Partner
Abey Joseph ... Petitioner

-vs-

1.The Commercial Tax Officer (IAC)
Commercial Taxes Department
Puducherry

2.The Appellate Assistant Commissioner
Commercial Taxes Department
Puducherry ... Respondents

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Case Citation: (2026) taxcode.in 1044 HC

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PRAYER: Tax Civil Revision Petition filed under Section 42 of the Puducherry General Sales Tax Act, 1967, to revise the Judgment and Order of the Sales Tax Appellate Tribunal (Principal District Judge), Puducherry, dated 07.01.2011, passed in Tax Appeal No.4 of 2007.

For Petitioner : Mr.Joseph Markos, Senior Counsel
assisted by Mr.R.Anish Kumar

For Respondents : Mr.J.Kumaran
Additional Government Pleader (Pondy)

O R D E R

MUMMINENI SUDHEER KUMAR, J.

This tax revision petition is directed against the order dated 07.01.2011, passed in Tax Appeal No.4 of 2007, on the file of the Appellate Tribunal under the Puducherry General Sales Tax Act, 1967 (hereinafter, referred to as the "PGST Act"), at Puducherry.

2. The revision petitioner herein is the manufacturer of Hawai Chappals and Hawai Soles at Kirumampakkam, Puducherry and registered under

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the provisions of the PGST Act and was assessed to tax for the year 1997-1998. The total turnover of the revision petitioner herein as declared and determined was Rs.6,74,717/- with no exempted turnover and an amount of Rs.9,632/- was paid as tax. However, during the verification of the assessment records, the Assessing Officer noticed that an amount of Rs.35,27,874/- was received by the revision petitioner herein during the year 1997-1998 towards royalty from M/s.Jasco Footwear Products, having its Factory at No.9, Pipdic Industrial Estate, Kirumampakkam, Pondicherry, for usage of the brand name of “Miami Cushion”. The Assessing Officer, having taken a view that the since brand name itself constitutes an intangible property having intangible and incorporeal character being capable of bought and sold, and hence the said royalty income is liable to tax at 3% under entry 23 of Part D of Schedule- and proposed for revision of the assessment order and accordingly, issued the notice dated 19.04.2002.

3. In response thereto, the revision petitioner submitted its reply stating that the royalty received by the revision petitioner herein is not liable to tax under PGST Act, on the ground that only the movable property comes within the definition of “goods” in PGST Act and liability to pay tax would arise only when

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there is a sale as per definition under Section 2(p) of PGST Act. Thus, it is contended that there is no transfer of property in goods and therefore, the transaction in question is not a sale. It is also further contended that there was no transfer of right to use the brand name "Miami Cushion" and the said right continued to be with the revision petitioner herein without any let up or interruption or break and explained in detail, the nature of the agreement dated 01.04.1997 that was entered into between the revision petitioner herein and M/s.Josco Footwear Products (hereinafter referred to as JFP. The Assessing Officer, having considered the reply submitted by the revision petitioner herein, came to the conclusion that in terms of the said agreement dated 01.04.1997, the revision petitioner has agreed to confer the right to use the said brand name in favour of M/s.Josco Footwear Products subject to various terms and conditions mentioned in the said agreement. Therefore, the transaction between the revision petitioner and M/s.Josco Footwear Products would amount to sale within the meaning of "sale" defined under Clause (p) of Section 2 of PGST Act and accordingly, levied tax on the amount of Rs.35,27,874 being the royalty amount received by the revision petitioner herein at the rate of 3% amounting to Rs.1,05,836/-.

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4. It was aggrieved by the said order, the revision petitioner herein filed an appeal No.8/PGST/04-05 before the Appellate Assistant Commissioner, Commercial Taxes Department, Government of Puducherry, reiterating its contentions and also raising an additional ground that in terms of a Notification issued by the Government in G.O.Ms.No.50/90/F6, dated 10.12.1990 (hereinafter, referred to as the "Notification"), the transfer of right to use any goods for any purpose is exempted from payment of tax due under the PGST Act and therefore, the royalty amount in question cannot be subjected to tax. However, the representative appearing for the State Government contended that by virtue of the introduction of Section 3-A into the PGST Act with effect from 01.04.1997, the Notification dated 10.12.1990 is deemed to have been superseded and therefore, the revision petitioner herein cannot claim the benefit of the said Notification.

5. The Appellate Assistant Commissioner, Commercial Taxes Department, having examined the matter in detail, concurred with the findings of the Assessing Officer, and also rejected the contentions raised by the revision petitioner herein by placing reliance on the Notification dated 10.12.1990 and

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agreed with the contentions of the representative of the State Government, by order dated 23.04.2007.

6. It was aggrieved by the said order, the revision petitioner herein filed a Tax Appeal No.4 of 2007, before the Appellate Tribunal under the PGST Act at Puducherry and the said appeal came to be dismissed by the Appellate Tribunal by Judgment dated 07.01.2011. It was aggrieved by the said order, the revision petitioner is before this Court.

7. On 23.06.2011, while this tax revision case was admitted, the following substantial questions of law have been framed:

> *"1.Whether on the facts and in the circumstances of the case, royalty received by the petitioner on the licence granted to use its trade mark "Miami Cushion" is taxable under the PGST Act?*
>
> *2.Whether on the facts and in the circumstances of the case, the findings of the Appellate Tribunal that the petitioner is not entitled to the benefits of exemption notification G.O.Ms.No.50/90/F6 dated 10.12.1990 is right in law?*
>
> *3.Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that Section 3A is applicable to the petitioner in supersession of exemption*

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notification G.O.Ms.No.50/90/F6, dated 10.12.1990."

8. We have heard Mr.Joseph Markos, learned Senior Counsel assisted by Mr.R.Anish Kumar, learned counsel on record for the revision petitioner and Mr.J.Kumaran, Additional Government Pleader (Pondy) appearing for the respondents.

9. There is no dispute on the factual aspects of the matter. Right to use the trademark / brand name "Miami Cushion" was granted in favour of M/s.Josco Footwear Products under the agreement dated 01.04.1997 subject to payment of royalty at the rate of Rs.2.00 per pair for prime pair of chappal and Rs.1.25 paise per pair for second quality chappals sold in the market by M/s.Josco Footwear Products.

10. Learned Senior Counsel appearing for the revision petitioner having taken us through the detailed contents of the agreement dated 01.04.1997 contended that there was no transfer of right in the trademark in favour of M/s.Josco Footwear Products under the said agreement and all the rights over the

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trademark are retained by the revision petitioner herein with a specific power to transfer it to any other third party or to lease out to the third party, including the right to sell or mortgage the same. Therefore, there is no transfer of right in the trademark in favour of M/s.Josco Footwear Products. He also further contended that the trademark is not an immovable property so as to come within the meaning of "Goods" to attract the provisions of the PGST Act. He also further contended that by virtue of the Notification dated 10.12.1990, the transfer of right to use is exempted from payment of tax due under the PGST Act and the subsequent introduction of Section 3-A into the PGST Act cannot have any impact on the effect of the said Notification. In support of his contentions, he placed reliance on a subsequent Notification issued under G.O.Ms.No.64/F2/2008, dated 16.10.2008, whereby various Notifications, including the Notification dated 10.12.1990, came to be rescinded by the Government of Puducherry and contended that in case if there is any deemed supersession of the Notification dated 10.12.1990, there was no necessity for the Government to issue the Gazette Notification dated 16.10.2008 rescinding the Notification dated 10.12.1990. In support of his contentions, he also placed reliance on the following decisions of the Honourable Apex Court and various High Courts:

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(a) ***Bharat Sanchar Nigam Ltd., and another vs. Union of India and others***, reported in ***(2006) 3 SCC 1***;

(b) Judgment dated 24.06.2013, rendered in W.A.No.22313 of 2012 (***Malabar Gold Private Limited vs. Commercial Tax Officer, Kozhikode and others***) (Kerala High Court);

(c) Judgment dated 17.05.2017, rendered in S.T.A.No.26 of 2013 (***McDonalds India Pvt. Ltd., vs. Commissioner of Trade & Taxes***) (Delhi High Court); and

(d) ***Tvl.Vitan Departmental Stores and Industries Limited vs. State of Tamil Nadu***, reported in ***(2014) 45 GST 95 (Mad)***.

11. On the other hand, learned Additional Government Pleader appearing for the respondents contended that the issue as to whether trademark / brand name would come within the meaning of "immovable property / goods" within the meaning of the provisions contained in the PGST Act is no more *res*

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integra as the same was already decided by this Court in the case of ***S.P.S.Jayam and Co., vs. Registrar, Tamil Nadu Taxation Special Tribunal and others***, reported in ***2004 SCC OnLine Mad 1018***. He also further contended that by virtue of the introduction of Section 3-A into the PGST Act with effect from 01.04.1997, every dealer is made liable to pay tax on his taxable turnover relating to the business of transfer of right to use any goods for any purpose at the rate mentioned in Sub-Section (2) of Section 3 or as the case may be in Section 4. Hence, by implication whatever exemptions that were granted under the Notification dated 10.12.1990 would automatically stand superseded. In support of his contention, he drew the attention of this Court to various findings rendered by the Appellate Assistant Commissioner and the Appellate Tribunal placing reliance on the decisions of the Honourable Apex Court in the case of ***Commissioner, Sales Tax, U.P. vs. Agra Belting Works***, reported in ***(1987) 66 STC 1*** and decision of the Honourable Apex Court in the case of ***Sales Tax Officer, Sector IX, Kanpur vs. Darling Dairy Products and another***, reported in ***(1994) 94 STC 93***.

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12. We have carefully considered the submissions made on either side and also perused the entire materials on record.

13. No much deliberation required on the factual aspects of the matter. From the perusal of the agreement dated 01.04.1997, it is evident that the right to use the trademark / brand name was granted in favour of M/s.Josco Footwear Products subject to payment of royalty at the agreed rate. It is also not in dispute that M/s.Josco Footwear Products, as a matter of fact, used the said brand name and accordingly paid royalty to the revision petitioner herein during the year 1997-1998. The contention of the learned Senior Counsel appearing for the revision petitioner by placing reliance on the decision of the Honourable Apex Court in ***Bharat Sanchar Nigam Ltd***'s case and other decisions of the Kerala High Court and this Court cited supra, are all distinguishable and have no application to the case on hand in the light of the admitted facts of this case. In all the case of ***BSNL***, the dispute was as to whether the subject matter of transaction therein is a service or sale. So long as it was a service, the same was held to be not liable to tax under Sales Tax Act, but, the other part of transaction amounting to sale would be liable to tax. No doubt, in ***Bharat Sanchar Nigam Ltd***'s case,

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one of the learned Judge, while concurring with the final conclusion arrived at by the majority of the Judgment, held as under at Paragraph No.97:

> *"97. To constitute a transaction for the transfer of the right to use the goods the transaction must have the following attributes:*
>
> *(a) There must be goods available for delivery;*
>
> *(b) There must be a consensus ad idem as to the identity of the goods;*
>
> *(c) The transferee should have a legal right to use the goods consequently all legal consequences of such use including any permissions or licenses required therefor should be available to the transferee;*
>
> *(d) For the period during which the transferee has such legal right, it has to be the exclusion to the transferor this is the necessary concomitant of the plain language of the statute viz. a "transfer of the right to use" and not merely a licence to use the goods;*
>
> *(e) Having transferred the right to use the goods during the period for which it is to be transferred, the owner cannot again transfer the same rights to others."*

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14. Those are the observations made in minority concurring Judgment. The majority view was indicated at Paragraph No.92, while answering the questions that were framed in Paragraph No.32. For better appreciation, the questions that were framed in Paragraph No.32 and the answers given in Paragraph No.92 under the majority Judgment are extracted hereunder:

Q.No.	*Question at Para 32*	*Answer at Para 92*
A	*What are "goods" in telecommunication for the purposes of Article 366(29-A)(d)?*	*Goods do not include electromagnetic waves or radio frequencies for the purpose of Article 366(29-A)(d). The goods in telecommunication are limited to the handsets supplied by the service provider. As far as the SIM cards are concerned, the issue is left for determination by the assessing authorities*
B	*Is there any transfer of any right to use any goods by providing access or telephone connection by the telephone service provider to a subscriber?*	*There may be a transfer of right to use goods as defined in answer to the previous question by giving a telephone connection.*
C	*Is the nature of the transaction involved in providing telephone connection a composite contract*	*The nature of the transaction involved in providing the telephone connection may be a composite contract of service and sale. It is possible for the State to tax*

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	of service and sale? If so, is it possible for the States to tax the sale element?	*the sale element provided there is a discernible sale and only to the extent relatable to such sale.*
D	*If the providing of a telephone connection involves sale, is such sale an inter-State one?*	*The issue is left unanswered*
E	*Would the "aspect theory" be applicable to the transaction enabling the States to levy sales tax on the same transaction in respect of which the Union Government levies service tax?*	*The 'aspect theory' would not apply to enable the value of the services to be included in the sale of goods or the price of goods in the value of the service."*

15. In the concurring judgment of the learned Judge at Para 97 certain conclusions were arrived at. In this connection, Para 75 of the majority judgment is required to be noticed. The said paragraph reads as under:

> *75. In our opinion, the essence of the right under Article 366(29-A)(d) is that it relates to user of goods. It may be that the actual delivery of the goods is not necessary for effecting the transfer of the right to use the goods but the goods must be available at*

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the time of transfer must be deliverable and delivered at some stage. It is assumed, at the time of execution of any agreement to transfer the right to use, that the goods are available and deliverable. If the goods, or what is claimed to be goods by the respondents, are not deliverable at all by the service providers to the subscribers, the question of the right to use those goods, would not arise.

If the majority view is taken into consideration, the findings recorded therein are in connection with the facts of that particular case. No doubt, in the minority Judgment at Paragraph No.97, held that there must be goods available for delivery and the owner of the goods having transferred the rights to use goods cannot again transfer the right to use or can transfer the goods to others. As already noted above, the above findings are by the concurring minority Judgment which will have only persuasive value instead of binding nature. The conclusions arrived at in the minority judgement are the basis for the Kerala High Court to arrive at its conclusions in ***Malabar Gold*** case. The amendment made to Art. 366(29A) of the Constitution of India is the basis for making the transfer of right to use goods taxable. Right to use can be transferred either by way of Lease or Licence over the goods both tangible and intangible. If the license is to be treated as the one not coming within the scope of Section 3A, the same is nothing but causing violence to the very provisions itself. A right in goods can be transferred either permanently or temporarily. If it is permanent, it is by way of sale. If it is

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temporary for specified period, it will be by way of lease or license. What is transferred in the case on hand is the right to use the trade mark within Pondicherry only. When right to use is transferred for a specific period for a specified area only, it cannot be said that the owner of the trade mark cannot have right to transfer again or have no right to use the trade mark by itself. Therefore, it is highly improbable to say that in order to attract Section 3A, the owner of trademark also shall cease to have right to use the trade mark for the period during which right to use such trade mark was transferred. Therefore, the ***BSNL*** case and ***Malabar Gold*** case have application to the case on hand. In the case of ***Mc.Donalds*** also an identical view was taken as in the case of ***Malabar Gold*** case and in fact the Malabar Gold case was followed by Delhi High Court. For the very same reasons as stated in respect of Malabar Gold case, Mc.Donalds case also has no application to the case on hand. Further, the subject matter of both the said cases decided by Kerala High Court and Delhi High Court have dealt with Franchisee Agreements unlike in the present case.

16. In contrast to the decisions in ***Malabar*** and ***Mc.Donald*** cases, as rightly pointed out by the learned Additional Government Pleader appearing for

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the respondents, this Court had an occasion to deal with the case, which is identical in nature to the case on hand, in ***Jayam***'s case, wherein a Division Bench of this Court, having elaborately considered various decisions of the Honourable Apex Court, including the decision in the case of ***Vikas Sales Corporation vs. Commissioner of Commercial Taxes***, reported in ***(1996) 102 STC 106 (SC)***, at Paragraph No.8, has held as under:

> *"8. Coming to the facts of the present case, the petitioner/ assessee permitted M/s.Muthu Agencies to use their trademark in the course of trade at the rates specified therein for various items during a particular period. Of course, it retained the liberty to make use of the trademark in the event of the licensor starting to manufacture the products. Equally, it retained the liberty to grant licence to any other individual person or company to use the trademarks. Trademark is the property right and it exclusively belongs to the party who has registered it. Such a right is an intangible or incorporeal goods, which can be merchandised by the registered owners. As pointed out by the Supreme Court, the word "goods" is defined in very wide terms so as to bring in both tangible and intangible objects. General Clauses Act would explain movable property as property of every description except immovable property. Trademark right is intangible goods, which can be subject-matter of transfer. As already pointed out, M/s. Muthu Agencies was granted permission to use the trademark without any restriction whatsoever for a particular period. Consequently, it can only be taken as transfer of a right to use and not a mere right to enjoy. Simply because the assessee retained the right for himself to use the trademark and reserved the right to grant permission to others to use the trademark, it would not take away the*

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character of the transaction as one of transfer of a right to use. That being so, this Court has to only hold that the order of the Tamil Nadu Taxation Special Tribunal, Chennai, confirming the order of the Joint Commissioner-III (SMR), Chepauk, is well in order."

17. The said decision of this Court in ***Jayam***'s case was carried in appeal in Civil Appeal No.1415 of 2010 before the Hon`ble Apex Court and the order passed by this Court in ***Jayam***'s case was confirmed by the by order dated 18.01.2023. The facts of the present case are identical in nature as seen from Paragraph No.8 of the decision of this Court, wherein it was held that the word "goods" is defined in very wide terms so as to bring in both tangible and intangible objects within the meaning of "goods". In the said case, M/s.Muthu Agencies was permitted to use the trademark of "M/s.S.P.S.Jayam and Company" in the course of trade subject to payment at the rates as specified therein for various items during a particular period, while retaining the liberty to make use of the trademark like in the present case. The said transaction between M/s.S.P.S.Jayam and Company vs. M/s.Muthu Agencies was considered to be a transaction of sale within the meaning of sale. The decision in Jayam`s case was followed by another learned Division Bench of this Court in the case of TVL.Vitan Departmental Stores and Industries Limited Vs. The State of Tamil

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Nadu reported in (2014)45 GST95 (Madras) = MANU/TN/2266/2013 wherein an identical issue like the one on hand arose and we are respectfully inclined to follow the decisions of our High Court and we fully agree with the view taken in the said decisions.

18. In the instant case also, as seen from the definition of "sale" as defined under Section 2(p) of PGST Act, under Clause (iv) a transfer of the right to use any goods for any purpose (whether or not for a specified period) for case, deferred payment or other valuable consideration also comes within the meaning of "sale". Therefore, the contentions raised on behalf of the revision petitioner herein, that the transfer of right to use granted in favour of M/s.Josco Footwear Products, does not amount to sale under the provisions of the PGST Act is liable to be rejected. Once the right in trademark is considered as goods and transfer of right to use in the same is coming within the meaning of sale as defined under the PGST Act, the same is bound to be subjected to tax under the provisions of the PGST Act. Therefore, all the contentions raised in this regard by the learned Senior Counsel appearing for the revision petitioner are liable to be rejected. With this, the substantial questions of law No.1 is answered in negative.

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19. Then, coming to the contention of the learned Senior Counsel appearing for the revision petitioner herein by placing reliance on the Notification dated 10.12.1990 and that the same was in force notwithstanding introducing Section 3A w.e.f. 01-04-1997 is concerned, even assuming that the same is in force, any amount of exemption that was granted under the said Notification would only cover within in scope all that liability that was cast on the dealer concerned as on the date of Notification i.e. 10.12.1990 but not the liability that may be fastened in future time to come. The liability that is now being cast upon the revision petitioner is not one under any of the provisions of law that were prevailing or existing as on 10.12.1990. But, it is only by virtue of the new provision that was introduced under Section 3-A into the PGST Act w.e.f. 01-04-1997, the impugned liability is being cast upon the revision petitioner herein. Therefore, under no stretch of imagination, it can be said that the Notification dated 10.12.1990 would automatically take into its purview the liability that was created by virtue of the introduction of Section 3-A into the PGST Act with effect from 01.04.1997. Therefore, any amount of reliance placed on the Notification dated 10.12.1990 is of no avail to the revision petitioner. Further, it is also

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relevant to note that the Appellate Assistant Commissioner, dealt with this aspect of the matter in his Order, dated 23-04-2007 at Paragraphs 4 to 11 by placing reliance on the decisions of the Hon`ble Apex Court in the case of Sales Tax Officer Vs. Darling Dairy Products reported in (1994) 94 STC 93 and State of Bihar Vs. Krishna Kumar Kabra reported in (1998) 08 STC 1 which was also confirmed by the Appellate Tribunal. We are in complete agreement with the said reasoning. In so far as the contention basing on Notification, dated 16-10-2008 and contending that the Notification, dated 10-12-1990 was rescinded only on 16-10-2008 is concerned, as is evident from the said Notification, dated 16-10-2008, the same was issued consequent upon the Repeal of PGST Act, and the same was general in nature rescinding all the notification issued under the said PGST Act. Hence the said contention also liable to be rejected.

20. In the light of the above, the contention raised by the learned Senior Counsel appearing for the revision petitioner by placing reliance on the Notification dated 10.12.1990 is liable to be rejected.

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21. In the light of the above, all the substantial questions of law are liable to be answered in negative and accordingly, the same are hereby answered in negative.

22. In the result, this Tax Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(Dr.A.S.M., J.) **(M.S.K., J.)**

29 .04.2026

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To:

1.The Principal District Judge,
Sales Tax Appellate Tribunal,
Puducherry.

2.The Commercial Tax Officer (IAC)
Commercial Taxes Department
Puducherry

3.The Appellate Assistant Commissioner
Commercial Taxes Department
Puducherry

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T.C.No.47 of 2011

DR.JUSTICE ANITA SUMANTH
AND
MUMMINENI SUDHEER KUMAR, J.

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PRE-DELIVERY ORDER
IN
T.C.No.47 of 2011

29 .04.2026

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