CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
<u>CHENNAI</u>

REGIONAL BENCH – COURT No. I

Excise Appeal No. 41491 of 2016

(Arising out of Order-in-Original No. 03/2016(CE) dated 19.02.2016 passed by Commissioner of Central Excise, No. 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai – 600 034)

M/s. Mahle Engine Components India Pvt. Ltd. **...Appellant**
(Previously known as M/s. Mahle IPL Limited),
A-4, Industrial Estate, Maraimalai Nagar,
Kancheepuram – 603 209.

Versus

Commissioner of GST and Central Excise **...Respondent**
Chennai North Commissionerate,
No. 26/1, Mahatma Gandhi Road,
Nungambakkam,
Chennai – 600 034.

<u>APPEARANCE:</u>
For the Appellant : Ms. Charulatha, Advocate
For the Respondent : Mr. Sanjay Kakkar, Authorised Representative

<u>CORAM:</u>
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

<u>FINAL ORDER No. 41042 / 2025</u>

DATE OF HEARING : 01.04.2025
DATE OF DECISION : 24.09.2025

Per Mr. VASA SESHAGIRI RAO

M/s. Mahle Engine Components India Pvt. Ltd. who is the appellant herein in this appeal, is engaged in the manufacture of Pistons for Petrol and Diesel Engines falling under Chapter 84 of the Central Excise Tariff Act, 1985. The appellant was a joint venture company of M/s. Mahle Holding India Pvt. Ltd. (hereinafter referred to as "Mahle") and M/s India Pistons Limited (hereinafter referred to as "IPL"). In terms of the Share Purchase Agreement (hereinafter referred to as "SPA") made on 24.12.2013 between Mahle and IPL (including its affiliates Simpsons & Company Limited and Amalgamations Private Limited), IPL and its affiliates transferred their entire shareholdings in the joint venture to the appellant on 24.12.2013. Consequently, the joint venture agreement was terminated and Mahle became the sole owner of the appellant firm.

2.1 Schedule 3 of the SPA contained a non-compete clause and other conditions, which are summarized below: -

i. the appellant and IPL (including its affiliates Simpsons & Company Limited and Amalgamations Private Limited) agreed for transfer of certain products/agreements with Indian OEMs to IPL.
ii. the appellant agreed not to compete for the products listed in paragraph 1.1 of Schedule 3 of the SPA for 3 years to enable IPL to produce automotive pistons. Further, the appellant agreed not to solicit, quote, manufacture or supply the said products during the no competition period of 3 years.
iii. the appellant agreed that for the products listed in paragraph 1.1 of Schedule 3 of the SPA, IPL shall have direct contact to the customer.
iv. the appellant agreed that all appellant's inventory and pipeline supplies of parts, materials, components etc. for

the products listed in paragraph 1.1 of Schedule 3 of the SPA to be purchased by IPL at the current purchase price before IPL commences serial supply to the customer.

v. IPL agreed that no gallery cooled piston process to be implemented by IPL/IPL's Affiliates for 2 years from the Termination Date. Exception is the Super Ace piston only, which can be implemented and supplied for the Super Ace vehicle only.

vi. the appellant agreed for sale/transfer of assets listed in paragraph 2.1 of Schedule 3 of the SPA to IPL.

vii. IPL and its affiliates acknowledged and confirmed that the appellant have the sole right to manufacture and supply automotive and non-automotive pistons, (including assemblies where applicable), to all multinational customers, including those listed in the SPA.

viii. IPL and its affiliates acknowledged that the appellant have made huge capital and know-how investments to develop products for its customers. Accordingly, IPL and its affiliates agreed not to solicit, quote, manufacture or supply pistons to multinational customers for an initial period of 3 years from the Termination Date in the domestic or overseas markets;

ix. IPL and its affiliates agreed that the appellant shall have the sole contact to the customer for the items not transferred, (including assemblies if applicable), with two exceptions as detailed in paragraph 3.3 of Schedule 3 of the SPA.

x. the appellant agreed that IPL can continue to supply Euro 1, 2 & 3 compliant OES pistons to the customer marked with (**) in paragraph 3.1 of Schedule 3 of the SPA.

xi. IPL and its affiliates acknowledged and confirmed that the appellant has and shall continue to have the sole right to manufacture and supply pistons, including assemblies where applicable, to the Indian customers, viz. Tata Motors and Mahindra and Mahindra.

xii. Considering the huge capital and know-how investments made by the appellant, IPL and its affiliates agreed not to solicit, quote, manufacture or supply any automotive pistons to Mahindra & Mahindra or to Tata Motors directly or indirectly which are not listed in paragraph 1.1 of Schedule 3 of the SPA, and / or that are in development or in serial production in appellant's company as of October 3, 2013 including any future upgrades/downgrades or variants (e.g. from gallery to non-gallery) for a period of 3 years from the Termination Date.

xiii. IPL and its affiliates agreed not to solicit for or quote directly or indirectly any new gallery cooled pistons (except Tata Motors – Super Ace) during the said 3 year period.

xiv. IPL and its affiliates agreed that for the pistons retained in appellant's company for Indian Customers Mahindra and Mahindra and Tata Motors which are not included in paragraph 1.1 of Schedule 3 of the SPA, and / or that are in development or in serial production in the appellant's company, contact with and direct access by IPL and its affiliates to these customers shall be restricted to rings only.

xv. the appellant agreed not to solicit, quote, manufacture or supply pistons for tractors that were being produced as on the date of the SPA or were under development by IPL, which are listed in paragraph 5 of Schedule 3 of the SPA, for 3 years from the Termination Date. However, there was no restriction on the appellant to supply all multinational customers including tractor manufacturers.

xvi. IPL and its affiliates agreed to ensure that in case they entered into any joint venture, technical or financial agreement / arrangement, it will not violate the terms agreed under the SPA.

xvii. the appellant and IPL, including its affiliates, agreed and acknowledged that the restrictions and covenants under the SPA were (a) short term and temporary in nature; (b) essential for recoupment of the investments made in the appellant, for realizing the full value of investments proposed to be made in the appellant, for enabling the appellant to recover its losses, for achieving the basic objective of formation of the Appellant firm and for continued subsistence of operations of the Appellant firm; and (c) essential to protect the technology and know-how infused in the Appellant firm with respect to the customers and products mentioned in the SPA.

xviii. the appellant and IPL, including its affiliates, agreed and acknowledged that the appellant was incurring losses in its business and investments and that the restrictions and covenants under the SPA were necessary for the appellant to sustain its operations and to realize the full potential and benefits of the technology and know-how infused into the appellant for production and supply of technically advanced products (design and development of pistons compliant with Euro 4 emission norms and above) at competitive costs to the Indian market.

xix. the appellant and IPL, including its affiliates, further agreed and acknowledged that the restrictions and covenants under the SPA were (a) essential for providing gestation period to IPL for building its own capacity; (b) essential for IPL to be able to cater to the needs of the customers and products mentioned in the SPA; and (c) necessary for effective implementation of the Technical Assistance Agreement whereby the appellant has agreed to provide certain technical information/ technical assistance to IPL for manufacturing and supply of certain products mentioned in the SPA.

2.2 In consideration of the obligations undertaken under the SPA, the appellant paid a mutual obligation fee of Rs.10,00,00,000/- (Ten Crores only) to IPL, for which IPL had raised a Debit Note / Bill No. 34655 dated 31.12.2013 for the said amount of Rs. 10 Crores along with applicable Service Tax of Rs.1,23,60,000/- (Rupees One Crore Twenty Three Lakhs Sixty Thousand only). The appellant availed Cenvat credit of the above amount of service tax in the month of May 2014.

3. Show Cause Notice No. 20/2015 dated 08.06.2015 was issued to the appellant by the Commissioner of Central Excise-III, Chennai where it was proposed to (a) recover the said Cenvat Credit of Rs. 1,23,60,000/- (Rupees One Crore Twenty Three Lakhs Sixty Thousand only) in terms of Rule 14 of Cenvat Credit Rules, 2004 read with Section 11A(4)(e) of the Central Excise Act, 1944, on the

ground that the same was availed in contravention of Rule 3 read with Rule 2(l) and 9(1) of Cenvat Credit Rules, 2004; (b) demand interest on the above amount of Cenvat Credit in terms of Rule 14 of Cenvat Credit Rules, 2004 read with Section 11AA of the Central Excise Act, 1944; and (c) impose penalty on the appellant in terms of Rule 15(2) of Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944.

4.1 After following due process of adjudication, the impugned order was passed confirming the entire demand of Cenvat Credit, along with interest, on the following grounds: -

i. The obligations created on M/s IPL in terms of the SPA are intended to protect the existing volume of sales of pistons/auto components manufactured by the appellant to their existing customers and the restraint created on M/s IPL, who is a competitor to the appellant, through mutual obligation agreement could never be termed as sales promotion intended for increasing sales to the appellant's products.

ii. The scope of the definition of 'Input Service' appearing in the Cenvat Credit Rules does not cover services by way of non-compete agreement.

iii. A non-compete agreement is generally intended to protect the existing market/territory and the same has nothing to do with the actual manufacture of the final product, in this case, pistons.

4.2 However, the demand was confirmed under Rule 14 of Cenvat Credit Rules, 2004 read with Section 11A(1) of the Central Excise Act, 1944 instead of Section 11A(4)(e) invoked in the show cause notice by holding that there is no evidence to conclude that the appellant had wilfully suppressed the facts or had contravened the provisions with intent to evade payment of duty. Similarly, penalty was imposed on the appellant under Section 11AC(1)(a) of the Central Excise Act, 1944 instead of Section Rule 15(2) of Cenvat Credit Rules invoked in the Show Cause Notice.

5. The appellant has preferred the present appeal assailing the impugned order.

6. The Ld. Advocate Ms. Charulatha appeared and argued for the appellant and submitted that the service of non-compete will qualify as input service within the “means clause” under Rule 2(l) of CCR, 2004. Hence, Credit is rightly availed.

7. It is submitted by the Learned Advocate that Clause 3 and 4 of Schedule 3 of the SPA clearly states that the Appellant will have the sole right to manufacture and supply pistons to the multi-national customers and Indian Customers listed in the said clauses whereas, IPL, will have the sole right to manufacture and supply pistons to Indian OEM's listed in clause 1 of Schedule 3 of the SPA.

8. The Ld. Advocate further submitted that IPL acknowledged that the Appellant has made huge investments in the capital and know-how investment of the Company and therefore, IPL undertook to not manufacture, solicit, quote, and supply pistons to the said customers for period of 3 years. In consideration of the aforesaid reciprocal obligations agreed to be undertaken by the Appellant and IPL as per the SPA, the parties mutually agreed that the Appellant would pay an amount of Rs. 10 Crores to IPL.

9. Therefore, the said amount was paid by the Appellant to IPL to eliminate direct competition, thereby directly incurring their overall market share. Furthermore, on payment of the said amount of Rs. 10 Crores, the Appellant retained with themselves the technical know-how and the sole right to manufacture and supply the pistons for a period of 3 years.

10. The Learned Advocate contended that the consideration of Rs. 10 Crores paid by the Appellant for the service provided by IPL is directly linked to their activity of manufacture of pistons, which is their business, in as much as the Appellant utilizes this service directly by preventing risk of competition from a business engaged in similar activity and protecting their capital investment and technical know-how which is crucial for their manufacturing activity. Therefore, the activity will qualify as a service which is directly used in or in relation to the manufacture of pistons by the Appellant under Rule 2(l) of the CCR, 2004.

11. It is argued by the Learned Advocate that the scope of the term "in or in relation to" mentioned in the definition of input service is wide and the service need not be utilised directly in the manufacture of the final product for it to be considered under the "means clause". In this regard, it is submitted that it is the settled law that any activity concerned with or pertaining to manufacturing goods will also qualify as input service. She placed reliance upon the judgment of *Union Carbide India v. CCE, Calcutta-I, 1996 (86) E.L.T. 613 (Tribunal)* wherein, it was held that the expression "used in relation to manufacture" must be allowed its natural play so as to also attract goods, which did not directly or indirectly enter into the "final product but

were used in any activity concerned with or pertaining to the manufacture of the final products".

12. She further submitted that the service received by the Appellant has direct nexus with their manufacturing activity as it gives them the sole right to manufacture and supply pistons to customers without risk of competition and also protects their capital and know-how investments. Thus, the service is squarely covered under the "means clause" of the definition of input services under Rule 2(l) of the CCR, 2004.

13. The Ld. Advocate averred that the aforesaid submission was made by the Appellant at the stage of their reply to the SCN and the Impugned Order also records the same in Paragraph 10 to 18. However, the operative portion of the Impugned Order fails to record any finding on the submission made by the Appellant that their case fits into the "means clause" of the definition of input services under Rule 2(l) of the CCR, 2004. The synopsis filed by the Respondent also does not deal with the said submission. Therefore, the Impugned Order is illegal and non-speaking. Hence, the Impugned Order confirming the reversal of Cenvat Credit merits to be set aside on this ground itself.

14. The Ld. Advocate contended that the service provided by IPL will be covered under the "includes" clause under Rule 2(l) of CCR, 2004 as "sales promotion". Hence, Cenvat credit cannot be denied. She submitted that the service of non-compete provided by IPL to the Appellant will be covered under the "inclusive" clause of the definition of input service under the expression "sales promotion". In this regard, it is submitted that "sales promotion" has not been defined under the CEA, 1944 and the CCR, 2004. However, the Oxford Dictionary of Business defines "sales promotion" to mean an activity designed to boost the sales of a product or service.

15. Under such circumstances, it is submitted that IPL by agreeing to forbear itself from doing an identical business with multi-national corporations and domestic clients has increased the sale of Appellant's products to customers by eliminating the risk of competition. In this regard, reliance is placed on the case of *CIT v. Ingersoll Rand International 2014 (6) TMI 934-Karnataka High Court*, wherein, it was held that on payment of non-compete fee, the taxpayer gets a monopoly to run the business by eliminating competition. The relevant extract of the said decision is extracted hereunder: -

"8. … … … …A non-compete right encompasses a right under which one person is prohibited from competing in business with another for a stipulated period. It would be the right of the person to carry on a business in competition but for such agreement of non-compete. Therefore the right acquired under a non-compete agreement is a right for which a valuable consideration is paid. This right is acquired so as to ensure that the recipient of the non-compete fee does not compete in any manner with the business in which he was earlier associated. The object of acquiring a know-how, patents, copyrights, trade marks, licences, franchises is to carry on business against rivals in the same business in a more efficient manner or to put it differently in a best possible manner. The object of entering into a non-compete agreement is also the same ie., to carry on business in a more efficient manner by avoiding competition, atleast for a limited period of time. On payment of non-compete, the payer acquires a bundle of rights such as restricting receiver directly or indirectly participating in a business which is similar to the business being acquired, from directly or indirectly soliciting or influencing clients or customers of the existing business or any other person either not to do business with the person who has acquired the business and paid the non-compete fee or to do business with the person receiving the non-compete fee to do business with a person who is directly or indirectly in competition with the business which is being acquired. The right is acquired for carrying on the business and therefore it is a business right … … … … … … When by payment of non-compete fee, the businessman gets his right what he is practically getting is kind of monopoly to run his business without bothering about the competition. Generally, non-compete fee is paid for a definite period. The idea is that by that time, the business would stand firmly on its own footing and can sustain later on. This

clearly shows that the commercial right comes into existence whenever the assessee makes payment for non-compete fee. Therefore that right which the assessee acquires on payment of non-compete fee confers in him a commercial or a business right which is held to be similar in nature to know-how, patents, copyrights, trade marks, licences, franchises. Therefore the commercial right thus acquired by the assessee unambiguously falls in the category of an 'intangible asset'."

16. Thus, it was argued that from the above, it can be inferred that the service received by the Appellant from IPL would qualify as input service under Rule 2(l) of the CCR, 2004 being a service relating to "sales promotion". However, the Impugned Order has failed to consider the same and has confirmed the reversal of Cenvat Credit merely on the ground that the mutual obligation fee is paid with an intention to protect the "existing volume" of sales of pistons manufactured by the Appellant and therefore, it cannot be equated with the activity of sales promotion.

17. In this regard, it is submitted that "sales promotion" includes an activity which is designed to boost the sales of the product in the intended market. It is submitted that such boosting sales need not necessarily create a new market, and the said expression shall also refer to the activity of boosting the sales within the existing

market. Therefore, the amount paid to IPL for not competing with the Appellant in manufacturing and selling the product in the intended market leading to the direct increase in sales of the Appellant in that intended market is undoubtedly a consideration paid to boost the sales of the Appellant therefore, the activity squarely falls within the scope of the definition of "sales promotion".

18. The Appellant submits that in light of the aforesaid submissions, since the demand for reversal of Cenvat Credit cannot be sustained, the consequential imposition of interest and penalty also merits to be set aside.

19.1 *Per contra*, Mr. Sanjay Kakkar, the Learned Authorized Representative for the Revenue submitted that though it is true the higher judiciary has provided a wide amplitude to the definition of "input service" considering the exhaustive and inclusive part of the definition, in the impugned case, there appears not even a feeble touch between the Mutual Obligation Fee and the claimed activity of 'sales promotion'.

19.2 Learner AR contended that Cenvat credit scheme is a beneficial piece of legislation which allows for credit in respect of the taxes paid on the input service and capital goods used by the manufacturer/service provider to be utilised for payment of central excise duty or service tax in respect of the goods manufactured and cleared or the output services provided.

19.3 The Ld. AR relied on the decision rendered in case of *Mall of Joy Pvt Ltd & Ors Versus Union of India, Central Board of Indirect Taxes and Customs & Ors [2024 (87) G.S.T.L. 4 (Ker.)]* to submit that the nature of the claim for Input Tax Credit is in the nature of concession or entitlement, which is not an absolute right and is subject to the conditions and restrictions. The Learned AR referred to the following observations of the Hon'ble High Court: –

> *"The Input Tax Credit is in the nature of a benefit or concession extended to the dealer under the statutory scheme. Even if it is held to be an entitlement, this entitlement is subject to the restrictions as provided under the Scheme or the Statute. The claim to Input Tax Credit is not an absolute right, but it can be said that it is an entitlement subject to the conditions and restrictions……"*

In this regard, Learned AR placed further reliance on the decision of the Hon'ble Supreme Court in *Union of India & Ors Vs VKC Footsteps (I) (P) Limited [(2022) 2 SCC 603]* wherein it is held that *"……it is a trite law that whenever concession is given by a statue the conditions thereof are to be strictly complied with in order to avail such concession… ……".*

19.4 The Learned AR argued that the onus to prove that the Mutual Obligation Fee has been paid for "sales promotion" activity and the said "sales promotion" activity is used by the manufacturer, whether directly or indirectly for manufacture of the final product is on the claimant-Appellant, failing which it ought to be denied.

19.5 The Learned AR pointed out that the SPA does not contain even a single word that would indicate any linkage whatsoever with the words, 'sales promotion', as defined by the appellants citing various books on marketing management and dictionaries.

19.6 It is further submitted by the Learned AR that in the instant case, it is seen that no activity whatsoever has been described in the SPA which could even be remotely held to fall in the ambit of 'sales promotion'. In this regard, he submitted that the definition and meaning of 'sales promotion' has been thoroughly analysed by the Hon'ble Gujarat High Court in the case of *Commissioner of Central Excise, Ahmedabad – II Vs M/s Cadila Health Care Ltd. [2013 (30) S.T.R. 3 (Guj.)].* The Learned AR referred to the following observations of the Hon'ble High Court in para 5.2 as follows: –

"5.2
(vii) The expression 'sales promotion' has been defined in the 'Oxford Dictionary of Business' to mean an activity designed to boost the sales of a product or service. It may include an advertising campaign, increased PR activity, a free-sample campaign, offering free gifts or trading stamps, arranging demonstrations or exhibitions, setting up competitions with attractive prizes, temporary price reductions, door-to-door calling, telephone selling, personal letters etc. In the "Oxford Dictionary of Business English", sales promotion has been defined as a group of activities that are intended to improve sales, sometimes including advertising, organizing competitions, providing free gifts and samples. These promotions may form part of a wider sales campaign. Sales promotion has also been defined as stimulation of sales achieved through contests, demonstrations, discounts, exhibitions or trade shows, games, giveaways, point-of-sale displays and merchandising, special offers, and similar activities. The Advanced Law Lexicon by P. Ramanatha Aiyar, third edition, describes the term 'sales promotion' as use of incentives to get people to buy a product or a sales drive.
……………………..
(viii) From the definition of 'sales promotion', it is apparent that in case of sales promotion a large population of consumers is targeted. Such activities relate to promotion of sales in general to the consumers at large and are more in the nature of the activities referred to in the preceding paragraph……………"

19.7 The Ld. AR averred that it appears that 'sales promotion' is an overt activity, that involves i) goods / services, ii) a physical activity that stimulates demand, iii) a specific target market at which the said campaign/activity is directed, iv) an incentive or inducement to taget consumers, *etc*.

19.8 It is the Ld. AR's contention that 'sales promotion' is a mechanism of boosting the sales, not one of elimination of competition or an increase of territory of operation, as has been enlisted in Schedule-3 of the SPA for which Mutual Obligation Fee has been paid. Merely because the end-result of 'sales promotion' and a 'no-compete or investment-protection arrangement' may be the same would not ipso facto mean that both are same and would fall in the inclusive part of the definition of 'input service'.

19.9 The Ld. AR further submitted that contrary to the nature of 'sales promotion' activities, the Mutual Obligation Fee paid is in the nature of investment or protection of investments in technical knowhow and a no-compete arrangement for protecting marketing territories, which do not fall in the definition of 'sales promotion' even in the definitions extracted by the appellant from various marketing management books or dictionaries. He averred that the purpose for which Mutual Obligation Fee has been paid does not involve any activity / element / purpose mentioned in the definition extracted of 'sales promotion' extracted by the appellant from (a) Philip Kotler's Book: Marketing

Management; (b) Achumba Iheanyi's Book: Sales Management Concepts; (c) George Jennifer's Book: Contemporary Management; (d) Adrian Palmer's Book: Introduction to Marketing Theory and Practice; (e) Bagavathi Pillai's Book: Modern Marketing; (f) Oxford Dictionary of Business English and Advanced Law Lexicon by P. Ramatha Aiyar, both of which were analysed by Hon'ble Gujarat High Court in the Cadila Healthcare citation referred earlier in para 19.6 *supra.*

19.10 It is argued by the Ld. AR that the Appellant has not been able to make out any case to place the purpose for which Mutual Obligation Fee has been paid into any of the parameters of the substantive as well as inclusive portion of the definition of 'input services', as given under Rule 2(l) of CCR. In this regard, he further referred to and relied on the following judgments: -

i. *Gujarat State Fertilizers and Chemicals Ltd. Vs. CCE., CUS. & S.T. Surat-II [2016 (41) STR 794 (Guj)],* wherein it was held that *"A fleeting reference to attempt to sales-promotion would not change the very basic nature of agreement and the relations between the appellant and the stockist……"*

ii. *Stanadyne Amalgamations Pvt. Ltd Vs Commissioner of Central Excise, Chennai [2011 (22) STR 344 (Tri.-Chennai)],* wherein it has been held that –

> *"7. In the present case, the appellants are manufacturing pumps for IC Engines. The learned Advocate canvasses that the expenses incurred for the purpose of maintenance of garden are in relation to the business activity and, therefore, the services so used for maintaining the gardens should be treated as input services. Every business enterprises (whether it is a proprietary concern or partnership firm or a company), which are in <u>business treat all expenses as incurred towards business activities only except perhaps amounts which are given on charity. The definition of input services does not take such liberal view to go to the extent of treating all services utilized to be treated as input services. If the intention was to include such services, the definition of input services could have been made much simpler to include all services, which were paid for by the assessee</u>. Further, the term 'input services' is a relative term and there should be some nexus between the services utilized and the activities of manufacture of final products. In the present case, the link is very remote. The claim of the appellants that the service of maintaining garden is indirectly used in relation to the manufacture is thus difficult to accept."*
>
> *[Emphasis supplied]*

19.11 The Ld. AR also relied on the judgment in the case of *Willaimson Magor & Co. Vs Commissioner of Service Tax, Kolkata [2024 (3) TMI 404-CESTAT Kolkata]* to submit that where there was no specific clause in the Agreement that indicated a promotion of the business of the Service

Recipient, the classification of the service could not be done and as a consequence of the same, the Cenvat credit could not be availed. He submitted that the impugned case is similar as no 'sales promotion' activity, as claimed by the appellant, is evident from any of the clauses of the SPA.

19.12 Further, the Ld. AR averred that the purpose for which Mutual Obligation Fee has been paid has no relation, either directly or indirectly, with the manufactured product. He submitted that it is seen from Clause 6.6 of Schedule-3 of the SPA that the appellant is already in the know of the technology for manufacturing the scheduled products viz. piston rings for automotive sector and in fact, have been manufacturing the same. He further submitted that the non-compete clauses for territorial and market allocations would have nothing to do with the manufacture of the products; that it is not that the products could not be manufactured without the SPA and that therefore, the claim of the Appellant that activity for which Mutual Obligation Fee has been paid is related to the manufactured product appears to fail. In this regard, he relied on the judgment of Hon'ble Gujarat High Court in the case of *Commissioner of C.Ex & Cus. Vs. Gujarat Heavy Chemicals Ltd [2011 (22) STR 610 (Guj.)].*

19.13 The Ld. AR contended that the appellant had not sought any services of 'sales promotion' and the entity that issued the debit note is also not in the business of 'sales promotion'. Therefore, the integral connection test laid by Hon'ble High Court of *Bombay in Commissioner Vs. Ultratech Cement Ltd [2010 (280) ELT 369 (Bom)]* relied upon by the appellant fails.

19.14 It was further submitted by the Learned AR that in the case of *United Telecom Ltd. Vs Commissioner of Central Excise, Bangalore-I [2014 (33) STR 357 (Kar)],* citing the cases of *Bombay High Court in Commissioner Vs. Manikgarh Cement [2010 (20) STR 456]* and Supreme Court decision in the case of *Maruti Suzuki Ltd Vs Commissioner [2009 (240) ELT 641 (SC)],* it was held that incidental or ancillary activities to the main objects of the manufacture could not be considered as related to the manufactured product and hence, any credit on this count could not be granted. He submitted that the said citation is squarely applicable to the facts of the impugned case.

19.15 The Ld. AR relied on the case of *Marmugao Port Trust Vs Commissioner of Customs, Central Excise and Service Tax, Goa [2016 (11) TMI 520 – CESTAT Mumbai]* to submit that any payments of the nature of Royalty are not a consideration for rendition of any service, but in fact represent a share of revenue arising out of a Joint-Venture being carried out between two partners. He argued that the 'Mutual Obligation Fee' paid in the impugned case is akin to Royalty in the case law cited and therefore, there is no service rendered in this case and the question of availing input credit on the same would not arise.

19.16 The Learned AR finally prayed for dismissal of the appeal and upholding of the impugned order.

20. The Ld. Advocate for the appellant made further arguments countering the submissions made by the Learned AR and the same are tabulated hereunder.

Rebuttals to specific submissions made by the Respondent during the hearing before the CESTAT, Chennai on 01.04.2025: -

S.No.	**Respondent's submissions**	**Appellant's rebuttals**
1.	It was submitted that IPL is not in the business of 'sales promotion'. Therefore, the integral connection test laid by Hon'ble High Court of Bombay in the case of **Ultratech Cement Ltd, 2010 (260) E.L.T. 369 (Bom.)** fails.	It is submitted that in the case of **Ultratech Cement,** the Hon'ble Bombay High Court held that *"the definition of "input service" is very wide and covers not only services, which are directly or indirectly used in or in relation to the manufacture of final products but also includes various services used in relation to the business of manufacture of final products, be it prior to the manufacture of final products or after the manufacture of final products. To put it differently, the definition of input service is not restricted to services used in or in relation to manufacture of final products but extends to all services used in relation to the business of manufacturing the final products provided that they are integrally connected with the business of the Appellant."* Thus, any activity which is used in the business of

		manufacturing the product is an input service. In the instant case, as submitted *supra*, the service of non-compete is integrally connected and directly interlinked to the Appellant's manufacturing activities in as much as without the said service, the Appellant will be constrained to share their business of manufacture of pistons with their direct competitors. Thus, the ratio of the decision of the Hon'ble Bombay High Court in the case of **Ultratech** is squarely applicable to the facts of the instant case and the Appellant satisfies the test laid down to classify the service of non-compete to an input service.
2.	It was submitted that there was no specific clause in the SPA to indicate promotion of business, thus, classification of the service could not be done. As a consequence, Cenvat Credit could not be availed. Reliance in this regard was placed on **Williamson Magar & Co v. Commissioner of Service Tax, Kolkata [2024 (3) TMI 404-CESTAT Kolkata].**	At the outset, it is submitted that it is a settled law that the misclassification of service at the supplier's end cannot be a ground to deny Cenvat Credit to the recipient. Reliance in this regard is placed on the case of the jurisdictional high court in **M/s. Modular Auto Limited v. Commissioner of Central Excise, 2018 (8) TMI 1691 – Madras high Court** and the case of **Gulf Oil Corporation Limited v. C.C.E. and S.T.-Vapi, 2023 (2) TMI 829 – CESTAT Ahmedabad.** Therefore, the denial of Cenvat Credit merely on the ground that the service of non-compete cannot be classifiable at the supplier's end is not sustainable in as much as the Department has not disputed the Service tax paid on the said service. It is further submitted that the reliance placed on the case of **Williamson Magor** is misplaced and incorrect in as much as the said case is differentiable from the instant case on the following grounds: ➢ The issue in the said case is on the taxability of the non-compete fee received by the assessee under the category of Business Auxiliary Service and not on the eligibility of Cenvat Credit. In this regard, it is settled law that a case is an authority for what it does and not what logically flows from it. Reliance in this regard is placed on the case of **Sreenivasa General Traders v. State of AP, 1983 (9) TMI 315 – Supreme Court.** ➢ The demand in the said case pertains to the period prior to 01.07.2012. In this regard, without prejudice, it is submitted that post 01.07.2012, the service of non-compete received by the Appellant would fall under the ambit of Section 66E(e) of the Finance Act, 1944 *i.e.,* agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act. Thus, the facts of the aforesaid case are not applicable to the instant case and the Cenvat Credit availed by the Appellant cannot be recovered on this ground.
3.	It was submitted that "Mutual Obligation Fee" paid in the impugned case is akin to Royalty and not a consideration of rendition of any	It is submitted that assuming without admitting that the activity of non-compete is not a taxable service, the Appellant submits that it is settled law that Cenvat Credit cannot be denied on the ground that the service provider was not liable to pay service tax on the same. Reliance in this regard is placed on the case of **Commissioner of Central Excise, Pune v. Ajinkya Enterprises, 2013 (294) E.L.T. 203 (Bom.).**

	service, therefore, the question of availing Credit for the same by the service-recipient would not arise. Reliance in this regard was placed on the case of M**armugao Port Trust v. Commissioner of Customs, Central Excise and Service Tax, Goa [2016 (11) TMI 520 – CESTAT Mumbai]**	Without prejudice, it is submitted that if the service of non-compete is not taxable, the Cenvat Credit availed by the Appellant shall be treated as refund of tax erroneously paid to the Government and shall not be recovered. Reliance in this regard is placed on the case of **Bajaj Allianz General Insurance Co. Limited v. Commissioner of Central Excise, Pune-III, 2015 (37) S.T.R. 316 (Tri. – Mumbai),** wherein, under similar facts, the Hon'ble Tribunal, in the context of insurance auxiliary service held as follows: *"From the above discussion, it is very much clear that the insurance auxiliary services provided by the agents in the State of Jammu & Kashmir are not taxable. Therefore, the appellants are not liable to pay Service Tax for the said services of the insurance agents. In these terms, whatever credit is taken by the appellant is nothing but the refund of tax erroneously paid by them.* *….* *With these observations, we hold that the appellant is entitled to take the Cenvat Credit in the facts and circumstances of the case."* It is submitted that the facts of the aforesaid case are squarely applicable to the instant case and therefore, if the contention of the Department is that the service of non-compete is not taxable, then, the appellant shall be permitted to treat the Cenvat Credit availed by them as refund of tax erroneously paid.
4.	It was submitted that the Appellant has not been able to make out any case to place the purpose for which Mutual Obligation fee has been paid into any of the parameters of the substantive as well as inclusive portion of the definition of 'input services', therefore, Cenvat credit is not eligible. Reliance in this regard was placed on the cases of **Gujarat State Fertilizers and Chemicals Ltd Vs. CCE., CUS. & S.T. Surat-II [2016 (41) STR 794 (Guj)** and **Stanadyne Amalgamations Pvt. Ltd v. Commissioner of Central Excise, Chennai [2011**	It is submitted that the reliance placed on the decisions is misplaced in as much as the said cases are differentiable on facts. In this regard, with respect to the case of **Gujarat State Fertilisers and Chemicals,** it is submitted that the said decision is rendered by placing reliance on the case of Commissioner of Central Excise, Ahmedabad-II v. Ms Cadila Health Care Ltd. **[2013 (30) S.T.R. 3 (Guj.)]** which has been reversed by the Hon'ble Supreme Court in the case of **Zydus Lifesciences Limited v. Commissioner of Central Excise, Ahmedabad-II, 2024 (80) G.S.T.L. 338 (S.C.).** In light of the same, the said decision cannot be applied to the instant case. With regard to the case of **Stanadyne Amalgamations**, at the outset, it is submitted that the findings in the aforesaid case are not contrary to the submissions made by the Appellant in as much as the Hon'ble Tribunal, in the said case has held that the term 'input services' is a relative term and there should be some nexus between the services utilized and the activities of manufacture of final products. In this regard, it is the case of the Appellant that the service of non-compete is directly in relation to the manufacture of pistons. It is further submitted that in the aforesaid case, Cenvat Credit was denied on the grounds that the service of maintaining the garden cannot be said to be in relation to the manufacture of pumps. However, in the subsequent case of **Hubergroup India Private Limited v. C.C.E. & S.T.-Daman, 2022 (4) TMI 421**

	(22) STR 344 (Tri.-Chennai)]	**– CESTAT Ahmedabad,** after placing reliance on the case of the jurisdictional High Court in **Commissioner of Central Excise and Service Tax v. M/s. Rane TRW Steering Systems Limited, 2015 (4) TMI 704 – Madras High Court,** the Hon'ble Tribunal held that the appellants therein are entitled for the cenvat credit in respect of maintenance of gardens. Without prejudice, it is submitted that the decision of **Stanadyne Amalgamations** is by a Single Member of the Hon'ble CESTAT, therefore, it is not binding in the instant case. In light of the same, it is submitted that the Cenvat Credit availed by the Appellant is eligible and cannot be denied on this ground.
5.	It was submitted that incidental or ancillary activities to the main objects of the manufacturer could not be considered as related to the manufactured product and hence, credit on this count could not be granted. Reliance was placed on **Commissioner v. Manikgarh Cement [2010 (20) STR 456]** and the case of **Maruti Suzuki Ltd Vs Commissioner [2009 (240) ELT 641 (SC)].**	It is submitted that as stated *supra*, the service of non-compete is an activity which is intrinsically linked to the manufacture of pistons by the Appellant, which is part and parcel of their business activity and is therefore not an activity which is incidental or ancillary to the business of the Appellant. Therefore, the service falls within the "means clause" of the definition of input service and Cenvat Credit is eligible to the Appellant. Furthermore, the reliance placed by the Department on the case of **Manikgarh Cement** is misplaced in as much as the said case pertained to the availment of Credit on services of repairs, maintenance and civil construction for the establishment of a residential colony for the benefit of the employees. Under such circumstances, the Hon'ble Court held that the said activity qualifies as a welfare activity for the benefit of the employees and has no nexus with the business of the assesse. In light of the same, Credit availed was denied. Therefore, the facts of the aforesaid case are differentiable and are not applicable to the instant case. In any case, it is submitted that the said decision was distinguished in the case of **Reliance Industries Limited v. Commissioner of Central Excise and Service Tax (LTU) Mumbai, 2022 (380) E.L.T. 457 (Tri. - LB)** by placing reliance on the cases of **Ultratech** and **Coca Cola India Pvt. Ltd. v. Commissioner of Central Excise, Pune-III [2009 (15) S.T.R. 657 (Bom.).** Further, in the case of **M/s. Manikgarh Cement v. Commissioner of Central Excise and Customs, Nagpur, 2023 (8) TMI 1046 – CESTAT Mumbai,** credit was allowed by placing reliance on the aforesaid decisions. It is further submitted that the Department has placed reliance on the case of **Maruti Suzuki** to submit that it has to be established that inputs mentioned in the inclusive part are "used in or in relation to the manufacture of final product". In this regard, at the outset, it is submitted that the said finding was rendered in the context of the definition of "inputs" under Rule 2(g) of the CCR, 2004 and not "input services" under Rule 2(l) of the CCR, 2004. Without prejudice, it is submitted that the said finding is not contrary to the submissions made by the Appellant *supra*, in fact, the case of **Maruti Suzuki** aids the submissions of the Appellant in as much as it is squarely

		the case of the Appellant that service of non-compete is directly used in or in relation to the manufacturing activity of the Appellant. Furthermore, the Appellant does not contest the fact that the "means clause" and the "inclusive clause" of the definition of the input service should be read together and not in isolation. In light of the same, the Cenvat Credit availed by the Appellant cannot be denied by placing reliance on the aforesaid decisions.

21. Finally, the Learned Advocate prayed that the Appeal be allowed in full, and the Impugned Order be set aside with consequential relief.

22. We have carefully considered rival submissions and examined the evidences available on Appeal records including the case laws relied upon.

23. The issues before us for consideration in this appeal are: -

i. Whether the Mutual Obligation Fee has been paid by the appellant for any service rendered and if so, whether such service will qualify as input service within the "means clause" under Rule 2(l) of CCR, 2004.

ii. Whether the performance of any mutual obligation, if a service, when provided by IPL, will be covered under the "includes" clause under Rule 2(l) of CCR, 2004 as "sales promotion".

24. “Mutual obligation fee" as the phrase denotes is a fee for obligations to be performed mutually. As the term obligation relates to a performance of a duty cast upon a person, mutual obligation is merely duty that both parties perform for one another. Obligation has a legal, social or moral tinge depending on the commitment or promise involved and is the duty involved in fulfilling such commitment or promise, whereas service on the other hand is purely a contractual engagement for a work in return for monetary or other consideration. Thus, when the appellant as well as IPL have divided amongst themselves the products and areas to which they will confine themselves to, it is more of a fulfilment of a duty to honor the same rather than performance of any service inter-se the parties. Thus, while the question whether the 'mutual obligation fee' itself denotes any service is moot, nevertheless, inasmuch as Revenue is not in appeal against the finding of the Adjudicating Authority that it is a service, we too proceed on the said basis.

25. In this context, we find it apt to reproduce the definition of “input services” in terms of CENVAT Credit Rules, 2004, which reads as under: -

(l) “input service” means any service, -

(i) used by a provider of output service for providing an output service; or

(ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal, and includes services used in relation to modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal;

but excludes………

[Explanation. - For the purpose of this clause, sales promotion includes services by way of sale of dutiable goods on commission basis.]

26. The appellant is a manufacturer and not a service provider. Therefore, the first issue to be decided is whether the services for which Mutual Obligation Fee has been paid by the appellant have been used by the appellant,

whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal.

27. We find that the payment made to IPL by the appellant is not for manufacture of final products or in relation to manufacture of final products but for mutually agreeing to obligations stated in Schedule 3 to the Share Purchase Agreement. In this case, we find the principal agreement is the Share Purchase Agreement dated 24.12.2013 amongst all the parties stated therein, Clause 9 of the Agreement titled 'Non-Solicitation' at sub-Clause 9.1 causing an obligation on the relevant parties to execute a non-solicitation agreement simultaneously with the execution of the main agreement on the execution date. Clause 8.5 of the Share Purchase Agreement titled 'Additional Obligations and Covenants' that stipulates the parties have further agreed to comply with the obligations and covenants listed in Schedule 3 of this Agreement. In Schedule 3 of the Agreement, we find that the appellant and IPL have, after identifying products to be manufactured and areas of operation by each, made mutual obligations with respect to the manufacture of products, the customers for whom they are manufactured, as well as assets necessary for the same. It is in furtherance of the obligations to be complied with

under this Schedule, which are termed as mutual obligations, that IPL has made the said payments.

28. The debit note / bill No. 34655 dated 31.12.2013 raised by IPL on the appellant describes the service / purpose for which the payment has been sought by IPL from the appellant as "Mutual Obligation Services Fee". Therefore, the services for which Mutual Obligation Fee has been paid by the appellant do not qualify as input service within the "means clause" under Rule 2(l) of CCR, 2004, since from the nature of duties performed mutually, they cannot be said to be used by the appellant directly or indirectly in or in relation to manufacture of final products.

29. The appellant's reliance on the judgment of *Union Carbide India v. CCE, Calcutta-I, 1996 (86) E.L.T. 613 (Tribunal)* to submit that the definition of input service is wide and the service need not be utilised directly in the manufacture of the final product for it to be considered under the "means clause" is misplaced as the said case law relates to definition of "inputs" and not "input services". The appellant themselves have argued elsewhere in this appeal that it is settled law that a case is an authority for what it does and not what logically flows from it. The same argument is squarely applicable here.

30. Coming to the second issue, we find that the appellant has placed reliance on Oxford Dictionary of Business in support of the argument that the service received by them constitutes "Sales Promotion" and in their written submission dated 01.04.2025 in Para 15, they have said that "the 'sales promotion' has been defined in the Oxford Dictionary of Business to mean an activity designed to boost the sales of a product or service". However, they have produced Webster's Third New International Dictionary at page 50 of their paper book of Rules and Citations filed on 01.04.2025, the 'sales promotion' as defined in the Webster's Third New International Dictionary is as follows: -

> *"**Sales promotion** : activities and devices designed to create goodwill and sell a product; esp.: selling activities (as use of displays, sampling, demonstrations, fashion shows, contests, coupons, premiums, and special sales) that supplement advertising and personal selling, coordinate then, and make them effective"*

31. We find that none of the activities mentioned in aforesaid dictionary definition; or even activities that are normally associated with sales promotion, such as advertising campaign, increased PR activity, a free-sample campaign, offering free gifts or trading stamps, arranging demonstrations or exhibitions, setting up competitions with attractive prizes, temporary price reductions, door-to-door calling, telephone selling, personal letters etc., stimulation of

sales achieved through contests, demonstrations, discounts, exhibitions or trade shows, games, giveaways, point-of-sale displays and merchandising, special offers, and similar activities, use of incentives which are employed to get people to buy a product, or drive sales, *etc.,* are rendered by IPL to the appellant for the said payment of 'mutual obligation fee'.

32. We find that merely because the appellant has paid service tax on the said activity as is leviable under the Finance Act, 1994 provisions, or because their services fall under Section 66E(e) of the Finance Act, 1994, does not automatically mean that such services are also qualified as input services. While the services performed may be subject to levy of service tax, not all services qualify as input services, and it is only those that fall within the ambit of the definition that can be considered to be input services. Therefore, merely the factum of a service having suffered service tax does not necessarily translate the service becoming an input service.

33. At this juncture, we find it appropriate to notice the finding of the Adjudicating Authority which is reproduced as under: -

> *"41. From the above, it is clear that sales promotion is defined as an activity that gives incentives to get people to*

buy a product; as a medium to stimulate quicker purchase of particular products; as the ways used by firms to communicate with intended target market; as an activity designed to boost the sales of a product or service. Here it is elaborated as an activity to boost sales of products/services and intended to reach the targeted class/segment (potential customers). But in respect of the services received by the assessee, in this case, I find that the "Mutual Obligation Fee" is paid by the assessee to its competitor to create an obligation on the part of the competitor and the competitor is obliged not to compete with the assessee in the areas agreed upon mutually. In this case, I find that M/s India Pistons Ltd. had obliged to not to solicit, quote or supply pistons to M/s Mahindra and Mahindra and M/s Tata Motors i.e. in other terms M/s India Pistons Ltd. had obliged to not to compete with the assessee for supply of pistons or auto components to the said two customers. Similarly, M/s India Pistons Ltd. have also agreed to not to solicit, quote or supply of pistons to multinational customers for a period of three years from the date of termination of their joint venture agreement.

42. I also find that these obligations have been created on M/s India Pistons Ltd. by an agreement and the obligations are intended to protect the investments made by the assessee and their capital and technical know-how. I find that these obligations created on M/s India Pistons Ltd., are intended to protect the existing volume of sales of pistons/auto components manufactured by the assessee, with the customers discussed above. Here I find that it has to be critically examined the obligations created for protecting the existing market/sales could be equated as sales promotion. From the definition given in the dictionaries explained above, it could be seen that the activities intended to reach the intended target customers for enlarging/increasing the volume of sales alone could be termed as sales promotion activities. Hence by comparing *the definition for the word 'sales promotion' with the obligations created on the competitor, it could be arrived that the steps taken by the assessee to protect their investment/volume of sales to their existing customers could not be termed as activities intended for 'sales promotion'. It should also be noted that the services of mutual obligation has been received from M/s India Pistons Ltd. who is a competitor to the assessee in the field of manufacture of pistons for automobiles. Hence the services received from the competitor could never be termed as sales promotion intended for increasing sales to the assessee's products. The restraint created on the competitor through mutual obligation agreement could not be termed as a step in the direction of sales promotion and it is a step intended to just retain their present market share/sales volume with the existing customers. Hence I conclude that the assessee's contention that the services received by them from M/s India Pistons Ltd. are nothing but 'sales promotion' is not acceptable. Probably, the assessee is stretching the meaning of 'sales promotion', so as to obtain Cenvat credit [available on 'input service'], of the service tax paid on the 'Mutual Obligation Fee'. Within the scope of the definition of 'input service' appearing in the Cenvat Credit Rules, services by way of non-compete agreement does not appear to be covered. A non-compete agreement is generally intended to protect the existing market/territory, and the same has nothing to do with the actual manufacture of the final product, in this case, pistons.”*

34. The appellant has argued that in case the service tax paid is erroneous, the judgment of *Bajaj Allianz General Insurance Co. Limited v. Commissioner of Central Excise, Pune-III, 2015 (37) S.T.R. 316 (Tri. – Mumbai)* is applicable

and the appellant should be permitted to treat the Cenvat Credit availed by them as refund of tax erroneously paid. In this regard, we find that the issue that arises for our consideration is only on the entitlement of the appellant to take credit of the service tax paid on the mutual obligation fee and we are called upon only to decide the same. The taxability or otherwise of the service tax paid at the service providers' end does not arise for our consideration.

35. Before concluding, it may not be out of place to point out that the appellant's reliance on the case of *CIT v. Ingersoll Rand International 2014 (6) TMI 934-Karnataka High Court* to contend that the service received by the Appellant from IPL is a service relating to "sales promotion" is also misplaced for the reasons that the said decision is in respect of order passed by Income Tax Appellate Tribunal in the context of Income Tax Act, 1961 and the said decision does not even attempt to interpret the term "Sales Promotion".

36. The other case laws relied upon by both the parties are clearly distinguishable in the facts and circumstances of those cases. In fact, it is not the definition of input services as given in Rule 2(l) of the CENVAT Credit

Rules, 2004 for the relevant period that has arisen for consideration in some of these relied upon cases.

37. We further observe that the fact still remains that typically, organizations classify nearly all outlays as pertaining to their commercial pursuits, with the possible exception of donations to philanthropic endeavors. Yet, the definition of input services as in the statute, refrains from embracing such an expansive interpretation that would deem every procured service as eligible. Had the objective been to incorporate them comprehensively, the legislature would have simplified the definition to merely cover "all services" remunerated by the assessee. Additionally, the expression "input services" is inherently relational, necessitating at least a modicum of linkage between the services employed and the fabrication of the ultimate goods. Here, such a correlation is utterly absent, far from even a tenuous one. In fact, the input service definition as existing for the relevant period requires an integral connection that should come out between the services rendered and the activity of manufacture of the appellant. We observe that attempt of the appellant to bringing the said 'mutual obligation' performed under the nomenclature 'sales-promotion', is doomed to fail, as that would not change the very basic nature of these obligations as is discernable from the

agreement. In the impugned case, the Agreement nomenclatured as a Share Purchase Agreement contains these obligations in the Schedule 3 and giving such obligations, a colour of Sales-Promotion, as contended by the Appellants, would be too far-fetched.

38. We find that SPA does not contain any identifiable service that would indicate that what is being provided is a service of sales promotion. In fact, it is also pertinent that IPL is a manufacturer and is not a registered provider of services of sales promotion.

39. We agree with the contention of the Ld. Authorized Representative that sales promotion is an overt activity that involves i) goods/ services, ii) a physical activity that stimulates demand, iii) a specific target market at which the said campaign/activity is directed, iv) an incentive or inducement to target consumers, *etc.*

40. This shows that 'sales promotion' is a positive connotation in that it is a mechanism of enhancing the sales. Just because of no-compete provisions, or mutual engagement in the activities of each other by IPL and the appellant, by demarcating the respective spaces, does not make the activities that of sales promotion. Such activities

may no doubt result in securing the bottom line of the Company, however, such false equivalence of turf protecting activities intended to salvage and protect the respective territories cannot be equated to the 'sales promotion' stated in the inclusive portion of the definition in Rule 2(l) of the CENVAT Credit Rules, 2004. We find that the mutual obligation fee paid by IPL to MIPL is for activities in the nature of investment, or protection of investments in technical knowhow, no-compete arrangement for protecting marked territories, and do not fall under the definition of 'sales promotion' even in the definitions extracted by the appellant in the Ground of Appeal, from various marketing management books or dictionaries, as below: -

a. The definition extracted from Philip Kotler's Book: Marketing Management uses the words/terms - campaigns, incentive tools, short- term, stimulate. It is submitted that the purpose for which Mutual Obligation Fee has been paid as per Schedule 3 to Share Purchase Agreement does not involve any activity pertaining to any of the abovementioned terms.
b. The definition extracted from Achumba Iheanyi's Book: Sales Management Concepts uses the words/terms- 'marketing activities' and 'stimulate consumer purchasing', 'displays/ shows/ demonstrations/ expositions/ *etc*'. We find that the purpose for which Mutual Obligation Fee is entirely different, one of no-compete arrangement, it does not involve an

activity pertaining to any of the abovementioned terms as per Schedule 3 to Share Purchase Agreement.

c. The definition extracted from George Jennifer's Book. Contemporary Management uses the words/terms - 'direct inducement', 'incentive', 'sales-force/ distributors/ ultimate consumers', 'immediate sale'. We do not find that Mutual Obligation Fee has been paid for any of the aforesaid activities as per Schedule 3 to Share Purchase Agreement.
d. The definition extracted from Adrian Palmer's Book: Introduction to Marketing Theory and Practice uses the words/terms - "communicate' and 'incentive for action'. As per Schedule 3 to Share Purchase Agreement, Mutual Obligation Fee is not for any communication of incentive for action by any consumer. It is for an entirely different purpose, i.e., one of no-compete arrangement and involving transfer of shares/control/ technical knowhow/ marketing territories.
e. The definition extracted from Bagavathi Pillai's Book: Modern Marketing uses the words/terms 'stimulate interest', 'trial or purchase'. We find that no such mention is available in Schedule- 3 of the SPA for which Mutual Obligation Fee has been paid. The purpose of payment of Mutual Obligation Fee is entirely distinct and different, as already stated above.

41. We are therefore of the view that the appellant has failed to make out a case that the mutual obligation fee paid warrants treatment as input services either in the means clause or as “Sales Promotion” in the inclusive part of

the definition of input services as per Rule 2(l) of the CENVAT Credit Rules, 2004.

42. From the above discussion, we find no reason to interfere with the well-reasoned order of the Adjudicating Authority.

43. Thus, we reject the appeal and uphold the Order-in-Original No. 03/2016(CE) dated 19.02.2016 passed by the Commissioner of Central Excise, Chennai

(Order pronounced in open court on 24.09.2025)

Sd/-	Sd/-
(AJAYAN T.V.)	**(VASA SESHAGIRI RAO)**
MEMBER (JUDICIAL)	MEMBER (TECHNICAL)

MK