GSTAT

Division Bench Court No. Court I

APL/15/RPR/2026

HINDALCO INDUSTRIES LIMITED **.....Appellant**

Versus

COMMISSIONER STATE TAX CHHATISGARH,
COMMISSIONER STATE TAX CHHATISGARH, HEAD OFFICE COMMERCIAL TAX-GST DEPARTMENT,
NORTH BLOCK, SECTOR-19, ATAL NAGAR **.....Respondent**

Counsel for Appellant
MR. SAURABH MALPANI, ADVOCATE
MR. KARAN NANKANI, CA

Counsel for Respondent
MR. ABHAY TIWARI, ADVOCATE

Hon'ble Pradeep Kumar Vyas, Member (Judicial)
Hon'ble Chandra Bhushan Singh, Member (Technical)

Form GST APL-04A

[See rules 113(1) & 115]

Summary of the order and demand after issue of order by the GST Appellate Tribunal

Whether remand order: No

Order reference no.: ZA220050926000243H **Date of order:** 24/09/2026

1.	GSTIN/Temporary ID/UIN - 22AAACH1201R1ZX	
2.	Appeal Case Reference no. - APL/15/RPR/2026	Date - 27/03/2026
3.	Name of the appellant - HINDALCO INDUSTRIES LIMITED, vidyadhar.patel@adityabirla.com, 8709038637	
4.	Name of the respondant – 1. Commissioner State Tax Chhatisgarh , cctd.cg@gov.in	
5.	Order appealed against - AD220322002632X	
	(5.1) Order Type - Demand Order	
	(5.2) Ref Number - ZD2212220007155	Date - 07/12/2022
6.	Personal Hearing - 24/09/2026 16/09/2026 02/09/2026 28/07/2026	
7.	Status of Order under Appeal - **Confirmed** – Order under Appeal is confirmed	
8.	**Order in brief -** The present appeal by Hindalco Industries Limited under Section 112 of the CGGST Act challenges Order-in-Appeal No. 112/GST/2022 dated	

	14.11.2022, whereby interest of ₹44,51,491 was sustained on an alleged erroneous refund of ₹90,35,671. The refund had been sanctioned on 13.02.2019 under Section 54(3) read with Rule 89(5) against a larger refund claim arising from inverted duty structure. Subsequently, the Department held that, on correct application of the substituted Rule 89(5), no positive refund was admissible and initiated proceedings under Section 73. The appellant repaid ₹90,35,671 through DRC-03 on 08.11.2021 but did not pay interest. The appellant contended that the refund sanction in FORM GST RFD-06 was a quasi-judicial order which, having not been challenged under Section 107(2) or revised under Section 108, could not be reopened through Section 73. It further argued that refund of accumulated ITC was not covered by the expression "tax erroneously refunded"; that Sections 50 and 73 did not create substantive liability to interest; and that retrospective operation of Rule 89(5), the decision in VKC Footsteps, and later insertion of Rule 88B could not retrospectively justify interest. The respondent maintained that Section 73 independently covers erroneous refunds and expressly links such recovery with interest under Section 50. The Tribunal holds that monetary refund of accumulated ITC under Section 54(3) can constitute an "erroneous refund" under Section 73 and that prior resort to Sections 107(2) or 108 is not, in the facts of the case, a jurisdictional precondition. The Rule 89(5) computation showing no positive refund remains uncontroverted; VKC Footsteps upheld the governing formula; the entire principal amount has been restored; and only ₹44,51,491 towards interest is disputed. Sections 73 and 50, read conjointly, are held to provide substantive authority for interest on an erroneous refund. Rule 88B does not create that liability. Interest of ₹44,51,491 at 18% for the period from 13.02.2019 to 08.11.2021 is held sustainable. The impugned Order-in-Appeal is accordingly affirmed and the appeal dismissed.

Summary of Order

9.	If demand order then whether demand quantified: Yes

Section-I										
Particulars	**Central tax**		**State/UT tax**		**Integrated tax**		**Cess**		**Total**	
	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount	**Disputed Amount**	**Determined Amount**
1	2	3	4	5	6	7	8	9	**10**	**11**
(a) Tax	0	0	0	0	0	0	0	0	**0**	**0**
(b)Interest	0	0	4451491	4451491	0	0	0	0	**4451491**	**4451491**
(c) Penalty	0	0	0	0	0	0	0	0	**0**	**0**
(d) Fees	0	0	0	0	0	0	0	0	**0**	**0**

(e) Others										**0**
(f) Refund										**0**

10.	For Other orders and Demand orders which are not quantified:	
Issues as raised by proper officer	Issues as determined by Appellate/Revisional authority	Order by GST Appellate Tribunal
Levy of interest or late fee or fine	As per the Order-in-Appeal, the case of the Department is that as per Section 50 of the SGST Act the refund of accumulated input tax credit pertaining to input services was erroneously granted to the appellant under an inverted duty structure, contrary to the statutory scheme clarified by Circular No. 79/53/2018-GST dated 31.12.2018 and authoritatively settled by the HonÃ¢Â□Â□ble Supreme Court in VKC Footsteps India Pvt. Ltd. v. Union of India. Once such refund, credited in cash, was utilised by the appellant, a liability arose under Section 73(1) of the CGST Act, which expressly provides for recovery of erroneous refunds along with interest payable under Section 50. The Department contends that although Section 50 is titled Ã¢Â□Â□interest on delayed payment of taxÃ¢Â□Â□, its application is triggered through Section 73 in cases where public revenue has been wrongly retained and used by the assessee, resulting in loss of time value of money to the exchequer. Accordingly, interest is compensatory in nature and automatically follows recovery of an erroneous refund, irrespective of the absence of fraud or intent.	Interest

Place: RAIPUR

Date: 24.09.2026

Signature

Chandra Bhushan Singh

Designation: Member

Jurisdiction: Raipur

ORDER

PER: C. B. SINGH, MEMBER (TECHNICAL)

1. This appeal under Section 112 of the Chhattisgarh Goods and Services Tax Act, 2017 ('CGGST Act') is directed against Order-in-Appeal No. 112/GST/2022 dated 14.11.2022 passed by the Joint Commissioner (Appeals), State Tax, Bilaspur, whereby the appellant's first appeal was rejected and the demand of interest of ₹44,51,491/- confirmed by the Assistant Commissioner, State Tax, Raigarh Circle-2, by order dated 11.11.2021 / FORM GST DRC-07, was sustained.

2. The dispute arises out of refund of ₹90,35,671/- sanctioned to the appellant pursuant to Refund Sanction/Rejection Order No. 50 dated 13.02.2019 in FORM GST RFD-06. Proceedings were subsequently initiated under Section 73 treating the said amount as erroneously refunded. During pendency of those proceedings, the appellant deposited ₹90,35,671/- through FORM GST DRC-03 dated 08.11.2021, but did not deposit the interest demanded thereon. The legal effect of such payment, including whether any dispute concerning the principal amount survives for determination in the present appeal and whether the appellant nevertheless remains entitled to contest the consequential interest, is considered hereinafter.

I. FACTS AND PROCEDURAL HISTORY

3. The appellant is engaged, inter alia, in extraction of coal and bauxite and in manufacture of aluminium and copper. Its operations during the period July 2017 to March 2018 resulted in accumulation of input tax credit on account of an inverted duty structure. On 31.12.2018, the appellant filed an application in FORM GST RFD-01A, ARN AA220318001451X, claiming refund of ₹24,61,34,059/- under the State tax head under Section 54(3) of the CGGST Act read with Rule 89(5) of the CGGST Rules.

4. In the refund proceedings, a show-cause notice in FORM GST RFD-08 dated 11.01.2019 proposed rejection of ₹23,70,36,223/-, principally on the ground that the amount pertained to input tax credit relating to input services and capital goods which was not admissible in the computation of refund under the substituted Rule 89(5), read with Circular No. 79/53/2018-GST dated 31.12.2018. The appellant filed its reply in FORM GST RFD-09 on 24.01.2019 along with a written representation.

5. Refund Sanction/Rejection Order No. 50 dated 13.02.2019 was thereafter issued in FORM GST RFD-06. Against the refund claim of ₹24,61,34,059/-, the proper officer rejected ₹23,70,98,388/- and sanctioned ₹90,35,671/- under the State tax head. The accompanying payment advice in FORM GST RFD-05 also records ₹90,35,671/- as the net refund sanctioned. Thus, the refund authority itself did not accept the appellant's larger claim founded on inclusion of input-service/capital-goods credit; the amount of ₹90,35,671/- was the residual amount considered refundable upon adjudication of the refund application.

6. Aggrieved by the rejection of the larger part of its refund claim, the appellant instituted W.P.(T) No. 128/2019 before the Hon'ble High Court of Chhattisgarh, questioning, inter alia, the validity and legality of Rule 89(5), as amended by Notification No. 21/2018-Central Tax dated 18.04.2018 and Notification No. 26/2018-Central Tax dated 13.06.2018, and the rejection part of RFD-06. The writ proceedings were thus directed against the denial/rejection of the larger refund claim. The amount of ₹90,35,671/- sanctioned by RFD-06 was not challenged by the Department by an appeal under Section 107(2) or by exercise of revisional jurisdiction under Section 108.

7. On subsequent scrutiny, the Department formed the view that even the amount of ₹90,35,671/- had been erroneously refunded. The Department's case was that, *on correct application of the substituted Rule 89(5) formula,* after restricting 'Net ITC' to eligible input-goods credit and applying the other components of the statutory formula, the maximum refund worked out to a negative figure and consequently no positive refund was admissible. An intimation in FORM GST DRC-01A was issued on 19.03.2021. The appellant responded thereto on 07.06.2021 and disputed the proposed recovery.

8. Thereafter, a show-cause notice / FORM GST DRC-01 dated 22.06.2021 proposed recovery of ₹90,35,671/- as an erroneous refund under Section 73(1), together with interest under Section 50, then quantified at ₹38,27,659/-. The appellant filed a detailed reply dated 15.07.2021 disputing both the characterisation of the sanctioned amount as an *erroneous refund* and the consequential liability to interest.

9. While the Section 73 proceedings were pending, the Hon'ble Supreme Court delivered judgment on 13.09.2021 in *Union of India v. VKC Footsteps (Supra) India Pvt. Ltd., (2022) 2 SCC 603: 2021 (52) GSTL 513 (SC).* The Hon'ble Supreme Court upheld the statutory validity of the amended Rule 89(5), including the confinement of 'Net ITC' in the inverted-duty refund formula to input tax credit availed on inputs, and

disapproved the contrary view which had treated exclusion of input services from the formula as ultra vires Section 54(3).

10. A further/fresh FORM GST DRC-01 was issued on 06.10.2021. Thereafter, during pendency of the proceedings initiated under Section 73, the appellant deposited ₹90,35,671/- through FORM GST DRC-03 dated 08.11.2021. In its submissions, the appellant has characterised the payment as having been made after the decision in *VKC Footsteps (Supra)*, 'as an abundant caution and to buy peace of mind'. The legal effect of that characterisation, and the consequence of payment of the principal amount without the interest contemplated in the Section 73 scheme, are considered in the findings hereinafter. The appellant did not deposit the interest demanded on the said amount.

11. The adjudicating authority thereafter passed the order dated 11.11.2021 and issued FORM GST DRC-07. It recorded that the amount of ₹90,35,671/- proposed to be recovered as erroneous refund had been deposited through DRC-03 on 08.11.2021, whereas the interest had not been paid. The surviving demand was accordingly confined to interest of ₹44,51,491 calculated up to the date of repayment of the principal amount.

12. The appellant challenged the interest demand before the Joint Commissioner (Appeals), State Tax, Bilaspur, under Section 107. The appellate record shows that opportunities of personal hearing were afforded on 21.04.2022, 22.04.2022, 27.06.2022 and 14.11.2022. On 27.06.2022 the appellant was represented and made submissions; on 14.11.2022 it requested that the appeal be decided on the basis of the submissions already made. By Order-in-Appeal No. 112/GST/2022 dated 14.11.2022, the first appellate authority rejected the appeal and sustained the demand of interest.

13. In the impugned order, the first appellate authority also recorded the Department's computation under Rule 89(5). It records turnover of inverted-rated supply of ₹7,64,34,08,160/-, tax payable on such inverted-rated supply of ₹38,21,11,676/-, and 'Net ITC' restricted to input-goods credit of ₹1,80,71,342/-. On the computation recorded therein, the maximum refund worked out to a negative figure of ₹36,41,16,305/-, with the result that no positive refund was considered admissible. In the present appeal, the appellant has not furnished any alternative computation under Rule 89(5) demonstrating that any positive amount remained refundable, nor has it specifically assailed the mathematical computation recorded in the impugned order.

14. The challenge, as ultimately pressed, principally turns on the legal effect and finality of RFD-06, the scope and applicability of Section 73, the statutory basis and commencement of interest, the effect of retrospectivity, and the applicability of Rule 88B.

II. PROCEEDINGS AND SUBMISSIONS BEFORE THE TRIBUNAL

15. We heard Mr. Saurabh Malpani learned counsel for the appellant and Mr. Abhay Tiwari learned counsel and the Authorised Representative for the respondent at length and perused the appeal memorandum, counter-statement, refund proceedings, show-cause notice(s), order-in-original, order-in-appeal and the arguments submitted at final hearing.

16. The prayer in the memorandum of appeal is to set aside Order-in-Appeal No. 112/GST/2022 dated 14.11.2022 insofar as it is against the appellant, to allow the appeal, to grant personal hearing, and to pass such further order(s) as may be deemed fit and proper. That general prayer has, however, to be read with the statutory appeal form and the quantified dispute carried to this Tribunal: the appeal memorandum shows ₹44,51,491/- as the amount of interest under dispute, while no amount is shown as disputed under the head of erroneous refund and no amount of the principal ₹90,35,671/- is claimed as refundable/restorable in the present appeal. At the oral hearing, learned representatives for both sides further agreed that the sanctioned refund of ₹90,35,671/- was actually credited/disbursed to the appellant on 13.02.2019, the date of the refund sanction order, and that the principal amount was paid back on 08.11.2021. These two dates are thus not in dispute. The appellant stated at final hearing that, in view of the opportunity available before the first appellate authority and before this Tribunal, it did not press the prayer for remand. The matter was accordingly argued for final determination on merits.

A. Submissions of the appellant

17. The principal submission of learned counsel for the appellant is that Refund Sanction/Rejection Order No. 50 dated 13.02.2019 in FORM GST RFD-06 was a quasi-judicial order passed after examination of the refund claim, issuance of RFD-08 and consideration of the appellant's reply in RFD-09. No departmental appeal under Section 107(2) was filed and no revisional jurisdiction under Section 108 was exercised.

Consequently, according to the appellant, the sanction of ₹90,35,671/- attained finality and could not be collaterally nullified by issuing a demand under Section 73.

18. Heavy reliance is placed on *Patanjali Foods Ltd. v. Union of India, 2025 SCC OnLine Guj 1418: (2025) 147 GSTR 397: 97 GSTL 24*, where the Hon'ble Gujarat High Court, on the facts before it, held that a refund sanctioned after adjudication and left unchallenged under Section 107 or unrevised under Section 108 could not subsequently be taken away through Section 73. Reliance is also placed on *Eveready Industries India Ltd. v. CESTAT, 2016 SCC OnLine Mad 6066: (2016) 337 ELT 189 (Mad),* construing Sections 11A, 11B and 35E of the Central Excise Act, 1944, for the proposition that once refund has been allowed after adjudication, another authority cannot in collateral proceedings describe the refund as erroneous without first disturbing the refund order through the statutory review/appellate route.

19. Learned counsel further relies upon paragraph 2.2 of *CBIC Instruction No. 03/2022-GST dated 14.06.2022*, dealing with post-audit/review of refund orders and examination under Section 107(2). According to the appellant, the Instruction itself recognises that legality or propriety of a refund order is to be tested through departmental review/appeal and supports the contention that Section 73 cannot be invoked as a substitute for that statutory route.

20. A textual submission is advanced that Section 73 separately refers to *'any tax has not been paid or short paid or erroneously refunded'* and to *'input tax credit wrongly availed or utilised'*, but does not expressly use the words *'input tax credit erroneously refunded'*. On that basis it is contended that a cash refund sourced from accumulated ITC is outside the erroneous-refund limb.

21. On interest, learned counsel submits that there is no substantive charging provision for interest on an ‘erroneous refund’. It is urged that Section 50(1) speaks of a person liable to pay tax who fails to pay such tax within the prescribed period, while Section 73 merely uses the expression 'along with interest payable thereon under section 50'. Reliance is placed on *Mahindra & Mahindra Ltd. v. Union of India, 2022 SCC OnLine Bom 3155; J.K. Synthetics Ltd. v. Commercial Taxes Officer, (1994) 4 SCC 276; Vikrant Tyres Ltd. v. First ITO, (2001) 3 SCC 76; India Carbon Ltd. v. State of Assam, (1997) 6 SCC 479; and V.V.S. Sugars v. Government of A.P., (1999) 4 SCC 192,* for the proposition that liability to interest must rest on clear substantive statutory authority and cannot be supplied merely by implication.

22. Reliance is also placed on *Orion Steel Corporation v. CCE, 2008 (231) ELT 332 (Tri. -Ahmd.),* to contend that where refund was held under an operative order and was repaid after reversal, interest could not run from the original refund date. *T. Blades v. Union of India, 1994 SCC OnLine Bom 792: (1994) 71 ELT 911 (Bom)* was also cited; learned counsel fairly accepted that its ultimate result, directing repayment with interest, does not support the appellant.

23. Learned counsel also invokes *Star India (P) Ltd. v. CCE, (2005) 7 SCC 203* to contend that although a fiscal liability may, in a proper case, be legislated retrospectively, interest cannot retrospectively be fastened for a period when the underlying liability itself did not exist. It is submitted that the retrospective amendment to Rule 89(5), or its subsequent authoritative interpretation in *VKC Footsteps (Supra)*, cannot be applied to create retrospective interest. Reference is also made to *Sarrs Construction v. Commercial Taxes Department, 2024 SCC OnLine Raj 3998,* where further proceedings pursuant to a notice were stayed at an interim stage on the submission that refund could not be recovered unless the refund order was first reversed in appeal or revision.

24. The appellant also contends that Rule 88B, inserted later, cannot govern the disputed period. It does not, however, challenge by an alternative calculation the Rule 89(5) computation reproduced in the impugned order. Nor is any separate arithmetical computation of interest of ₹44,51,491/- placed before us.

25. Although the appeal memorandum contained a ground regarding absence of personal hearing at the original stage, the appellant, after having been heard at the appellate stage and at final hearing before this Tribunal, does not press remand and seeks a decision on merits. Learned counsel further submits that repayment of ₹90,35,671/- through DRC-03 was made after *VKC Footsteps (Supra)* only by way of abundant caution and 'to buy peace of mind', and was not intended as an admission either that RFD-06 was without legal effect or that interest was payable from the date of sanction/credit of refund.

26. In the rejoinder dated 12.09.2026, the appellant has amplified the above pleas. It submits that the refund sanction order dated 13.02.2019 was an adjudicatory order passed by an Assistant Commissioner and could be examined, if at all, by a superior authority through Section 107(2) or Section 108; the same authority could not, according to the appellant, reopen its own concluded refund adjudication through Section 73. In

addition to *Patanjali Foods (supra)* and *Eveready Industries (supra)*, reliance is placed on *Honda Siel Power Products v. Union of India [2020 (372) E.L.T. 30 (All.)], Torrent Pharmaceuticals Ltd. v. Union of India* [2024-VlL-648-GUJ] and *Auroglobal Comtrade Pvt. Ltd. v. Joint Commissioner, GST & Central Excise [2026 (105) G.S.T.L. 116 (Ori.)]*, besides decisions under the earlier indirect-tax enactments including *ITC Ltd. v. CCE, Kolkata-IV [2019 (368) E.LT. 216 (S.C.)], CCE, Kanpur vs Flock (India) Pvt Ltd [2000-VIL-12-SC-CE], Commissioner of Central GST And Central Excise Vs Krishi Rasayan Exports Pvt Ltd [2023-Vil-438-.J&K-Ce], Tripura Ispat vs. Union Of India [2021 (1) TMI 753]* and other authorities collected in the rejoinder. The appellant also refers to *CBEC Circular No. 423/56/98-CX dated 22.09.1998*. The common proposition for which these materials are cited is that a subsisting adjudicatory refund order cannot be nullified collaterally by the authority which granted it and that the prescribed appellate/revisional route must first be followed.

27. The rejoinder separately presses the textual objection to Section 73. According to the appellant, Section 73(1) identifies four situations - non-payment, short-payment, erroneous refund of tax, and wrongful availment/utilisation of ITC - but does not expressly provide for recovery of 'ITC erroneously refunded'. Reliance is placed on the contrast with Rule 14 of the erstwhile CENVAT Credit Rules, 2004 and on authorities applying strict construction to taxing statutes, including *Commissioner of Income Tax vs. Kasturi sons Ltd., (1999) 3 SCC 346 and State of West Bengal vs. Kesoram Industries Limited, (2004) IO SCC 201.* It is urged that the Court or Tribunal cannot supply an omission in the statutory text.

28. On interest, the rejoinder develops three alternative submissions. First, Section 50 is said to be confined to delayed payment of tax and wrongful availment and utilisation of ITC and, according to the appellant, neither the Act, Notification No. 13/2017-Central Tax (Rate) nor Rule 88B provides a charging and computational mechanism specifically for interest on an erroneous refund of accumulated ITC. Reliance is placed, inter alia, on *Mahindra & Mahindra (supra), J.K. Synthetics (supra), India Carbon (supra), TVL Hotel Peacock v. Commercial Tax Officer, Chennai 12018 (17) G.S.T.L. 385 (Mad.)] and S. Gurunathan v. Deputy Commercial Tax Officer, Thirupathur [2014 SCC OnlineMad 1829].* Secondly, relying on *Vikrant Tyres (supra) and Orion Steel (supra),* it is urged that so long as RFD-06 remained a valid and subsisting order there was no default by the appellant and therefore no interest could run for the period during which the amount was retained under that order. Thirdly, relying on *Star India (supra)* and

decisions said to have followed it, the appellant submits that a subsequent judicial interpretation or retrospective operation of Rule 89(5) cannot retrospectively create an interest burden for an earlier period. The rejoinder also advances, without prejudice, narrower alternatives that interest cannot run before the adjudicating order determining recoverability and, in any event, cannot be charged for the period 24.07.2020 to 13.09.2021 when the Gujarat High Court decision in *VKC Footsteps (Supra)* stood in the appellant's favour.

29. The rejoinder further reiterates that the DRC-03 payment was made only as abundant caution after the Hon'ble Supreme Court decision in *VKC Footsteps (Supra)* and was not an admission of liability; that the second DRC-01 dated 06.10.2021 was itself impermissible while the earlier proceedings were pending; and that the amount repaid in cash has not been re-credited to the appellant's electronic credit ledger. It also reiterates the original-stage personal-hearing objection under Section 75(4), relying on *Eminent Logistics v. Assistant Commissioner of State Tax [2025 (6) T MI 1843 - CALCUTTA HIGH COURT]*. These pleas, insofar as they survive the position taken at final hearing, are dealt with in the findings below.

B. Submissions of the respondent

30. The respondent supports the orders below. It submits that the refund claim was governed by the substituted Rule 89(5), made effective from 01.07.2017, and that the Hon'ble Supreme Court in *VKC Footsteps (Supra)* has conclusively upheld the statutory architecture under which 'Net ITC' for the inverted-duty formula is confined to input-goods credit. According to the respondent, the legal premise on which inclusion of input-service credit had been claimed therefore does not survive.

31. It is submitted that correct application of Rule 89(5) resulted in no positive refund entitlement. The computation recorded by the first appellate authority has not been displaced by any alternative computation from the appellant; the principal amount was itself repaid after *VKC Footsteps (Supra)*.

32. According to the respondent, Section 73 expressly provides an independent demand-and-recovery mechanism for *'tax ... erroneously refunded'*. Sections 107(2) and 108 contain no non obstante clause, exclusivity clause or other language making departmental appeal/revision the sole method of recovering an *erroneous refund*. The

CBIC Instruction concerning review of refund orders is an administrative safeguard and cannot curtail the express statutory power conferred by Section.

33. The respondent submits that a monetary refund of unutilised ITC under Section 54(3) is a refund within the GST statute. The separate phrase 'ITC wrongly availed or utilised' addresses wrongful credit at the ledger/utilisation stage; it does not exclude from the preceding erroneous-refund limb a cash payment sourced from accumulated ITC.

34. On interest, the respondent relies upon the repeated express references in Section 73 to interest under Section 50. It is argued that the statutory liability is compensatory and does not depend upon fraud or fault; indeed, Section 73 is the provision applicable precisely where fraud, wilful misstatement or suppression are not alleged. The consequence of an erroneous refund is therefore not neutralised merely because the refund was sanctioned by the Department on the claimant's application. Reliance is also placed on the decision of the Hon'ble Madras High Court in *M/s Razack Trading Company v. Assistant Commissioner (ST), W.P.(MD) No. 15302 of 2022, decided on 30.04.2024.*

III. ISSUES FOR DETERMINATION

38. Upon consideration of the pleadings, the impugned order, the material on record and the submissions advanced at the final hearing, the following issues arise for determination in the present appeal:

(1) Whether a monetary refund originating from accumulated ITC is capable of being treated as 'tax ... erroneously refunded' for the purposes of Section 73(1).

(2) Whether proceedings under Section 73 were without jurisdiction merely because RFD-06 dated 13.02.2019 had not first been reversed in a departmental appeal under Section 107(2) or revision under Section 108.

(3) Whether, in the present appeal, any controversy survives as to the principal refund entitlement under Rule 89(5), having regard to *VKC Footsteps (Supra)*, repayment of ₹90,35,671/- and absence of any competing computation from the appellant.

(4) Whether Section 73 read with Section 50 supplies substantive statutory authority to levy interest on an erroneous refund, and whether the authorities cited by the appellant require a different conclusion.

(5) Whether retrospective operation of the substituted Rule 89(5), or the subsequent decision in *VKC Footsteps (Supra)*, renders the interest demand impermissibly retrospective.

(6) Whether the personal-hearing ground requires interference when remand is expressly not pressed and the matter has been fully argued on merits.

(7) Whether the rate, period and amount of interest of ₹44,51,491/- call for interference.

IV. STATUTORY FRAMEWORK

39. **Section 54(3)**, insofar as relevant, provides that a registered person may claim refund of any unutilised input tax credit at the end of any tax period, subject to the proviso that no refund of unutilised input tax credit shall be allowed except, inter alia, where the credit has accumulated on account of the rate of tax on inputs being higher than the rate of tax on output supplies. The right to refund is therefore statutory and its extent is controlled by Section 54(3), its provisos and the prescribed formula.

For ready reference, the material part of Section 54(3) may be noticed:

"Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period: Provided that no refund of unutilised input tax credit shall be allowed in cases other than— ... (ii) *where the credit has accumulated on account of rate of tax on inputs* being higher than the rate of tax on output supplies ..."

40. **Rule 89(5)**, as substituted by Notification No. 21/2018-Central Tax dated 18.04.2018 and made effective from 01.07.2017 by Notification No. 26/2018-Central Tax dated 13.06.2018, prescribed the maximum refund formula for inverted-duty cases and defined 'Net ITC', for that purpose, by reference to input tax credit availed on inputs. The formula is: Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services × Net ITC ÷ Adjusted Total Turnover) − tax payable on such inverted rated supply of goods and services}. The statutory formula, and not merely exclusion of input-service credit in isolation, therefore governs the quantum of admissible refund.

The formula which governs the computation is central to the controversy. In substance, Rule 89(5) prescribes the maximum refund as the proportionate input-goods ITC attributable to inverted-rated turnover, reduced by the tax payable on such inverted-rated supply; and, for this purpose, 'Net ITC' is confined to input tax credit availed on inputs

during the relevant period. *The dispute is therefore not answered merely by identifying the quantum of input-service credit excluded; the complete statutory formula has to be applied.*

41. **Rule 86(4B)**, inserted by Notification No. 14/2022-Central Tax dated 05.07.2022, also deserves notice as part of the later statutory framework. It contemplates a registered person depositing, through FORM GST DRC-03 in cash, an erroneous refund sanctioned under Section 54(3), together with interest and penalty wherever applicable, followed by re-credit of an equivalent amount to the electronic credit ledger through FORM GST PMT-03A. Circular No. 174/06/2022-GST dated 06.07.2022, issued under Section 168(1), explains this mechanism and expressly includes within its ambit a *'refund of unutilised ITC due to inverted tax structure'. Paragraph 4.3 further requires the proper officer, before allowing re-credit, to be satisfied that the erroneous refund has been deposited together with 'applicable interest, as per the provisions of section 50'.* The Circular and Rule 86(4B) post-date the refund and the adjudication involved in the present case and are therefore not treated as the source of the appellant's liability. They are noticed only as subsequent statutory material consistent with the legislative scheme under which a monetary refund of unutilised ITC under Section 54(3) may answer the description of an erroneous refund and the applicable interest, if otherwise attracted, is referable to Section 50.

42. **Section 73** is the principal demand provision invoked in the present case. Its material language expressly covers an amount 'erroneously refunded' and links the recoverable amount with interest under Section 50. The relevant portions of Section 73(1) may be noticed:

> *"Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded ... he shall serve notice ... requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 ..."*

Section 73(8) *further provides that –*

> *where the person chargeable with tax pays "the said tax along with interest payable under section 50 within thirty days of issue of show cause notice", no penalty is payable and the proceedings in respect of the notice are deemed concluded. Under* ***sub-section (9)****, where the matter is not so concluded, the proper officer determines the amount of tax, interest and penalty due.*

43. **Section 50(1),** to which Section 73 expressly refers, provides, so far as material:

> "Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall, for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified ..."

44. **Section 75(4)** requires grant of an opportunity of hearing where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person. **Section 107(12)** requires the first appellate authority to state the points for determination, the decision thereon and the reasons for such decision. These provisions are relevant to the procedural objection raised in the appeal, though remand is no longer pressed before us.

For the jurisdictional objection, **Sections 107(2)** and 108 are also material. Section 107(2) empowers the Commissioner to call for and examine the record of an adjudicating authority *"for the purpose of satisfying himself as to the legality or propriety"* of the decision or order and to direct a subordinate officer to apply to the Appellate Authority. **Section 108(1)** empowers the Revisional Authority to call for and examine the record where an order is, inter alia, *"erroneous in so far as it is prejudicial to the interest of revenue"* and, after hearing, to pass an appropriate order, including enhancing, modifying or annulling it. The appellant treats these as the exclusive routes for disturbing RFD-06; the respondent relies on Section 73 as an independent provision expressly dealing with erroneous refund.

V. ANALYSIS AND FINDINGS

Issue 1 - Whether refund of accumulated ITC can be an 'erroneous refund' under Section 73

45. The appellant's textual submission proceeds on an unduly compartmentalised reading of Section 73. Section 54(3) itself contemplates a statutory 'refund of any unutilised input tax credit'. Input tax credit is credit of input tax. When such credit remains in the electronic credit ledger, the statutory expression 'input tax credit wrongly availed or utilised' addresses wrongful availment or utilisation. *When, however, accumulated credit is converted, on the claimant's application, into a monetary payment by Government under Section 54, the transaction is a refund.*

If the amount so paid exceeds what ***Section 54*** *read with* ***Rule 89(5)*** *permits, it is capable of answering the statutory description 'erroneously refunded'.* Section 73 itself addresses the person 'to whom the refund has erroneously been made'. To exclude every Section 54(3) cash refund merely because its source is ITC would leave a substantial class of statutory refunds outside the express erroneous-refund limb without any language in the Act requiring such exclusion.

46. The later **Rule 86(4B)** and Circular No. 174/06/2022-GST reinforce this construction without creating it. The Circular specifically enumerates 'refund of unutilised ITC due to inverted tax structure' among the categories of refund which, when sanctioned erroneously and repaid, may be re-credited through PMT-03A. This subsequent clarification cannot enlarge Section 73, but it is inconsistent with the appellant's suggested construction that a monetary refund sourced from accumulated ITC is, by its very nature, outside the statutory concept of an erroneous refund.

47. The comparison with *Rule 14 of the erstwhile CENVAT Credit Rules* does not alter this conclusion. The GST enactment employs its own drafting structure. The absence of the exact phrase 'ITC erroneously refunded' after the second limb cannot nullify the first limb when a monetary refund has in fact been made under Section 54(3). We therefore reject the contention that ₹90,35,671/- was, by reason only of its ITC origin, incapable of being dealt with as an erroneous refund under Section 73.

48. We accept the appellant's general proposition, supported in the rejoinder by *Kasturi Sons (supra)* and *Kesoram Industries (supra),* that a taxing statute must be construed from the words enacted and that neither equity nor a presumed legislative intention can be used to supply an omission. The conclusion reached here does not depend upon adding the words 'ITC erroneously refunded' to Section 73. It follows from giving effect to the words which are already there: Section 54(3) expressly authorises a 'refund of any unutilised input tax credit'; once such credit is converted into a monetary refund, Section 73 expressly addresses an amount 'erroneously refunded' and the person 'to whom the refund has erroneously been made'. The strict-construction principle therefore does not require the monetary refund to be treated as though it had remained merely a ledger credit.

Issue 2 - Section 73 vis-à-vis the subsisting RFD-06

49. RFD-06 dated 13.02.2019 is undoubtedly a statutory order sanctioning and rejecting the refund claim. It is not a mere ministerial or accounting communication. The claim was examined under the statutory refund procedure, RFD-08 was issued, the appellant replied in RFD-09, and the proper officer determined the amount to be sanctioned and rejected. Such an order is amenable to the appellate/revisional structure. CBIC Instruction No. 03/2022-GST also recognises post-audit/review of refund orders and examination for departmental appeal under Section 107(2). *There is therefore force in the appellant's premise that finality of an adjudicatory refund order is a matter of legal significance. The question is whether that premise makes Sections 107(2) and 108 exclusive remedies and excludes Section 73 altogether.*

50. In our view, it does not. Section 73 is itself a substantive statutory provision enacted specifically for determination of, inter alia, tax 'erroneously refunded'. Neither Section 107(2), Section 108 nor Section 73 contains language making the Section 73 jurisdiction conditional upon prior departmental appeal or revision of the refund order. *The provisions therefore operate in related but distinct fields: departmental appeal/revision tests the legality or propriety and continued efficacy of the refund order as an order, whereas Section 73 provides demand-and-determination machinery for amounts not paid, short paid or erroneously refunded, subject to its own notice, adjudication and limitation safeguards.* An executive instruction prescribing review of refund orders cannot read into Section 73 an additional jurisdictional condition which the legislature has not expressed.

51. We have carefully considered *Patanjali Foods Ltd. v. Union of India*, 2025 SCC OnLine Guj 1418: (2025) 147 GSTR 397: 97 GSTL 24 (Guj.). The Hon'ble Gujarat High Court held, on the facts before it, that where refund had been sanctioned by a quasi-judicial order and neither departmental appeal under Section 107 nor revision under Section 108 had been pursued, the benefit of that order could not thereafter be taken away through proceedings under Section 73. Being a direct GST decision, the ruling is entitled to considerable persuasive weight. The factual and legal setting in which that conclusion was reached, however, is material. The recovery proceedings there arose in the context of para 2(2) of Circular No. 181/13/2022-GST dated 10.11.2022 and the restriction sought to be applied to the refund claim on the basis of the notification referred to therein. The Hon'ble High Court, besides noticing the finality of the refund sanction order dated 12.01.2024, struck down para 2(2) of the said Circular. Thus, the very substantive basis on which the sanctioned refund was sought to be withdrawn did

not survive the judgment. The case therefore involved not merely the availability of Section 73 after an unreversed refund order, but also the unsustainability of the substantive premise on which recovery of that refund was sought.

The present case stands on a materially different footing. The proceedings under Section 73 are not founded upon the subsequently issued Circular or upon a restriction subsequently introduced and sought to be applied to an earlier tax period. They proceed on the Department's case that application of the Rule 89(5) formula governing the refund in question itself yielded no positive refund entitlement. That statutory computation was put to the appellant in the Section 73 proceedings and was contested by it. The question before us is therefore whether, in such circumstances, the express erroneous-refund limb of Section 73 was rendered unavailable merely because the original RFD-06 had not first been disturbed under Section 107(2) or Section 108. That precise question, in the factual setting obtaining here, did not arise for determination in *Patanjali Foods (supra)*. The later decision of the Hon'ble Orissa High Court in *Auroglobal Comtrade Pvt. Ltd. v. Joint Commissioner, GST & Central Excise, W.P.(C) No. 35050 of 2025, decided on 18.12.2025: 2026 (105) G.S.T.L. 116 (Ori.),* also requires careful distinction. There the Commissioner had already examined the refund order under Section 107(2), a departmental appeal had actually been filed, and the Appellate Authority had affirmed the refund on merits. Section 107(16) expressly made that appellate order final and binding subject to the statutory higher remedies. The subsequent Section 73 notice sought to reagitate the self-same issues already decided in the departmental appeal; the Hon'ble High Court therefore held that the Joint Commissioner could not set the appellate order at naught. Hindalco's case contains no departmental appellate order affirming RFD-06. *Auroglobal (supra)*, therefore, strongly protects the finality of an existing appellate adjudication, but does not decide whether Section 73 is unavailable merely because an original RFD-06 has not first been appealed or revised.

52. The current GST position also includes *M/s Paradeep Phosphates Limited v. Union of India & Ors., W.P.(C) No. 16154 of 2025, decided on 02.07.2026 (Ori.)*. There, refunds for periods including July 2017 to June 2018 had earlier been sanctioned; after the retrospective amendment of Rule 89(5), proceedings under Section 73 were initiated and recovery was confirmed. The resulting Order-in-Appeal was challenged directly before the Hon'ble Orissa High Court. The Court did not pronounce upon the merits of the recovery; instead, it held that GSTAT is competent under Section 112 to adjudicate both the disputed facts emanating from the appellate order and questions of law

concerning Rule 89(5), and relegated the taxpayer to the statutory Tribunal remedy. *Paradeep Phosphates (supra)* is therefore not authority that Section 73 necessarily prevails over an unreversed refund order; equally, it is significant that, in a closely comparable GST setting, the Section 73 recovery controversy was treated as one requiring appellate adjudication on facts and law rather than as facially incapable of examination by GSTAT.

Eveready Industries India Ltd. (supra) supports the general concern against collateral re-adjudication of a concluded refund order, but arose under Sections 11A, 11B and 35E of the Central Excise Act, 1944. The Hon'ble Supreme Court's decision in *Commissioner of Central Excise v. Morarjee Gokuldas Spg. & Wvg. Co. Ltd., 2023 INSC 285: 2023 SCC OnLine SC 327,* while also arising under the Central Excise Act, is useful only for the limited structural proposition that review/appellate provisions and erroneous-refund recovery provisions can operate in different fields and for different purposes. *Morarjee* followed *Asian Paints (India) Ltd. v. CCE, (2002) 9 SCC 515: 2002 SCC OnLine SC 441,* where the Hon'ble Supreme Court held that Sections 35E and 11A operated in different fields and could not be construed so as to render either provision ineffective. *Morarjee* itself concerned a refund order which had in fact been set aside in review; it therefore does not directly answer the present question of an unreversed RFD-06. We use these authorities only as structural guidance and not as a substitute for the text of the GST enactment.

53. Against the aforesaid statutory background, Sections 107(2), 108 and 73 must be read harmoniously so that the statutory text of none is rendered redundant. Sections 107(2) and 108 provide the Department with appellate and revisional remedies to question the legality or propriety of an order. Section 73, at the same time, expressly contemplates determination where an amount has been “erroneously refunded” and addresses the person to whom such refund has been made. The expression “erroneously refunded” cannot be rendered otiose merely because the payment originated in an order in FORM GST RFD-06. Whether Section 73 is being invoked for the statutory purpose for which that power has been conferred, or is instead being employed to circumvent an adjudication which has attained finality, must therefore be examined in the factual and legal setting of the particular proceedings.

54. *Patanjali Foods (supra)* requires careful consideration in that context. There, refund pertaining to February and March, 2021 had been sanctioned by order dated 12.01.2024. The subsequent proceedings under Section 73 proceeded on the basis of

para 2(2) of Circular No. 181/13/2022-GST dated 10.11.2022, which sought to apply the restriction flowing from Notification No. 9/2022-Central Tax (Rate) dated 13.07.2022 to refund applications filed after the notification even where the refund pertained to an earlier period. The Hon'ble Gujarat High Court struck down para 2(2) of the said Circular and, further, noticing that the refund had already been sanctioned by a quasi-judicial order against which neither appeal under Section 107 nor revision under Section 108 had been pursued, held that the benefit of that order could not subsequently be taken away through proceedings under Section 73. Thus, apart from the finality attached by the Hon'ble High Court to the unreversed refund order, the very substantive basis upon which recovery of that refund was sought did not survive the judgment.

Thus, apart from the finality attached by the Hon'ble High Court to the unreversed refund order, the very substantive basis upon which recovery of that refund was sought did not survive the judgment. *In Patanjali Foods (supra), therefore, the substantive basis for recovery itself fell upon the Hon'ble High Court striking down the relevant part of Circular No. 181/13/2022-GST; in the present case, by contrast, the substantive foundation of the Section 73 proceedings is the Rule 89(5) computation governing the appellant's own refund period, the validity and operation of the relevant prescription having been considered by the Hon'ble Supreme Court in VKC Footsteps (supra).*

The present case consequently stands on a materially different footing. The proceedings under Section 73 were founded on the specific allegation that, upon application of the Rule 89(5) formula governing the refund in question, no positive refund was admissible. The appellant had notice of that case and contested the proceedings. Thereafter, following the decision of the Hon'ble Supreme Court in *VKC Footsteps (supra)*, the appellant restored the entire amount of ₹90,35,671/- during the pendency of the Section 73 proceedings.

The case is also distinguishable from *Auroglobal (supra)*. There is here no subsisting appellate determination under Section 107 in favour of the appellant which the subsequent Section 73 proceedings seek to nullify. The RFD-06 dated 13.02.2019 was the original refund order; the larger refund claim had itself been rejected therein and was carried by the appellant before the Hon'ble High Court. The Department thereafter proceeded under the specific erroneous-refund limb of Section 73 in respect of ₹90,35,671/- which, according to it, had nevertheless been wrongly refunded upon application of the governing statutory formula.

As discussed separately below, in the present statutory appeal the appellant has quantified only the consequential interest of ₹44,51,491/- as the amount in dispute and

has not sought restitution of the principal amount so restored. These subsequent circumstances do not constitute the source of jurisdiction under Section 73; they are relevant to the nature and scope of the controversy that survives before us. Having regard to the express erroneous-refund limb of Section 73 and the particular factual and procedural setting noticed above, we are unable to hold that non-invocation of Section 107(2) or Section 108, by itself, deprived the proper officer of jurisdiction under Section 73.

We accordingly do not read Section 73 as a general power to reopen concluded refund adjudications, nor do we hold that it may be employed to disregard a subsisting appellate determination. Our conclusion is confined to the statutory erroneous-refund proceedings and the factual setting before us.

55. This conclusion does not treat RFD-06 as non-adjudicatory or devoid of legal efficacy. RFD-06 being a statutory refund order, its existence could not simply be disregarded in proceedings under Section 73. The proper officer was required to identify, through notice and adjudication, the statutory basis upon which the amount sanctioned thereunder nevertheless answered the description of an "erroneous refund" within Section 73. In the present case, the allegation put to the appellant was founded upon the Rule 89(5) computation, and the adjudication records the computation on the basis of which the amount sanctioned was treated as erroneously refunded. Whether that computation and the consequential demand of interest withstand the appellant's remaining grounds is considered hereafter.

Issue 3 - Rule 89(5), VKC Footsteps (supra) and the principal amount

56. The statutory history is material. Rule 89(5) originally employed a wider definition of 'Net ITC'. By Notification No. 21/2018-Central Tax dated 18.04.2018 the formula was substituted so that, for the inverted-duty refund, 'Net ITC' meant input tax credit availed on inputs; Notification No. 26/2018-Central Tax dated 13.06.2018 made the substituted provision operative from 01.07.2017. The appellant's refund application dated 31.12.2018 and RFD-06 dated 13.02.2019 therefore fell to be dealt with under the substituted formula.

57. The present record is equally material. The refund authority itself had already rejected more than ₹23.70 crore of the claim on account of input services/capital goods and sanctioned only ₹90,35,671/-. The later departmental case was not merely that input-service ITC had to be excluded. It was that, after restricting 'Net ITC' to eligible input-

goods credit and applying the complete Rule 89(5) formula governing the refund claim, including deduction of the tax payable on the inverted-rated supply, the maximum refund became negative. The impugned order records a negative maximum refund of ₹36,41,16,305/-. The appellant has not specifically challenged that mathematical conclusion in the present appeal and has not produced an alternative computation under the formula on which its refund claim and the impugned proceedings were adjudicated demonstrating that any positive amount remained refundable. The Tribunal is therefore not called upon to construct a fresh computational case which the appellant has neither pleaded nor argued.

58. In *VKC Footsteps (Supra)*, the Hon'ble Supreme Court expressly considered the architecture of the amended formula, including the exclusion of input-service credit from 'Net ITC' and the anomaly alleged to arise because the formula deducts the tax payable on inverted-rated supplies. The Hon'ble Supreme Court affirmed the validity of Rule 89(5), disapproved the contrary view of the Hon'ble Gujarat High Court and declined to judicially rewrite the formula. The legal premise on which the appellant had challenged the amended formula therefore did not survive that judgment. *VKC Footsteps (Supra)* does not, by itself, calculate appellant's refund, but it conclusively settles the validity and interpretation of the rule by which that refund falls to be computed.

The Hon'ble Supreme Court rejected the invitation to read down the Rule 89(5) formula merely because anomalies were demonstrated. In paragraph 104 of VKC Footsteps (supra), the Court rejected the submission for reading down, and in paragraph 112 affirmed the view of the Hon'ble Madras High Court while disapproving the contrary view of the Hon'ble Gujarat High Court. For the controversy actually raised and adjudicated in the present proceedings, therefore, the Rule 89(5) formula whose validity was upheld in VKC Footsteps (supra) governs.

After *VKC Footsteps (supra)*, and while the proceedings under Section 73 were pending, the appellant deposited ₹90,35,671/- through DRC-03. Its description of that payment as having been made "as an abundant caution and to buy peace of mind" is not treated as an admission of every legal proposition advanced by the respondent, particularly the separate liability to interest. *The position concerning the principal amount, however, follows from the cumulative effect of the record and not merely from the fact of payment.*

The validity of the Rule 89(5) prescription governing the refund in question stands upheld by the Hon'ble Supreme Court in *VKC Footsteps (supra)*; the computation recorded in the impugned proceedings yields no positive refund; and the appellant has

not placed before this Tribunal any alternative computation under the Rule governing the refund in question. The entire amount of ₹90,35,671/- has, moreover, been restored. Significantly, in the present statutory appeal the appellant has quantified only ₹44,51,491/- of interest as the amount in dispute and has neither carried ₹90,35,671/- as a disputed erroneous-refund amount nor sought restitution thereof. A general prayer for setting aside the impugned Order-in-Appeal insofar as it is adverse to the appellant cannot, in the absence of a corresponding challenge to and quantified claim concerning the principal amount, enlarge the subject matter of the appeal into a claim for restitution which has not been made. The Tribunal is therefore not called upon in the present appeal to re-adjudicate or direct restitution of the principal amount. The controversy which survives for determination is whether the demand of interest of ₹44,51,491/- is legally and arithmetically sustainable.

Issue 4 - Substantive statutory authority for interest

59. The appellant's contention that the enactment contains no substantive authority for levy of interest on an erroneous refund requires Sections 50 and 73 to be read conjointly rather than in isolation. Section 73(1), while expressly providing for recovery of an erroneous refund, requires the person concerned to show cause why the amount specified in the notice should not be paid "along with interest payable thereon under section 50". The same statutory scheme is carried through sub-section (5), which contemplates payment of the amount together with interest under Section 50 before service of notice; sub-section (8), which makes payment of the tax together with such interest within thirty days of the notice a condition for conclusion of the proceedings; and sub-section (9), which requires determination of the amount of tax, interest and penalty due. These are not incidental or isolated references to interest; they form an integral part of the statutory scheme governing determination and recovery under Section 73, including in a case of erroneous refund.

Section 73 thus does not merely provide for recovery of the principal amount while leaving liability to interest to implication. It expressly links the interest component to Section 50. The relevant question, therefore, is whether Section 50, when read with the express provisions of Section 73 relating to an erroneous refund, supplies the statutory basis and measure for the interest demanded—not whether interest can be imposed independently of the statute on considerations of equity or compensation.

60. An erroneous refund determined under Section 73 cannot be treated as a private-law debt divorced from the statutory tax scheme. The amount refunded under Section 54(3) represents input tax credit - credit of input tax - converted into money on the claimant's application. If that monetary conversion exceeds the statutory entitlement under Section 54 read with Rule 89(5), Section 73 characterises the payment as an erroneous refund and expressly connects the amount with interest under Section 50. The question is therefore one of statutory consequence, not an equitable claim for compensation outside the Act.

61. Nor does liability depend upon identifying fault. Section 73 is the provision applicable where the short payment or erroneous refund is for reasons other than fraud, willful misstatement or suppression of facts to evade tax. Thus, bona fides, departmental error, or the fact that payment was made pursuant to RFD-06 do not, by themselves, extinguish a statutory interest consequence. The refund was sanctioned on the appellant's own application and the appellant had the use of the amount until it was restored.

The appellant's characterisation of interest as penal is also not borne out as a general proposition. In *Mahalaxmi Sugar Mills Co. v. CIT, (1980) 3 SCC 475,* the Hon'ble Supreme Court, construing a statutory interest provision distinct from penalty, held that interest was *"in reality part and parcel of the liability" and compensatory for delay.* The statutory setting there was different, but the distinction is instructive: Section 73 likewise separately deals with the amount erroneously refunded, interest under Section 50 and penalty. Interest here cannot therefore be treated as penal merely because it follows an erroneous-refund determination.

Circular No. 174/06/2022-GST points in the same direction as to the statutory source, though not as to the commencement date. Paragraphs 4.1 and 4.3 contemplate repayment of an erroneous refund together with applicable interest and expressly identify such interest as being 'as per the provisions of section 50 of the CGST Act'. Since the Circular was issued after the material events, it cannot create a liability retrospectively; its relevance is limited to confirming the Board's understanding that an erroneous Section 54(3) refund, including an inverted-duty refund, may carry interest under Section 50 where the Act otherwise attracts it.

62. The decision of the Hon'ble Madras High Court in *M/s Razack Trading Company v. Assistant Commissioner (ST), W.P.(MD) No. 15302 of 2022, decided on 30.04.2024,* is materially relevant. There too a refund sanctioned through RFD-06 was subsequently found inadmissible, the principal was repaid and interest under Section 50 was

challenged. After noticing Sections 73 and 74, the Hon'ble High Court held that there had to be “restitution of the unjust benefit gained” and declined to interfere with the interest demand. Although the factual source of credit was different, the decision directly negatives the broad proposition that a refund of credit, once sanctioned through RFD-06, is for that reason incapable of carrying statutory interest upon being found erroneous.

63. The authorities relied upon by the appellant do not lead to a contrary result. *K. Synthetics (supra)*, *Vikrant Tyres (supra)*, *India Carbon (supra)* and *V.V.S. Sugars (supra)* state the unexceptionable principle that interest requires substantive statutory authority and cannot be imposed merely by implication. *Mahindra & Mahindra (supra)* similarly turned on the statutory provisions considered there. In the present enactment, however, Section 73 repeatedly and expressly couples an erroneous refund with interest under Section 50. *Vikrant Tyres,* in particular, arose under Section 220(2) of the Income-tax Act and turned on non-fulfilment of the statutory condition of default under a demand notice. It does not negate an express GST erroneous-refund scheme.

64. *Orion Steel Corporation (supra)* arose under the Central Excise regime and treated liability as arising after reversal of the refund order in appeal. Apart from the different statutory setting, it cannot displace the express GST language or the direct persuasive reasoning in *Razack Trading Company (supra)*. *T. Blades (supra)*, as fairly acknowledged, does not support the appellant on result.

65. We accordingly hold that Section 73 read with Section 50 supplies statutory authority for interest on an erroneous refund and reject the appellant's objection of absence of a substantive provision.

66. The further plea in the rejoinder that Notification No. 13/2017-Central Tax and Rule 88B do not separately enumerate 'erroneous refund of ITC' does not persuade us to treat the express cross-reference in Section 73 as otiose. Section 73(1), (5), (8) and (9) repeatedly preserve the interest component by reference to Section 50. The authorities cited for the proposition that a machinery provision cannot create a charge are unexceptionable; here they do not answer the different question whether the charge is already embedded in the Act by the combined operation of Sections 73 and 50. Circular No. 174/06/2022-GST, though subsequent and incapable of creating a retrospective charge, is consistent with that statutory understanding when it contemplates repayment of an erroneous Section 54(3) refund, including an inverted-duty refund, together with applicable interest 'as per the provisions of section 50'.

67. We have also considered the appellant's alternative submission founded on *Vikrant Tyres (supra)* and *Orion Steel (supra)* that no 'default' existed while RFD-06 remained operative. Those decisions turned on their own statutory conditions and procedural setting. Under the CGST scheme, once the amount is validly determined under Section 73 to have been erroneously refunded, Section 73 itself directs consideration of interest payable thereon under Section 50. The subsistence of RFD-06 is relevant to the jurisdictional objection already considered, but cannot simultaneously be treated as conclusive against interest after that objection has been rejected and the refund is found erroneous under the governing law.

Issue 5 - Retrospectivity, Star India and Rule 88B

68. The reliance on *Star India (supra)* is misplaced on the present facts. There the underlying service-tax liability itself was extended retrospectively by amendment. Crucially, the validating provision granted thirty days from Presidential assent for payment and provided interest only on default thereafter; the Hon'ble Supreme Court therefore held that the assessee was entitled to that statutory period before interest could arise. Here, by contrast, substituted Rule 89(5) had already been made effective from 01.07.2017 before the refund application dated 31.12.2018 and RFD-06 dated 13.02.2019. VKC Footsteps (supra) did not retrospectively create a new liability; it upheld and authoritatively declared the operation of an existing rule.

69. The rejoinder's still narrower plea that interest should in any event be excluded for 24.07.2020 to 13.09.2021 because the Gujarat High Court judgment in *VKC Footsteps (Supra)* then stood in favour of the appellant is also not accepted. A judicial decision of a High Court in another State, subsequently reversed by the Hon'ble Supreme Court, did not suspend the operation of the substituted Rule 89(5) or create a statutory interest-free interval. The appellant's bona fide reliance on that decision may explain its conduct, but Section 73 is the non-fraud provision and the statutory interest consequence, once otherwise attracted, is not conditioned upon culpability. Nor does *Star India (supra)* assist on this narrower formulation, because the substituted Rule 89(5) had already been made operative from 01.07.2017 before the refund application and sanction; the Hon'ble Supreme Court judgment settled the validity and interpretation of the existing rule rather than introducing a new levy from 13.09.2021.

The appellant's further premise that interest is penal in nature also does not follow from *Star India (supra)*. *Mahalakshmi Sugar Mills (supra)* draws the distinction between

penalty for infringement and statutory interest which compensates for delayed payment. The two decisions operate on different questions and can be read harmoniously: *Mahalakshmi Sugar Mills (supra)* addresses the character of interest, whereas *Star India (supra)* addresses the temporal consequence where the underlying liability itself was subsequently created with retrospective effect. Here the governing Rule 89(5) had already been made operative from 01.07.2017 before both the refund application and the refund sanction. *VKC Footsteps (Supra)* upheld and declared the operation of that existing rule; it did not create, for the first time in 2021, the restriction on refund. The present interest demand therefore cannot be treated as a retrospective penalty merely because the validity and effect of Rule 89(5) were authoritatively settled later.

70. The appellant's objection based on Rule 88B also does not invalidate the demand. It is unnecessary to found the substantive liability in the present case upon Rule 88B. The asserted liability arises under Sections 50 and 73. Rule 88B concerns the manner of calculation of interest and cannot either create a charge absent in the Act or extinguish a charge which the Act itself creates. To the extent the impugned demand has been computed for the period during which the erroneous refund remained with the appellant, the mere later insertion of Rule 88B does not, by itself, invalidate the statutory demand.

Issue 6 - Personal hearing and remand

71. The appeal memorandum had raised a grievance regarding absence/inadequacy of personal hearing at the original stage. The FORM GST DRC-01 dated 22.06.2021 showed 'NA' against the particulars of personal hearing, and Section 75(4) mandates an opportunity of hearing where a request is received in writing or where an adverse decision is contemplated. The jurisdictional Hon'ble High Court has emphasised the mandatory character of such hearing. We do not dilute that principle. The record, however, also shows detailed replies by the appellant and repeated effective opportunities at the first appellate stage, including oral hearing on 27.06.2022; on 14.11.2022 the appellant itself requested decision on the basis of submissions already made.

72. More importantly, at the final hearing before this Tribunal, the appellant expressly stated that adequate opportunity of hearing had been afforded and did not press the plea for remand, but requested that the appeal be finally adjudicated on merits. The parties have accordingly been heard at length on all surviving legal and factual issues. The First Appellate Authority, while exercising jurisdiction under Section 107, was itself required

to decide the appeal and had no unrestricted power of remand. In these circumstances, when the controversy is ripe for final determination and remand is expressly not sought, no useful purpose would be served by relegating the matter for fresh adjudication. The issues arising in the appeal are, therefore, considered and decided on merits.

73. *Eminent Logistics (supra)*, cited in the rejoinder for the mandatory character of Section 75(4), does not require a different operative course in the present appeal. We do not dilute the requirement of personal hearing where Section 75(4) applies. However, the appellant has expressly not pressed remand at final hearing and has requested adjudication on merits after full opportunity before the appellate forums. We therefore do not treat the later hearing as a general doctrinal 'cure' of every possible original-stage defect; rather, no remand relief survives for adjudication on the position expressly taken by the appellant before us.

Issue 7 - Effect of DRC-03 payment and computation of interest

74. We have considered the appellant's submission that ₹90,35,671/- was deposited merely “as an abundant caution and to buy peace of mind”. The legal effect of the payment cannot, however, be determined by the subjective motive attributed to it. The amount was deposited through DRC-03 on 08.11.2021 while proceedings under Section 73 for recovery of that very amount as erroneous refund were pending, after the decision of the Hon'ble Supreme Court in VKC Footsteps (supra) and the further/fresh DRC-01 dated 06.10.2021. The payment was thus directly referable to the principal amount sought to be recovered in those proceedings. It did not, by itself, amount to an admission of every legal premise underlying the notice, and the appellant remained entitled to contest the character of the refund, jurisdiction under Section 73 and liability to interest.

75. Section 73(8), however, makes payment of the principal together with interest under Section 50 a condition for statutory closure after notice. The appellant paid the entire principal but not the interest; the proceedings therefore did not conclude under sub-section (8), and the proper officer proceeded under sub-section (9), confining the surviving demand to interest of ₹44,51,491/-. Rule 86(4B) and Circular No. 174/06/2022-GST, though subsequent and not applied retrospectively, are consistent with this scheme in contemplating repayment of an erroneous Section 54(3) refund through DRC-03 together with applicable interest.

76. Payment of the principal amount does not, by itself, amount to an admission by the appellant of every legal proposition advanced by the respondent, nor does it create an estoppel against a pure question of law. In particular, it does not preclude the appellant from contesting whether interest was legally leviable, its commencement date or its computation. Its legal effect is narrower: the amount alleged to have been erroneously refunded stood restored to Government during the Section 73 proceedings, while the interest component remained unpaid and therefore required adjudication. Read with the uncontroverted Rule 89(5) computation, *VKC Footsteps (Supra)*, and the manner in which the present appeal itself quantifies the dispute solely as interest of ₹44,51,491/-, *this leaves no surviving restitutionary controversy regarding the principal amount in the present appeal.*

77. The rejoinder's objection to the further DRC-01 dated 06.10.2021 and its statement that the cash repayment has not been re-credited to the electronic credit ledger do not alter the determination of the present appeal. The operative adjudication was under Section 73 and the appellant had notice of, and answered, the case of erroneous refund. The question of re-credit following repayment is governed by the statutory/rule mechanism applicable to re-credit, including Rule 86(4B) and the later procedural clarification in Circular No. 174/06/2022-GST; no claim for an order directing such re-credit is the subject matter of the present appeal. These matters therefore do not displace the interest determination under challenge.

78. As to quantum, the material dates are undisputed. At the final hearing, learned representatives for both sides agreed that the refund of ₹90,35,671/- was actually credited/disbursed on 13.02.2019 and repaid through FORM GST DRC-03 on 08.11.2021. Once the refund is held, for the reasons recorded above, to be erroneous and liable to interest under Sections 50 and 73, these admitted dates determine the period of interest. The demand of ₹44,51,491/- is arithmetically consistent with interest at 18% per annum on ₹90,35,671/- for 999 days, from 13.02.2019 to 08.11.2021, subject to ordinary rounding; no alternative rate or computation has been demonstrated by the appellant. Circular No. 174/06/2022-GST is relied upon only as clarificatory material: its reference to “applicable interest” under Section 50 and to the date of credit of refund in the bank account is consistent with this approach, but neither creates the liability nor determines its commencement retrospectively.

VI. CONCLUSIONS AND OPERATIVE ORDER

79. The monetary refund of ₹90,35,671/- was capable in law of being treated as an erroneous refund under Section 73 notwithstanding that its source was accumulated ITC.

80. Non-invocation of Section 107(2) or Section 108 did not, by itself, oust the express jurisdiction under Section 73 in the facts of the present case.

81. The Rule 89(5) computation recorded in the impugned order has not been displaced by any alternative computation from the appellant. Read with VKC Footsteps (Supra), the appellant's restoration of the entire amount during the Section 73 proceedings, and the appeal memorandum which quantifies only the interest demand as disputed, no subsisting claim for restoration of the principal amount survives before us. The general prayer to set aside the impugned Order-in-Appeal insofar as adverse to the appellant is accordingly examined within the actual subject matter carried in appeal, namely the interest demand of ₹44,51,491/-.

82. Sections 73 and 50, read together, provide statutory authority for interest on an erroneous refund. Section 73(8) contemplates statutory closure after notice only upon payment of the principal amount together with interest payable under Section 50; payment of principal alone did not conclude the proceedings. Such interest liability is not dependent upon proof of fraud or upon attributing fault for the original sanction.

83. VKC Footsteps (Supra) did not create a new retrospective liability; it upheld the legal operation of a Rule already made effective before the refund application and refund sanction. Star India is distinguishable.

84. The later insertion of Rule 88B does not invalidate the demand, which rests upon Sections 50 and 73.

85. Remand is not pressed. The matter has been fully heard and is decided on merits.

86. The dates governing the computation are admitted: the refund was credited/disbursed on 13.02.2019 and the principal was paid back on 08.11.2021. No specific error in the applicable rate or in the arithmetic yielding interest of ₹44,51,491/- for that period has been established.

87. For the reasons recorded above, we find no legal or factual infirmity in Order-in-Appeal No. 112/GST/2022 dated 14.11.2022 insofar as it sustains interest of ₹44,51,491/- on the erroneous refund of ₹90,35,671/-.

88. In view of the foregoing discussion, **the appeal is dismissed**. The impugned **Order-in-Appeal is affirmed**. All pending applications, if any, stand disposed of accordingly.

Pronounced in open court on 24.09.2026.

(Pradeep Kumar Vyas) (Chandra Bhushan Singh)

Dated: 24.09.2026