Case Citation: (2026) taxcode.in 1214 HC

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

FRIDAY, THE 10TH DAY OF JULY 2026 / 19TH ASHADHA, 1948

WP(C) NO. 21135 OF 2026

PETITIONER/S:

ABE SERVICE PRIVATE LIMITED,
REPRESENTED BY THE DIRECTOR, PRADEEP ABRAHAM, 3RD FLOOR, MUSCAT TOWER, CHERUPARAMBATH ROAD, KADAVANTHRA, ERNAKULAM PIN –, PIN - 682020

BY ADVS.
SRI.KARTHIK S. NAIR
SHRI.R.RAGHAVAN

RESPONDENT/S:

DEPUTY COMMISSIONER,
CENTRAL REFUND PROCESSING FORMATION, SGST DEPARTMENT, THRIRUVANANTHAPURAM, PIN - 695002

OTHER PRESENT:

SHRI.GIREESH G, SR.G.P

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10.07.2026, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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JUDGMENT

All these writ petitions are submitted by the same petitioner, being aggrieved by the deficiency memo as evidenced by Ext.P2 in all cases, in respect of the applications submitted by the petitioner for refund of GST paid on Educational consultancy services provided to the foreign educational establishments. According to the petitioner, the reasons mentioned in Ext.P2 Deficiency memo, are matters which should not have been formed the basis of Deficiency memo and instead, those are matters to be considered while the refund applications are considered on merits.

2. In WP(C) No.21135/2026, the deficiencies mentioned in the Deficiency memo are as follows:

> *"Remarks: 1. Incorrect Category "Any Other" instead of "Refund of IGST paid on Zero-rated supply".*
> *2. Missing Statutory Statements: Under Rule 89 and Circular 125/44/2019, Statement 3 (linking invoices to remittances) and Annexure-B are mandatory. "invoice list" is insufficient.*
> *3. Invalid Realization Proof: A "Remittance Advice" is not a substitute for a Bank Realisation Certificate (e-BRC) or FIRC, which is legal requirement for export of services under Rule 89(2)(c). 4.Claim barred by time limitation."*

3. According to the petitioner, as far as the incorrect category referred to in this case is concerned, the same could not have been a subject matter of deficiency memo, as the same is

Case Citation: (2026) taxcode.in 1214 HC

something which ought to be considered at the time when the application is considered on merits. According to the petitioner, he rendered the services of export of services and paid CGST, in respect of the transaction which is sought to be refunded. According to the petitioner, since the petitioner is claiming refund of CGST, the only option that is available in the portal while uploading the refund application is, to include it under the category of "Any other" and other options are not provided. According to the petitioner, as far as the Circular 125/44/2019 referred to in the deficiency memo is concerned, the same is applicable only in respect of refund of unutilised portion of input tax credit, and it cannot be made applicable to the petitioner, which is seeking refund of the CGST and SGST paid under reverse mechanism. Thus, it is pointed out that, it is impossible for the petitioner to comply with the said requirement and therefore, denial of consideration of refund application on such impossible ground is illegal.

4. Similarly, with regard to the insistence for Bank Realisation Certificate or FIRC by rejecting the remittance advice uploaded by the petitioner along with the refund application, it is

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the submission of the learned counsel for the petitioner that, although the contents of such certificates satisfy the requirement of BRC, unfortunately the same was titled by the bank as the Advice of Foreign Inward Remittance. Therefore, that by itself cannot be a reason, to deny the opportunity to get the refund application considered.

5. Thus it is pointed out that, the deficiencies pointed out in Ext.P2 cannot be sustained. Another deficiency is that, the claim is barred by limitation. According to the petitioner the same is also a matter which ought to have been considered by the authority while considering the application on merits after hearing the petitioner and considering the explanation the petitioner has to offer in respect of the same.

6. Heard learned counsel for the petitioner and learned a Government Pleader for the respondents. After carefully going through the records, I find merits in the submission made by the learned counsel for the petitioner. Evidently, the deficiency memos which are produced as Ext.P2 in all theses cases were issued invoking the powers under Rule 90 of CGST Rules, 2017 particularly sub rule (3)thereof. The Rules 90 reads as follows:

"Rule 90. Acknowledgment.-(1) Where the application

relates to a claim for refund from the electronic cash ledger, an acknowledgment in FORM GST RFD-02 shall be made available to the applicant through the common portal electronically, clearly indicating the date of filing of the claim for refund and the time period specified in sub-section (7) of section 54 shall be counted from such date of filing.(2) The application for refund, other than claim for refund from electronic cash ledger, shall be forwarded to the proper officer who shall, within a period of fifteen days of filing of the said application, scrutinize the application for its completeness and where the application is found to be complete in terms of sub-rule (2), (3) and (4)of rule 89, an acknowledgment in FORM GST RFD-02 shall be made available to the applicant through the common portal electronically, clearly indicating the date of filing of the claim for refund and the time period specified in sub-section (7) of section 54 shall be counted from such date of filing.(3) Where any deficiencies are noticed, the proper officer shall communicate the deficiencies to the applicant in FORM GST RFD-03 through the common portal electronically, requiring him to file a fresh refund application after rectification of such deficiencies.

Provided that the time period, from the date of filing of the refund claim in FORM GST RFD-01 till the date of communication of the deficiencies in FORMGST RFD-03 by the proper officer, shall be excluded from the period of two years as specified under subsection (1) of Section 54, in respect of any such fresh refund claim filed by the applicant after rectification of the deficiencies.

(4) Where deficiencies have been communicated in FORM GST RFD-03 under the State Goods and Service Tax Rules, 2017, the same shall also deemed to have been communicated under this rule along with the deficiencies communicated under sub-rule (3).

(5) The applicant may, at any time before issuance of provisional refund sanction order in FORM GST RFD-04 or final refund sanction order in FORM GST RFD-06 or payment order in FORM GST RFD-05 or refund withhold order in FORM GST RFD-07 or notice in FORM GST RFD-08, in respect of any refund application filed in FORM GST RFD-01 , withdraw the said application for refund by filing an application in FORM GST RFD-01W.

(6) On submission of application for withdrawal of refund in FORM GST RFD-01W , any amount debited by the applicant from electronic credit ledger or electronic cash ledger, as the case may be, while filing application for refund in FORM GST RFD-01, shall be credited back to the ledger from which such debit was made."

Case Citation: (2026) taxcode.in 1214 HC

7. As per the said provision, the authority concerned has to scrutinize the application for its completeness and where the application is found to be complete in terms of sub rules (2),(3) and (4) of Rule 89, an acknowledgment in Form GST, RFD-02 shall be made available. Sub-rule (3) of Rule 90 provides that, where any deficiencies are noted, the proper officer shall communicate the deficiencies to the applicant in Form GST RFD-03 through the common portal, electronically, requiring the petitioner to file a fresh refund application after rectification of such deficiencies. From sub-rule (2) it is evident that, the scope of scrutiny contemplated as per sub-rule (2) of Rule 90, is only to examine the completeness of the application, which would mean that, the application will have to be scrutinized to find out whether, it satisfies the requirement of sub-rules (2),(3), and (4) of Rule 89. The question whether the documents produced are acceptable or not, is a matter which is beyond the scope of such scrutiny and the same has to be considered at the time when it is considered on merits after giving the petitioner an opportunity for being heard.

8. In this case, going by the nature of the contentions raised by the petitioner which are referred to above, apparently the same

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are beyond the scope of scrutiny contemplated under sub-rule (2) of Rule 90 of the CGST rules. This is because, as far as the disputes regarding the categories of the services rendered, the petitioner has already highlighted the difficulty, i.e., the lack of option available in the portal. Moreover, question of category is not something which is specifically referred to in sub-rule (2) of Rule 90, and therefore, that ground by itself cannot be reason, to issue a deficiency memo. There may be cases where, there could be overlapping in respect of the activities and confusion may arise with regard to the actual category in which the relevant service or supply needs to be included. In such cases, the matter will have to be determined on merits after examining the nature of the transactions, and in such cases if the applications itself is rejected, without even entertaining the application by issuing a deficiency memo, the opportunity to contest the said issue would be denied to the applicant concerned.

9. Therefore, it is indeed a matter, that could be considered on merits and not at the stage when application is submitted and as part of conducting a scrutiny under Rule 90(2). When it comes to the question of the statutory statements in terms of Circular

125/44/2019, the petitioner had already explained that, it is not seeking refund of the unutilised portion of input tax credit, but he is seeking refund of the tax paid under reverse charge mechanism therefore, it is not applicable. When it comes to the instance of Bank Realisation Certificate, it is a specific case of the petitioner is that, the petitioner had produced Ext.P10 which is termed as advice of Foreign Inward Remittance, issued by the Bank, and that satisfies the requirements for which the Bank Realisation Certificate or FIRC is issued.

10. According to the petitioner, merely because, the Bank titled it as an Advise of Foreign Inward Remittance, the same cannot be rejected. After carefully going through the same, I am of the view that the authority should not have issued deficiency memos simply going by the title of the certificate instead of going into the contents of the document, and finding out whether that satisfies the requirements. Ultimately, the said document is insisted upon, to show the genuineness of and the amounts involved in the transaction, and if the documents produced by the petitioner satisfies the said purpose, necessarily the same will have to be entertained and considered on its merits. Therefore, I find

that the said ground mentioned in the deficiency memo is not justifiable.

11. Lastly, when it comes to the question of limitation, that is also a matter, where the petitioner could offer explanation, and the scrutiny under sub-rule (2) of Rule 90, does not contemplates for the same. If the claim is barred by limitation, the application can be rejected, at the time when the application is considered on merits after hearing the petitioner and it need not be rejected by issuing a deficiency memo under Rule 90(2) of the Rules. Thus when considering all the relevant aspects, I find that the deficiency memos issued to the petitioner are not legally sustainable and all the deficiencies pointed out in those memos are matters to be considered by the authority concerned, while the refund application is considered on merits.

In such circumstances, this writ petitions are disposed of holding that, the reasons mentioned in Ext.P2 memos are not relevant factors for the purpose of entertaining/accepting the applications of refund, and with a direction to entertain the refund applications which shall be re-filed by the petitioner within a period of two weeks from the date of receipt of a copy of this judgment.

Case Citation: (2026) taxcode.in 1214 HC

Upon submission of those applications, the same shall be considered and while conducting the scrutiny under Rule 90(2) of the said applications, the deficiencies as referred to above shall not be treated as valid grounds to issue deficiency memos. It is clarified that, all the observations made in this writ petition with regard to the contentions raised by the petitioner, were only with respect to the scope of scrutiny contemplated under Rule 90(2) of the CGST rules, and it shall be open to the authority concerned to consider the said claims on merits.

Sd/-

ZIYAD RAHMAN A.A.
JUDGE

AGK/pkk

www.taxcode.in

Case Citation: (2026) taxcode.in 1214 HC

APPENDIX OF WP(C) NO. 21135 OF 2026

PETITIONER EXHIBITS

EXHIBIT P1	TRUE COPY OF THE REFUND CLAIM ARN AA3201260345150 DATED 29.01.2026
EXHIBIT P2	TRUE COPY OF THE DEFICIENCY MEMO NO. ZD320226003823V DATED 05.02.2026
EXHIBIT P3	TRUE COPY OF THE ORDER-IN-ORIGINAL NO. 45/2023/GST DATED 22.12.2023
EXHIBIT P4	TRUE COPY OF THE ORDER-IN-ORIGINAL NO. 45/2023/GST DATED 22.12.2023
EXHIBIT P5	TRUE COPY OF REFUND CLAIM ARN AA3206250208784 DATED 23.06.2025
EXHIBIT P6	TRUE COPY OF FORM GST-RFD-03 NO. Z ZD320725003134Y DATED 03.07.2025
EXHIBIT P7	TRUE COPY OF THE EMAIL DATED 17.03.2026
EXHIBIT P8	TRUE COPY OF THE EMAIL DATED 17.03.2026
EXHIBIT P9	TRUE COPY OF THE STATEMENT OF INVOICES
EXHIBIT P10	TRUE COPY OF SAMPLE CERTIFICATE ISSUED BY THE BANK

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