

| S. N. | Section | Case Subject | Case | Held |
|-------|---------|---|---|--|
| 1. | 54 | RFD-08 being issued for issues to be covered by RFD-03 and opportunity of hearing not given as file contemplated to be attached with Notice was never provided to the assessee. | [2023] 150 taxmann.com 515 (Bombay) Knowledge Capital Services (P.) Ltd. v. Union of India | <p>The High Court observed that in the present case Petitioner had applied for a refund. The Petitioner received an acknowledgment under Form GST RFD-02 with a Nil remark, meaning, thereby, the application for refund was acknowledged. There were no lacunae pointed out under the said acknowledgment. No deficiency was pointed out; neither deficiency memo, as contemplated under Rule 90 (3) of the CGST Rules of 2017 in Form GST RFD-03, was issued to the Petitioner. The Petitioner directly received Form GST RFD-08 under Rule 92 (3) of the CGST Rules of 2017 for rejection of the application for refund. There were no reasons given in the said Form GST RFD-08, and it was stated that the Exports Defects Memo Knowledge Capital-pdf.pdf is a file that is attached. However, the said file was not annexed to the reply affidavit.</p> <p>The High Court observed that the deficiencies ought to have been communicated to the Petitioner under Form GST RFD -03 as per Rule 90 (3) of the CGST Rules of 2017. Instead, these deficiencies were made a ground to issue a show cause notice for rejection of the refund. Thereafter, application was rejected on the ground that no reply was received to the show cause notice. There was no opportunity given to the Petitioner to rectify lacunae, and the deficiencies which were to be informed through Form GST RFD-03 were sent in a file attached in Form GST RFD08. This deprived the Petitioner to submit a fresh refund application as contemplated under Rule 90 (3) of the CGST Rules of 2017. there was nonadherence with the procedure envisaged under the Rules to use the correct Forms prescribed. Not only Form GST RFD-03 was not issued, but a file is sought to be attached to Form GST RFD-08, which has a different Form. The matter was remanded by the High Court to decide afresh directing that If there are deficiencies in the Petitioner's application, the same may be informed to the Petitioner as per Form-GST-RFD-03, and if not, the application be processed as per law.</p> |
| 2. | HSN 99 | Manpower supplied to Central/State Government for housekeeping, cleaning, security data, entry operator not exempt. | [2023] 150 taxmann.com 507 (AAAR-GUJARAT) Sankalp Facilities and Management Services (P.) Ltd | <p>The appellant contended that the manpower services provided by them to the Government authorities/ entities are exempted supplies as they are provided by way of any activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution of India or in relation to any function entrusted to a Municipality under Article 243W of the Constitution of India.</p> <p>It was held that if the intention of the legislature was to exempt all the services provided to Central Government, State Government or Union Territory or Local authority then there was no need to specify activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution. Even though the appellant is providing services to the Government offices concerned, but they are in no way related to the function entrusted to a Panchayat under article 243G of the Constitution or function entrusted to a Municipality under article 243 W of the Constitution which is carried out by the Government concerned.</p> |
| 3. | 17 | Input Tax Credit not allowed for Pre-Fabricated Sheds as it is an immovable Property | [2023] 150 taxmann.com 506 (AAR-TELANGANA) Sanghi Enterprises | <p>Applicant is constructing a Pre fabricated shed ('PFS') on land and it is intended to be used as a permanent structure for the purpose of conducting business, which has beneficial enjoyment of the land on which it is being built. The applicant intends to use technology, for the construction of the 'PFS', which involves the application of pre-fabricated structures and also civil work for supporting the pre-fabricated structure and developing the RCC platform of the 'PFS'. If not for the purpose of beneficial enjoyment by way of conducting business on the RCC platform, the 'PFS' has no separate existence. The 'PFS' being constructed is, therefore, an immovable property and the input tax credit is not admissible on the inward supplies, which may include Works contract services, for its construction, as the credit of such tax comes under category of blocked credits as per section 17(5)(d) and section 17(5)(c) of the CGST/TGST Act'2017.</p> <p>Cases Referred-Solid & Correct Engineering Works (2010) 252 ELT 481 (SC), Sirpur Paper Mills Ltd 97 ELT 3 (SC), f Triveni Engineering & Industries Ltd. & Anr. V. Commissioner of Central Excise 2000 (120) ELT 273 (SC), n Quality Steel Tubes (P) Ltd. V. CCE, U.P. 1995 (75) ELT 17 (SC), Mittal Engineering Works (P) Ltd. V. CCE, Meerut 1996 (88) ELT 622 (SC), Circular No. 58/1/2002-CX dated 15/01/2002</p> |