

**Government of India**  
**Ministry of Commerce & Industry**  
**Directorate General of Foreign Trade**  
**Udyog Bhawan, New Delhi -110011**

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F. No. 01/92/171/09/AM-22/PCVI /31-32

Date of Order: 12.07.2022

Date of Dispatch: 12.07.2022

Name of the Appellant: **Wipro HR Services India Pvt. Limited,**  
**Ground to 6th and 12th floor, Building No. 2,**  
**Candor Gurgaon One Realty Projects Pvt. Ltd.,**  
**IT/ITES SEZ Village Tikri,**  
**Sector-48, Gurugram**

IEC Number: **0516006032**

Order appealed against: **Appeal filed against Order-in-Original dated**  
**15.06.2021 passed by the Development Commissioner,**  
**Noida SEZ**

Order-in-Appeal passed by: **Santosh Kumar Sarangi, DGFT**

**Order-in-Appeal**

Wipro HR Services India Private Limited (hereinafter referred to as "the Appellant"), a SEZ unit, has filed an appeal dated 03.08.2021 (received on 03.08.2021) under Section 15 of Foreign Trade (Development & Regulation) Act, 1992 (hereinafter referred to as "the Act") against Order-in-Original dated 15.06.2021 (issued under F.No. 10/64/2016-SEZ), passed by the Development Commissioner (hereinafter referred to as "DC"), Noida Special Economic Zone (NSEZ).

2.1 Vide Notification No. 101 (RE-2013)/2009-2014 dated 5th December 2014, the Central Government has authorized the Director General of Foreign Trade aided by one Addl. DGFT in the Directorate General of Foreign Trade to function as Appellate Authority against the orders passed by the Development Commissioner, Special Economic Zones as Adjudicating Authorities. Hence, the present appeal is before me.

2.2 Any person/party deeming himself/itself aggrieved by this order, may file a review petition under the provisions of Section 16 of the FT(D&R) Act, 1992 before the Appellate Committee, Department of Commerce, New Delhi.

**3. Brief facts of the case :**

3.1 Wipro HR Services India Private Limited was issued a Letter of Approval (LoA) dated 22.02.2017 by the DC, NSEZ for setting up a unit in IT/ITES SEZ for rendering service activities namely "IT & IT enabled services namely Back Office Operations, Call Centre,



Data Processing, Human Resources, Payroll, Revenue Accounting, Support Centre and website services”, subject to terms and conditions mentioned therein.

- 3.2 LoA was granted to the Appellant, inter-alia, subject to the condition that the unit will export services as per provisions of the SEZ Act, 2005 and Rules made thereunder. Appellant executed Bond-cum-LUT to abide by the terms and conditions of LoA and provisions of the Act, Rules and Orders made thereunder.
- 3.3 Appellant commenced its business i.e. export of services with effect from 26.04.2017.
- 3.4 Unit Approval Committee chaired by DC, Noida SEZ reviewed the performance of the Appellant on 04.02.2021 and observed that it has rendered services for Rs. 582.62 lakhs in the DTA during FY 2019-20 which were paid in Indian Rupees (INR). It has noticed that the services rendered in the DTA are not as per the provisions of Section 2(z)(iii) of the SEZ Act as per which “*Services means tradeable services which earn foreign exchange*”.
- 3.5 DC issued a Show-cause notice (SCN) dated 01.03.2021 to the Appellant to why penalty should not be imposed against it under the Section 11(2) of the FT(D&R) Act, 1992 for rendering services in DTA, against payment in INR, instead of free foreign exchange.
- 3.6 Appellant in its written/oral submissions in the Personal hearing on 03.05.2021 before the DC informed that irrespective of whether the payment was in foreign exchange or in INR, it is only a domestic sale and does not impact the actual balance of trade.
4. DC, NSEZ vide Order-in-Original dated 15.06.2021 imposed a penalty of Rs. 58,262/- under Section 11(2) of the FT(D&R) Act, 1992 for rendering services in DTA, against payment in INR, as against the requirement of earning foreign exchange in terms of Section 2(z)(iii) of SEZ Act.
5. Aggrieved by the Order-in-Original dated 15.06.2021, the Appellant filed the present Appeal. Shri Raman Venkat, Senior Manager, Corporate Indirect Taxation appeared on behalf of the Appellant in the Personal hearing on 16.06.2022. Shri A. Bipin Menon, DC, Noida Special Economic Zone was also present.
6. Appellant in written submissions has raised the following grounds :-
  - (i) The demand that services rendered by a SEZ Unit into the DTA should earn foreign exchange defeats the purpose of SEZ Act.
  - (ii) Since supply of service to DTA by SEZ units is neither ‘export’ nor import as defined in SEZ Act, Section 11(2) of FT(D&R) Act cannot be invoked as no contravention is done in terms of import or export of the Appellant.
  - (iii) The definition of ‘services’ requiring earnings in foreign exchange applicable only for specific purpose and not DTA sales.

Appellant informed that it has already deposited the penalty amount.

7. Comments on the Appeal were obtained from the office of DC, NSEZ. The DC vide letter dated 24.03.2022 stated as under :-

- (i) RBI vide its circular No. 46 dated 23.10.2012 has specifically allowed ADs to sell foreign exchange to unit in the DTA for making payment in foreign exchange to a unit in the SEZ for the services rendered by it (i.e. a unit in SEZ) to a DTA unit. Further, Section 2(z) of the SEZ Act, 2005 defines services and it is agnostic as to whether the services are exported or supplied to DTA. The sub-para (iii) of the said definition refers to services having to earn foreign exchange. The unit has made sale of services in DTA against payment in INR in place of foreign exchange which is in contravention of Section 2(z)(iii) of the Act.
- (ii) Section 11(2) of the FT(D&R) Act, 1992 stipulates that where any person makes or abets or attempts to make any export or import in contravention of any provision of the Act, he shall be liable to imposition of penalty.
- (iii) As per Section 2(z)(iii) of SEZ Act, 2005, "Services" means such tradable services which earn foreign exchange and therefore, a service unit is required to earn foreign exchange only. Further, all the transactions of such service units either to abroad or in DTA are to be made and paid in foreign exchange only.
- (iv) Rule 54 of the SEZ Rules, 2006 categorically states that in case the Approval Committee comes to the conclusion that a unit has failed to abide by any of the terms and conditions of the LoA or Bond-cum-LUT, the said unit shall be liable for penal action under FT(D&R) Act.

8. I have considered the Order-in-Original dated 15.06.2021 passed by DC, Noida SEZ, Appeal, comments given by the DC and all other aspects relevant to the case. It is noted that :-

- (i) As per the LoA issued to the Appellant by the DC, NSEZ, its unit was required to export services as per provisions of the SEZ Act, 2005 and Rules made thereunder. Appellant executed Bond-cum-LUT to abide by the terms and conditions of LoA and provisions of the Act, Rules and Orders made thereunder.
- (ii) Section 2(z) of the SEZ Act, 2005 states that :-

*"(z) "services" means such tradable services which,—*

- (i) are covered under the General Agreement on Trade in Services annexed as IB to the Agreement establishing the World Trade Organisation concluded at Marrakesh on the 15th day of April, 1994;*
- (ii) may be prescribed by the Central Government for the purposes of this Act; and*
- (iii) earn foreign exchange;"*  
*(emphasis added)*

- (iii) After review of the performance of the Appellant by the Approval Committee of the DC on 04.02.2021, it was noticed that it has rendered services for Rs. 582.62

lakhs in the DTA during FY 2019-20 which were paid in INR instead of foreign exchange as stipulated by the Section 2(z)(iii) of the SEZ Act, 2005.

- (iv) Hence, the action taken by the DC, NSEZ for imposition of penalty for contravening the provisions of the Section 2(z)(iii) of the SEZ Act and conditions of the LoA is in accordance with the Act.
- (v) As per Section 11(2) of the FT(D&R) Act, the Adjudicating authority could have imposed penalty upto five times of the value of goods for which contravention has been made. In the present case, the contravention was for an amount of Rs. 582.62 lakhs. Therefore, the penalty amount could have been upto Rs. 2,913.10 lakhs whereas the Adjudicating Authority imposed a penalty of Rs. 58,262/- only. By any stretch of imagination, such a penalty cannot be termed as harsh or unreasonable and is upheld.

9. In view of the above, in exercise of the powers vested in me under Section 15 of the Foreign Trade (Development & Regulation) Act, 1992 (as amended in 2010) read with Notification No. 101 (RE-2013)/2009-2014 dated the 5<sup>th</sup> December 2014, I pass the following order :-

**Order**

F.No. 01/92/171/09/AM-22/PCVI

Dated: 12 .07.2022

The Appeal is dismissed.



**(Santosh Kumar Sarangi)**  
**Director General of Foreign Trade**

Copy to:

1. Wipro HR Services India Pvt. Limited, Ground to 6th and 12th floor, Building No. 2, Candor Gurgaon One Realty Projects Pvt. Ltd., IT/ITES SEZ Village Tikri, Sector-48, Gurugram.
2. Development Commissioner, Noida SEZ for information and compliance.
3. Additional Secretary (SEZ Division), DoC, New Delhi for information.
4. DGFT's website.



**(Randheep Thakur)**  
**Joint Director General of Foreign Trade**