

CHAPTER V

STAMP DUTY AND REGISTRATION FEES

EXECUTIVE SUMMARY

Appreciable increase in tax collection	As indicated at para 1.1.2 of Chapter-I, in 2010-11 the collection of stamp duty and registration fees increased by 45.29 <i>per cent</i> over the previous year, which was attributed by the Department to revision of market value of properties and withdrawal of exemption of stamp duty on flats with plinth area of less than 1,200 square feet.
Very low recovery by the Department in respect of observations pointed out by us in earlier years	During the period 2005-06 to 2009-10, we had pointed out non/short levy, non/short realisation, loss of revenue, incorrect exemption etc., with revenue implication of ₹ 440.81 crore in 2,295 cases. Of these, the Department/Government had accepted audit observations in 394 cases involving ₹ 16.10 crore and had since recovered ₹ 1.33 crore in 182 cases. The recovery position as compared to acceptance of objections was very low at 8.26 <i>per cent</i> during the five year period.
Results of audits conducted by us in 2010-11	<p>In 2010-11 we test checked the records of 270 offices relating to District Registries and Sub-Registries and found underassessment of duties and other irregularities involving ₹ 150.84 crore in 332 cases.</p> <p>The Department had accepted underassessments and other deficiencies of ₹ 126.57 crore in 375 cases of which, 111 cases involving ₹ 82.04 crore were pointed out during the year and the rest in the earlier years. An amount of ₹ 63 lakh was realised in 105 cases during the year 2010-11.</p>
What we have highlighted in this Chapter?	<p>In this Chapter we present illustrative cases of ₹ 44.90 crore selected from observations noticed during our test check of records relating to assessment and collection of stamp duty and registration fees in the offices of District Registries and Sub-Registries, where we found that the provisions of the Acts/Rules were not observed.</p> <p>It is a matter of concern that similar omissions were pointed out by us repeatedly in the Audit Reports for the past several years, but the Department had not taken corrective action. We are also concerned that though these omissions were apparent from the records which were made available to us, the registering officers failed to detect them.</p>

Our conclusion

The Department needs to improve the internal control system including strengthening of internal audit so that weaknesses in the system are addressed and omissions of the nature detected by us are avoided in future.

It also needs to initiate immediate action to recover the stamp duty and registration fees etc., pointed out by us, more so in those cases where it had accepted our contention.

In cases where audit observations emanated from cross verification of data with other Departments/ authorities such as in the case of vehicles registered with hypothecation agreement (Transport Department) and amalgamation/merger of companies (Registrar of companies), it is recommended that effective mechanism be put in place so that Department/authorities concerned work in co-ordination with each other for realisation of legitimate revenues.

5.1 Tax administration

The Registration and Stamps Department is responsible for administration of the Indian Stamp (IS) Act, 1899 and the Indian Registration Act, 1908 as amended from time to time by the Union and State legislations. The Department is primarily entrusted with registration of documents and is responsible for determining and collecting stamp duty and registration fees on registration of various documents/instruments by the general public. The Inspector General (IG) of Registration exercises overall superintendence over all the registration offices in the State. He is assisted by the region-wise Deputy IGs. The Registrar is incharge of the district and superintends and controls the Sub-Registrars in the district concerned. The IG of Registration and Stamps also acts as the Registrar of marriages and the Registrar of firms and societies.

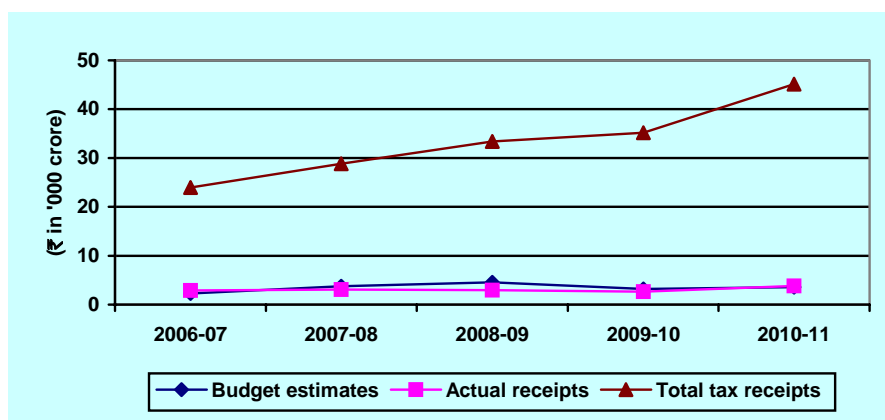
5.2 Trend of receipts

Actual receipts from Stamp Duty and Registration Fees (SDRF) during the years 2006-07 to 2010-11 along with the total tax receipts during the same period is exhibited in the following table and graphs.

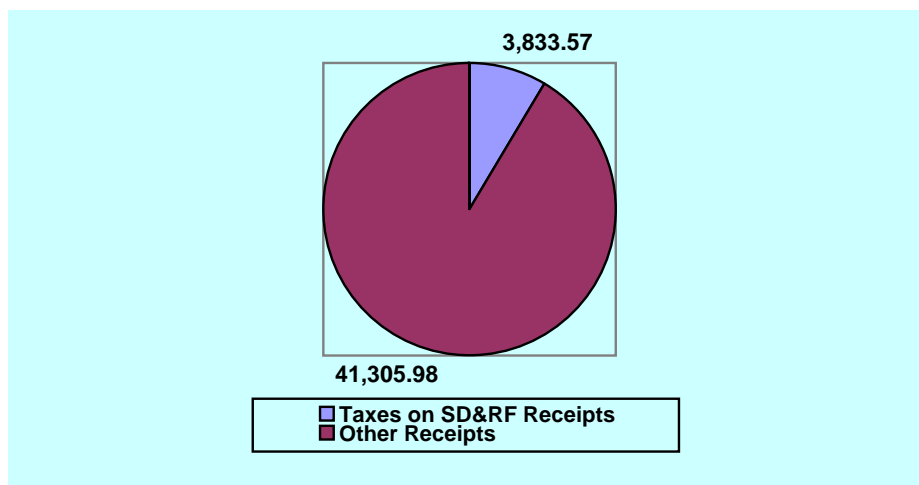
(₹ in crore)

Year	Budget estimates	Actual receipts	Variation excess (+)/ shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts vis-a-vis total tax receipts
2006-07	2,250.00	2,865.38	(+) 615.38	(+) 27.35	23,926.20	11.98
2007-08	3,750.00	3,086.06	(-) 663.94	(-) 17.71	28,794.05	10.72
2008-09	4,537.50	2,930.99	(-) 1,606.51	(-) 35.41	33,358.29	8.79
2009-10	3,224.00	2,638.63	(-) 585.37	(-) 18.16	35,176.68	7.50
2010-11	3,546.00	3,833.57	(+) 287.57	(+) 8.11	45,139.55	8.49

Graph 1: Budget estimates, actual receipts and total tax receipts



**Graph 2: Actual receipts vis-à-vis Other tax receipts
(₹ in crore)**



5.3 Cost of collection

The figures of gross collection in respect of the stamp duty and registration fees, expenditure incurred on collection and the percentage of such expenditure to gross collection during the years 2008-09, 2009-10 and 2010-11 along with the relevant all India average percentage of expenditure on collection to gross collection for the previous year are mentioned below:

(₹ in crore)

Head of revenue	Year	Gross collection	Expenditure on collection of revenue	Percentage of cost of collection to gross collection	All India average percentage for the previous year
Stamp duty and registration fees	2008-09	2,930.99	73.58	2.51	2.09
	2009-10	2,638.63	87.75	3.33	2.77
	2010-11	3,833.57	94.99	2.48	2.47

There has been increase in the cost of collection during 2010-11 as compared to previous years. However the percentage of cost of collection was drastically reduced and almost close to All India Average percentage.

5.4 Revenue impact

During the last five years audit had pointed out non/short levy, non/short realisation, loss of revenue, incorrect exemption etc., with revenue implication of ₹ 440.81 crore in 2,295 cases. Of these, the Government/Department had accepted audit observations in 394 cases involving ₹ 16.10 crore and had since recovered ₹ 1.33 crore. The details are shown in the following table:

(₹ in crore)

Year	No. of units audited	Amount objected		Amount accepted		Amount recovered	
		No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
2005-06	323	419	68.85	76	0.67	40	0.11
2006-07	302	329	28.33	68	1.33	44	0.25
2007-08	303	449	20.45	61	0.76	29	0.13
2008-09	294	508	47.98	126	6.89	39	0.57
2009-10	276	590	275.20	63	6.45	30	0.27
Total	1,498	2,295	440.81	394	16.10	182	1.33

Recovery of only ₹ 1.33 crore (8.26 *per cent*) against the money value of ₹ 16.10 crore relating to accepted cases during the period 2005-06 to 2009-10 highlights the failure of the Government/Department machinery to act promptly to recover the Government dues even in respect of the cases accepted by them.

5.5 Working of internal audit wing

Internal audits are being conducted as per the programme issued by the District Registrars concerned. Internal audit was established by the Department to arrest the leakage of revenue where the market value was not adopted by the party and also in respect of the documents registered on deficit stamp duty due to incorrect computation or misclassification. Punishments are imposed on the defaulting officials and steps are taken to collect the deficit amounts.

5.6 Results of audit

Test check of the records of 270 offices relating to District Registries and Sub- Registries during the year 2010-11 revealed under assessment of duties and other irregularities involving ₹ 150.84 crore in 332 cases which fall under the following categories:

(₹ in crore)

Sl.No.	Category	No. of cases	Amount
1.	Misclassification of documents	249	125.57
2.	Short levy of stamp duty and registration fees	49	13.48
3.	Undervaluation of properties	9	0.14
4.	Other irregularities	25	11.65
Total		332	150.84

During the course of the year 2010-11, the Department accepted under assessments and other deficiencies of ₹ 126.57 crore in 375 cases of which, 111 cases involving ₹ 82.04 crore were pointed out during the year and the rest in the earlier years. An amount of ₹ 53.24 lakh was realised in 102 cases.

After issue of two draft paragraphs, the Department reported (March and April 2011) recovery of ₹ 9.76 lakh in respect of three cases.

Our examination of documents styled as equitable mortgage by deposit of title deeds registered in the years 2006-07 to 2009-10 revealed that in these documents there was either creation of charge or assurance or security interest by the mortgagor in favour of mortgagees. Thus in our opinion these documents were classifiable as Mortgage and stamp duty at three *per cent* was leviable instead of stamp duty at the rate of 0.5 *per cent* which was levied as Deposit of title deeds (DOTs).

After the cases were pointed out, the Government, while accepting the observation had stated (July 2011) that they had revised the format of DOT to bring out distinction between the format of the Mortgage and DOT and issued instructions to the lower formations for implementation. Concerning the past cases, it was stated that they would like to present the matter before the PAC to take a final view on them. The rate of stamp duty on mortgage has been reduced from three *per cent* to 0.5 *per cent* with effect from 11 May 2010 so that the putative loss due to creation of charges on deposit of title deeds making it indistinguishable from mortgage deed does not arise.

Few illustrative cases involving ₹ 44.90 crore are mentioned in the succeeding paragraphs.

5.7 Audit observations

During scrutiny of the records in the offices of the District Registries (DRs) and Sub-Registries (SRs) relating to revenue received from stamp duty, transfer duty and registration fees, we noticed several cases of non-observance of the provisions of the Acts/Rules resulting in non/short levy of duties and fees as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out by us. We pointed out such omissions in audit each year, but not only do the irregularities persist; these remain undetected till an audit is conducted. There is a need for the Government to consider directing the Department to improve the internal control system including strengthening the internal audit to ensure that such omissions are detected and rectified.

5.8 Misclassification of ‘Mortgage deeds’ as ‘Mortgages by deposit of title deeds’

According to Section 27 of the Indian Stamp (IS) Act, 1899, all other facts and circumstances besides the consideration and market value, affecting the chargeability of any instrument with stamp duty, shall be truly and fully set forth in that instrument.

Under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 read with Security Interest Enforcement Rules 2002, the term 'Security Interest' means right, title and interest of any kind whatsoever upon a property and includes any mortgage, charge, hypothecation and assignment. The SARFAESI Act also stipulates that any instrument, which creates 'Security Interest' is a 'Security Agreement' and such security agreement includes a document of 'Mortgage by deposit of title deeds'. The Banks treat the loans/advances granted by them to the general public as 'secured debts' and also treat the documents of DOTs executed by the loanees in their favour as 'Security Agreements', which create 'Security Interest' in the properties in favour of Banks.

We noticed (between May 2008 and December 2010) during test check of the records of 21 DRs¹ and 91 SRs² in respect of 13,733 documents registered during the years 2006-07 to 2009-10 that the parties were taking the loans under the provisions of the said Act and also authorising the banks to sell their properties in case of non-payment of the dues to the banks. The above facts and circumstances affect the classification of the documents of DOTs, as the same involve creation of 'charge' on the properties and also granting power/ agreeing to sell the properties in case of non-payment of such dues, which are the essential features of a 'simple mortgage'.

Due to non-disclosure of facts and circumstances of above nature by the borrowers, the registering authorities treated the documents as mere DOTs, instead of treating them as 'Security Agreements' classifiable as 'Mortgages'. **Audit observed that the Department did not have any mechanism in place after the promulgation of SARFAESI Act, 2002 to ensure that the documents registered had complete recitals affecting the chargeability of the same.**

After the cases were pointed out, Government while accepting the observation had stated (July 2011) that the Commissioner and Inspector General (Registration and Stamps) had held a meeting with bank officials to revise their formats and opined that the loophole would be plugged in the amendment to the Act, which was being proposed at the Central level.

Non-registration of documents

The provisions of Registration Act, 1908, provides for compulsory/optional registration of documents. This enables levy of stamp duty on all the documents as required under the provisions of Stamp Act. During the course of our audit we noticed that in some cases though the documents were optionally registrable the same were not registered and as a result stamp duty was not levied resulting in loss of revenue to the Government. In other cases though the documents were registered, the stamp duty was incorrectly levied resulting in short levy of stamp duty. Such cases are mentioned in para 5.9 to 5.12.

¹ Bhimavaram, Chittoor, Gudur, Guntur, Hyderabad, Hyderabad (South), Kadapa, Kakinada, Karimnagar, Khammam, Mahabubnagar, Markapur, Medak, Nalgonda, Nandyal, Proddatur, Ranga Reddy, Sanga Reddy, SPSR Nellore, Tenali and Warangal.

² Akividu, Alluru, Ambajipet, Attili, Balanagar, Bantumilli, Bapatla, Bheemunipatnam, Bhimadole, Bhongir, Bhuja Bhuja Nellore, Bodhan, Bowenpally, Champapet, Chikkadapalli, Chilakaluripeta, Chintalapudi, Chirala, Chittoor (Rural), Dubbaka, Duggirala, Devarakonda, Gadwal, Gajuwaka, Ganapavaram, Gannavaram, Gopalapatnam, Hayathnagar, Huzurabad, Ibrahimpatnam, Jangareddygudem, Kadiri, Kaikalur, Kalyandurg, Kanchikacherla, Kandukuru, Kankipadu, Kanumole, Kapra, Karimnagar (Rural), Khammam (Rural), Kodad, Korukonda, Kothapeta, Luxettipet, Madanapalli, Madhira, Madhurawada, Malkajiri, Mancherial, Mandapet, Medak, Medchal, Metpalli, Nagar Kurnool, Naidupeta, Nandigama, Nandikotkur, Narsapur, Palakol, Pathikonda, Peapully, Peddapuram, Ponnur, Prathipadu, Rajendranagar, Ramayampeta, Rayachoti, Rayadurg, Repalle, Samalkot, Sanjeeva Reddy Nagar, Saroornagar, Sarpavaram, Secunderabad, Shadnagar, Shamirpet, Shankarpally, Singarayakonda, Sircilla, Suryapet, Tadepalligudem, Tandur, Tanuku, Tuni, Uppal, Vallabh Nagar, Vemulawada, Vinjamur, Warangal (Rural) and Zaheerabad.

5.9 Non-levy of stamp duty on vehicles registered with hypothecation agreement

As per Article 7(b) of Schedule I-A to the IS Act, the pawn, pledge, or hypothecation of movable property, where such pawn, pledge, or hypothecation has been made by way of security for the repayment of money advanced or to be advanced by way of loan or an existing or future debt is leviable with stamp duty at 0.5 *per cent* of the amount secured subject to a maximum of two lakh rupees, if such loan or debt is repayable on demand or more than three months from the date of the instrument, evidencing the agreement. Further, every instrument has to be properly stamped as per the provisions of the IS Act.

We noticed (December 2010 and January 2011) during the test check of Form 20 relating to the registration of vehicles in the offices of Joint Transport Commissioner, Hyderabad, 17 Deputy Transport Commissioners³ and 25 Regional Transport Officers⁴ that 4,84,944 vehicles were hypothecated to banks and institutions during the year 2009-10. We cross linked Form 20 filed in Transport Department with Hypothecation Agreement made available by the

financiers and found that these documents were executed only on ₹ 100 stamp paper and stamp duty at 0.5 *per cent* was not collected in terms of provisions of the IS Act. We found that other institutions/banks are also not levying requisite stamp duty but we do not have assurance regarding the same. The loss to the State Government on stamp duty was of ₹ 36.48 crore for one year alone, calculated at 80 *per cent* of the vehicle cost.

We recommend that an effective mechanism be put in place in the Registration and Stamps Department for collection of information from the Transport Department/RTOs and for sending notices to the financial institutions and Banks for enforcement of provisions of the stamp duty relating to hypothecation of vehicles.

After the cases were pointed out, the Government stated (July 2011) that the matter would be pursued by the Stamps and Registration Department by exploring different approaches.

³ Adilabad, Ananthapur, Chittoor, East Godavari, Eluru, Guntur, Kadapa, Karimnagar, Kurnool, Medak, Nellore, Nizamabad, Ranga Reddy, Srikakulam, Vijayawada, Visakhapatnam and Warangal.

⁴ Amalapuram, Anakapalli, Bhimavaram, Gudivada, Hindupur, Hyderabad (East, North, South and West), Ibrahimpatnam, Khammam, Mahabubnagar, Mancherial, Medchal, Nalgonda, Nandigama, Nandyal, Narasaraopet, Ongole, Proddatur, Rajahmundry, Ranga Reddy East, Siddipet, Tirupati and Vizianagaram.

5.10 Non-levy of stamp duty on amalgamation/merger of companies

According to Article 20 (d) of Schedule I-A to the IS Act, conveyance, so far as it relates to amalgamation or merger of companies under the order of Hon'ble High Court under section 394 of the Companies Act, 1956, is chargeable to stamp duty at the rate of two *per cent* on the market value of the property with effect from 1 August 2005. For the purpose of the Article, the market value of the property shall be deemed to be the amount of total value of the shares issued or allotted by the transferee company, either in exchange or otherwise, and the amount of consideration, if any, paid for such amalgamation or merger.

We noticed (December 2010 and January 2011) during the cross verification of records of the Office of the Commissioner and Inspector General of Registration and Stamps, Andhra Pradesh with the records of the Registrar of Companies, Andhra Pradesh, Hyderabad that 16 companies were merged/amalgamated under the orders of Hon'ble High Court of

Andhra Pradesh that were issued between March 2007 and February 2009. Though property of ₹ 171.05 crore in shares was conveyed in these mergers/amalgamations, stamp duty of ₹ 3.42 crore leviable at two *per cent* was not levied and collected.

After we pointed out the case, the Department while accepting the audit observation stated (April 2011) that District Registrars were requested to take steps to collect the stamp duty from the companies and keep in touch with Registrar of Companies for effective co-ordination and realisation of legitimate revenues.

We referred the matter to the Government in May 2011; their reply has not been received (October 2011).

5.11 Lease Deeds of IMFL Manufactory

As per Article 31 (C) of Schedule-I A to the IS Act, where a lease is granted for a fine or premium or for money advanced in addition to rent reserved, stamp duty is leviable at five *per cent* on the market value of the property or the amount or value of such fine or premium or advance, set forth in the lease, whichever is higher, in addition to the stamp duty which would have been payable on such lease, if no fine or premium or advance has been paid or delivered. As per the amendment to Section 17 (1) (d) of the Indian Registration Act, all leases are compulsorily registerable, with effect from 1 April 1999.

As per Rule 11 of AP Distillery Rules 1970 and AP Distillery (Manufacture of IMFL other than Beer and Wine) Rules 2006, the Commissioner of Prohibition and Excise, Andhra Pradesh may permit the license holder of a Distillery to sub-lease the Manufactory on payment of a sum equal to 10 *per cent* of the proportionate licence fee and such leases have to be registered within 15 days from the date of such permission.

5.11.1 We noticed (between September and October 2010) during test check of the records of SR, Uppal that a lease deed was executed in March 2010 by the lessor who is the owner of the factory, leasing out his manufactory building alongwith plant, machinery and equipment to the lessee for a period of five years for the purpose of manufacture, bottling, sale, distribution and storage of IMFL for a monthly rent of ₹ 10 lakh. Our cross verification with the records of Excise Department revealed that the sub lessee who is also a licence holder under AP Excise Act, 1968 paid an advance of ₹ 7 lakh being

10 *per cent* of proportionate license fee in February 2010 and the same was not disclosed in the document. The sub lessee also undertook to return the possession of the sub-leased property upon expiry of lease period. As the sub-lease was granted for money advanced in addition to rent reserved, stamp duty is leviable on the market value of the property (being higher than the amount of advance) in addition to stamp duty leviable on average annual rent reserved. However, the registering officer levied stamp duty on the amount of annual rent only. Non-disclosure of the fact of payment of advance and failure to insist upon such details by the registering officer resulted in short levy of stamp duty of ₹ 1.50 crore.

After we pointed out the case, DR, Ranga Reddy (East) stated (March 2011) that a notice was being issued to the concerned parties to ascertain the quantum of proportionate recurring license fee and other taxes, if any, for taking further necessary action.

We referred the matter to the Department in January 2011 and to the Government in June 2011, their reply has not been received (October 2011).

5.11.2 Lease agreements of business premises

Under Article 31 (a) (ii) of Schedule I-A to the IS Act, where the lease purports to be for a term of not less than one year but not more than five years, stamp duty is leviable at two *per cent* on the value of average annual rent reserved. Further, as per Article 31 (a) (iii) where the lease purports to be for a term exceeding five years but not exceeding ten years, stamp duty is leviable at five *per cent* on one and half times of average annual rent reserved. Further, Section 17 (d) of the Registration Act specifies that leases of immovable property are compulsorily registerable with effect from 1 April 1999. Government vide U.O.No.32391/Regn/I (2)/2005 dated 20 July 2005 and Memo No. 24597/Vig I(1)/2007-1 dated 2 June 2007 issued instructions to insist for registered lease/rental deeds while issuing VAT registration certificates to dealers.

We noticed (May and July 2010) during test check of the records of the Commercial Taxes Department in two circles⁵ that six dealers had executed seven lease agreements of their business premises with the lessors during the period between February 2008 and October 2009. However, these lease agreements were not registered at the time of obtaining VAT registration certificates and the same was not insisted upon by the Commercial Taxes Department in view of the Government instructions of 2005/2007. The Registration

and Stamps Department also did not monitor such cases of non-registration by coordinating with other departments, in the interest of revenue. This resulted in short levy of stamp duty of ₹ 20.22 lakh. Further, non-insistence for registration of the lease deeds resulted in loss of registration fees of ₹ 1.58 lakh.

After we pointed out the cases, the Department intimated (June 2011) that the District Registrar concerned was instructed to collect stamp duty from the dealers in consultation with the Commercial Tax Officers concerned.

We referred the matter to the Government in June 2011; their reply has not been received (October 2011).

⁵ Commercial Tax Officers, Begumpet and S.D. Road.

5.11.3 Lease deeds for properties exceeding 30 years

As per Article 31 (a) (vi) (a) of Schedule I-A to the IS Act, a lease where the lease purports to be for a period in excess of thirty years or in perpetuity or does not purport to be for a definite period, stamp duty is chargeable at five *per cent* on the market value of the property or value of ten times of the average annual rent reserved, whichever is higher.

We noticed (February and March 2008) during test check of the records of two SRs⁶ that two lease deeds were executed and registered in December 2006 by the lessors in favour of the lessees, leasing their property for a period of

33 and 35 years respectively. As the lease period exceeded 30 years, stamp duty is leviable at five *per cent* on the market value of property or ten times of average annual rent reserved, whichever is higher. However, the registering officers levied stamp duty at five *per cent* on ten times of average annual rent reserved of ₹ 6 lakh even though market value of the properties was higher at ₹ 2.02 crore. This resulted in short levy of stamp duty of ₹ 9.78 lakh.

After we pointed out the cases, the Department accepted (May 2011) the audit observation in respect of SR Vikarabad and intimated that instructions were issued to collect the deficit amount. Final reply in respect of SR Tadipatri is awaited.

We referred the matter to the Government in May 2011; their reply has not been received (October 2011).

5.11.4 Build Operate and Transfer lease agreements

As per Article 31 (d) where the lessee undertakes to effect improvement in the leased property and agrees to make the same to the lessor at the time of termination of lease, stamp duty is leviable at five *per cent* on the value of the improvement contemplated to be made by the lessee as set forth in the deed in addition to the duty chargeable.

5.11.4.1 We noticed (September 2008) during test check of the records of DR, Ongole that a lease agreement was registered in August 2007 for setting up a project and associated facilities on Build, Operate and Transfer (BOT) basis for a period of 15 years. The lessee agreed to develop the project and hand over the same to the lessor on expiry of

lease with the minimum project cost of ₹ 1.50 crore. The registering officer levied stamp duty of ₹ 0.75 lakh only on the value of ₹ 10.80 lakh, ignoring the value of the improvement. This resulted in short levy of stamp duty of ₹ 7.29 lakh.

After we pointed out the case, the Department accepted (April 2011) the audit observation and stated that instructions were issued to ascertain the cost of improvements and collect the deficit amount.

⁶ Tadipatri and Vikarabad.

We referred the matter to the Government in May 2011; their reply has not been received (October 2011).

5.11.4.2 We noticed (September 2008) during test check of records of SR, Patamata, Vijayawada that a lease deed was registered in August 2007 between Andhra Pradesh Industrial Infrastructure Corporation (APIIC), Vijayawada (lessor) and Vijayawada Auto Cluster Development Company Limited, Vijayawada (lessee) for a term of 25 years. It was recited in the document that the lessee shall construct a building and surrender the land and building to the lessor on expiry of lease. Therefore, stamp duty is leviable at five *per cent* on the value of improvements in addition to stamp duty leviable on lease for 25 years. However, the registering officer levied stamp duty of ₹ 3,600 only ignoring the aspect of improvement. This resulted in short levy of stamp duty of ₹ 6.90 lakh.

After we pointed out the case, the Sub Registrar, Patamata stated (September 2008) that a reply would be furnished after examination.

We referred the matter to the Department in February 2011 and to the Government in May 2011; their reply has not been received (October 2011).

5.12 Short levy of stamp duty due to non-inclusion of 'goodwill'

As per Section 2 (10) of the IS Act, 'goodwill' is also a property and a goodwill is capable of being conveyed independently of the land. Where it is conveyed, the instrument by which it is conveyed will be liable to stamp duty as a conveyance on sale.

Under Article 6(B) of schedule I-A to IS Act read with G.O.Ms.No.568 Revenue (Regn I) Department dated 10 April 2008 and G.O.Ms.No.1481 Revenue (Regn I) Department dated 30 April 2007, Development agreements-cum-GPA are chargeable to stamp duty at one *per cent* on the amount of sale consideration or the market value of the property as per market value guidelines or the estimated market value for land and complete construction made or to be made in accordance with the schedule of rates approved by the Commissioner and Inspector General of Registration and Stamps, whichever is higher.

We noticed (May and June 2010) during test check of the records of DR, Ranga Reddy that two documents styled as 'Development Agreement / development agreement - cum - General Power of Attorney (GPA)' were registered between July and December 2009 by the land owners in favour of the developers for development of the lands into multi-storied residential / commercial complex with the funds of the developers. The land owners and the developers would share the developed property in the specified ratio as mentioned in the documents. Besides, the developers had paid goodwill of ₹ 25 crore and ₹ 5 crore respectively to the land owners. The

documents were registered on levy of stamp duty of one *per cent* on the estimated value of land and complete construction to be made as applicable to

development agreement/Agreement-cum-GPA without including cash paid as goodwill. This resulted in short levy of stamp duty of ₹ 1.50 crore.

After we pointed out the case, the District Registrar, Ranga Reddy stated (June 2010) that the matter would be examined.

We referred the matter to the Department in January 2011 and to the Government in May 2011; their reply has not been received (October 2011).

5.13 Short levy of stamp duty due to non-disclosure/mis-representation of facts

As per Section 27 of the IS Act, the consideration, if any, the market value of the property and all other facts and circumstances affecting the chargeability of any instrument with duty or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein.

Provided that a registering officer appointed under the Registration Act or any other Officer authorised in this behalf, may inspect the property, which is the subject matter of such instrument, make necessary local enquiries, call for and examine all the connected records and satisfy that the provisions of this section are complied with. If the instrument is undervalued, it will be open to the Registrar to initiate prosecution under Section 27 read with Section 64 and recover the differential duty.

Further, stamp duty payable under Article 6 (B) of Schedule I-A of the Act, is one *per cent* on the amount of sale consideration or market value of property or estimated market value for land and complete construction made or to be made in accordance with schedule of rates whichever is higher on documents of development agreement-cum- GPA.

We noticed (September and October 2010) during test check of the records of SR, Ghatkesar, Ranga Reddy district that a document styled as 'Development Agreement -cum-GPA' was executed and registered in July 2008 by the land owner in favour of the developer for development of seven acres of land into a project comprising residential and commercial complex. The proposed area of construction was declared by the parties as 5,000 sft in the document as against 10,00,000 sft indicated in the website as verified by audit. The case therefore requires verification by the Stamp authorities as there could be a potential revenue gain of ₹ 57.01 lakh by way of stamp duty based on the construction estimated for development of the property.

After we pointed out the case, the Department accepted (April 2011) the audit observation and intimated that the District Registrar was directed to collect the deficit amount.

We referred the matter to the Government in May 2011; their reply has not been received (October 2011).

5.14 Undervaluation of property by not including construction cost

As per Article 6(B) of Schedule 1-A to the IS Act, read with G.O.Ms. No 1481 Revenue (Registration-I) Department dated 30 November 2007, stamp duty in respect of documents relating to agreement for development of immovable properties combined with GPA is leviable at one *per cent* on the sale consideration or the market value of the property as per the market value guidelines or the estimated market value for land and complete construction made or to be made in accordance with schedule of rates approved by the C&IG(R&S), whichever is higher.

5.14.1 We noticed (between December 2009 and January 2010) during a test check of the records of SR, Ghatkesar, Ranga Reddy district that a document styled as 'development agreement-cum-GPA' was executed and registered in October 2008 by the landowners in favour of the developer for development of land into residential apartments / commercial complex. As per the terms of the agreement, the owners were entitled to 15 *per cent* share in the

proposed structure or 10,000 sft per acre whichever is higher and remaining 85 *per cent* would be the entitlement of the developer. Accordingly, the total proposed structure worked out to 6,05,420 sft valuing ₹ 34.21 crore as per the development agreement. Stamp duty was to be levied at one *per cent* on the estimated value of land and complete construction to be made. However, the registering officer levied lesser stamp duty of ₹ 3.85 lakh instead of ₹ 34.21 lakh which resulted in short levy of stamp duty ₹ 30.36 lakh.

After we pointed out the case, the Department accepted (April 2011) the audit observation and intimated that District Registrar, Ranga Reddy (East) was directed to collect the deficit amount.

We referred the matter to the Government in May 2011; their reply has not been received (October 2011).

5.14.2 We noticed (between October 2009 and August 2010) during a test check of the records of DR, Medak and SR, Tadepalligudem that 28 documents styled as 'Development agreements-cum-GPA' were registered between July 2008 and October 2009 by the landowners in favour of developers for development of land into commercial complex/flats/apartments. The documents were liable to stamp duty at one *per cent* on the estimated value of land and complete construction to be made. However, the registering officer levied stamp duty on the market value of land ignoring aspect of value of construction cost. This resulted in short levy of stamp duty of ₹ 8.43 lakh considering the value of construction as ₹ 41.07 crore on the basis of recitals of documents.

After we pointed out the cases, the Department accepted (March and June 2011) the audit observation and intimated that ₹ 5.03 lakh had been collected (between September 2010 and June 2011) in respect of DR, Medak. Recovery particulars in respect of SR, Tadepalligudem is awaited (October 2011).

We referred the matter to the Government in May 2011; their reply has not been received (October 2011).

Misclassification of Documents

The Stamp duty and Registration Fee are chargeable on the value set forth in the documents as per the classification of the documents i.e., conveyance deeds, lease deeds etc. The correct classification of the documents is necessary for levy and collection of Government revenue on the deeds presented for registration. Our scrutiny of records revealed that documents were incorrectly classified resulting in short levy of stamp duty.

5.15 Short levy of stamp duty on Agreements of Sale

As per Explanation I under Article 47-A of Schedule I-A to the IS Act, an agreement to sell followed by or evidencing delivery of possession of the property agreed to be sold shall be chargeable as a 'sale' and chargeable with stamp duty of seven *per cent* on the value of the consideration as set forth in the instrument or the market value of the property, whichever is higher.

We noticed (January 2010) during test check of records of SR, Serilingampally, Ranga Reddy district that two documents styled as 'Agreements of sale' were executed and registered in February 2009 by the vendors and a confirming party conveying two acres of land in favour of the vendee for a total consideration of

₹ 4 crore. The documents contained recitals to the effect that vendors and confirming party delivered the physical possession of the scheduled properties and all original title deeds to the vendee. As the above documents of agreements of sale evidenced delivery of possession of properties they were 'Sale' agreements and as such stamp duty was leviable at seven *per cent* on the market value of the property. However, the registering officer levied stamp duty treating it as 'Agreement for Sale' resulting in short levy of stamp duty of ₹ 24 lakh.

After we pointed out the case, DR, Ranga Reddy district stated (April 2011) that when the agreement of sale was given in favour of vendee, it could be construed that possession of schedule property was delivered and ultimately a sale deed had to be executed to complete the transaction. The reply is not acceptable as these were sale agreements and liable to be charged with stamp duty at the rate of seven *per cent*.

We referred the matter to the Department in January 2011 and to the Government in May 2011; their reply has not been received (October 2011).

5.16 Misclassification of deeds

According to Article 41 (C) (a) of Schedule I-A to the IS Act, where the property which belonged to one partner or partners when the partnership commenced is distributed or allotted or given to another partner or partners, stamp duty is leviable at five *per cent* on the market value of the property distributed or allotted or given to the partner or partners under the instrument of dissolution in addition to the duty which would have been chargeable on such dissolution if such property had not been distributed or allotted or given.

5.16.1 We noticed (August 2008) in test check of the records of SR, Medchal, Ranga Reddy district that a document styled as 'Memorandum of Understanding (MOU)' was executed between two parties and registered in December 2007. It was recited in the document that APIIC allotted the scheduled property for manufacturing cement bricks to the first party. Subsequently, the first

party was unable to meet the expenditure and due to adverse financial conditions had admitted the second party as his partner by executing a partnership deed in 1991. The second party had paid all the dues of the partnership firm to the concerned banks and financial institutions and hence the first party through MOU, transferred all rights, title and interest of the unit alongwith land and building to the second party.

As the property was given to the other partner and the partnership ceased to exist, stamp duty is leviable at five *per cent* on the market value of the property. However, the registering officer levied stamp duty of ₹ 200 treating the document as MOU. Misclassification of 'dissolution of partnership' as 'MOU' resulted in short levy of stamp duty and registration fees of ₹ 6.15 lakh.

After we pointed out the case, the Department accepted (June 2011) the audit observation and intimated that the District Registrar concerned was directed to collect the deficit amount.

We referred the matter to the Government in May 2011; their reply has not been received (October 2011).

As per the Andhra Pradesh High Court judgement No. 83 of 70 dated 18 January 1974, a release that does not operate on all other co-parceners or co-owners is a conveyance on sale. Further, a release should necessarily be in favour of someone who has a preexisting right over the property and the effect of release is only to enlarge the rights of the property.

5.16.2 We noticed (between May 2008 and May 2010) during test check of the records of four⁷ SRs that four documents styled as ‘release deed’ were executed by releasers, releasing their share of property in favour of the releasees. It was noticed in three cases from the recitals

of either the same documents or documents that were registered earlier that one/some of the co-parceners to the property were not included in the release deeds, thus making the documents ‘conveyance on sale’. In another case, though the releaser did not have pre-existing right in the property, the property was released in favour of releasee thereby making the document as conveyance on sale. However, the registering officers treated the above documents as ‘release among family members’ instead of ‘conveyance on sale’. Thus misclassification of ‘conveyance on sale’ as ‘release’ resulted in short levy of duties and fees of ₹ 5.88 lakh.

After we pointed out the cases, the Department stated (September 2011) that Sub-Registrars cannot go beyond the recitals of the documents and verify the title of the properties. The reply is not tenable as person(s) having right/title/interest of the property were excluded from the release deed thereby making the documents classifiable as conveyances on sale. The registering officers could have initiated action for issue of notices to collect deficit duties under section 41A of IS Act.

We referred the matter to the Government in May 2011; their reply has not been received (October 2011).

5.17 Short levy of duties and fees

According to Article 47-A of Schedule 1-A to the IS Act, instruments of sale are chargeable to stamp duty at seven *per cent* on the amount set forth in the instrument or the market value of the property, whichever is higher. Further, transfer duty is leviable at two *per cent* as per the provisions of various Acts of Local Bodies.

As per G.O.Ms.No.2046 Revenue (Registration-I) Department dated 28 November 2005, stamp duty payable in respect of sale deeds of land and buildings made through auction by the official liquidator is two *per cent*.

5.17.1 We noticed (December 2010) during test check of the records of SR, Adoni, Kurnool district that a sale deed was registered in June 2009 conveying factory site including godowns. Stamp duty of seven *per cent* was leviable on the market value of

⁷ Charminar, Kothagudem, Peddapally and Sanjeeva Reddy Nagar.

the property of ₹ 1.53 crore. However, the registering officer levied stamp duty of two *per cent* applicable to the sale deeds of land and buildings made through auction by the official liquidator on the value of ₹ 96.77 lakh declared as the market value of the property by the executants, even though the property was sold under normal conditions of sale as evident from the document itself. This resulted in short levy of duties and fees of ₹ 10.21 lakh.

After we pointed out the case, the Department accepted (June 2011) the audit observation and intimated that the District Registrar concerned was directed to collect the deficit amount.

We referred the matter to the Government in May 2011; their reply has not been received (October 2011).

5.17.2 We noticed (between January and February 2009) during test check of the records of two⁸ SRs that two sale deeds were registered between April 2007 and January 2008 by the vendors in favour of vendees. The Registering Officer levied duties and fees on the value of consideration instead of market value of the property in one case even though the market value of the property was higher. In the other case, the sale deed was registered by adopting agricultural/acreage rate instead of house site/square yard rate even though the property was already converted into house sites. These omissions on part of the registering officer in valuation of the properties resulted in short levy of stamp duties and fees of ₹ 5.98 lakh.

After we pointed out the case, the Department accepted (March 2011) the audit observation in respect of SR, Dharmavaram and intimated that instructions were issued to collect the deficit amount. In respect of Sub Registrar Shamshabad, it was stated (April 2011) that the survey number in which the property located was huge and even though some of the properties in survey number with small extent were registered at ₹ 1,700 per sq. yard, the other lands were remaining as mere lands without development. The reply is not acceptable as the vendors had already divided the land owned by them into plots which was evident from the document executed by them earlier i.e. on 11 January 2008; whereas the transaction in question pertains to the document registered at a later date i.e., 25 January 2008. As the property had already lost its 'agricultural status' stamp duty was leviable at house site/square yard rate i.e. at residential rates.

We referred the matter to the Government in May 2011; their reply has not been received (October 2011).

5.17.3 We noticed (February 2009) during test check of the records of SR, Dharmavaram, Ananthapur district that three sale deeds were executed and registered in September 2007 by the vendors in favour of the purchasers. While computing duties and fees, the registering officer adopted the value of land as ₹ 1.30 lakh per acre instead of ₹ 9.68 lakh per acre as per the basic value register. This resulted in short levy of duties and fees of ₹ 5.69 lakh.

⁸ Dharmavaram and Shamshabad.

After we pointed out the case, the Department accepted (March 2011) the audit observation and intimated that instructions were issued to collect the deficit amount.

We referred the matter to the Government in May 2011; their reply has not been received (October 2011).