

CHAPTER II
ADMINISTRATION OF STAMP AND
REGISTRATION LAWS

Highlights

Non-inclusion of “general power of attorney” within the purview of levy on market value continues to deny revenue to the Government.

[Paragraph 2.2]

Failure to notify the rate of stamp duty for issue of shares, etc., through electronic mode had resulted in the Government being not able to augment revenue during the years from 2005-06 to 2008-09.

[Paragraph 2.4]

The Government did not amend the Registration Act to make certificate of sale compulsorily registrable to ensure sufficiency in payment of stamp duty.

[Paragraph 2.5]

Misclassification of instruments of conveyance as cancellation deed resulted in short realisation of stamp duty and registration fees of ₹ 4.09 crore.

[Paragraph 2.7]

Stamp duty and registration fees of ₹ 42.06 crore was short levied on mortgage deeds.

[Paragraph 2.8]

Stamp duty and registration fees of ₹ 5.33 crore was not collected as there was suppression of fact in the conveyance deed.

[Paragraph 2.9]

Stamp duty and registration fees of ₹ 9.75 crore was short levied due to undervaluation of properties in 22 Registries.

[Paragraph 2.10]

Stamp duty and registration fees of ₹ 25.70 crore was not levied due to incorrect grant of exemption.

[Paragraph 2.11]

2.1 Introduction

The Inspector General of Registration is the highest departmental authority. He also acts as the Chief Controlling Revenue Authority (CCRA). We studied the efforts made by the Department in augmenting revenue by plugging loopholes, exploring new areas of taxation and simplifying the process of registration for the benefit of the general public and our comments are given in the succeeding paragraphs.

2.2 Concept of market value and the necessity for widening its ambit

The Registration rules provide for registering the documents on the basis of consideration received. As innumerable instances of understating the consideration for the purpose of reducing the stamp duty were noticed, the Government, to plug the leakage of revenue, decided to levy stamp duty on the market value of the property.

The instruments of sale, exchange, gift, settlement and release of benami right were brought under the ambit of market value. Three more instruments viz., (1) leases over 99 years, (2) release in favour of a co-owner and (3) release in favour of a partner in the firm were also brought under the ambit of market value from the year 2000.

The aspect of widening the definition of conveyance, *inter alia*, to include agreement to develop the property and general power of attorney

executed in favour of third persons other than blood relations⁵ has been engaging the attention of the Department and the Government since 1997. These instruments were, however, not brought within the purview of market value so far. Mention was also made of this in the Comptroller and Auditor General's Audit Report 2005-06 and though the Government agreed to look into this aspect, no decision has been taken so far.

The Government may consider bringing in agreement to develop property within the definition of conveyance. It may also consider treating such power of attorney where power to sell immovable property is given to third persons other than blood relations as conveyance deeds for stamp duty purposes, by amending the Act/Rules governing stamp duty in the State. Such provisions have already been made in other states such as Rajasthan (Section 44 EE of the Rajasthan Stamp Act).

⁵ Two persons are said to be related to each other by full blood, when they are descendents from a common ancestor by the same wife (Section 3(e) of the Hindu Succession Act, 1956).

As per the existing provision under Article 48(e) of the IS Act, on power of attorney given with consideration, stamp duty is leviable at four *per cent* on the amount of consideration. However, if the power of attorney is not given for consideration, ₹ 20 only is charged as stamp duty.

2.2.1 We observed during test check of records in nine offices⁶ that though general power of attorney was stated to have been given without consideration to third persons other than blood relations in nine cases, it was found through subsequent documents viz., sale deed executed by the power agent with the third party in three cases and sale agreement executed on the

same day in six cases, that consideration had been given. Hence, the general power of attorney should be treated as deeds of conveyance and charged to stamp duty accordingly. Had the stamp duty been levied on the consideration, an amount of ₹ 5.77 crore would have accrued to Government (inclusive of registration fee).

2.2.1.1 Misclassification of instrument of power for consideration as sale agreement

According to Section 5 of the IS Act, any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under the Act. As per Article 48(e) of Schedule I to the Act, when a power of attorney was given for consideration, stamp duty is leviable at four *per cent* on the amount of consideration.

We observed during test check of the records in Sub-Registry, Thiruporur in October 2008 and August 2009 that through eight instruments of sale agreement executed in October 2007/August 2008 and registered between October 2007 and August 2008, 29.77 acres of agricultural land was proposed to be conveyed. The entire sale consideration of ₹ 49.38 crore as set forth in the documents was paid and stamp duty of ₹ 800 and Registration fees of ₹ 0.49 crore was collected.

However, we noticed from one of the conditions of the agreement that the buyer was authorised to transfer, assign, mortgage and to deal with and dispose of the property in such manner as the buyer may, in his discretion deem fit and proper, without any reference and/or consent from the seller and/or the confirming party. The buyer was also free to receive, recover and appropriate, consideration and amounts that may become due and recoverable on such transactions. It is clear from the above that the instruments comprised

⁶ Adayar, Hosur and Tiruppur – **Sale deed** and Cuddalore, Konnur, Kundrathur, Neelangarai, Suramangalam and Tambaram – **Sale Agreement**

of two different matters, i.e., one a ‘sale agreement’ and the other ‘power for consideration’. Therefore, stamp duty of ₹ 1.97 crore at four *per cent* on the value set forth in the documents as provided in Article 48(e) was to be levied.

We pointed this out to the department in December 2008/October 2009 and to the Government in December 2009. The Government accepted (April 2010) the audit observation in one case. We are awaiting further report (March 2011).

2.3 Overlooking the grounds and causes of previous amendment

2.3.1 In order to arrest the tendency of the registering public to reduce the duty incidence on sale of property by opting for leases over 99 years, leases over 30 years were subjected to duty on market value by Act No.1 of 2000. However, the amended Act No.31 of 2004 shifted the factor for levy to set forth value.

2.3.2 Partition among family members is subjected to stamp duty on market value (under Article 45(a) of the IS Act since December 2004) whereas partition among non-family members is stamped on the value of the separated shares. While the registering officer assesses the market value in the former case, the parties themselves declare the value in the latter.

2.3.3 Three kinds of releases viz., release of benami right, release in favour of co-owner and release in favour of partner of the firm are covered under Article 55 B to D of the IS Act. Any other release like leasehold right, tenancy right, conjugal right, contractual right and litigants right would fall under Article 55-A of the IS Act as clarified by the IG of Registration.

By an amendment in December 2004⁷ under the Registration Act, the concession of registration fees was restricted only to family members, whereas corresponding amendment under IS Act was not confined to family members though as per the ‘Statement of objects and reasons’, the Government decided to give concession only to transactions relating to family members.

Stamp Act	Registration Act
Article 55A	Proviso under Item 1(b) of Table of Fees
<u>Before Amendment</u>	<u>Before amendment</u>
4 per cent of the value of release	One per cent on the value on which the stamp duty is levied
<u>After amendment</u>	<u>After amendment</u>
One <i>per cent</i> on the market value subject to a maximum of ₹ 10,000	A proviso was included for transactions among family members restricting the fee to ₹ 2,000

⁷ vide GO 185 CT, dated 16 December, 2004

Omission to restrict the stamp duty concession under Article 55-A only to family members resulted in unintended concession of ₹ 7.99 crore in the following few illustrative cases.

(₹ in lakh)

Name of the sub-registry/ Nature of the instrument (No.of documents)	Nature of transaction	Stamp duty and registration fee leviable/levied	Difference
Annanagar/ Conveyance deed (1)	The person who was contracted originally to purchase the property from the owner was paid ₹ 50 crore by the ultimate purchaser and the contracted person also signed the deed as a confirming party. This execution by the confirming party has to be treated as release of contractual rights, and stamped accordingly.	250.00/Nil	250.00
Ten ⁸ Sub-registries (70)	Through 70 instruments, the confirming parties involved in the documents received consideration for releasing their contractual rights and litigation rights besides transfer of lands by the owners in favour of the purchasers. As such, the instruments should be classified as conveyance cum release (between non family members) and stamp duty and registration fees were to be levied .	549.00/Nil	549.00
<p>After we pointed this out, the department replied that the sale deeds in question were executed by the owners of the properties and the agreement holders in the capacity of confirming party to the said sale to perfect the transfer of title by the vendor.</p> <p>The reply is not tenable. It is clear from the recitals of the documents that the confirming parties signed the document in order to relinquish their rights over the property. As such the documents should be classified as conveyance cum release and stamped accordingly.</p>			

⁸ Annur, Jt.II Chingleput, K. Sathanur, Kundrathur, Manavalanagar, Neelanganarai, Padappai, Sulur, Thirukazhikundram and Tiruporur

2.4 Augmentation of revenue

Under the provisions of the Constitution, levy and regulatory powers in respect of stamp duty is governed by the Concurrent list and rate of stamp duty (except those that are covered in Entry 91 of the Union List) is in the exclusive domain of the State Government. The State of Tamil Nadu adopted the IS Act with suitable amendment, wherever necessary.

2.4.1 According to Section 8-A of the Indian Stamp Act, the issuer of shares, debentures or other marketable securities through electronic mode, is liable to pay stamp duty on the total amount of securities. However, the State Government is yet to notify the rate of stamp duty under Section 8-A. Thus, issuer of shares in demat form are not paying duty. This issue was already pointed out in the Audit Report for the year 2005-06 and though the Government agreed to consider the issue, no rate was notified so far.

We observed that 25 Tamil Nadu based companies issued demat shares during the period from 2005-06 to 2008-09 for ₹ 3,847.52 crore on which no stamp duty was paid.

The Government of India made 'contracts for sale' compulsorily registerable. A new article 23-A was inserted (September 2001) in Schedule I to the Indian Stamp Act, 1899 by which contracts for sale executed in the Union Territories are liable to stamp duty at ninety *per cent* as applicable to conveyance.

2.4.2 The Inspector General of Registration stated in his letter dated December 2001 that a separate proposal would be sent to the Government for providing appropriate rate of stamp duty for agreements to sell with consideration. The rate of stamp duty for contracts for sale has, so far, not been prescribed by the Government of Tamil Nadu. As a result, the contracts for sale with possession are being stamped with duty of ₹ 20 only under Article

5 (j), a residuary article.

We observed in Sub Registry, Annanagar, that an immovable property was contracted for sale and the contracted person also developed the property. However, the contract for sale was not registered and stamped accordingly as the rate of stamp duty has not been prescribed so far.

As the power to fix the rate of stamp duty remains with the State Government, whenever amendments were made in the Stamp Act and other Acts, effect of such amendments needs to be studied immediately so as to fix/revise the rates of duties wherever necessary in order to maximise the revenues to the State.

2.5 Sufficiency of stamp duty in respect of documents not requiring compulsory registration

The registering officer appointed under the Registration Act, 1908 is also notified as “Collector” for various sections under Chapters III & IV of the Indian Stamp Act, 1899 and he is duty bound to ensure stamp duty sufficiency in respect of instruments presented to him for registration.

As per sections 2(6), 2(12), 3 and 17 of the IS Act, every instrument mentioned in Schedule I is liable for stamp duty. As per Section 33 of the IS Act, every person in charge of a public office may impound instruments not requiring compulsory registration or instruments requiring compulsory registration but not opted for registration that may come to his notice in discharge of his functions.

Instruments like court decree and certificate of sale confer title over immovable properties. Copies of orders or the details of such judicial or quasi-judicial orders are required to be forwarded to the jurisdictional registry. However, their registration is optional as per section 18 of the Registration Act. The registering officer, on receipt of such details, is duty bound to index the same as per Section 55(2) of Registration Act.

2.5.1 We observed in four registries⁹ that

certificate of sale was issued by the Debt Recovery Tribunals in respect of properties valued at ₹ 6.17 crore. Subsequently, the parties, while settling or mortgaging or selling the property so acquired described the mode of acquisition as being through certificate of sale in the instruments sought to be registered, thus avoiding the stamp duty required to be paid on the certificate of sale. Further, the certificate of sale was simply indexed in the registry concerned. As the instrument is not compulsorily registrable, stamp duty amounting to ₹ 37.03 lakh could not be realised.

The IGR issued instructions on 3 July 2002 that such type of documents should be compulsorily registered. The Hon’ble High Court¹⁰ struck down the instructions issued by the IGR as ultra vires, as there was no provision in the Act to make certificate of sale compulsorily registrable. The above lacuna could have been plugged had the Government amended the Act so as to bring certificate of sale under the purview of compulsory registration.

After we pointed this out, the Department replied that similar attempt made by the Government of Andhra Pradesh to inspect banks was held unconstitutional by the Supreme Court of India¹¹. The reply is not tenable since the case law relied on by the Department pertains to an amendment to Section 73 which empowered demand of deficit duty from the public officer who held insufficiently stamped instrument, whereas the audit point is that an

⁹ Hosur, Konnur, Rajapalayam and Tuticorin

¹⁰ WP No.17833 of 2009 – High Court of Madras

¹¹ District Registrar Versus the Canara Bank reported in 2004(5) CTC 376 SC

amendment is required to be made for compulsory registration of certificate of sale to ensure the sufficiency of stamp duty at the time of registration. We are awaiting further report (March 2011).

2.5.2 Misclassification of instrument of conveyance as certificate of sale

As per Article 23 of the Schedule I to the IS Act, in the case of conveyance of an immovable property, stamp duty is leviable at the rate of eight *per cent* including transfer duty surcharge (TDS) on the market value of the property. As per Article 18, on sale of any property through public auction by a Civil Court or Revenue Court or Collector or other revenue officer in respect of which a certificate of sale is issued to the purchasers, the stamp duty at the rate of six *per cent* is leviable on the market value equal to the consideration.

We observed during test check of the records in four¹² registering offices that in 10 cases, certificates of sale were issued, for a value of ₹ 8.77 crore by persons not empowered to issue certificate of sale. These instruments were, therefore, to be classified as conveyance deeds and stamp duty was leviable on the market value which was ₹ 12.18 crore. The misclassification of instruments resulted in short levy of stamp duty and registration fees of ₹ 49.76 lakh (due to undervaluation of properties and non collection of difference

amount at two *per cent* being the TDS portion on the value of the property).

We recommend that the Government may consider amending the Registration Act to make certificate of sale compulsorily registrable.

2.6 Delayed reference for valuation

Under Section 47A of the IS Act, if the registering officer has reason to believe that the market value of the property has not been truly set forth in the instrument, he may, after registering the instrument, refer the same to the Collector for determination of the correct market value.

The Inspector General of Registration instructed (September 2002) that the documents wherever required should be referred within 21 days from the date of registration.

We observed that there were 4,081 instances of delayed reference under Section 47A(1) out of 9,723 sampled cases

pertaining to 149 Sub-Registries. In 867 cases the delays ranged from 91 days to 688 days. The delay in initiating action under Section 47A(1) further delayed the realisation of revenue.

¹² Jt-II SR, Chengalpet, DR Erode, SR Neelankarai, and Jt.IV Madurai

2.7 Misclassification of instruments of conveyance as cancellation deed

As per Article 17 of Schedule-I to the IS Act, on the instrument of cancellation if attested and not otherwise provided for, stamp duty is leviable at ₹ 50.

It was judicially¹³ held that there can be no such thing as cancellation of a conveyance under which the right of the property has already been passed. Property can be retransferred only by a conveyance.

We observed during test check of the records in 45 District Registries/Sub Registries¹⁴ that conveyance of properties effected through 500 sale deeds were cancelled on mutual agreement by both the executants and claimants through deeds of cancellation registered subsequent to the date of registration of the original deed on the ground that consideration was not received or possession was not given or the properties were not in absolute ownership of the original vendor, etc. Further by making an entry in the registration records regarding registration of cancellation deed the registration of original sale deed was nullified. This was also included in the encumbrance certificate issued by the department. The time gap between the original sale deed and the cancellation deed is as follows:

Time gap in years	No.of documents
Less than one year	135
One year to two years	113
Three to five years	183
Six to ten years	39
More than 10 years	30
Total	500

Since the original vendors re-acquired the right and interest over the property from the original purchasers through cancellation deeds these deeds were to be treated as conveyance deeds. Accordingly, stamp duty and registration fees of ₹ 4.10 crore was to be levied on the market value of the property of ₹ 45.54 crore as against ₹ 0.01 crore levied by the department. The misclassification of conveyance deed as cancellation deed resulted in short realisation of stamp duty and registration fees of ₹ 4.09 crore.

After we pointed this out, the Department replied that the relevant sale deeds registered earlier were cancelled and there was no conveyance and it was covered under Article 17 of the Stamp Act. The reply is not tenable since it

¹³ WA.Nos.592 & 938 of 2009 – High Court of Madras

¹⁴ Alandur, Ambattur, Arakkonam, Avinashi, Bhavani, Cheyyar, Cuddalore, Dharmapuri (West), Dindigul, DR Erode, Guduvancherry, Jt.IV Kanchipuram, Karur (West), Katpadi, Kumarapalayam, Kundrathur, JT,IV Madurai, Mannargudi, Melapalayam, Neelangarai, Padappai, Palayamkottai, Palladam, Perambalur, Periamedu, P.N. Palayam, Pollachi, Poonamallee, Purasaiwakkam, Rasipuram, Redhills, Jt.II Saidapet, Sullur, Tambaram, DR Thanjavur, Thiruchengodu, Thirumangalam, Thirupathur, Thuraiyur, Tiruporur, Tiruppur, Tiruvermbur, Villivakkam, Walajahbad, and Walajahnagar

has been judicially held that a sale cannot be cancelled by merely stating that the consideration was not received and possession not handed over even though it has been stated otherwise in the original sale deed. The misuse of the provisions of Article 17 by registering cancellation of sale deeds resulted in short realisation of revenue to Government. We await further report (March 2011).

2.8 Mortgage in English form

As per explanation under Article 40, where power of attorney to collect rent from the mortgaged property had been given by the mortgagor to the mortgagee while executing the mortgage deed, the mortgagor is deemed to have given possession of the property in favour of the mortgagee and the deed shall be chargeable to stamp duty at three *per cent* plus surcharge at one *per cent* on the amount of loan secured in the deed and the registration fees is collectable at the rate of one *per cent*, subject to a maximum of ₹ two lakh.

As per Section 58(e) of the Transfer of Property Act, 1882, under English mortgage, the mortgaged property is absolutely transferred to the mortgagee. It would be retransferred to the mortgagor upon repayment of the loan as agreed. A stipulation in the instrument that the mortgagor would, until he committed default in payment of the principal or the interest, remain in possession of the mortgaged property and he would receive the rents and profits of the mortgaged property and would pay rates and taxes on the property, does not detract the absolute nature of the transfer and make any difference in the

position that the mortgage is an English mortgage.

We observed during test check of the records in three¹⁵ Sub-Registries that in four mortgage deeds registered between November 2004 and October 2006, the mortgagors created mortgages in favour of the mortgagees, who were the security trustee for the lenders for the total loan amount of ₹1,115.92 crore borrowed by the mortgagors. All the four mortgages were English mortgages and the same were rightly classifiable as mortgage deeds with possession under Article 40(a). Omission to correctly classify the deeds resulted in short levy of stamp duty and registration fees of ₹ 42.06 crore.

¹⁵ Alandur, Kumarapalayam and Kuttalam

2.9 Suppression of transfer of immovable property

As per Section 17 of the Registration Act, 1908, any instrument, through which any title or interest, whether vested or contingent, is created or declared of the value of one hundred rupees or more in immovable property, is compulsorily registerable. As per Section 5 of the IS Act, any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under this Act. As per Article 58 (ii), in case of settlement of properties in favour of a person stamp duty is chargeable at eight per cent.

As per Article 23 of Schedule I to the Indian Stamp Act, 1899 in the case of conveyance of immovable property, stamp duty shall be levied at the rate of eight *per cent* including surcharge on the market value of the property which is the subject matter of conveyance.

2.9.1 We observed during test check of the records in Sub Registry, Poonamallee that in a sale agreement registered in September 2007 M/s Muktha Shanthiniketan Properties, a registered partnership firm, had transferred 29.12 acres of land to its retired partner, M/s. HIEC Trading Company, towards settlement of their accounts. The transferred property was in possession of the retired partner

from the said date. However, in the sale agreement mentioned above, the retired partner company was mentioned as second part and also referred to collectively as sellers, represented by its nominee M/s Sriji Ventures, mentioned as confirming party and were included in the sale agreement for conveying the said property. We further observed that the transfer of immovable property by the firm to the retired partner company was not registered. Though the above transfer was registered only through this sale agreement, the stamp duty and registration fees for distinct matters i.e., the settlement made was not noticed by the registering officer and the sale agreement document was not impounded. The market value of the property was ₹ 57.66 crore. The omission of the registering officer to charge duty for settlement made resulted in non levy of stamp duty and registration fees of ₹ 5.19 crore.

2.9.2 We observed from the sale deed executed and registered in February 2006 in Sub Registry, Thiruverumbur that M/s. Tamil Nadu Small Industries Development Corporation Ltd., allotted 65 acres of land situated in Valavandan kottai village of Trichy taluk in favour of M/s. Indian Oil Corporation Ltd., vide an allotment order in June 1999. As per the memorandum of understanding executed in March 2001 the purchaser paid the entire consideration of ₹ 5.15 crore to the vendor through cheque in June 1999. The possession of the entire land of 65 acres was handed over to the purchaser in March 2001. However, instead of executing a sale deed for the entire extent of 65 acres described in schedule-C of the document, the vendor conveyed an extent of 28.90 acres only, described in schedule-D for a

consideration of ₹ 2.29 crore through the sale deed. Thus, for land measuring 36.10 acres for which a consideration of ₹ 2.86 crore was already paid in June 1999, no sale deed was executed and registered. This was contrary to the provisions of the Registration Act. The omission to register the conveyance of 36.10 acres of land resulted in non collection of stamp duty and registration fees aggregating ₹ 14.30 lakh.

2.10 Undervaluation of property

As per the provisions of Article 23 of the Schedule-I to the IS Act, in the case of conveyance of immovable property, stamp duty including the surcharge is leviable at the rate of eight *per cent* on the market value of the property. According to Section 27, the consideration, the market value and all other facts and circumstances affecting the chargeability of the instrument with duty or the amount of the duty with which it is chargeable shall be fully and truly set forth therein.

As per Rule 3(4) of the Tamil Nadu Stamp (Prevention of undervaluation of instrument) Rules, 1968, the registering officer may also consider the value of the property as per the guidelines register for the purpose of verifying the market value.

The Central Valuation Committee for guideline value had decided in September, 2007 that if any document with a value higher than the guideline value was registered for a particular survey

number/street/nagar before 1 August 2007, the same should be taken into account for registering the document on or after 1 August, 2007.

We observed during test check of the records in 22 Registries between April 2010 and July 2010 that in 193 instruments there was undervaluation of properties to an extent of ₹ 108.38 crore resulting in short levy of stamp duty and registration fees of ₹ 9.75 crore.

2.11 Exemption to societies

According to notification dated 29 June 1966, issued under the Co-operative Societies Act, remission of stamp duty chargeable under the IS Act is admissible in respect of instruments executed by a member of a registered co-operative society, provided the executant was a member of such society continuously for a period of not less than two years.

2.11.1 We observed during test check of the records in 12 registering offices that 134 sale deeds were registered whereby lands were conveyed in favour of a co-operative housing society by persons who were not members of the society or by members who had not completed two years of membership, for a consideration of ₹ 262.94 crore. These instruments were

exempted from payment of stamp duty, despite the fact that the executants

were not members of the society concerned/ not members for a continuous period of not less than two years, which was not in order. The incorrect exemption resulted in non levy of stamp duty of ₹ 21.05 crore as detailed below:

(₹ in crore)

Sl. No.	Name of the registry/ No.of documents	Nature of irregularity	Stamp duty involved
1	Jt II Chingleput, Kundrathur and Salem (West)/ 65	Lands valuing ₹ 16.25 crore were conveyed to a Co-operative Housing Society by non-member vendors through their power agents. As the vendors were not members of the Society, no remission was admissible in respect of the above sale instruments.	1.32
The department replied that any instrument executed by or on behalf of any society or by an officer or member thereof and relating to the business of such society is exempted from stamp duty as per Notification dated. 29.06.1966. The reply is not tenable since the remission of stamp duty is not admissible in respect of documents executed by a non-member in favour of the societies.			
2	Ten ¹⁶ Registries/ 69	Lands valuing ₹ 246.69 crore were conveyed by persons who were members of the society for a period less than two years and the transactions were exempted. Since the period of membership of the vendors was less than two years, these instruments were not eligible for exemption from payment of stamp duty.	19.73
The department replied that as per the G.O. and the instructions of Inspector General of Registration, the period of two years membership is applicable only in the case of Co-operative House Construction Society. Since the societies in the instant cases are Co-operative Housing Societies, the condition of two years is not applicable. The reply is not tenable as the second proviso of the notification clearly indicates that exemption is admissible only to those members who are in continuous membership of two years or more and is applicable to all the registered societies and not to the House Construction Societies alone.			
Total			21.05

2.11.2 Misuse of exemption

We further observed in Guduvancherry Sub-Registry that in respect of two sale deeds the above exemption was misused to undervalue the properties with consequent short payment of stamp duty of ₹ 4.65 crore as detailed below:

(₹ in crore)

Sl. No	Name of the registry/ No.of documents	Nature of irregularity	Stamp duty involved
1	Guduvancherry/ one	Land measuring 12.39 ½ acres was conveyed by a vendor company for a consideration of ₹ 5.58 crore through a sale deed on 1 August 2007. As the set forth value was less than the guideline value of ₹ 7.61 crore, the document was referred to the District Revenue Officer (Stamps), Chennai for determination of the market value.	0.60

¹⁶ Chengleput, Guduvancherry, Kanchipuram, Katpadi, Padappai, Sriperumbudur, Thirukazhikundram, Tiruporur, Walajahbad and Walajah Nagar

	<p>The purchaser who was a member of the Chennai Metropolitan Co-operative Housing Society, sold the same property on 7 August 2007 for a value of ₹ 12.27 crore to the Society within seven days from the date of purchase and no duty was paid availing the exemption. Since conveyance of the said property directly in favour of the co-operative society involved payment of stamp duty on the actual consideration of ₹ 12.27 crore, the parties adopted the method by undervaluing the property as ₹ 5.58 crore and paid lesser amount of stamp duty and registration fees.</p> <p>We also observed that the department handed over the document to the purchaser in July 2009 based on the court order along with the endorsement that action under section 47A(1) was pending with the DRO(Stamps). The document was not shown as pending and was treated as cleared in the departmental record.</p>	
Guduvan-cherry/one	<p>Land measuring 7.24 lakh square feet was developed and the approved layout was conveyed (February 2008) by M/s. Hi-Bright Property Developers India Private Limited and two others in favour of an individual (Shri P.Raju) for a consideration of ₹ 19.92 crore after remitting the stamp duty and registration fees of ₹1.79 crore. However, it was seen that through another sale deed executed and registered in March 2008, the same property was conveyed by the individual in favour of Chennai Metropolitan Co-operative Housing Society Limited for a consideration of ₹ 64.93 crore. Stamp duty was fully exempted on the ground that the deed was executed by a member of the society in favour of the society. It was seen from the details of payments recited in the sale deed executed in March 2008 that the society paid the entire sale consideration of ₹ 64.93 crore to Shri P.Raju (₹ 7.26 crore), M/s. Hi-Bright Property Developers India Private Limited (₹ 39.43 crore) and to Shri Dayalan (₹ 18.24 crore) between May 2007 and March 2008. This included a sum of ₹ 1.79 crore paid by the society at the request of the vendor Shri P.Raju by way of cheque dated 14 February 2008 for the issue of demand draft in favour of the Sub-Registry, Guduvancherry as stamp duty and registration fees for the first deed. From the above, it is clear that instead of conveying the said property in favour of the society by the company and individuals, who are not members of the society, one member of the society acted as a middlemen in those transactions to reduce the payment of stamp duty and registration fees by undervaluing the property in the sale deed executed in February 2008. Thus, the property was undervalued to an extent of ₹ 45.01 crore in the first document. This resulted in short levy of stamp duty and registration fees.</p>	4.05
Total		4.65

2.11.3 Unintended benefit to members

We observed during test check of the records in the Sub Registry, Katpadi that through four sale deeds registered in 2006, house sites were conveyed by the Katpadi Co-operative Society to the buyers for a total consideration of ₹ 72.49 lakh. As the buyers were members of the seller society, stamp duty was exempted and only registration fee was collected. Subsequently, the

purchasers conveyed the said property for a total consideration of ₹ 1.45 crore in the year 2006 and in April 2007.

As per the conditions of sale, the plot should be used by the member only for construction of residential building and the same was agreed to by the member of the society. This condition was violated by disposing of the same to a third party who was not a member of the society.

Since the member of the society had not utilised the allotted plots but had sold them to the third parties, the objectives of the co-operative society was defeated. Further, there was no provision in the Act to withdraw the exemption of stamp duty allowed in such cases.

The Government may consider introducing enabling provisions to withdraw the exemption if the properties are re-conveyed and not used by society members for the intended purpose.

2.12 Other points of interest

2.12.1 Incorrect remission of stamp duty under Samadhan Scheme

The Government by an order introduced Samadhan Scheme in April 2007 wherein a remission of 40 per cent of the difference of stamp duty and registration fee between the stamp duty/registration fee already paid and the duty/fee chargeable as per the guideline value can be given.

The scheme was made applicable in respect of instruments which were pending as on 22 March 2007 under sections 47A(1), 47A(3), 47A(5), 47A(6), 47A(10) and 19B of the Indian Stamp Act, 1899 for determination of market value and in respect of instruments registered and pending with the registering officer as on 22 March 2007 for

referring to the Collector.

We observed during test check of the records in the office of the DRO (Stamps), Coimbatore, for the period from June 2007 to August 2007 that in respect of 118 documents, though the market value had been fixed and pending for collection under the RR Act, they were sent for inclusion under the Samadhan Scheme as detailed below:

Month	No. of cases	Amount (₹ in lakh)
June 2007	96	134.85
July 2007	16	15.09
August 2007	6	9.34
Total	118	159.28

As the cases were not pending for finalisation their inclusion under the scheme was incorrect. The reasons for their inclusion were not found on record. The

incorrect procedure followed by the DRO (Stamps), Coimbatore, resulted in loss of revenue of ₹ 63.71 lakh.

2.12.2 Excess allocation of transfer duty surcharge to local bodies

According to Section 94 of the Tamil Nadu Urban Local Bodies Act, 1998 and Section 175 of the Tamil Nadu Panchayat Act, 1994, a duty shall be levied on the following classes of transfer of immovable property in the form of surcharge on the duty imposed under the Indian Stamp Act, 1899, viz., sale, exchange, gift, mortgage with possession, and lease in perpetuity. It shall be levied and collected at the rate of two *per cent* on the market value of the property transferred and subsequently allocated to the concerned local bodies.

We observed during test check of the records in 35 sub registries that though a sum of ₹ 0.36 crore was due towards transfer duty surcharge, ₹ 3.13 crore was allocated to local bodies due to typographical/arithmetical error and allocation made in respect of ineligible documents. This resulted in excess allocation of ₹ 2.77 crore made to local bodies out of the revenue due to Government.

After we pointed this out, the Government replied in May 2009 and June 2010 that an amount of ₹ 46.28 lakh pertaining to six offices has since been adjusted. We await recovery details (March 2011).

2.12.3 Registration Training Institute

The Registration Training Institute (RTI) functioning from September 1996 has been imparting training to the staff of the department to acquire functional knowledge of the provisions of the Indian Stamp Act, Registration Act and other Acts administered by the department. Between 2004-05 and 2008-09, 494 Sub Registrars and 50 Assistants were trained. Even though Junior Assistants post is the feeder cadre for the Assistants post, no training was imparted to Junior Assistants in the RTI.

The RTI has not been provided with computers to impart training in EDP and has no full fledged library. Hence the trainees are being deputed to sub-registrar offices for basic computer training. The training institute has not taken into consideration the future needs of the department viz. online registration, data collection from other sources, e-governance etc. while imparting training.

2.12.4 Record management

One of the key activities of the Registration Department is preservation of registered documents. Prior to computerisation, the documents were preserved in the form of books in bound volumes. Since computerisation of the Registration Department, documents are being stored as image files and preserved in hard discs at the concerned registration offices and at three

different locations (concerned sub-registrar, jurisdictional district registrar and jurisdictional Deputy Inspector General) and archived on a monthly basis.

At present documents are scanned and stored in open-tiff format in folders. However, the security control in the system is not adequate. We observed from check of records that registered documents were tampered with in several cases. In one such case in sub registry, Aranthangi, in two sale documents registered in 2003, the schedule of the property conveyed was tampered with, by which the area conveyed was altered in the original document and also the image files stored in the computer system were replaced which led to the dismissal of the delinquent officer. Five more cases were also detected by the department during the period from 2003-04 to 2008-09.

The department stated (June 2010) that safe storage of registered documents has been the prime concern of the department. Necessary modules for strengthening the security control system have been incorporated in the functional document and given to M/s.ELCOT for the development of an integrated web based software. They also stated that proposals were under way to create a technical set up in the department.

A foolproof mechanism needs to be installed for the preservation of records as it is the responsibility of the department to give legal security to transactions registered through documents. **The Government may consider putting in place a system of storing the scanned images in a centralized server with an adequate backup system and viewing through a web based software.**

2.12.5 e-Governance

The computerisation of the Registration Department was completed in July 2009. The objectives of e-governance through computerised operation was to provide speedy service to the public in issuance of encumbrance certificates, certified copies of documents already scanned, registration of marriages, preparation of property valuation statement etc. The reduction in time envisaged for some of the activities on account of computerisation was as follows:-

	Prior to computerisation	After computerisation
Issue of encumbrance certificate	8 days	5 minutes
Registration of document	4 days	60 minutes
Marriage certificate copy	1 day	15 minutes
Certified copy of value of property	30 minutes	5 minutes

We observed in 14¹⁷ sub-registries, that in many cases, the prescribed time schedule was not adhered to. Audit scrutiny revealed in three¹⁸ sub-registries that during the period from 2005-06 to 2008-09, in 97,547 cases, the delay for issuing encumbrance certificate ranged from one to five days.

We also observed that during the period from 2005-06 to 2008-09 the delay in scanning and return of documents ranged between one and 10 days. Thus the benefits of computerisation did not reach the general public.

The other objectives of computerisation were to provide link among field units to enable registration of documents at any place in the State, obtaining encumbrance certificate at any office, online registration etc. However, proper network facilities have not been provided so far. Though “REGINET”, the official website of the department, is in existence for the last seven years, data available in the website were not updated or found faulty in some cases. The names of 24 stamp vendors whose licences were cancelled still figure in the approved stamp vendors list published in the “REGINET” rendering the information generated unreliable.

2.12.6 Quantum of revenue forgone

As per the provisions of Section 9 of the Indian Stamp Act, 1899, the Government may by specific orders allow remission of stamp duty in respect of any instruments executed by or in favour of any particular class of persons/any members of such class.

We observed during test check that no mechanism was evolved by the department to ascertain the quantum of remission of stamp duty and also the number of beneficiaries. The computerised system used in this department was also not having the facility for capturing the details of concessions in duty (nature of document wise and article wise)

granted at the time of registration of instruments. Consequently, the department did not have any database to indicate the amount of concession allowed to different classes of people every year.

The department confirmed that details were not available and there was no provision in the computerised system to generate such details.

The Government may consider a system of monitoring the quantum of such remissions/exemptions through computerised data.

¹⁷ Erode (DR), Kancheepuram (Joint IV), Kundrathur, K. Sathanur, Peelamedu, Perundurai, Pollachi, Sathur, Sular, Thirumangalam, Thiruverumbur, Thuraiyur, Tiruppur and Wallajabad

¹⁸ Erode, Perundurai and Thirumangalam

2.12.7 Non receipt of copy of speaking orders from Collector

As per clause (2) of Rule 7 of The Tamil Nadu Stamp (Prevention of Under Valuation of Instruments) Rules, 1968 the Collector should pass final order in the cases referred to him under Section 47A of the Indian Stamp Act for determination of market value in the instruments where the properties were undervalued. Further, he should forward a copy of the same to the registering officers concerned for their file.

We observed during test check of the records in four¹⁹ District Registries/Sub Registries that out of 3,762 cases for which final orders were passed by the Collectors under Section 47A(2), in respect of 3,589 cases, the final orders were not received by the registration offices. Instead, only the details regarding payment of deficit duty and interest, if any, collected were forwarded along with the original documents.

The registering officers had also not insisted upon the Collectors to furnish the same. As a result, the registering officers were not in a position to identify the cases detrimental to the revenue and for submission to higher authorities for *suo-motu* revision under Section 47A(6) by the CCRA.

2.13 Conclusion

For the purpose of levy of stamp duty and registration fees, other information available with the department were not taken into account in addition to the details furnished in the recitals of the document to determine the true nature of the transactions. No rate was prescribed for the levy of stamp duty on the issue of shares in demat form. In the case of co-operative societies, remission of stamp duty was allowed without ascertaining the eligibility of the member and the period of membership. There was no system in the department to ascertain the quantum of revenue forgone by way of exemption and the number of beneficiaries availing the concessional stamp duty.

¹⁹ SR Kumarapalayam, SR Rasipuram, DR Salem West and Joint III SR Trichy.

2.14 Recommendations

The Government may consider taking the following steps:

- **Provision may be made for levy of stamp duty on power of attorney instruments on market value irrespective of whether the power was given with or without consideration.**
- **As the power to fix the rate of stamp duty remain with the State Government, whenever amendments were made in the Stamp Act and other Acts, the effect of such amendments need to be studied immediately so as to fix/revise the rates of duties wherever necessary in order to maximise the revenue to the State.**
- **Suitable amendment may be made in the Registration Act to make certificate of sale compulsorily registrable.**
- **A system may be evolved for recording the beneficiary wise details of remission of stamp duty/registration fees allowed.**
- **Provisions for withdrawal of concession of stamp duty may be made in case of violation of the conditions of sale in instruments executed by co-operative societies in favour of their members.**