

CHAPTER-III

DEFICIT STAMP DUTY AND REGISTRATON FEES

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CHAPTER - III

Deficit Stamp Duty and Registration fees

3.1 Application of inconsistent notifications to the RS Act, 1998 causing loss of revenue

Systemic deficiency

The Section 3 of the RS Act, 1998 provides that subject to the provisions of this Act and the exemptions contained in the Schedule appended to the Act, every instrument mentioned in it shall be chargeable with duty of the amount indicated in the Schedule. The RS Act, 1998 came into effect from 27 May, 2004. Further, the Section 91(2) of the RS Act, 1998 provides that **any appointment, notification, notice, order, rule or form** made or issued under the enactment hereby repealed shall be deemed to have been made or issued **under the provisions of this Act in so far as such appointment, notification, notice, order, rule or form is not inconsistent with the provisions of this Act** and shall continue in force, unless and until it is superseded by an appointment, notification, notice, order, rule or form made or issued under the Act. Thus, any notification under the repealed IS Act 1899 should continue only if was consistent with the 1998 Act.

We observed that a few notifications issued under the repealed Rajasthan Stamp Law (Adaptation) Act 1952, wherein exemptions/ remissions were granted by the State Government, which were in force up to 26 May 2004, continued to be effective during the period of audit. The provisions of these notifications were inconsistent with the provisions contained in the Schedule to the Section 3 of RS Act 1998 and hence, should not have been applied by the Registering Officers (ROs) in terms of the Section 91 (2) of the RS Act. Based on our earlier local audit observations on application of these inconsistent Notifications, the Registration and Stamp Department had identified 11 such types of notifications wherein the rates of stamp duty/provisions were different from the rates/provisions were prescribed in the Schedule. However, these notifications continued to be applied by the ROs, causing loss of stamp duty revenue.

The details of 11 such notifications are given below:

Sl. no	Article no. of Schedule	Detail of Article of Schedule in Present Act	Stamp Duty Chargeable as per present Act (RS Act, 1998)	Notification no./Date	Notification in existence prior to enactment of the present Act	Inconsistency as per RS Act, 1998
1	2	3	4	5	6	7
1	37	Mortgage deed, not being an agreement relating to deposit of title-deeds. pawn or pledge (no.6) mortgage of a crop (no.38), security Bond (no.50)	The same duty as on a bond (no.14) for the Amount Secured on such deed	F.2(3)VIT/ GROUP-4/93/1-83 Dated 07.3.1994	Stamp Duty reduced to one <i>per cent</i> of the loan amount or ₹ 100 whichever is higher on mortgage deed for the loan taken from bank or cooperative society for non-agricultural purposes.	The Article 14 of the Schedule provides a charge of five <i>per cent</i> stamp duty whereas as per the notification the same was charged at the rate of one <i>per cent</i> or ₹ 100 whichever was higher.
2	37	Mortgage deed, not being an agreement relating to deposit of title-deeds. pawn or pledge (no.6) mortgage of a crop (no.38), security Bond (no.50)	The same duty as on a bond (no.14) for the Amount Secured on such deed	F.2(3)VIT/ GROUP-4/93/1-83 Dated 07.3.1994	Stamp Duty reduced to one <i>per cent</i> of the loan amount or ₹ 100 whichever is higher on mortgage deed for the loan taken for purchase, conversion/ extension of house/ flat.	The Article 14 of the Schedule provides charge of five <i>per cent</i> stamp duty whereas as per the notification the same was charged at the rate of one <i>per cent</i> or ₹ 100 whichever was higher.
3	37	Mortgage deed, not being an agreement relating to deposit of title-deeds. pawn or pledge (no.6) mortgage of a crop (no.38), security Bond (no.50)	The same duty as on a bond (no.14) for the Amount Secured on such deed	F.2(3)VIT/ GROUP-4/93/1-83 Dated 07.3.1994	Stamp Duty reduced to one <i>per cent</i> of the loan amount or ₹ 100 whichever is higher on mortgage deed for the loan taken by employees for purchase, conversion/ extension of house/flat from registered private institution.	-do-

4	40	Note or Memorandum, sent by a broker or agent to his principal intimating the purchase or sale, on account of such principal of any goods, stock or marketable security	0.5 per cent of the value of the goods, stock or marketable security subject to a minimum of ₹ 100.	F.2(3)VIT/KAR-ANU./97 Dated 26.6.1997	Stamp Duty reduced to 0.10 per cent subject to minimum of ₹ 10 and maximum of ₹ 75.	The Stamp Duty @ 0.10 per cent subject to minimum of ₹ 10 and maximum of ₹ 75 was charged instead of 0.5 per cent of the value of the goods, stock or marketable security subject to a minimum of ₹ 100.
5	50	Security Bond or Mortgage Deed, executed by way of security for due execution of an office, or to account for money or other property, received by virtue thereof, or executed by a surety to secure the due performance of a contract or the due discharge of a liability.	Subject to a minimum of ₹ 200, half (0.5) per cent of the amount secured.	F.2(11)FD/T AX-DIV./ 97 Dated 21.03.1998	Stamp Duty reduced to 0.1 per cent on the Security Bond.	The Stamp Duty @ 0.1 per cent on the Security Bond was charged instead of half (0.5) per cent of the amount secured subject to a minimum of ₹ 200.
6	42	Instrument of partition	The same duty as on conveyance (No. 21) for the amount or value of the separated share or shares of the property.	F.4(14)FD/T AX-DIV./98-52 Dated 09.07.1998	Stamp Duty reduced to one per cent of the market value of the separated share or ₹ 10,000 whichever is less in respect of ancestral property.	The present Act does not classifies property into ancestral or other property for charging stamp duty and prescribes stamp duty at the rate of five per cent of the market value of the property as in a conveyance on the separated share.
7	5 (C)	Agreement or memorandum of an agreement, if not otherwise provided for	₹ 100	F.2(15)FD/T AX-DIV./98-73 Dated 14.08.1998	Stamp Duty reduced to ₹ 10 in case of agreement executed between RSEB and Consumer for taking new electric connection.	The Stamp Duty @ ₹ 10 in case of agreement executed between RSEB and Consumer for taking new electric connection is being charged instead of ₹ 100.

8	43	Instrument of partnership	₹ 500	F.2(22)FD/T AX-DIV./99-215 Dated 22.04.1999	Stamp Duty reduced to ₹ 100 in case of partnership deed executed on account of change in partnership.	The instrument executed on account of change in partnership classifies as transfer of lease by way of assignment thereby stamp duty chargeable at the rate of five <i>per cent</i> under the Article 55.
9	33 (a), (b), (c)	Lease including an under lease, or sub lease and any agreement to let or sub let.	The same duty as on conveyance (No.21) for a consideration equal to the amount or value of the average rent of two years, where the lease purports to be for a term of not less than one year but not more than 20 years.	PA.4(4)FD/03-223 Dated 05.03.2003.	Where the lease purports to be for a term of not less than one year but not more than 20 years in which only rent has been paid but not premium: the stamp duty reduced as under:- 1.in residential cases – one <i>per cent</i> 2. in commercial & other cases- two <i>per cent</i> .	1. The Finance Department agreed that the notification dated 05.03.2003 was inconsistent with the provision of the present Act wide notification dated 25.8.2010. However, later wide notification dated 1.12.2010 rebutted the same stand. 2. The notification prescribes reduced rate of stamp duty for residential and commercial and other cases thus inconsistent with provisions of the Article 33 (a) (ii) 3. The Provisions of notification dated 05.3.2003 was applied in cases cover under article 33(c)(iii) which is included in the Schedule on 27.5.2004.
10	48 (b)	Release in any other case (other than non-ancestral property)	The same duty as on conveyance (No.21) for an amount equal to the market value of the share, interest, part or claim renounced.	-	Stamp Duty reduced to five <i>per cent</i> in case of non - ancestral property.	The Stamp Duty @ five <i>per cent</i> in case of non-ancestral property was charged instead of as on a conveyance.
11	23 (II)	Debt assignment	Stamp duty payable @ 0.5 <i>per cent</i> on debt	PA.2(22)VIT / KAR/03-05 Dated 20.05.2004	Subject to a maximum of ₹ 2 lakh, 0.1 <i>per cent</i> in case of debt assignment.	Stamp duty @ 0.1 <i>per cent</i> subject to maximum ₹ 2 lakh was charged instead of @ 0.5 <i>per cent</i> on debt

The ROs failed to implement the provisions of the RS Act, 1998 which came into force w.e.f. 27 May 2004. Though the provisions of Section 91(2) of the RS Act, 1998 were very clear, the Department allowed exemptions or incorrect rates under inconsistent notifications to the RS Act, 1998. The cases which we came across during our audit are enumerated in the succeeding paragraphs (3.1.1, 3.1.2, 3.1.3, and 3.1.4) whereby there has been a loss of ₹ 6.46 crore to the State *exchequer*, due to application of incorrect rates.

We recommend that the IG (R&S) issue instructions to all the ROs regarding implementation of the provisions of the RS Act, 1998 as per the Schedule entries governing stamp duty rates applicable for various Instruments.

3.1.1 On lease deeds in which rent is fixed but no premium was paid

Under the provision of Article 33 (a) (ii) of the Schedule to the RS Act, 1998, where the lease purports to be for a term of not less than one year but not more than 20 years and by such lease, the rent is fixed and no premium is paid or delivered, the stamp duty is chargeable as a conveyance for a consideration equal to the amount or value of the average rent of two years. Registration Fees are also chargeable on the instrument of lease at the rate of one *per cent* of the value or consideration subject to a maximum of ₹ 25,000 and ₹ 50,000 since 09 April 2010 under the Section 78 of the Registration Act, 1908.

During scrutiny of the records of 11 SR offices¹, we noticed (October 2010 to September 2011) that 84 lease deeds were registered during the period 2006-07 to 2010-11 in which the SRs had charged registration fees at the rate of one *per cent* and stamp duty at the rate of two *per cent* of average rent for one year instead of at conveyance rate on average rent of two years. This resulted in short levy of Stamp Duty and Registration Fees aggregating ₹ 94.52 lakh.

When we pointed out, four SRs (Beawar, Bikaner-I, Jaipur-V and Udaipur-II) replied (May and June 2011) that notices had been served to the executants for recovery of ₹ 0.71 lakh. Other seven SRs replied that (September 2010 and May to September 2011) Stamp Duty and Registration Fees were charged as per Government's notification dated 5 March 2003. The reply is not acceptable as the notification dated 5 March 2003 was issued prior to the enactment of the RS Act, 1998 which came into force w.e.f. 27 May 2004. The provisions of the notification are inconsistent to the Schedule appended to the Act, hence, were not applicable in terms of Section 91(2) of the RS Act, 1998.

The Deputy Secretary (Finance) replied (December 2011) that the Stamp Duty and Registration Fees on the lease deeds registered under Article 33 (a) (ii) were charged as per Government's notification dated 5 March 2003. The reply

¹Beawar, Bikaner-I, Bundi, Jaipur-II, Jaipur-V, Jaisalmer, Jodhpur-I, Jodhpur-II, Jodhpur-III Kota-I and Udaipur-II.

is not tenable as the provisions were inconsistent to the Schedule appended to the Act and hence, should not have been applied by the ROs, in terms of the Section 91(2) of the RS Act, 1998.

3.1.2 On lease deeds granted for premium *etc.* in addition to rent

Under the provision of Article 33 (c) (i) of the Schedule to the RS Act, 1998, where lease is granted for a fine or premium or for money advanced or development charges advanced or security charges advanced in addition to rent reserved and such lease purports to be for a term of not more than 20 years, the Stamp Duty is chargeable as a conveyance for a consideration equal to the amount or value of such fine, premium or advance and amount of average rent of two years as set forth in the lease. The Registration Fees are also chargeable at one *per cent* of the valuation subject to maximum of ₹ 25,000 and ₹ 50,000 since 09 April 2010.

During scrutiny of the records of 17 SR offices², we found (October 2010 to December 2011) that 193 lease deeds covered under Article 33(c) (i) *ibid* were registered during the period 2006-07 to 2010-11. The SRs charged registration fees at the rate of one *per cent* and stamp duty at two *per cent* in case of commercial property and at one *per cent* in case of residential property on average rent of one year, in addition to security deposit, instead of at conveyance rate on average rent of two years and security deposit. This resulted in short levy

of stamp duty and registration fees aggregating ₹ 3.54 crore.

When we pointed out, six SRs (Bundi, Jaipur-IV, Jaipur-V, Jaisalmer, Udaipur-I and Udaipur-II) replied that notices had been issued to the executants for recovery of ₹ 6.81 lakh. Other 11 SRs replied that Stamp Duty and Registration Fees were charged as per Government's notification dated 5 March 2003. We do not accept the replies as the provisions of the notification dated 5 March 2003 are inconsistent to the Article 33 (c) (i) *ibid*, hence, were not applicable in terms of Section 91(2) of the RS Act, 1998.

The Deputy Secretary (Finance) replied (December 2011) that the concerned Collector (Stamps) have been directed (September 2011) for recovery of Stamp Duty and Registration Fees in documents under audit objection.

²Amer, Ajmer-II, Bundi, Jaipur-I, Jaipur-II, Jaipur-III, Jaipur-IV, Jaipur-V, Jaipur-VII, Jaisalmer, Kota-I, Nadbai, Rajsamand, Sanganer-I, Sikar, Udaipur-I and Udaipur-II.

3.1.3 On mortgage deeds

As per Article 37 (b) of the Schedule to the RS Act, 1998, when possession of the property or any part of the property comprised in mortgage deed is not given to the mortgagee by the mortgagor, the stamp duty is leviable as on a bond (Article 14 of RS Act) *i.e.* five *per cent* for the amount secured by such deed. In addition to the stamp duty, registration fees are also payable at the rate of *one per cent* subject to maximum ₹ 25,000 and ₹ 50,000 since 09 April 2010.

During scrutiny of the records of 11 SR offices³, we found (January 2011 to October 2011) that 19 mortgage deeds to secure the money advanced or to be advanced by way of loan or an existing or future debt were registered during the period 2006-07 to 2010-11. The concerned SRs charged stamp duty at the rate of 0.1 to one *per cent* instead of five *per cent* for the amount secured by such deed.

This resulted in short levy of

stamp duty and registration fees aggregating ₹ 1.08 crore.

When we pointed out, three SRs (Asind, Jayal and Nadbai) replied (May 2011) that notices had been issued to the executants for recovery of ₹ 0.16 lakh.

The SR Sanganer-I replied that the instrument was categorised under Article 6 of the Schedule to the RS Act, 1998 and SD was charged at the rate of one *per cent* accordingly. The reply is not acceptable as the instrument was, in fact, titled as mortgage deed and SD is payable under Article 37(b) of the Schedule to the RS Act, 1998.

Remaining seven SRs, replied that stamp duty were charged at the rate of 0.1 to one *per cent* on the loan amount as per Government's notification dated 7 March 1994. The reply is not acceptable because the provisions of the notification dated 7 March, 1994 are inconsistent to Article 37 (b) to the RS Act, 1998, hence, were not applicable in terms of the Section 91(2) of the RS Act, 1998.

The Deputy Secretary (Finance) replied (December 2011) that the stamp duty and registration fees on the mortgage deeds registered under Article 37 (b) were charged as per Government's notification dated 7 March 1994. The reply is not tenable as the provisions are inconsistent to the Schedule appended to the Act and hence, were not applicable in terms of the Section 91(2) of the RS Act, 1998.

³ Asind, Deedwana, Jaipur-II, Jaisalmer, Jayal, Kotputli, Jodhpur-III, Nadbai, Sanganer-I, Sri Ganganagar and Udaipur-I.

3.1.4 On partition deeds

Stamp Duty on an instrument, whereby co-owners of any property divide or agree to divide such property in severalty, is leviable as a conveyance on the market value of the separated share or shares of the property under Article 42 of the Schedule. The largest share remaining after this property is partitioned (or if there are two or more shares of equal value, the one of such equal shares) shall be deemed to be that from which the other shares are separated.

During scrutiny of the records of eight SR Offices⁴ for the period 2006-07 to 2010-11, we found that the SRs charged stamp duty amounting to ₹ 1.91 lakh on 20 instruments for separated share/shares at the rate of one *per cent* on the market value ₹ 15.28 crore of the separated shares or maximum ₹ 10,000 instead of leviable stamp duty ₹ 91.29 lakh based on market value of the separated share of the property. This resulted

in short levy of stamp duty ₹ 89.38 lakh.

When we pointed out, all concerned SRs replied (September 2010 to December 2011) that stamp duty on partition deeds were charged at the rate of one *per cent* subject to maximum of ₹ 10,000 on the market value of the property as per Government's notification dated 9 July 1998. The reply is not acceptable as the notification dated 9 July 1998 was issued prior to enactment of the RS Act, 1998 which came into force w.e.f. 27 May 2004. The provisions of the notification are inconsistent to the Schedule appended to the Act and hence, were not applicable in terms of the Section 91(2) of the RS Act, 1998.

The Deputy Secretary (Finance) replied (December 2011) that the stamp duty and registration fees on the partition deeds registered under Article 42 were charged as per Government's notification dated 9 July 1998. The reply is not tenable as the provisions are inconsistent to the Schedule appended to the Act and hence, were not applicable in terms of the Section 91(2) of the RS Act, 1998.

⁴ Amer, Beawer, Bikaner-I, Jaipur-II, Jaipur-V, Jodhpur-III, Kota-I and Udaipur-I

3.1.5 Short levy of Stamp Duty on sureties/securities by way of bank guarantees

Section 17 (1) (c) of the Registration Act, 1908 provides that non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest are compulsorily registrable. Further, under Article 50 of the Schedule to the RS Act, 1998, security bond or mortgage deed executed by way of security for the due execution of an office, or to account for money or other property, received by virtue thereof, or executed by a surety to secure due performance of a contract or the due discharge of a liability are chargeable to a stamp duty at 0.5 *per cent* of the amount secured subject to a minimum of ₹ 200.

Information gathered from 10 District Excise Offices (DEOs)⁵, we noticed (May 2011) that 137 bank guarantees involving ₹ 5.90 crore were executed during 2006-07 to 2009-10. The executants were required to pay stamp duty and registration fees of ₹ 7.55 lakh. However, stamp duty of ₹ 1.08 lakh only was paid. This resulted in short levy of stamp duty and registration fees aggregating ₹ 6.47 lakh.

The Deputy Secretary (Finance) replied (December 2011) that the

stamp duty had been recovered at the rate of 0.1 *per cent* on sureties/ securities as per notification dated 21 March 1998. We do not accept the reply as the provision of the notification dated 21 March 1998 was inconsistent to the Article 50 of the Schedule appended to the RS Act, 1998 and not applicable in terms of the Section 91 (2) of the RS Act, 1998.

3.2.1 On registration of perpetual lease deeds

Article 33(a)(iii) of the RS Act, 1998 provides that where a lease purports to be for a term in excess of 20 years or in perpetuity or where the term is not mentioned, Stamp Duty is chargeable as on conveyance on the market value of the property. The term of a lease shall include not only the period stated in the document but shall be deemed to be the sum of such stated period alongwith all immediately preceding period without a break for which the lessee and lessor remained the same. Further, as per clarification issued under IG's circular no. 8/2004, for computing period of more than 20 years, the periods of renewal shall also be counted. Registration fees are also chargeable at the prescribed rates

We noticed (September 2010 to March 2011) that in six Sub-Registrar offices registered six lease deeds pertaining to a period of more than 20 years during the period 2006-07 to 2009-10, Stamp Duty was recovered on the basis of

⁵Baran, Bharatpur, Bikaner, Dausa, Jaisalmer, Jhalawar, Nagaur, Pratapgarh, Sawai Madhopur and Tonk.

“average rent” instead of as “on conveyance” on the market value of property. This resulted in short levy of SD and RF aggregating to ₹ 73.20 lakh as per the details given below:

(Amount in ₹)

Sl. no.	Name of SR	Document no. and date	Name of lessee	Market value	Market value adopted	SD and RF		Short levy of SD and RF
						Leviable	Levied	
1	Shri Madhopur	392/21.1.09	SBI, Reengus	64,00,710	3,16,440	5,37,057	9,500	5,27,557
2	Jodhpur-II	3837/16.03.09	SBBJ, khanda falsa, Jodhpur	89,55,298	5,65,323	7,41,424	16,970	7,24,454
3	Jaipur-II	1916/9.4.09	Canara Bank, Jaipur	2,27,94,813	5,31,288	18,48,585	15,950	18,32,635
4	Rajakheda	11/11.2.09	SBBJ, Rajakheda	41,70,000	1,44,000	3,58,600	4,320	3,54,280
5	Jaipur-V	914/2.2.09	The Oriental Insurance co., Delhi	4,60,98,619	89,08,044	36,87,890	1,78,170	35,09,720
6	Neem Ka Thana	725/02.03.07	Gandhi Vidya Mandir Samiti, Neem Ka Thana	53,50,979	24,000	3,72,814	1,740	3,71,074
Total				370,759	189,198	346,442	126,651	219,791

Remarks:

1. Initial lease period of 10 years expired on 30 June 2008 and new lease period for another 15 years term was extended from 01 July 2008.
2. The premises known as Bank was already in possession of SBBJ Bank and new lease period for another term of 15 years was extended from 01 January 2009.
3. The lessee was already a tenant under the lessor in respect of premises. In absence of the mention of previous period in document, it is categorised as a perpetual lease.
4. The lessee was already a tenant on the same property since 31 August 1967.
5. The lessee was already a tenant in respect of floor II since 10 August 1984 and the III floor since 17 June 1988.
6. The lessor was bound to lease out the property on expiry of lease term of 19 years.

When we pointed out, the SR Sri Madhopur replied (January 2011) that intimation regarding recovery of stamp duty shall be communicated later on.

The SR Rajakheda replied (April 2011) that action for recovery shall be initiated against the lessor.

The SR Jaipur-II and Jodhpur-II replied (September 2010 and December 2010) that Stamp Duty and Registration Fees were recovered as per recital of instruments presented for registration. We do not accept the replies as lessee were already in possession of Bank premises.

When we pointed out (April 2011), the SR Neem Ka Thana replied (May 2011) that notice to the executants had been issued for recovery of ₹ 3.71 lakh. In case of non- recovery, the case shall be referred to DIG (Vigilance), Jaipur for adjudication.

The Deputy Secretary (Finance) replied (December 2011) that the concerned Collector (Stamps) have been directed (September 2011) for recovery of stamp duty and registration fees in documents under audit objection.

3.2.2 On power of attorneys

Under Article 44 (ee) (ii) of the Schedule to the RS Act, SD at the rate of two *per cent* on market value of the property shall be levied on execution of instruments in which power of attorney is given without consideration to sell immovable property to any other person. RF is also payable at the rate of one *per cent* of the market value of the property subject to maximum ₹ 25,000 and ₹ 50,000 since 09 April 2010 on registration of these instruments (Notification dated 14 March 1997).

3.2.2.1 We observed (November 2010 to February 2011) that in seven SR offices⁶ nine sale deeds were presented for registration during the years 2006-07 to 2009-10, by the holders of power of attorney on behalf of their property owners.

Recitals of sale deeds and power of attorneys revealed that the power of attorneys were executed in the office

of Notary Public, which were not duly stamped. Such types of power of attorneys were not acceptable as evidence in execution of sale deeds being not duly stamped. The concerned SRs did not charge stamp duty while registering these documents on such power of attorneys while registering these documents at the rate of two *per cent* on the market value of the property transferred. This resulted in short levy of Stamp Duty aggregating ₹ 2.15 lakh.

When we pointed out, five SRs (Bikaner-I, Bhiwadi, Kota-I, Sanganer-I and Vallabh Nagar) replied (May 2011) that notices had been issued to the executants for recovery of ₹ 2.05 lakh.

The SR Revdar replied that Stamp Duty of ₹ 0.06 lakh were charged at the rate of two *per cent* but no evidence regarding recovery was furnished. Reply from SR Sikar has been not received (January 2012).

The Deputy Secretary (Finance) replied (December 2011) that the concerned Collector (Stamps) have been directed (September 2011) for recovery of Stamp Duty and Registration Fees in documents under audit objection.

3.2.2.2 During scrutiny of the records of nine SR offices⁷ for the years 2006-07 to 2009-2010, we found (October 2010 to April 2011) that in 250 cases of power of attorney covered under Article 44(ee)(ii) *ibid*, the concerned SRs incorrectly charged registration fees of ₹ 100 in each case instead of charging one *per cent* on the market value. This resulted in short levy of registration fees of ₹ 15.39 lakh.

The SR Jaipur-VIII replied (February 2011) that the RF were charged as per rates prescribed in SARATHI software. Mistake has now been corrected in software and recovery ₹ 8.42 lakh pointed out in previous cases could not be affected. We do not accept the reply as registration fees were to be charged as per notification dated 14 March 1997.

⁶ Bikaner-I, Bhiwadi, Kota-I, Revdar, Sanganer-I, Sikar and Vallabh Nagar.

⁷ Beawar, Jaipur-IV, Jaipur-V, Jaipur-VIII, Jaisalmer, Phagi, Sanganer-I, Udaipur-I and Udaipur-II.

When we pointed out, the other seven SRs replied (May 2011) that notices had been issued to the executants for recovery of ₹ 2.70 lakh.

The Deputy Secretary (Finance) replied (December 2011) that the concerned Collector (Stamps) have been directed (September 2011) for recovery of Stamp Duty and Registration Fees in documents under audit objection.

3.2.3 On exchange deeds

As per Article 29 of the Schedule to the RS Act, 1998, the stamp duty on an instrument relating to exchange of property is chargeable as on a conveyance for a market value equal to the market value of the property of greater value which is the subject matter of exchange. As per notification dated 5 April 1984 issued under the RS Act, 1998, exchange deeds of agriculture land and of land mutually transferred under section 48 of the Rajasthan Tenancy Act, 1955 were exempted from payment of stamp duty provided that land is of same kind, same cost and is not divided into pieces.

During scrutiny of the records in two SR offices⁸, we observed (February and March 2011) that agriculture lands were exchanged through two exchange deeds in August 2009 and October 2009. The exchanges of land were neither similar in kind nor in cost, hence, stamp duty exemption was not applicable. Based on the greater value of the land, stamp duty ₹ 0.81 lakh were recoverable as against of ₹ 0.09 lakh recovered by the SRs. This resulted in short levy of stamp duty of ₹ 0.72 lakh.

When we pointed out, the SR Srikaranpur replied (February 2011) that stamp duty was exempted under notification dated 5 April 1984. Reply is not acceptable as cost of land was not same. Hence, exemption granted was not in consonance with the provision of the notification.

The SR Pilibanga replied (May 2011) that stamp duty and registration fees of ₹ 0.17 lakh were charged on the valuation calculated on the difference of land exchanged. The reply is not acceptable as the stamp duty and registration fees were payable on the valuation calculated on the greater part of land exchanged.

The Deputy Secretary (Finance) replied (December 2011) that the concerned Collector (Stamps) have been directed (September 2011) for recovery of stamp duty and registration fees in documents under audit objection.

3.2.4 On an agreement to sell with possession

As per explanation (i) given under Article 21 of the Schedule to the RS Act, 1998, an Agreement to Sell an immovable property executed shall, in case of transfer of the possession of such property before, at the time of or after the execution of any such instrument, be deemed to be a conveyance and the stamp duty thereon shall be chargeable accordingly.

⁸ Pilibanga and Srikaranpur

During test check of the records of the SR Ahore (District Jalore) for the year 2007, we noticed (March 2011) that a sale deed (Instrument no. 1957 dated 18 October 2007) was registered between vendor and vendee from where it was seen that an Agreement to Sell was registered in the office of Notary Public (18 January 2007) for a consideration of ₹ 5.00 lakh with the land owners which was not duly stamped and the possession of a converted (12 April 1999) residential land measuring 45,600 Sqm was handed over on the same date by the owner.

The SR did not enquire about the registration of the Agreement to Sell with the original owner as a result of which stamp duty and registration fees ₹ 24.17 lakh (on the market value of land ₹ 3.68 crore calculated at the rates prescribed for residential land) was not recovered.

When we pointed out (March 2011), the SR replied (March 2011) that the matter shall be brought to the notice of the previous SR for comments and facts in this regard shall be communicated later on.

3.3 Short levy of SD and RF due to incorrect application of rates

Under the Section 3 of the RS Act, 1998, every instrument mentioned in the Schedule shall be chargeable with duty at the prescribed rates.

During scrutiny of the records of seven SR offices⁹ for the period 2006-07 to 2009-10, we noticed that in 10 instruments,¹⁰ stamp duty and registration fees were not charged at the rates prescribed in the Schedule *ibid*, resulting in short levy of stamp duty and registration fees aggregating ₹ 2.66 lakh.

When we pointed out, four SRs (Kota-I, Neem ka Thana, Vallabh Nagar and Rajakheda) replied (May 2011) that notices to the executants had been issued for recovery of ₹ 0.53 lakh. Replies from remaining SRs have not been received (January 2012).

The Deputy Secretary (Finance) replied (December 2011) that the concerned Collector (Stamps) have been directed (September 2011) for recovery of stamp duty and registration fees in documents under audit objection.

3.4 Non-registration of Developer Agreements

Under the provisions of Article 5 (bbbb) to the Schedule of the RS Act, 1998, Agreements or Memorandum of agreements, if relating to giving authority or power to a promoter or a developer, by whatever name it may be called, for construction or development of any immovable property, are chargeable to stamp duty at the rate of one *per cent* of the market value of the property and registration fees at the prescribed rates.

On test check of the records of five SRs,¹¹ we found (November 2011) that 20 instruments were executed between vendors and vendees for purchase of readymade flats

⁹ Deedwana, Kota-I, Neem ka thana, Rajakheda, Sikar, Shrimadhapur and Vallabh Nagar.

¹⁰ Release deeds, Gift deeds, Lease and Agreement to sell of immovable property.

¹¹ Jaipur-II, Jaipur-IV, Jaipur-V, Jodhpur-II and Sanganer-II.

during period January 2009 to February 2011. The recitals of the instruments revealed that multi-storey flats were constructed by a developer on behalf of the owners of the land as per terms and conditions of the Agreement. The fact about registration of Agreement in SR office was neither mentioned in the Sale deeds nor was the copy of Agreement enclosed with the Sale deed for Registration of Flats for ready reference. The non-registration of these Developers Agreements in SR offices cannot, therefore, be ruled out. The Stamp Duty and Registration Fees receivable was ₹ 2.44 crore at the rate of one *per cent* each of market value¹² of the property.

When we pointed out, the SR, Jaipur-IV replied that intimation in this regard shall be conveyed after verification of records. Reply was awaited (January 2012).

The Deputy Secretary (Finance) replied (December 2011) that the concerned Collector (Stamps) have been directed (September 2011) for recovery of stamp duty and registration fees in documents under audit objection.

3.5 Misclassification of instrument of transfer of lease by way of assignment

As per circular issued (8/2004) by the Inspector General of Registration and Stamps, Ajmer, documents executed as supplementary documents *inter alia* on change of legal status of firm or change of partners or dissolution of partnership shall be categorised as 'transfer of lease by way of assignment'. Under Article 55 of the Schedule appended to the RS Act, 1998, in case of instrument of transfer of lease by way of assignment, the stamp duty is leviable as a conveyance on the market value of the property which is the subject matter of transfer.

During scrutiny of the records of three SR offices¹³ for the years 2007-08 to 2010-11, we observed (November 2010 to December 2011) that nine instruments of transfer of lease of land were executed, wherein the lease was transferred/ assigned from the assignor to the assignee. The SRs

misclassified the instruments as supplementary deed/ correction deed and charged stamp duty and registration fees of ₹ 1.89 lakh instead of ₹ 24.08 lakh leviable on transfer of lease by way of assignment. This resulted in short levy of stamp duty and registration fees of ₹ 22.19 lakh.

The Deputy Secretary (Finance) replied (December 2011) that notices had been issued to the executants for recovery. In cases of non-deposition of stamp duty, the matter shall be referred to concerned Collector (Stamps) for initiating action for recovery.

¹² Calculated as per DLC rate effective from November 2010.

¹³ Amer, Bhiwadi and Jaipur-V