

## CHAPTER IV: STAMP DUTY

### 4.1.1 Tax administration

Receipts from the stamp duty (SD) and registration fee (RF) in the State are regulated under the Indian Stamp Act, 1899 (IS Act), Indian Registration Act, 1908 (IR Act), Punjab Stamp Rules, 1934, as adopted by the Government of Haryana with suitable amendments and the Haryana Stamp (Prevention of Undervaluation of Instruments) Rules, 1978. At the Government level, the Additional Chief Secretary, Revenue and Disaster Management Department, Haryana is responsible for the administration of the IS Act and IR Act and the rules framed thereunder relating to the registration of various documents. The overall control and superintendence over levy and collection of SD and RF vests with the Inspector General of Registration (IGR), Haryana. The IGR is assisted by the 21 Deputy Commissioners (DCs), 67 tehsildars and 46 naib tehsildars acting as Registrars, Sub Registrars (SRs) and Joint Sub Registrars (JSRs) respectively.

### 4.1.2 Results of audit

Test check of the records of various registration offices during the year 2012-13 noticed non/short levy of SD and RF amounting to ₹ 68.26 crore in 793 cases, which broadly fall under the categories detailed in **Table 4.1**.

**Table 4.1**

(₹ in crore)			
Sr. No.	Category	Number of cases	Amount
<b>Revenue Department</b>			
1.	Levy and collection of stamp duty and registration fee on Development Agreements	01	60.39
2.	Short recovery of stamp duty and registration fee due to non-charging of residential rates on purchase of land	254	1.26
3.	Short realisation of stamp duty due to sale of property at lower consideration than the amount mentioned in the agreement deeds	75	1.64
4.	Non/short recovery of stamp duty due to undervaluation of immovable property	214	2.05
5.	Irregular exemption of stamp duty on mortgage deeds/compensation certificates to land acquired	17	0.07
6.	Short recovery of stamp duty due to misclassification of instruments	17	1.12
7.	Miscellaneous irregularities	215	1.73
<b>Total</b>		<b>793</b>	<b>68.26</b>

During the course of the year 2012-13, the Department accepted underassessment and other deficiencies of ₹ 8.16 crore involved in 707 cases, out of which ₹ 8.14 crore involved in 686 cases were pointed out during the year and the rest in earlier years. The Department recovered ₹ 2.52 lakh in 21 cases pointed out in earlier years.

A few illustrative cases involving ₹ 65.27 crore are mentioned in the succeeding paragraphs.

## Audit findings

### 4.2 Levy and collection of stamp duty and registration fee on Development Agreements

#### 4.2.1 Introduction

A development agreement executed between the land owner and the developers, entrusts the possession of the immovable properties to the developer in lieu of consideration, in the form of some residential/shop-cum flats/cash. The Development Agreements entered into six districts<sup>1</sup> for the years 2007-08 to 2012-13 were test checked between April to July 2013. We selected the units on the basis of quantum of construction activities. Rohtak district was included in the scope of audit on the suggestion made by Department. The findings of the audit are given in the succeeding paragraphs.

#### 4.2.2 Short levy of stamp duty due to misclassification of sale deeds into collaboration agreement

Section 2 (10) of the IS Act, provides that ‘conveyance’ includes conveyance on sale and every instrument by which property, whether movable or immovable, is transferred inter vivos and which is not otherwise specifically provided for by schedule 1-A of the Act. Further, Section 54 of the Transfer of Property Act, 1882 defines “sale” as transfer of ownership in exchange for a price paid or promised or part paid and part promised. The classification of an instrument depends upon the nature of the transaction recorded therein.

We noticed that 228 Collaboration Agreements relating to six districts<sup>2</sup> were registered between June 2007 and March 2013 in respect of land on which SD and RF of ₹ 1.66 lakh was levied as applicable in the case of agreement, not involving sale of land. Scrutiny of these agreements further noticed that the owners of land authorised the developers to take possession of the land with the right to construct, built-up shop-cum-flats and residential houses in exchange for a share of the developed land and/or receive part payments. The developers were entitled to dispose of their shares of developed land in such a manner as they deemed fit without requiring any consent from the owners. Hence, the development right/collaboration agreements were conveyance deeds and were liable to pay SD on sale of property in respect of the developers’ share of land. As per rates fixed by the Collector, total value of land transferred to the developers worked out to ₹ 1,190.76 crore on which SD

<sup>1</sup> Faridabad, Gurgaon, Karnal, Panchkula, Rewari and Sonipat.

<sup>2</sup> (i) Gurgaon: 71; Manesar (Gurgaon) :13 ; Sohna(Gurgaon):13 (ii) Panchkula: 09 (iii) Karnal: 07 (iv) Faridabad:51 ; Ballabgarh (Faridabad) :02 (v) Rewari :03, Dharuhera (Rewari): 03 (vi) Sonapat :42 and IR cases :14.

and RF of ₹ 60.41 crore was leviable. However, the registering authorities misclassified these documents as agreement to sell charging SD of ₹ 1.66 lakh instead of ₹ 60.41 crore, resulting in short levy of SD of ₹ 60.39 crore.

#### **4.2.3 Absence of time limit for disposal of cases of undervaluation referred to the Collector under Section 47A of IS Act**

Under Section 47-A of the IS Act, if the registering officer has reasons to believe that the value of the property or the consideration has not been truly set forth in the instrument, he may, after registering such instrument, refer the same to the Collector for determination of the value of the consideration and the proper duty payable. Thereafter, the Collector, after issue of notice to the concerned person, is required to conduct summary enquiry as he may deem proper and assess the amount of deficient duty recoverable from the person concerned after determining the value of property. The cases so referred to the Collector are entered in register in Form 3 maintained in the office of the Collector. The adjudication orders are also entered in this register. After their finalisation, these adjudication cases are returned to the concerned registering officer who will watch the recovery of deficient duty.

During test check of the Reference Registers of Collectors Karnal, Ballabgarh and Sonapat, we noticed that in 14 cases involving SD of ₹ 1.10 crore referred by the SRs to the Collectors between March 2012 and May 2013 for the years 2010-11 and 2011-12 by three SRs, were pending adjudication. Delay in deciding the cases ranged between 2 to 17 months. We observed that no time limit had been prescribed for disposal of such cases under adjudication.

On these being pointed out (August 2013), the Government accepted the audit observations during the exit conference (November 2013) and stated that notification had been issued on 1 October 2013 regarding the levy of SD as per rate prescribed for sale/conveyance deeds on such Development agreements and the directions have been issued to finalise the cases referred under Section 47A of IS Act within two months.

#### **4.3 Short levy of stamp duty due to application of incorrect rates of immovable property**

As per Government instructions issued in November 2000, agricultural land sold within municipal limits, with an area less than 1,000 square yards or in case where purchasers are more than one and the share of each purchaser is less than 1,000 square yards, be valued at the rate fixed for the residential property of that locality for the purpose of levying SD.

We noticed from the records of 22 offices of JSRs/SRs that 134 sale deeds of plots falling within the parameter of above notification were registered between April 2010 and March 2012. The deeds were liable to be assessed for ₹ 41.78 crore based on the rates fixed for residential areas and SD of ₹ 2.59 crore was chargeable. However, the registering authorities assessed the

deeds for ₹ 10.71 crore based on the rates fixed for agricultural land and levied SD of ₹ 64.29 lakh. This resulted in short levy of SD of ₹ 1.95 crore.

The matter was referred to the Government in July 2013 which accepted the audit observations during the exit conference (November 2013) and stated that an amount of SD of ₹ 75,000 had been recovered and instructions had been issued to the registering authorities for strict compliance to recover the outstanding amount of SD of ₹ 1.94 crore.

#### **4.4 Short levy of stamp duty due to undervaluation of immovable property**

As per Government order issued in May 2010 in view of Hon'ble Supreme Court judgment in March 2010, stamp duty shall be levied on the market value of land to be sold and not on the basis of value agreed between the buyer and the seller. If the Registering Authority has reason to believe that the value of the property or the consideration, has not been truly set forth in the instrument, he may, after registering such instrument, refer the same to the Collector for determination of the value or consideration, as the case may be, and the proper duty payable thereon.

**4.4.1** During test check of records of 21 offices<sup>3</sup> of SRs/ JSRs, we noticed that in 47 cases, the registering authorities assessed the value of land at ₹ 3.25 crore on the basis of rates agreed to between the parties earlier and levied SD of ₹ 13.67 lakh, but the actual value of the immovable property was ₹ 21.10 crore as per Collector rate applicable at the time of registration of documents and SD of ₹ 1.16 crore was leviable resulting in short levy of SD of ₹ 1.02 crore.

**4.4.2** In four offices<sup>4</sup> of SR, we noticed that five vendees purchased land between May 2010 and March 2011 for a consideration of ₹ 12.55 crore. In three cases, the industrial/residential land purchased for ₹ 1.37 crore was treated as agricultural land and was levied SD of ₹ 8.18 lakh as against SD of ₹ 20.43 lakh leviable as per Collector's rate on ₹ 4.55 crore, which resulted in short levy of SD of ₹ 12.25 lakh. In other two cases, the agricultural land was purchased for ₹ 11.18 crore and the rate or value of land determinable on the basis of agreed between the Government and the autonomous bodies i.e. electricity board at a price of ₹ 30/35 lakh per acre along with annuity value of ₹ 15,000 per acre plus annual increase of ₹ 500 per year for a period of 33 years. The registering authority levied SD of ₹ 55.89 lakh on the basis of agricultural land without considering the annuity value and annual increase though the SD was to be levied of ₹ 65.84 lakh which resulted in short levy of SD of ₹ 9.95 lakh. However, the Registering Authority did not refer the same to the Collector for determination of the value as consideration and proper duty payable. This resulted in short levy of SD of ₹ 22.20 lakh.

<sup>3</sup> Behal, Charkidadri, Loharu, Bhiwani, Sohna, Sonipat, Gohana, Ganuuar, Kosli, Dharuhera, Panipat, Pataudi, Firojpur (Jhirka), Nuh, Ambala Cantt, Naraingarh, Faridabad, Ballabgarh, Mulana, Jagadhri and Mustafabad.

<sup>4</sup> Palwal, Pataudi, Rewari and Sonipat.

The Government accepted the audit observation during the exit conference (November 2013) and stated that an amount of SD of ₹ 79,000 had been recovered and assured that appropriate action would be taken to recover the outstanding amount of SD of ₹ 1.23 crore.

#### **4.5 Evasion of stamp duty due to misclassification of documents**

The classification of an instrument depends upon the nature of the transactions recorded therein.

In six offices<sup>5</sup> of SRs, we noticed that 21 instruments conveying possession and transfer of property valued at ₹ 12.47 crore to the vendees from whom the vendors received full amount of consideration were misclassified as agreements to sell charging SD of ₹ 1,560 which was incorrect as against duty leviable at ₹ 68.64 lakh for conveyance deeds resulting in short levy of ₹ 68.63 lakh.

We reported the matter to the Government in May 2013 which accepted the audit observations during the exit conference (November 2013) and stated that an amount of SD of ₹ 2.10 lakh had been recovered and instructions would be issued to the registering authorities to recover the outstanding amount of SD of ₹ 66.53 lakh.

#### **4.6 Evasion of stamp duty due to undervaluation of immovable property**

Section 27 of the IS Act provides that consideration and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of duty with which it is chargeable, should be fully or truly set forth therein. Further, Section 64 of the IS Act provides that any person who, with intent to defraud the Government, executes an instrument in which all the facts and circumstances are not fully and truly set forth, is punishable with a fine which may extend to ₹ 5,000 per instrument.

In 19 registering offices<sup>6</sup> we noticed that 60 conveyance deeds were registered for sale of immovable properties worth ₹ 10.06 crore. Cross verification of these deeds with the agreements executed between the concerned parties noticed that the total sale value of agreements worked out to ₹ 25.10 crore resulting in undervaluation of immovable properties. This resulted in evasion of SD of ₹ 58.13 lakh. In addition, penalty not exceeding ₹ 3.00 lakh for incorrect information in the documents was also leviable as per Act.

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<sup>5</sup> SRs: Bahadurgarh, Gurgaon, Jagadhri, Jhajjar, Kaithal and Sohna.

<sup>6</sup> JSRs: Balsamand, Behal, Rajaund and Uklana.

SRs: Beri, Bahadurgarh, Badhda, Ballabhgarh, Dharuhera, Faridabad, Guhla, Hisar, Hansi, Jhajjar, Loharu, Narnaul, Narnaund, Nuh and Punhana.

We reported the matter to the Government in June 2013 which accepted the audit observations during the exit conference (November 2013) and stated that an amount of ₹ 2.18 lakh including penalty of ₹ 20,000 had been recovered and efforts would be made to recover the outstanding amount of SD of ₹ 58.95 lakh including penalty of ₹ 2.80 lakh.

#### 4.7 Undue benefit through reduction in Stamp Duty

As per notification issued on November 2010, under the IS Act, the Government reduced the SD by one *per cent* in respect of instruments of transfer of self acquired immovable property executed in favour of son or daughter or father or mother or spouse of the executants.

Examination of gift deeds in eight offices<sup>7</sup> showed that 100 instruments of gift deeds in respect of which donees were other than those allowed in the above notification and allowance of one *per cent* SD to those 100 instruments resulted in loss of revenue to State exchequer to the extent of ₹ 29.44 lakh.

We pointed out the matter to the Government in July 2013 which accepted the audit observations during the exit conference (November 2013) and stated that an amount of ₹ 6.43 lakh had been recovered and efforts would be made to recover the outstanding amount of SD of ₹ 23.01 lakh.

#### 4.8 Irregular exemption of stamp duty

As per notification issued on August 1995, under the IS Act, the Government remits the SD in respect of the sale deeds covering purchase of agricultural land by farmers whose land was acquired by Haryana Government for public purposes within one year of receipt of compensation. The remittance will be limited to the compensation amount only and the additional amount involved for the purchase of agricultural land, will be liable to SD as per rules.

In four offices of JSR/SR, we noticed that farmers, whose land was acquired by the Government for public purposes, purchased residential and agricultural land valued at ₹ 1.79 crore in 15 cases. In 13 cases, the farmers purchased residential land valued at ₹ 1.24 crore attracting SD at the rate of five to seven *per cent* valuing ₹ 7.14 lakh. Non levy of SD resulted in loss of ₹ 7.14 lakh. In another two cases, SD of ₹ 2.76 lakh was leviable at the rate of five *per cent* on ₹ 55.22 lakh as the land was purchased after one year from the date of receipt of compensation amount. Thus, irregular exemption of SD resulted in non-levy of SD to the extent of ₹ 9.90 lakh.

<sup>7</sup> Balsamand, Ballabhgarh, Faridabad, Hisar, Kalka, Panchkula, Panipat and Raipurani.

We reported the matter to the Government in June 2013 which accepted the audit observations during the exit conference (November 2013) and stated that an amount of SD of ₹ 1.32 lakh had been recovered and efforts would be made to recover the outstanding amount of SD of ₹ 8.58 lakh.