

## CHAPTER-III

### EXECUTIVE SUMMARY

<b>Tax collection</b>	In 2012-13, the revenue collection from stamp duty and registration fee was ₹ 5,225.02 crore, and the same had increased by about 13 <i>per cent</i> over 2011-12.
<b>Absence of Internal Audit Wing</b>	There is no IAW in the Department. Mention of absence of IAW in the Department was made in the Report of the Comptroller and Auditor General of India (Revenue Receipts) for the year ended 31 March 2010. It was also recommended that the Government expedite the setting up of IAW in the Department.
<b>Insignificant recovery by the Department of observations pointed out by us in earlier years</b>	During the years 2008-09 to 2012-13, we had, through our Audit Reports pointed out non/short levy, non/short realisation of revenue amounting to ₹ 396.52 crore in 32 paragraphs. Of these, the Government/Department had accepted audit observations in 24 paragraphs involving ₹ 309.57 crore and had since recovered only ₹ 0.72 crore. The recovery made by the Department is only 0.23 <i>per cent</i> of the amount involved in the total accepted cases.
<b>Results of audit conducted by us in 2012-13</b>	<p>In 2012-13, we test checked the records of 129 offices of the Department and found non/short levy of stamp duty and registration fee, loss of revenue due to suppression of facts, undervaluation of properties etc in 204 cases involving ₹ 38.97 crore.</p> <p>The Department accepted 203 cases pointed out during the year and recovered ₹ 0.40 crore in 23 cases.</p> <p>In addition, the Department also recovered ₹ 13.81 lakh in 19 cases pointed out in earlier years.</p> <p>We conducted an audit on levy of stamp duty and registration fee on Development Agreement', the findings of which are featured in this chapter.</p>
<b>What we have highlighted in this Chapter</b>	<p>A paragraph on 'levy of stamp duty and registration fee on development agreement' revealed the following:</p> <p>Department continued to register documents as JDA during 2011-12, even though the Article 5(f)</p>

	<p>relating to JDA was deleted. This resulted in short levy of stamp duty of ₹ 232.83 lakh and registration fee of ₹ 42.56 lakh in 20 documents.</p> <p style="text-align: right;"><b>(Paragraph 3.8.5.3)</b></p> <p>Documents were registered as JDA, even though the properties were not held jointly by the owners and developers, which is the primary condition to classify as JDA. This resulted in short levy of stamp duty of ₹ 19.20 crore and registration fee of ₹ 1.29 crore in 342 cases.</p> <p style="text-align: right;"><b>(Paragraph 3.8.5.4)</b></p> <p>The documents in which full consideration were paid by the developers to the land owners were classified as JDAs instead of conveyance deeds which led to short levy of stamp duty and registration fee of ₹ 2.28 crore in 31 cases.</p> <p style="text-align: right;"><b>(Paragraph 3.8.5.5)</b></p> <p>Developers were extended the undue benefit of a concessional rate of stamp duty due to non-adherence to the strictest interpretation of joint holding/development/sale.</p> <p style="text-align: right;"><b>(Paragraph 3.8.5.6)</b></p> <p>Non-levy/short levy of stamp duty and registration fees, penalty due to incorrect determination of market value, suppression of facts, incorrect adjustment of stamp duty paid on earlier documents involving ₹ 18.89 crore are highlighted in this Chapter.</p> <p style="text-align: right;"><b>(Paragraph 3.9.1 to 3.9.7)</b></p>
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## CHAPTER-III: STAMP DUTY AND REGISTRATION FEES

### 3.1 Tax administration

Receipts from stamp duty and registration fees in the State are governed by The Indian Stamp Act (IS Act), 1899, The Karnataka Stamp Act (KS Act), 1957, The Registration Act, 1908 and the Rules made thereunder. The levy and collection of stamp duty and registration fee is administered by the Department of Stamps and Registration (DSR) headed by the Inspector General of Registration and Commissioner of Stamps (IGRCS). There are 34 District Registrar (DR) offices and 242 Sub-Registrar offices (SRO) in the State.

### 3.2 Trend of receipts

Budget Estimates (BEs) and actual receipts from stamp duty and registration fees during the years 2008-09 to 2012-13 along with the total tax receipts during the same period are exhibited in the following table and graphs.

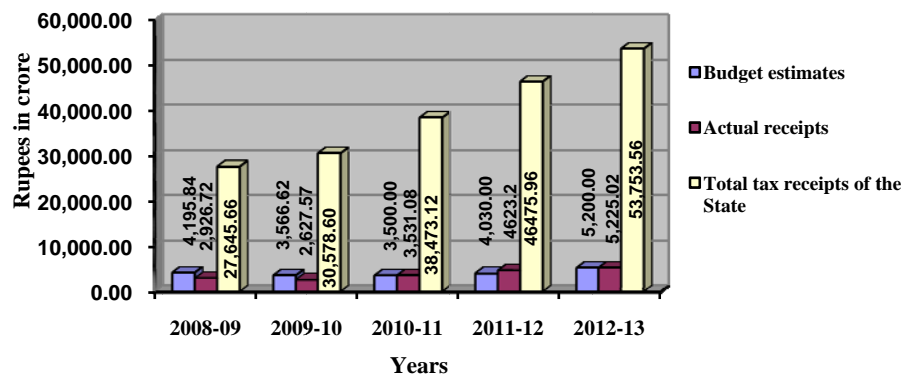
Table 3.1: Trend of receipts

(₹ in crore)

Year	Budget estimates	Actual receipts	Variation excess(+)/shortfall(-)	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts vis-à-vis total tax receipts
2008-09	4,195.84	2,926.72	(-1,269.12)	(-) 30.25	27,645.66	10.59
2009-10	3,566.62	2,627.57	(-)939.05	(-) 26.33	30,578.60	8.59
2010-11	3,500.00	3,531.08	(+)31.08	(+)0.89	38,473.12	9.18
2011-12	4,030.00	4,623.20	(+)593.20	(+)14.72	46,475.96	9.95
2012-13	5,200.00	5,225.02	(+) 25.02	(+) 0.48	53,753.56	9.72

It is seen from the above that the percentage of variation between BEs and actuals was more than 10 per cent during 2008-09, 2009-10, 2011-12.

Graph 3.1 : Budget estimates, Actual receipts and Total tax receipts



The percentage of actual receipts from stamp duty and registration fees to the total tax receipts ranged between 8.59 and 10.59 per cent during the five year period from 2008-09 to 2012-13.

### 3.3 Analysis of arrears of revenue

As per the information furnished to us by the Department in October 2013, the amount of uncollected revenue as on 31 March 2013 amounted to ₹ 74.09 crore. The year wise position of arrears of revenue for the period 2008-09 to 2012-13 as furnished is mentioned in the following table:

Table 3.2: Year-wise details of arrears

(₹ in crore)				
Year	Opening balance of arrears	Amount collected during the year from the arrears	Closing balance of arrears	Percentage of collection to opening balance of arrears
2008-09	77.65	15.95	62.90	20.54
2009-10	62.90	4.83	60.53	7.68
2010-11	60.53	3.29	77.57	5.43
2011-12	77.57	3.49	76.17	4.50
2012-13	76.17	2.53	74.09	3.32

### 3.4 Cost of collection

The gross collection in respect of stamps and registration fee, expenditure incurred on collection and the percentage of such expenditure to gross collection during the years 2010-10, 2011-12 and 2012-13 along with the relevant all India average percentage of expenditure on collection to gross collection for the respective preceding years were as follows:

Table 3.3: Cost of collection

Year	Gross collection	Expenditure on collection	Percentage of cost of collection to gross collection	All India average percentage for the preceding year
	(₹ in crore)			
2010-11	3,554.48	53.52	1.51	2.47
2011-12	4644.46	58.70	1.26	1.60
2012-13	5288.12	94.07	1.78	1.89

### 3.5 Working of Internal Audit Wing (IAW)

The objective of an IAW is to have a deterrent and reforming effect in the direction of prevention of mistakes and to play a corrective role by pointing out mistakes and ensuring remedies without loss of time.

Mention of absence of IAW in the Department was made in the Report of the Comptroller and Auditor General of India (Revenue Receipts) for the year ended 31 March 2010. It was recommended therein that the Government may expedite the setting up of IAW in the Department. This was reiterated in Audit Reports for the year 2010-11 and 2011-12. However, IAW has not been set up till date.

### 3.6 Impact of Audit Reports

During the last five years, through our Audit Reports, we had pointed out non/short levy, non/short realisation and loss of revenue, etc. with revenue implication of ₹ 396.52 crore in 32 paragraphs. Of these, the Government/Department had fully/partly accepted audit observations in 24 paragraphs involving ₹ 309.57 crore and since recovered ₹ 0.72 crore. The details are given in the following table:

Table 3.4: Compliance with earlier Audit Reports

(₹ in crore)

Year of Audit Report	Paragraphs included		Paragraphs accepted		Amount recovered	
	Number	Amount	Number	Amount <sup>1</sup>	Number	Amount <sup>1</sup>
2008-09	06	325.83	05	283.04	03	0.45
2009-10	07	16.49	05	12.03	04	0.08
2010-11	05	7.39	05	7.39	01	0.09
2011-12	06	2.39	03	0.26	Nil	0.03
2012-13	08	44.42	06	6.85	02	0.07
<b>Total</b>	<b>32</b>	<b>396.52</b>	<b>24</b>	<b>309.57</b>	<b>10</b>	<b>0.72</b>

Out of the amount of ₹ 325.83 crore relating to Audit Report of 2008-09, ₹ 260.76 crore pertains to Performance Audit on 'Levy and collection of stamp duty and registration fees' which was accepted by the Department.

As seen from the above table, the recovery made by the Department is only 0.23 per cent of the amount involved in the total accepted cases.

**We recommend that the Government may take measures to ensure expeditious recovery of revenue in respect of the accepted cases.**

### 3.7 Results of Audit

We conducted a test check of the records of 129 offices of the DSR during the year 2012-13, which revealed evasion, non-realisation, short levy of stamp duty and registration fee, etc. amounting to ₹ 38.97 crore in 204 cases, which fall under the following categories:

Table 3.5: Results of audit

(₹ in crore)

Sl. No.	Category	Number of paragraphs	Number of cases	Amount
1.	Paragraph on levy of stamp duty and registration fee on development agreements	01	01	25.53
2.	Short levy of stamp duty and registration fee	120	120	11.23
3.	Non-realisation of stamp duty	09	09	0.23
4.	Loss of stamp duty and registration fee due to suppression of facts	39	39	0.93
5.	Short levy of stamp duty and registration fee due to undervaluation of properties	11	11	0.13
6.	Other irregularities	24	24	0.92
<b>Total</b>		<b>204</b>	<b>204</b>	<b>38.97</b>

Out of the cases mentioned above, the Department accepted and recovered ₹ 0.40 crore in 23 cases pointed out during the year. In addition the Department also recovered an amount of ₹ 13.81 lakh in 19 cases pointed out in earlier years.

A paragraph on Levy of stamp duty and registration fee on development agreement involving ₹ 25.53 crore and a few illustrative audit observations involving ₹ 18.89 crore are mentioned in the succeeding paragraphs.

<sup>1</sup> Indicates the amount of acceptance and recovery in respect of individual cases included in the respective paragraphs.

### **3.8 Paragraph on Levy of Stamp Duty and Registration Fee on Development Agreement**

#### **Highlights**

**A paragraph on levy of stamp duty and registration fee on development agreement revealed as under:**

Department continued to register documents as JDA during 2011-12, even though the Article 5(f) relating to JDA was deleted from April 2011. This resulted in short levy of stamp duty of ₹ 232.83 lakh and registration fee of ₹ 42.56 lakh in 20 documents.

**(Paragraph 3.8.5.3)**

Documents were registered as JDA, even though the properties were not held jointly by the owners and developers, which is the primary condition to classify as JDA. This resulted in short levy of stamp duty of ₹ 19.20 crore and registration fee of ₹ 1.29 crore in 342 cases.

**(Paragraph 3.8.5.4)**

The documents in which full consideration was paid by the developers to the land owners were classified as JDAs instead of conveyance deeds which led to short levy of stamp duty and registration fee of ₹ 2.28 crore in 31 cases.

**(Paragraph 3.8.5.5)**

Developers were extended undue benefit of concessional rate of stamp duty due to non-adherence to the strictest interpretation of joint holding/development/sale.

**(Paragraph 3.8.5.6)**

#### **3.8.1 Introduction**

The DSR is the third largest revenue earning Department in the Government of Karnataka. The levy and collection of stamp duty and registration fee are governed by the KS Act, 1957 and the Registration Act, 1908. The rates of duty payable in respect of the instruments are prescribed in the schedules appended to the Act.

Section 2 of the Act defines the various terms/instruments mentioned in the Act. However, the term Joint Development Agreement (JDA) has not been defined in the Act. The rate of duty on JDA was introduced by an amendment in the Schedule of Articles of the Act by inserting an Article 5(f) 'Joint Development Agreement'. The rate of the stamp duty was the same as was for a conveyance instrument (Article 20). Thereafter the rates have been changed eight times. The article was deleted for the year 2011-12 and re-inserted from 2012-13 onwards.

### 3.8.2 Audit objectives

We conducted the audit with a view to ascertain whether

- The JDA is rightly defined.
- There is consistency in the Article related to JDA.
- The documents registered as JDA qualifies for a lower rate of Stamp duty.
- Any document wherein full consideration was received are classified as JDAs instead of conveyance deeds.

The DSR under the Revenue Department, Government of Karnataka, is headed by the Inspector General of Registration who is also designated as the Commissioner of Stamps and Chief Controlling Revenue Authority. He is assisted by two Deputy Inspectors General of Registration and two Assistant Inspectors General of Registration. At District level there are 34 DRs. There are 242 SROs headed by Sub-Registrars who are responsible for registration of documents under the Registration Act 1908.

### 3.8.3 Scope of audit and methodology

Out of 242 SROs across the state, more than ten JDAs were registered annually in 62 different offices during the period from 2007-08 to 2012-13. The 62 offices were stratified into three categories based on the number of JDAs registered. Out of these, 18 offices were selected randomly using IDEA<sup>2</sup> as given below:

**Table 3.6: Selection of units**

Sl. No.	Description	Percentage of selection	No. of offices selected
1	Offices with 325 or above JDAs	100	five <sup>3</sup>
2	Offices with 100 to 324 JDAs	33.33	seven <sup>4</sup>
3	Offices with 11 to 99 JDAs	16.67	six <sup>5</sup>
	<b>Total</b>		<b>Eighteen</b>

The documents were selected based on four strata by adopting stratified random sampling method. The total documents in each SROs were arranged on a descending order and the following samples were selected.

- 10 per cent of the top 10 per cent of total JDA Documents
- 20 per cent of the next 10 per cent JDA Documents
- 40 per cent of the next 30 per cent JDA Documents and
- 30 per cent of the remaining 50 per cent JDA Documents

We verified a total of 1,220 documents out of 3,763 JDAs registered in the SROs.

<sup>2</sup> Interactive Data Extraction and Analysis

<sup>3</sup> Mysore(North), Varthur, Banaswadi, Bommanahalli, Begur

<sup>4</sup> Indiranagar, Mahadevapura, Byatarayanapura, Anekal, Sarjapura, Shivajinagar, Mysore(South)

<sup>5</sup> Jayanagar, Dharwad, Malleswaram, Ganganagar, BTM layout, Belgaum

### 3.8.4 Audit criteria

The Audit criteria are derived from the following State and Central laws and Rules and notifications issued there under which govern levy and collection of stamp duty and registration fee:

- The Indian Registration Act, 1908
- The Karnataka Stamp Act, 1957
- The Karnataka Registration Manual
- Circular instructions issued by the DSR from time to time.

### 3.8.5 Audit findings

#### 3.8.5.1 Absence of a definition of JDA in the KS Act

The JDA is not defined in Section 2 of the KS Act. However, Article for the JDA was included as Article 5(f) of the KS Act and its rates were prescribed by the Government from time to time.

We noticed that the description of the Article 5(f) was changed from time to time. This article was removed from the schedule from 1 April 2011 and was reinserted from 1 April 2012. The descriptions are mentioned the following table:

**Table 3.7: Evolution of Article 5(f)**

Description as on 1.4.1995	Description as on 1.4.2009	Description as on 1.4.2012
Instrument relating to giving authority or power to a promoter or developer by whatever name called, for construction or development of or sale or transfer (in any manner whatsoever) of any immovable property.	Any instrument relating to construction or development or sale of immovable property, including a multi unit house or building or unit of apartment or flat or portion of multistoried building by a person having stipulation that after the construction or development, such property shall be held jointly or severally by that person and the owner or lessee as the case may be, of such property, or that it shall be sold jointly or severally by them or that a part of it shall be held jointly or severally by them and the remaining part thereof shall be held jointly or severally by them.	Same as in the notification of 1 April 2009 except for the fact that the words <b>“jointly or severally”</b> have been replaced with <b>“jointly”</b> .

Thus it could be seen from the above, that the description of duty given on 1 April 1995 was almost the same as was for a conveyance deed. As such duty was also same as for a conveyance deed. Conveyance includes “a conveyance on sale by which property, whether moveable or immovable, or any estate is transferred to, or vested in, in any other person, and which is not otherwise specifically provided for by the schedule.

However, with the passage of time, the stamp duty was reduced and in 1.4.2009 it was stipulated that the developer/owner could sell his share severally or jointly. This was again amended in 1 April 2012 and developers/owners were required to sell the property jointly only.

Thus, it would be seen that the description of the Article was changed from time to time. No reasons for the changes were made available to Audit despite



being requested (December 2013). The rates of the duty also were reduced from time to time as discussed in the succeeding paragraphs.

### 3.8.5.2 Variation in the rates of stamp duty

The rates of Stamp duty have been changed eight times including withdrawal of provision of Article during 2011-12. Rate of stamp duty on JDA vis-a-vis the rate of conveyance were as follows:

**Table 3.8: Time series analysis of rates of stamp duty**

Sl. No.	Period	Rate of stamp duty under Article 5(f)	Rate of stamp duty for 'Conveyance' under Article 20(1) in percentage
	From 1.4.1995 to 31.3.1998	Same duty as conveyance	6 and 8
1	From 1.4.1998 to 31.3.2001	4 per cent	8
2	From 1.4.2001 to 31.3.2002	5 per cent	8
3	From 1.4.2002 to 31.3.2003	2 per cent	8
4	From 1.4.2003 to 31.3.2007	₹ 1,000/- only.	8 and 7.5
5	From 1.4.2007 to 31.3.2009	Slab rate with minimum duty of ₹ 10,000/- and maximum of ₹ 1.5 lakh.	7.5
6	From 1.4.2009 to 31.3.2010	One per cent on the market value of the property which is the subject matter of DA.	From 1.4.2009 to 3.6.2009 – 7.5 per cent From 4.6.2009 to 31.3.2010 – 6 per cent
7	From 1.4.2010 to 31.3.2011	One per cent market value or consideration whichever is higher subject to a maximum of ₹ 1.5 lakh.	6 per cent
8	From 1.4.2011 to 31.3.2012	Deleted during the period	From 1.4.2011 to 3.1.2012 – 6 per cent From 4.1.2012 to 31.3.2012 – 5 per cent

**Source: Relevant Acts.**

It would be seen from the above that, though the rates of stamp duty in conveyance deeds have almost remained constant, the rates of stamp duty in respect of JDA were fixed from time to time.

### 3.8.5.3 Incorrect classification of Joint Development Agreement

Article 5(e) of the KS Act, 1957, relates to agreement for a sale of immovable property wherein

- (i) Possession of the property is delivered or is agreed to be delivered without executing the conveyance
- (ii) Possession of the property is not delivered

Further, as per Explanation-I under Article 5(e), when a reference of a Power of Attorney granted separately by the seller to the purchaser in respect of the property which is the subject matter of such agreement, is made in the agreement, then the possession of the property is deemed to have been delivered for the purpose of this clause. This attracts stamp duty at the rate of conveyance as per Article 20(1).

During 2011-12, the article 5(f) was deleted vide Amendment No.16 of 2011.

We noticed in 10 SROs that out of the 76 documents test checked, 20 JDAs were registered under Article 5(e)(ii), which attracted a meagre stamp duty between ₹ 500 and ₹ 20,000.

We further noticed that corresponding GPAs were executed and their references were mentioned in these agreements. This amounted to deemed delivery of possession. Hence stamp duty was to be levied at the rate of conveyance under Article

20(1).

The incorrect levy as per Article 5(e)(ii) instead of levy as per explanation-I under the Article, resulted in short levy of stamp duty of ₹ 232.83 lakh and registration fee of ₹ 42.56 lakh.

### 3.8.5.4 Misclassification of Joint Development Agreement

Article 5(f) of KS Act as amended (Act No.15 of 2012) relating to JDA stipulated that, the property should be held, developed and sold jointly by the owner and the developer.

During 2012-13, we test checked 342 documents titled as JDAs. Out of these, the recitals of 336 deeds valued at ₹ 510.73 crore revealed that, properties were not held, developed and sold jointly by the owner and the developer. These were also followed by GPAs which gave full authority/powers to the developer to sell/dispose off the properties independently. Thus, these documents did not fall in the ambit of development agreement under the Article 5(f) of KS Act, 1957. These deeds should have been stamped at conveyance rates and stamp duty of ₹ 25.54 crore should have been levied. But these were incorrectly classified/registered as development agreement and were stamped at ₹ 6.34 crore. This resulted in short levy of stamp duty of ₹ 19.20 crore and registration fee of ₹ 1.29 crore.

### 3.8.5.5 Incorrect classification of 'Absolute Sale Deed'/'Agreement to Sell with Possession' as JDAs

Stamp duty should have been levied as per the recitals of the instruments and not as given in the title of the instrument. Besides, according to Section 5 of KS 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".

We noticed that, 31 instruments were held as JDAs between the owner and the developer. However, recitals of the instruments revealed that the developers had purchased the property from the owners after paying the entire cost of the land. The possession of the properties were also given to the Developers. The Documents were classified as JDAs instead of conveyance though there were transfer of properties involved.

This has resulted in short levy of Stamp Duty of ₹ 1.98 crore and Registration Fee of ₹ 0.30 crore. A few cases are mentioned below:

**Table3.9: Misclassification of sale deeds as JDAs**

(₹ in lakh)						
Sl. No.	Document details	Nature of the observation	Duty leviable levied	Duty short levy	RF leviable Levied	RF short levy
1	BEL-1-11410/10-11/17.2.11	The owner had received the entire consideration of ₹ 2.45 crore for the land from the developer. The right, title and interest of the said property was transferred from the owner to the builder. It was further stated in GPA that further sale deeds could be executed by the builder only. As such the deed should have been stamped at conveyance rates.	<u>14.70</u> 1.50	13.20	<u>2.45</u> 0.30	2.15
2	BEL-1-6927/10-11/27.10.10	The owner had received the entire consideration of ₹ 0.81 crore for the land from the developer. The right, title and interest of the said property was transferred from the owner to the builder. It was further stated in GPA that further sale deeds could be executed by the builder only. As such the deed should have been stamped at conveyance rates.	<u>4.86</u> 1.14	3.71	<u>0.81</u> 0.20	0.61
3	ANK-1-0682/09-10/12.6.09	The owner had received the entire consideration of ₹ 3.73 crore for the land from the developer. The right, title and interest of the said property was transferred from the owner to the builder. It was further stated in GPA that further sale deeds could be executed by the builder only. As such the deed should have been stamped at conveyance rates.	<u>22.38</u> *10.10	12.27	<u>3.73</u> 1.68	2.04

\* The Party has paid excess stamp duty over and above of ₹ 1.50 lakh prescribed for the period 2009-10.

### 3.8.6 Conclusion

The Article introduced under the KS Act to legitimise the Development Agreement between land owners and developers with effect from 1 April 1995 was liberally interpreted to accommodate all kinds of related instruments under that Article. Though the Article was invoked for a wide range of transactions, levy of stamp duty at 'Conveyance' rate or at four, five or two *per cent* of market value of the property which was the subject matter of DA, adequately secured the interest of Government revenue up to 31 March 2003.

The reduction in rate of stamp duty to ₹ 1,000 from 1 April 2003 and introduction of slab rates from 1 April 2007 without ensuring that the scope of the Article is limited to the DA as intended by the legislation, led to unintended concessions enjoyed by developers and land owners. Though the Article was amended once in April 2009 and later in April 2012 to limit its scope in proper perspective, the Department failed to ensure compliance with the same.

### 3.8.7 Recommendations

Government may consider the following:

- **The legislative intent for introduction of any Article, amendments thereto or change in rate of duty be clearly spelt out in the Government Order or Notification effecting such amendments.**
- **Department may establish a mechanism to ensure that amendments to Act, Rules and Articles are communicated to all the SROs and they are complying with it.**
- **Levy of stamp duty as conveyance on all instruments wherever property is transferred from owner to developer, whether mentioned in the document or implied, be considered by suitably amending the Article.**

### 3.9 Non-observance of provisions of the Acts/Rules

The KS Act 1957 provides as under:

- Section 2(1)(d) - conveyance includes a conveyance on sale, by which property, whether movable or immovable is transferred to, or vested in, any other person which is not otherwise specifically provided for by the schedule.
- Section 2(1)(mm) - market value in relation to any property, which is the subject matter of an instrument, means the price which such property would have fetched, in the opinion of the DC or the appellate authority or the Chief Controlling Revenue authority, if sold in open market on the date of execution of such instrument or the consideration stated in the instrument, whichever is higher.
- Section 3 - for stamping of all instruments chargeable with duty as per the schedule to the Act and executed by any person in the State of Karnataka before or at the time of execution.
- Section 3B - for levy of additional stamp duty at the rate of 10 per cent on any instrument of conveyance exchange, settlement, gift or lease in perpetuity of immovable property chargeable with duty under Section 3 read with articles of the schedule, on such duty chargeable on such instrument of conveyance exchange, settlement, gift or lease in perpetuity.
- Section 5 - 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.
- Section 19 - Any instrument executed out of the State and subsequently received in the State, the amount of duty chargeable on such instrument shall be the amount of duty chargeable under the schedule less the amount of duty, if any, already paid on such instrument in any other State in India.
- Section 21 - Where an instrument is chargeable with ad valorem duty in respect of any stock or of any marketable or other security, such duty shall be calculated on the value of such stock or security according to the average price or the value thereof on the day of the date of the instrument.
- Section 28 - to set forth in the instrument the consideration and all other facts and circumstances affecting the chargeability of any instrument with duty or the amount of the duty with which it is chargeable. And Section 61(a) for levy of fine which may extend to five times the amount of the deficient duty if facts and consideration are not fully setforth.
- Section 34 - instruments not duly stamped, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable, or in the case of an instrument insufficiently stamped, on payment of the deficit stamp duty with penalty of ten times, if such deficit exceeds Rupees five.
- Article 20(4)(i) and (ii) - stamp duty is chargeable as a percentage on the market value of the property situated in Karnataka of the transferor company or as a percentage of the aggregate value of shares issued/

*allotted in exchange, in addition to the amount of consideration if any, whichever is higher.*

- *Article 41 (e) – Power of Attorney with selling powers, when given for consideration or when coupled with interest attracts the same stamp duty as a conveyance under Article 20(1), on the consideration or market value of the property which is the subject matter of power of attorney.*
- *Article 41(eb) – Power of Attorney with selling powers, when given to person other than the father, mother, wife or husband, sons, daughters, brothers sisters in relation to the executants, attracts the same stamp duty as a conveyance under Article 20(1), on the market value of the property which is the subject matter of power of attorney.*

*The Registration Act, 1908 and the Karnataka Registration Rules, 1965 provide as under:*

- *Section 80 for levy of fees in respect of various documents presented for registration.*

*We noticed in 24 SROs and the office of the IGR&CS and cross verification of information with Income Tax Department that the above provisions were not fully followed by the concerned authorities. This resulted in a number of discrepancies which led to non/short realisation of Government revenue amounting to ₹ 18.89 crore. The Department accepted audit observations in two cases involving ₹ 6.33 lakh and recovered the same. Final reply in respect of the remaining cases has not been received (December 2013).*

### 3.9.1 Short levy of stamp duty on amalgamation/demerger of public limited companies

Under Section 5 of the KS Act, 1957, 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.

Further, under Section 21 instrument chargeable with ad valorem duty in respect of any stock or of any marketable or other security such duty shall be calculated on the value of stock or security according to the average price or the value thereof on the day of the date of the instrument.

Stamp duty is chargeable under Article 20 (4) (i) and (ii), as a percentage on the market value of the property of the transferor company being transferred or on the aggregate value of shares issued/allotted and the consideration if any, paid for such amalgamation.

We noticed in the office of the IGR&CS in August 2011, that a Composite Scheme of Arrangement (CSA) relating to demerger and amalgamation of three<sup>6</sup> public limited companies was referred by the Hon'ble High Court of Karnataka for assessment of stamp duty payable on the instrument. The IGR directed the DR, Gandhinagar for assessment of the same in April 2010. The DR, Gandhinagar concluded his assessment and arrived at stamp duty payable at ₹ 48.33 lakh and conveyed the same to the Hon'ble High Court and the IGR in May 2011.

However, our scrutiny revealed that the CSA contained two distinct transactions relating to three companies, but stamp duty was

levied on only one transaction. This resulted in short levy of stamp duty of ₹ 12.03 crore as discussed below:

- i. As per Part-B of the CSA, the charter services operations undertaking of Deccan Aviation Ltd., was sold to Deccan Charters Ltd., for a consideration of ₹ 69 crore in January 2008. On this instrument, stamp duty of ₹ 48.33 lakh was levied.
- ii. As per Part-C of the CSA, the Commercial Airline Division undertaking of Kingfisher was transferred as a going concern to Deccan at book value in April 2008. This was materialised by issue of three fully paid-up equity shares of face value ₹ 10/- each of Deccan against seven fully paid-up equity shares of face value ₹ 10/- each of Kingfisher and one preference share of ₹ 100/- each of Deccan against one preference share of ₹ 100/- each of Kingfisher.

The above two matters were distinct and had to be valued separately. The stamp duty payable under Section 5 would be the aggregate of the stamp duty payable for the two transactions. But the DR, Gandhinagar omitted to levy the

<sup>6</sup> Kingfisher Airlilnes Ltd (Kingfisher)., Deccan Aviation Limited (Deccan)., Deccan Charters Ltd (DCL).

stamp duty on the transaction between Kingfisher Airlines Ltd., and Deccan Aviation Ltd., The stamp duty payable on the transaction was ₹ 12.03 crore.

After this was pointed out, the Department accepted the audit observation that stamp duty on the second transaction was leviable by them. The Department worked out the stamp duty on the face value of the share i.e., ₹ 10 per share and levied stamp duty of ₹ 1.59 crore but not on the market value of the share as contemplated in Section 21 of the Act. The market value of the share as per Bombay Stock Exchange index at the time of executing this transaction was ₹ 124.71.

This was reported to the Government in July 2013. Their replies are awaited (December 2013).

### 3.9.2 Non-levy of stamp duty and penalty

Under Section 34 of the KS Act, 1957 'No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped'. Further, it was also provided that subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable, or in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of ten times the amount of the proper stamp duty or deficient portion, when ten times the deficit exceeds Rupees five.

In respect of General Power of Attorneys (GPAs) authorising the holder thereof to sell the property, stamp duty at the rate applicable to conveyance of such property was leviable.

We noticed in four<sup>7</sup> SROs that 27 Sale deeds were executed during 2010-11 and 2011-12 by the GPA holders on behalf of the owners of the properties. These GPAs were not registered but were notarised before the notary publics between 1 August 2007 and 1 January 2012. The stamp duty paid for these GPAs were ₹ 100 or ₹ 200 each amounting to ₹ 4,700/- only, as against ₹ 37.42 lakh payable.

On production of these GPAs for execution of sale deeds, the SROs admitted the GPAs without collecting the deficit stamp duty of

₹ 37.38 lakh. Since these documents were produced as evidence, penalty of ₹ 373.76 lakh was also leviable.

The incorrect admission of GPAs by the concerned SROs resulted in non levy of stamp duty and penalty of ₹ 4.11 crore.

After these cases were pointed out to the SROs concerned, DRO, Hassan reported recovery of ₹ 2.24 lakh in one case relating to SRO, Belur.

<sup>7</sup> SROs – Brahmavar, Jigani, Belur, BTM Layout



After these cases were pointed out, the Department stated (October 2013) that the concerned DRs have issued notices under Section 46 A of the KS Act for recovery of stamp duty in all the cases.

These cases were reported to the Government in July 2013. Their replies are awaited (December 2013).

### 3.9.3 Short levy of stamp duty and registration fee due to undervaluation

Under Section 2(mm) of the KS Act, 1957, 'Market Value' in relation to any property, which is the subject matter of an instrument, means the price which such property would have fetched if sold in open market on the date of execution of such instrument or the consideration stated in the instrument whichever is higher'. If the registering officer while registering any instrument has reason to believe that the market value of the properties has not been truly set forth, he shall compute the estimated market value and upon payment of duty on such market value, register the document. Further, under the provisions of Act, Government constitutes committees for estimation of market value of areas under the jurisdiction of SROs.

We noticed in nine<sup>8</sup> SROs, in respect of 20 sale deeds registered during 2009-10 and 2011-12 that stamp duty of ₹ 3.21 crore and registration fee of ₹ 47.71 lakh were levied on the market value of ₹ 47.71 crore. However, market value as per guidelines approved by the Central Valuation Committee was ₹ 62.24 crore on which stamp duty of ₹ 4.19 crore and registration fee of ₹ 62.24 lakh was leviable. The short levy of stamp duty and registration fee due to undervaluation of properties amounted to ₹ 1.12 crore.

After these cases were pointed out, the Department stated (October 2013) recovery of ₹ 5.64 lakh in two cases and that the concerned DRs have issued notices under Section 46 A of the KS Act for recovery of stamp duty in the remaining cases.

These cases were reported to the Government in July 2013. The replies are awaited (December 2013).

<sup>8</sup> SROs, Malur, Nelamangala, Kanakapura, Chamarajpet, Shantinagar, Hubli, Hagaribommanahalli, BTM Layout, Kachanayakanahalli

### 3.9.4 Short levy of stamp duty and registration fee due to suppression of consideration

As per Section 28(1) of the KS Act, 1957, the consideration and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein. Non-adherence to this Section, attracts fine under Section 61 (a) which may extend to five times the deficient stamp duty.

**3.9.4.1** Information collected from the Income-tax Department<sup>9</sup> revealed that an assessee had received consideration of ₹ 12.81 crore on account of sale of an immovable property. A cross verification of the information with the records of SRO, Mahadevapura revealed that the assessee had registered the sale deed in September 2007 for a consideration of ₹ 5.02 crore, instead of ₹ 12.81 crore received by him. This resulted in

undervaluation of the property by ₹ 7.79 crore involving stamp duty of ₹ 65.43 lakh and registration fee of ₹ 7.79 lakh. Besides, a penalty upto ₹ 3.27 crore could have been levied for suppression of facts.

**3.9.4.2** We noticed in seven<sup>10</sup> SROs, that 10 sale deeds were registered during 2010-11 and 2011-12. Stamp duty of ₹ 19.63 lakh and registration fee of ₹ 3.46 lakh were levied on the consideration of ₹ 2.84 crore, stated in the documents. We found that prior to the execution of the sale deeds, the executants had executed GPAs or sale agreements with consideration amounting to ₹ 1.86 crore. The consideration received for the GPAs or sale agreements were in addition to the consideration of ₹ 2.84 received for sale deeds.

Suppression of facts of consideration received during sale agreement/GPA in the sale deeds resulted in short levy of stamp duty of ₹ 12.10 lakh and registration fee of ₹ 1.24 lakh. Besides, penalty up to five times the deficit stamp duty was also leviable.

After these cases were pointed out, the Department stated (October 2013) that the concerned DRs have issued notices under Section 46 A of the KS Act for recovery of stamp duty in all the cases.

These cases were reported to the Government in July 2013. Their replies are awaited (December 2013).

<sup>9</sup> ACIT, Circle 1(1)

<sup>10</sup> SROs, Yelahanka, Laggere, Tavarekere, Sarjapura, Ramanagaram, Kengeri, Srirampura

### 3.9.5 Incorrect adjustment of stamp duty

As per Article 41 (e) & (eb) of the KS Act 1957, Power of Attorney attracts the same stamp duty as a conveyance under Article 20(1), on the consideration or market value of the property which is the subject matter of power of attorney. Stamp duty paid on the power of attorney is adjustable towards the stamp duty payable on instrument of sale or transfer, executed between the same parties in respect of the same property.

Test check of 'A' registers and copies of sale deeds and related Power of Attorney of four<sup>11</sup> SROs between August 2012 and January 2013 revealed that in respect of nine cases, Power of Attorney were registered authorising the attorney holders to sell the properties. Subsequently, sale deeds were registered in favour of parties other than the Power of Attorney

holders and the stamp duty payable was adjusted with the duty paid in the registered documents of Power of Attorney, which was incorrect. This resulted in short levy of Stamp duty of ₹ 48.81 lakh.

After these cases were pointed out, the Department stated (October 2013) that the concerned DRs have issued notices under Section 46 A of the KS Act for recovery of stamp duty in all the cases.

These cases were reported to the Government in June 2013. Their replies are awaited (December 2013).

### 3.9.6 Non-levy of stamp duty

Under Section 19 of the KS Act 1957, where any instrument of the nature described in any Article in the Schedule and relating to any property situate or to any matter or thing done or to be done in the State of Karnataka is executed out of the said State and subsequently received in the said State, the amount of duty chargeable on such instrument shall be the amount of duty chargeable under the Schedule on a document of the like description executed in the State of Karnataka less the amount, if any, already paid on such instrument in any other State in India.

Under Article 41(eb) of the KS Act, 1957, Power of Attorney attracts stamp duty at five *per cent* when given to person other than father, mother, wife or husband, sons, daughters, brothers, sisters in relation to the executants authorising such person to sell immovable property situated in Karnataka State.

We noticed in two<sup>12</sup> SROs between September 2012 and December 2012 that two GPAs were executed and registered in Kottayam of Kerala State on 17 November 2005 and Chennai of Tamilnadu State on 24 April 2006 authorising the holder of the GPAs to execute sale deed on behalf of the owners of the

<sup>11</sup> SRO, Devanahalli, Mysore (North), Ramanagar, Jigani

<sup>12</sup> SROs – Jigani, Bommanahalli

lands situated in Karnataka. These GPAs were stamped for ₹ 150 and ₹ 100 respectively and presented before the SROs in April 2011 by the holders of the GPAs for execution of sale deeds. However, though the GPAs registered outside the State were presented before the SROs, the difference of stamp duty chargeable on such documents was not charged by the SROs. The stamp duty chargeable on these documents in this state were ₹ 13.81 lakh and ₹ 5.83 lakh respectively under Article 41(eb). The non levy of stamp duty amounted to ₹ 19.64 lakh. Further, registration of sale deeds by the SROs in these cases, on the strength of GPAs which were not properly stamped, was not in order.

After these cases were pointed out, the Department stated (October 2013) that the concerned DRs have issued notices under Section 46 A of the KS Act for recovery of stamp duty in all the cases.

These cases were reported to the Government in July 2013. Their replies are awaited (December 2013).

### 3.9.7 Short levy of stamp duty and registration fee

Under Section 2(1)(d) of the KS Act, 1957, conveyance includes a conveyance on sale, by which property, whether movable or immovable is transferred to, or vested in, any other person and which is not otherwise specifically provided for by the schedule. Further, as per Article 20(5) of the said Act, conveyance relating to industrial machinery whether treated as movable and immovable, stamp duty is to be levied at the rate of five *per cent* of the market value of the property.

In SRO, Bailhongal, a sale deed was registered during June 2011 for the conveyance of land and plant & machinery of a private limited company<sup>13</sup> through its official liquidator as per orders of the Hon'ble High Court of Karnataka for a consolidated value of ₹ 2 crore as set forth in the document.

However, the Department levied stamp duty of ₹ 10.28 lakh and registration fee of ₹ 1.53 lakh. This resulted in short levy of stamp duty and registration fee of ₹ 3.72 lakh.

The purchaser of the above property subsequently sold this property to another person in August 2011, setting forth the value as ₹ 1.65 crore for land and building and ₹ 55 lakh towards industrial machinery.

On this instrument, stamp duty and registration fee was levied only on the consideration received for land amounting to ₹ 12.74 lakh and not on the consideration received for industrial machinery. The short levy of stamp duty and registration fee works out to ₹ 3.76 lakh.

The total short levy of stamp duty and registration fee amounted to ₹ 7.47 lakh.

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<sup>13</sup> M/s. Metgud Extractions Pvt., Ltd.,

After these cases were pointed out, the Department stated (October 2013) that DR, Belgaum has issued notices under Section 46 A of the KS Act for recovery of stamp duty.

These cases were reported to the Government in July 2013. Their replies are awaited (December 2013).

