

Chapter-III Stamp Duty & Registration Fee

3.1 Tax administration

Receipts from stamp duty and registration fee are regulated by the Indian Stamp Act (IS Act), 1899, the Karnataka Stamp Act (KS Act), 1957, the Registration Act, 1908 and the Rules made thereunder. In Karnataka the levy and collection of stamp duty and registration fee is administered at the Government level by the Principal Secretary, Revenue Department. The Inspector General of Registration and Commissioner of Stamps (IGRCS) is the head of the Department of Stamps and Registration who is empowered with the task of superintendence and administration of registration work. There are 34 District Registrar (DR) offices and 242 Sub-Registrar offices (SRO) in the State.

3.2 Internal Audit

The Department stated that though an Internal Audit Cell was constituted in December 2012, it was still not functional (September 2014) due to lack of manpower.

3.3 Results of audit

In 2013-14, test check of the records of 132 units of Stamps and Registration Department showed non/short levy of stamp duty and registration fees etc. and other irregularities amounting to ` 45.15 crore in 261 cases, which fall under the categories given in **Table 3.1**.

Table 3.1

Sl. No.	Category	No. of cases	(₹ in crore)
			Amount
1	Misclassification of documents	36	34.94
2	Short/non levy of stamp duty and registration fees	69	3.83
3	Incorrect application of MV	87	2.40
4	Suppression of facts	27	1.53
5	Delay in remittances	25	1.12
6	Other Irregularities	17	1.33
	Total	261	45.15

During the course of the year, the department had accepted and recovered under assessments and other deficiencies in 116 cases involving ` 1.02 crore. A few illustrative cases involving ` 3.84 crore are discussed in the following paragraphs. Responsibility may be fixed on the officials concerned for their failure in assessing the correct amount of stamp duty and registration fees.

3.4 Short levy of stamp duty and registration fee due to undervaluation of properties

Under the KS Act, for the year 2012-13, stamp duty at the rate of five *per cent* is leviable on the 'market value'¹ of the property which is the subject matter of

¹ 'market value' means the price which a property would fetch, if sold in the open market on the date of execution of such instrument or the consideration stated in the instrument, whichever is higher.

conveyance instrument. The rate of stamp duty for the year 2011-12 was six *per cent*. Instruments of conveyance of immovable properties attract additional stamp duty at ten *per cent* on stamp duty charged. In addition, surcharge at two per cent of the duty imposed is also chargeable. Further, registration fee of one *per cent* of the 'market value' of the property is leviable under the Registration Act, 1908.

As per Section 45 A (1) of the above Act, "If the registering officer appointed under the Registration Act, 1908, while registering any instrument of – (a) conveyance, has reason to believe having regard to the guidance market value published by the committee constituted under Section 45-B², if any, or otherwise, that the market value of the property which is the subject matter of such instrument has not been truly set forth, he shall after arriving at the guidance market value, communicate the same to the parties and unless the parties pay the duty on the basis of such valuation, shall keep the process of registration pending and refer the matter along with a copy of such instrument to the Deputy Commissioner for determination of the market value of the property and the proper duty payable thereon".

Under Article 5(e) of the Schedule to the KS Act, stamp duty, as conveyance on the market value of the property is leviable on agreement to sell immovable property where possession of the property is delivered. The stamp duty as conveyance is also leviable in respect of 'Power of Attorney' registered under Article 41(e) of the KS Act.

On test check of records in thirteen³ SROs between April 2013 and February 2014, it was seen that 28 sale deeds, four agreement to sell with possession of the property to buyer and two power of attorney, all attracting levy of stamp duty and registration fee at the rate applicable for conveyance had been registered between August 2010 and April 2013. The aggregate market value or consideration in respect of properties which were subject matters of these instruments had been shown at ` 24.03 crore. Stamp duty and registration fee levied on these documents aggregated at ` 1.40 crore and ` 23.96 lakh respectively.

Cross verification of the value of properties adopted in the documents in these cases with reference to guidance market value notified by the Government revealed that value of the properties had been understated by the executants in all documents. The aggregate market value of the properties in these cases as per the guidance market value worked out to ` 45.67 crore. The SROs concerned also failed to assess the value of properties in accordance with the notified guidance market value and levy stamp duty and registration fee accordingly. This resulted in short levy of stamp duty of ` 1.23 crore and registration fee of ` 21.76 lakh.

After these cases were pointed out to the SROs concerned between April 2013 and February 2014, the Sub-Registrar, Bhatkal replied that the deficit amount

² A Central Valuation Committee (CVC) is constituted under the Chairmanship of IGR&CS for estimation, publication and revision of guidance market value of the properties in any area in the State at prescribed intervals. The CVC is the final authority for the formulation of policy, methodology and administration of guidance market value in the State.

³ SRO, Belgaum, Begur, Bijapur, Bhatkal, Byatarayanapura, Chickmagalur, Chitradurga, Doddaballapura, Hiriyyur, Kolar, Peenya, Shivajinagar and Tumkur.

of ` 60,592/- would be recovered in one case. In respect of the remaining cases reply has not been received (October 2014).

These issues were also taken up with the IGRCS by Audit (between April and June 2014) and reported to Government in July 2014. Their replies were awaited (October 2014).

3.5 Short levy of stamp duty and registration fee due to suppression of facts

Section 28(1) of the Karnataka Stamp Act (KS Act), 1957 stipulates that “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”.

Under Article 5(e)(i) of the Schedule to the KS Act, when an agreement related to sale of immovable property wherein possession of the property is delivered or agreed to be delivered without executing the conveyance, stamp duty is the same as that for a conveyance on the market value of the property.

As per Explanation-I under Article 5 (e) of the schedule of the said Act, ‘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’.

The stamp duty at 0.1 *per cent* of the consideration subject to a maximum of ` 20,000 only is leviable under Article 5(e)(ii) on agreements, if possession is not delivered.

Test check of records revealed the following:

3.5.1 In one case under SRO, chickaballapura, a memorandum of understanding (MOU) had been entered into (December 2011) between a vendor and a buyer and was registered on payment of stamp duty of ` 20,000/- and registration fee of ` 200/-, as applicable to a sale agreement without delivery of possession of property to the prospective buyer. Subsequently, this MOU was cancelled (April 2012), wherein it was stated that the possession of the property was given back to the vendor. This implies that the prospective buyer as per the original MOU was in possession of the property till the MOU was cancelled. Therefore stamp duty and registration fee payable for the MOU executed in December 2011 was to be taken as ` 58.10 lakh and ` 9.68 lakh respectively as applicable to agreement of sale with possession. Thus, the suppression of the facts resulted in short levy of stamp duty and registration fee of ` 57.90 lakh and ` 9.68 lakh respectively.

3.5.2 In three cases under three SROs⁴, General Powers of Attorney (GPAs) were registered between January 2012 and June 2012 by paying stamp duty of ` 1.54 lakh. In continuation, sale agreements were entered into between the same parties for the same properties on the same day or on subsequent dates by paying stamp duty of ₹ 31,100 and registration fee of ₹ 500.

⁴ SROs – Basavanagudi, Chickballapura and Shivajinagar

The total value of the properties in these instruments as per the consideration stated in the agreement or guidance market value was ₹ 5.09 crore.

In these sale agreements, stamp duty of ₹ 28.80 lakh, and registration fee of ₹ 5.08 lakh was also leviable as per Explanation-I below Article 5(e).

The short levy of stamp duty and registration fee amounted to ₹ 32.02 lakh, after adjusting the stamp duty paid in the respective GPAs.

3.5.3 In five cases under three SROs⁵, ₹ 50.49 lakh had been paid by the buyers to the vendors concerned, as advance at the time of executing sale agreements (February 2009 and November 2012), but the same was not mentioned as part of the consideration in the sale deeds which were executed later (April 2009 and February 2013). Hence, stamp duty of ₹ 2.91 lakh and registration fee of ₹ 0.48 lakh were levied short in these cases.

These cases were pointed out to the Department between April and August 2013 and referred to Government in July 2014. Their reply was awaited (October 2014).

3.6 Non-levy of stamp duty and penalty

Under Section 34 of the KS Act, “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 also provides 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 five rupees, of a sum equal to ten times such duty or portion”.

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

Audit noticed in three⁶ Sub-Registrar Offices (SROs), that, eleven ‘Sale deeds’ and one ‘Agreement to Deposit of Title deeds’ were executed during 2011-12 and 2012-13 by the General Power of Attorney holders on behalf of the owners of the properties. In these cases, the GPAs empowering the holders thereof to sell the property were executed before the notary public between February 2009 and January 2013, on which stamp duty of only ₹ 14,400 was paid. As these GPAs were admitted as evidence during execution of sale deeds/agreement, the SROs should have demanded and collected the differential amount of stamp duty between the amount leviable under the KS Act and amount already paid, alongwith the penalty. Based on the guidance market value, the stamp duty payable on these GPAs was ₹ 3.98 lakh resulting in short-levy of stamp duty of ₹ 3.84 lakh and penalty of ₹ 38.39 lakh at 10 times of the deficit stamp duty.

⁵ SROs – Bijapur, Sadalga and Yelahanka

⁶ SROs – Basavanagudi, Bhatkal, Hessarghatta

After these cases were pointed out between May 2013 and October 2013, SRO, Bhatkal replied that action would be taken to recover the deficit stamp duty. In respect of the remaining cases, replies had not been received (October 2014).

The issue was also taken up with the IGRCS in April 2014 and referred to Government in July 2014. Their reply was awaited (October 2014).

3.7 Short remittance of stamp duty

Under Rule 4 of the Karnataka Stamp (Payment of duty by means of e-stamping) Rules, 2009, Stock Holding Corporation of India Ltd. (SHCIL) was appointed (January 2010) to function as the Central Record Keeping Agency. Accordingly, an agreement was entered (25 January 2010) into between Government of Karnataka and SHCIL.

As per the said agreement, the duties of SHCIL include, *inter alia*, “collection of stamp duty and generation of e-stamp certificates through computer systems” and “effecting remittances of the collected amount of stamp duty to the State Government Account and reconciliation of accounts”. For the services provided, SHCIL was entitled to a commission of 0.65 *per cent* of the stamp duty collected through e-stamping mechanism. The agreement provided for SHCIL to deduct the commission from the stamp duty collected prior to remitting the same into the State Government Account. The agreement also made clear that this commission was inclusive of the compulsory duties and taxes payable to Central/State Governments.

Test check of related records in the Office of the IGRCS in January 2014 showed that from July 2012, SHCIL had been deducting, in addition to the commission due to it, service tax payable by them, on that commission, to Central Government, calculated at the rate of 12.36 *per cent* of the commission amount. This was in contravention of the agreement signed by them with the State Government. The excess amount of deduction up to December 2013 resulted in short remittance of ` 51.61 lakh to the Government Account. No action was taken by the IGRCS to recover the excess amount deducted by SHCIL.

After this was pointed out to IGRCS in January 2014, it was replied that the matter would be taken up with the SHCIL. The issue was referred to Government in July 2014; their reply was awaited (October 2014).

3.8 Non remittance of revenue collected in cash towards stamp duty and registration fees

Article 4 of the Karnataka Financial Code (KFC) 1958 stipulates that transactions to which any Government servant in his official capacity is a party must, without any reservation, be brought to account, and all moneys received should be paid in full without undue delay, in any case within two days, into a Government treasury, to be credited to the appropriate account and made part of the general treasury balance.

Article 329(v) of the KFC requires that “when Government money in the custody of a Government officer are paid into the Treasury or the bank, the Head of the office making such payments should as soon as possible after the

end of the month, obtain from the Treasury a consolidated receipt for all the remittances made during the month which should be compared with the postings in the Cash Book”.

The IGRCS vide a circular issued in March 2008 instructed the SROs not to collect amount exceeding ₹ 1000 in cash.

In a review of ‘A’ Register⁷ along with connected remittances registers, in the office of the SRO, Attibele, by Audit revealed that the amounts collected in cash were being shown as credited to the Nodal Bank. However, cross verification of remittances made with Treasury Schedules showed that in 18 instances an amount of ₹ 42.46 lakh collected in cash between April 2011 and September 2012 and entered in the Cash Book was shown as having been remitted to the Nodal Bank had not been credited to the Government Account. Further, since inception of the office i.e., 1 April 2007, the cash remittances made to the Nodal Bank had not been reconciled with Treasury Schedules to ensure the correctness of the remittances to Government Account.

After this was pointed out to the SRO, Attibelle on 4 March 2014, the entire amount of ₹ 42.46 lakh was remitted to the Government Account vide challans dated 07-03-2014, 10-03-2014, 11-03-2014 and 12-03-2014 by the SRO. Since it is evident that the said amount was misappropriated for two to three years, the matter calls for a detailed investigation to fix responsibility on the concerned.

The matter was taken up with IGRCS in May 2014 and referred to Government in July 2014; their reply was awaited (October 2014).

⁷ Register at SRO recording the day-wise transactions indicating the stamp duty and registration fee collected in respect of every document registered.