

## CHAPTER III EXECUTIVE SUMMARY

**Trend of receipts** The revenue collection of the State under Stamp duty and Registration Fee increased by 111.74 *per cent* in 2012-13 as compared to 2008-09.

**Revenue impact of Audit Reports** During the last five years, 2007-08 to 2011-12, we had pointed out in our Audit Reports cases of under assessments/non/short levy/loss of revenue of stamp duty, etc., interest and other irregularities with revenue implication of ₹ 53.89 crore in 90 cases. Of these, the Department had accepted audit observations in 79 cases involving ₹ 28.00 crore and had recovered ₹ 0.67 crore in eight cases. The recovery position as compared to acceptance of objection was negligible.

**Results of audit** During the year 2012-13, we reported underassessment, short levy, non-levy of stamp duty, loss of revenue etc., amounting to ₹ 191.08 crore in 392 cases of which the department accepted and recovered short levy and other deficiencies in 49 cases involving ₹ 0.55 crore.

**What we have highlighted in this Chapter** A paragraph on ‘**Levy of Stamp duty and Registration fee on Development Agreements**’ revealed the following :

Misclassification of instruments in 15 cases resulted in short levy of stamp duty of ₹ 66.24 lakh.

**(Paragraphs 3.2.4.1 and 3.2.4.2)**

As against levy of stamp duty of ₹ 3.25 crore, stamp duty was levied at ₹ 2.18 crore due to under valuation of property resulting in short levy of ₹ 1.07 crore.

**(Paragraph 3.4.4)**

Incorrect grant of benefit of tenancy for determination of market value resulted in short levy of stamp duty and penalty of ₹ 2.94 crore in one case.

**(Paragraph 3.4.6)**

Incorrect determination of market value in

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respect of several distinct matters involved in an instrument resulted in short levy of stamp duty of ₹ 50.56 lakh in one case.

**(Paragraph 3.4.8)**

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## CHAPTER III: STAMP DUTY AND REGISTRATION FEES

### 3.1 Introduction

#### 3.1.1 Tax Administration

At the apex level, Principal Secretary, Relief and Rehabilitation (R&R) heads the Department. The responsibility for overall administration of stamp duty and registration fee is entrusted with the Inspector General of Registration (IGR), Pune. He is assisted by the Additional Controller of Stamps, Mumbai, ten<sup>1</sup> Deputy Inspectors General of Registration (DIGs), nine<sup>2</sup> Assistant IGRs, six Collector of Stamps (COS) at Mumbai and Mumbai Suburban District, 32 Joint District Registrars and Collector of Stamps (JDRs and COS) and 465 Sub-Registrars (SRs) at district and taluka levels.

#### 3.1.2 Trend of receipts

Actual receipts from Stamp Duty and Registration Fee etc., during the years 2008-09 to 2012-13 along with the total tax receipts during the same period is exhibited in the following table.

(₹ in crore)

Year	Budget estimates <sup>3</sup>	Actual receipts <sup>3</sup>	Variation of receipt excess(+) / shortfall (-)	Percentage of variation of receipt from Budget	Total tax receipts of the State	Percentage of actual receipts vis-à-vis total tax receipts
2008-09	9,600.00	8,287.63	(-) 1,312.37	(-) 13.67	52,029.94	15.93
2009-10	9,600.00	10,773.65	(+) 1,173.65	(+) 12.23	59,106.33	18.23
2010-11	10,478.86	13,515.99	(+) 3,037.13	(+) 28.98	75,027.10	18.01
2011-12	15,677.14	14,407.49	(-) 1,269.65	(-) 8.09	87,608.46	16.44
2012-13	15,730.00	17,548.25	(+) 1,818.25	(+) 11.56	1,03,448.52	16.96

As can be seen from the above table, the revenue collection of the State under Stamp duty and Registration Fee increased by 111.74 *per cent* in 2012-13 as compared to 2008-09.

#### 3.1.3 Cost of collection

The gross collection in respect of Stamp duty and Registration Fee, the expenditure incurred on their collection and the percentage of such expenditure to the gross collection during the years 2010-11, 2011-12 and 2012-13 along with the relevant all India average percentage of expenditure on collection to gross collection for the preceding years are given in the following table:

<sup>1</sup> Including one Dy. IGR, Headquarter at Pune and one Dy. IGR (Computerisation)

<sup>2</sup> Including one Assistant IGR in Stamp Office, Mumbai.

<sup>3</sup> Source: Finance Accounts.

(₹ in crore)

Sl No	Head of revenue	Year	Gross collection	Expenditure on collection <sup>4</sup>	Percentage of expenditure to gross collection	All India average percentage of the preceding year
1.	Stamp duty and Registration Fee	2010-11	13,515.99	100.00	0.74	2.47
		2011-12	14,407.49	122.35	0.85	1.60
		2012-13	17,548.25	172.00	0.98	1.89

As seen from the above, the cost of collection in the State of Maharashtra, during the periods 2010-11 to 2012-13 is less as compared to the all India average for the corresponding preceding years.

### 3.1.4 Impact of audit reports

#### Revenue impact

During the last five years, 2007-08 to 2011-12, we had pointed out in our Audit Reports cases of under assessments/non/short levy/loss of revenue of stamp duty, etc., interest and other irregularities with revenue implication of ₹ 53.89 crore in 90 cases. Of these, the Department had accepted audit observations in 79 cases involving ₹ 28.00 crore and had recovered ₹ 67.12 lakh in eight cases. The details are shown in the following table:

(₹ in lakh)

Year	Amount objected		Amount accepted		Amount recovered	
	Number of cases	Amount	Number of cases	Amount	Number of cases	Amount
2007-08	9	2,582.00	3	56.00	1	11.00
2008-09	16	335.00	11	272.00	Nil	Nil
2009-10	28	496.84	28	496.84	1	2.70
2010-11	15	517.60	15	517.60	3	23.60
2011-12	22	1,457.91	22	1,457.91	3	29.82
<b>Total</b>	<b>90</b>	<b>5,389.35</b>	<b>79</b>	<b>2,800.35</b>	<b>8</b>	<b>67.12</b>

As would be seen from the above the amount recovered is only 2.40 per cent of the amount of the accepted cases. The Department needs to take effective steps to recover the amount at least in those cases which have been accepted by the Department.

**We recommend that the Government may consider issuing instructions to the Department for effecting recoveries at least in those cases which have been accepted by the Department.**

### 3.1.5 Results of audit

We reported underassessment, short levy, non-levy of stamp duty, loss of revenue etc., amounting to ₹ 191.08 crore in 392 cases as shown below, on the

<sup>4</sup> Source: Information furnished by the Department.

basis of test check of records of stamp duty and registration fees conducted during the year 2012-13 :

(₹ in crore)

Sl. No	Category	No. of cases	Amount
1	Audit of "Levy of Stamp duty and Registration fee on Development Agreements"	1	0.66
2	Short levy due to under valuation of property	267	15.39
3	Short levy due to misclassification of documents	18	7.36
4	Incorrect grant of exemption of stamp duty and registration fees	5	0.09
5	Non-levy of stamp duty and registration fee	87	167.03
6	Other irregularities	14	0.55
	<b>Total</b>	<b>392</b>	<b>191.08</b>

In response to the observations made in the local audit through Inspection Reports during the year 2012-13 as well as during earlier years, the Department accepted and recovered short levy and other deficiencies in 324 cases involving ₹ 6.43 crore, of which 49 cases involving ₹ 55.21 lakh were pointed out during 2012-13 and rest during earlier years.

A paragraph on "Levy of Stamp duty and Registration fee on Development Agreements" with a total financial effect of ₹ 66.24 lakh and few audit observations involving ₹ 5.13 crore are included in the succeeding paragraphs.

## **3.2 Paragraph on “Levy of stamp duty and registration fee on Development Agreements”**

### **3.2.1 Introduction**

In Maharashtra, levy of stamp duty is governed by the Bombay Stamp Act, 1958 (Act) and registration fee by the Registration Act, 1908. Under the Act, agreement to sell is deemed as conveyance deed and is chargeable at the rate of five *per cent* for properties situated in Municipal Corporation area and two *per cent* for properties situated in rural residential area.

Maharashtra Registration Manual Part-II prescribes that a development agreement includes the essential conditions, (i) the possession of the property is handed over as a licensee, (ii) the developer is required to construct residential/non-residential components on the property, and (iii) the developer is allowed to enter into agreements to sell the residential and non-residential components to the prospective purchasers. Further, in an instrument of development, if the owner agrees to sell the property to the developer, then it should be treated as an agreement to sell and charged under Article 25.

The State Government in order to avoid misclassification of conveyance deed as development agreements inserted the incidence of levy of stamp duty at the rate of one *per cent* on instrument of development agreement/power of attorneys by an Amendment Act of 1997 retrospectively applicable from 7 February 1990. With effect from 5 June 2008, the State Government had brought the levy of stamp duty on development agreement at par with the conveyance.

### **3.2.2 Audit objective**

Audit was conducted with a view to ascertain whether the instruments of development agreement/power of attorney were classified as conveyance deed and stamp duty levied correctly.

### **3.2.3 Scope of audit**

The scope of this audit was restricted to the period between 1 April 2007 and 4 June 2008 as the State Government, on the basis of the findings in Paragraph 3.2- “Evasion of stamp duty due to misclassification of documents”, included in the Report of the Comptroller and Auditor General of India on the Revenue Receipts of the Government of Maharashtra for the year ended 31 March 2006 and subsequent discussion of the said Report by the Public Accounts Committee, amended the Bombay Stamp Act, 1958 and brought the levy of stamp duty on development agreement/power of attorneys at par with the conveyance deed with effect from 5 June 2008. The issue of short levy of stamp duty due to misclassification of conveyance deeds as development agreement/power of attorneys before this amendment was raised during the course of local audit of units conducted between the period 1 January 2006 and 4 June 2008.

### 3.2.4 Audit findings

Stamp duty on instruments is levied as per articles described in Schedule I of the Act. Further, if any instruments is so framed as to come within two or more descriptions of the Schedule I of the act and is chargeable with duties at different rates then highest of the duty is to be charged.

#### 3.2.4.1 Short levy of stamp duty due to misclassification of instruments

Under the provisions of the Act, instrument of conveyance includes every instrument by which property, whether movable or immovable, or any estate or interest therein is not only sold but otherwise transferred to any other person with or without consideration and is chargeable under Article 25 of the Schedule-I of the Act. Further, as per instructions of Maharashtra Registration Manual-II, if the owner of the land agrees to sell the property to the developers under the instrument of development agreement, it should be treated as agreement to sell and charged as conveyance deed.

Recitals of instruments indicated that in 10 cases, the owner of the land authorised the developers to sell the land either partially or wholly for a consideration of ₹ 14.74 crore, the instruments were classifiable as agreement to sell and stamp duty was chargeable under Article 25 of Schedule I of the Act. However, the instruments were classified as development agreements and stamp duty was levied at ₹ 15 lakh i.e. at the rate of one *per cent.* instead of ₹ 65 lakh, which has resulted in short levy of ₹ 50 lakh as detailed in **Appendix IV.**

The Department had accepted the short levy in seven cases, out of which in one case the proceedings of revenue recovery certificate has been completed and in remaining cases recovery is in progress. Further in three cases first compliance is awaited from the Department (January 2014).

#### 3.2.4.2 Short levy of stamp duty due to misclassification of instruments of power of attorney

As per Maharashtra Registration Manual Part-II, a development agreement shall essentially include the conditions that (i) the possession of the property is handed over as a licensee, (ii) the developer is required to construct residential/non-residential components on the property, and (iii) the developer is allowed to enter into agreements to sell the residential and non-residential components to the prospective purchasers. Further, in an instrument of development if the owner agrees to sell the property to the developer, then it should be treated as an agreement to sell and charged under Article 25 of Schedule-I of the Act.

Recitals of instruments in five cases titled as “Development agreement” indicated that the owner of five property valued at ₹ 8.73 crore has executed five power of attorneys in favour of developers, which authorise the developers to sell the open land/plots. The instruments were classifiable as agreement to sell and accordingly stamp duty of ₹ 24.70 lakh was leviable under Article 25 of Schedule-I of the Act. Thus, misclassification of

agreement to sell as power of attorney has resulted in short levy of stamp duty of ₹ 15.97 lakh as detailed in **Appendix V**.

In reply the Department stated that detailed reply would be furnished.

We reported the matter to the Government in October 2013; their reply is awaited (January 2014).



### 3.3 Audit observations

*During scrutiny of records of the various registration offices, we noticed several cases of non-compliance of the provisions of the Bombay Stamp Act, 1958 and Government notifications and instructions and other cases as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on our test check of records. The Government/ Department need to improve internal control mechanisms so that such cases can be avoided, detected and corrected.*

### 3.4 Non-observance of provisions of Acts/Rules

*The provisions of the Bombay Stamp Act, 1958 and Government notifications and instructions require:-*

- i. levy of stamp duty on market value of property;*
- ii. levy of stamp duty at prescribed rate; and*
- iii. levy of stamp duty as per the substance and real nature of transaction.*

*We observed that the registering authorities did not observe some of the above provisions at the time of registration of documents in cases as mentioned in paragraphs 3.4.1 to 3.4.8.*

#### 3.4.1 Short levy of stamp duty and registration fee due to misclassification of document

##### Joint Sub-Registrar Haveli XVII Pune.

As per Article 48(d) of Schedule I to the Bombay Stamp Act 1958, Power of Attorney when authorizing one person to act in more than one transaction or generally stamp duty of ₹ 100 is leviable and as per amended provisions of article 48(g) *ibid* effective from 5 June 2008, where a power of attorney is given to promoter or developer by whatever name called, for construction on development, or sale or transfer (in any manner whatsoever) of any immovable property in such case the same duty as is leviable on conveyance under clause (b), (c) or (d) as the case may be of Article 25, on the market value of property at the rates applicable to the area in which the property is situated is leviable. These rates are prescribed in the Annual Statement of Rates (ASR).

During test check of records in February 2010, we observed that a document of Power of Attorney was executed on 6 June 2008 for development of land situated within Municipal Corporation limits of Pimpri Chinchwad wherein the developer was authorized to sell, execute sale deed/ conveyances from the above property to the prospective purchaser/ co-operative society for which the executants had acquired the right of development of land and power of attorney from the land owner in February 1994. Hence, the document was classifiable u/a 48 (g) as amended and stamp duty was leviable at ₹ 9.75 lakh on the market value of ₹ 1.95 crore. In

addition registration fee of ₹ 0.30 lakh was also leviable. However, the Department had misclassified the document u/a 48 (d) and levied stamp duty of ₹ 100 and registration fee of ₹ 100 only. This has resulted in short levy of stamp duty of ₹ 9.75 lakh and Registration fee of ₹ 0.30 lakh.

After we pointed out the case in February 2010, Joint District Registrar and Collector of Stamps, Pune accepted the observation (April 2011) and instructed to the Joint Sub Registrar Haveli-XVII, Pune to recover deficit stamp duty.

The matter was reported to the Government in May 2013; their reply is awaited (January 2014)

### 3.4.2 Short levy of stamp duty and penalty due to application of incorrect rate of stamp duty

#### Collector of Stamps, Borivali

As per provisions of Article 34 and 25 (b) (vi) (a) of Schedule- I to Bombay Stamp Act, 1958, on the instrument of gift (not being a settlement or will or transfer), if relating to immovable property situated within the limits of Municipal Corporation of Greater Bombay, the stamp duty @ 10 per cent is leviable on the market value of the property which is the subject matter of the gift provided that, if the property is gifted to a family member being the husband, wife, brother or sister of the donor or any lineal ascendant or descendant of the donor, then the amount of duty chargeable shall be @ two per cent on the market value. Further as per section 34 (a) (ii) of BS Act 1958 a penalty at the rate of two per cent of the deficit portion of the stamp duty for every month from the date of execution of such instrument is leviable provided that in no case the amount of penalty shall exceed double the deficient portion of stamp duty.

During test check of adjudicated cases in December 2010, we noticed that a Memorandum of understanding - cum gift deed was executed on 22 October 1996 between the religious entity as donor and two individuals as donee on stamp paper of ₹ 75 which was notarised. The donor gifted to donee three rooms having built up area of 2,782.80 square feet (sq. ft.)

situated within Municipal Corporation limits of Mumbai Suburban District. The Department adjudicated the document in April 2009 and considered incorrectly the relation of donor and donee as family member and allowed to levy stamp duty at concessional rate of two per cent amounting to ₹ 0.89 lakh on the market value of ₹ 44.52 lakh with penalty of ₹ 1.78 lakh. We noticed that the donor and donee were not family members therefore stamp duty was leviable @ 10 per cent amounting to ₹ 4.45 lakh. Thus, application of incorrect rate of stamp duty resulted in short levy of stamp duty of ₹ 3.56 lakh. Further, penalty @ two per cent per month subject to a maximum of twice the amount of deficit stamp duty amounting to ₹ 7.12 lakh was leviable. Thus, there was total short levy of ₹ 10.69 lakh.

After we pointed out the case in December 2010, the Collector of Stamps, Borivali accepted the observation (February 2011) and stated that the case has been referred to IGR Pune for taking action under section 53-A.

The matter was reported to the Government in May 2013; their reply is awaited (January 2014)

### 3.4.3 Short levy of stamp duty due to incorrect determination of market value of property

#### Joint Sub Registrar-VI, Nagpur

As per article 25 (b) (v) of the Bombay Stamp Act, 1958, stamp duty @ 5 per cent shall be levied on the true market value of the property which is the subject matter of conveyance or the consideration stated in the instrument whichever is higher. These rates are prescribed in ASR. Cess at the rate of one half per cent is leviable on the true market value of the property situated within the limits of Nagpur Municipal Corporation.

During test check of records in November 2011, we noticed that two Sale Deeds were executed on 31 December 2009 for sale of 6,170.24 square meter (sqm) of land situated within Nagpur Municipal Corporation limits. The Department had worked out market value of the property at ₹ 1.22 crore, however since the sale consideration of ₹ 2.09 crore was higher, levied stamp duty of ₹ 11.47 lakh on sale

consideration.

We noticed that correct market value of land by applying the rate applicable to the zone in which properties are situated worked out to ₹ 4 crore on which stamp duty of ₹ 22.01 lakh was leviable. Thus, incorrect determination of market value of property has resulted in short levy of stamp duty of ₹ 10.54 lakh.

After we pointed out these cases in November 2011, the Joint District Registrar and Collector of Stamps, Nagpur, accepted the observation (April 2012) and instructed the Joint Sub Registrar-VI, Nagpur to take action under section 32-A of BS Act 1958 for recovery.

The matter was reported to the Government in May 2013; their reply is awaited (January 2014).

### 3.4.4 Short levy of stamp duty due to undervaluation of property

During the test check (between June 2010 and December 2011) of documents registered (between June 2008 and September 2010), we noticed that under valuation of property by the Department resulted in short levy of stamp duty of ₹ 106.64 lakh. The details are mentioned in the

following table:

The market value of the property is worked out by applying the rates of the ASR applicable to the area in which property is situated.

Sl. no	Name of the Sub-Registrar	Document No. and Date of Execution/Registration	Market Value as per ASR (₹ in crore)	SD Leviable (₹ in lakh)	SD Levied (₹ in lakh)	Short levy of SD (₹ in lakh)
1.	SR-I Borivali	179 24-12-2008	22.54	112.69	100.55	12.14
2.	JSR-IV Thane	5367 21-06-2008	2.76	13.79	5.01	8.78
3.	JSR-IV Thane	5518 26-06-2008	3.97	19.85	13.90	5.95
4	JSR-IV Thane	9505 07-11-2008	4.38	21.91	8.12	13.79
5.	JSR-IV Thane	5057 11-06-2008	4.22	21.07	14.76	6.31
6	JSR-IV Thane	9727 14-11-2008	7.33	36.64	11.65	24.99
7	JSR-IV Thane	6577 02-08-2008	15.08	75.41	52.79	22.62
8	JSR-IV Nagpur	2651 13-05-2008	1.52	8.36	1.74	6.62
9	JSR-V Thane	10178 23-09-2010	7.68	15.36	9.92	5.44
<b>Total</b>			<b>69.48</b>	<b>325.08</b>	<b>218.44</b>	<b>106.64</b>

After we pointed these cases, the Department accepted (between January 2012 and January 2013) the omission and agreed to recover the deficit stamp duty.

The matter was reported to Government in May–June 2013; their reply was awaited (January 2014). However, JSR-IV Nagpur intimated that full recovery has been made in respect of case at serial number 8 and JSR-V Thane intimated that recovery of ₹ 5.32 lakh has been made in respect of case at serial number 9.

### 3.4.5 Short levy of stamp duty due to incorrect computation of market value

As per article 36 (iii) & (iv) of schedule-I of Bombay Stamp Act, 1958, where such lease period purports to be (a) for a period exceeding ten years but not exceeding twenty-nine years with a renewal clause contingent or otherwise and (b) for a period exceeding twenty-nine years or in perpetuity, or does not purport for any definite period or for lease for period exceeding twenty-nine years with a renewal clause contingent or otherwise, stamp duty is leviable as conveyance under article 25 (b) (v) *ibid* on 50 per cent / 90 per cent respectively of market value worked out by applying the rates of ready reckoner applicable to the area in which the property is situated.

During the test check of records in November-December 2011, we found that incorrect computation of market value of property for levy of stamp duty resulted in short levy of ₹ 11.93 lakh. The details of which are mentioned in the following table.

Sl. No.	Name of the office	Document Number and date of execution	S.D. leviable (₹ in lakh)	S.D. levied (₹ in lakh)	Short levy (₹ in lakh)	Irregularity in brief.
1	JSR (City) 2 Nagpur.	1522 13/04/2010	9.47	3.01	6.46	On an instrument of lease of commercial building even though separate rates for valuation of commercial building were given in ASR, market value was incorrectly computed taking in to account rate of open land and construction cost.
2	JSR-VI, Nagpur	2168 31/03/2010	6.61	2.30	4.31	On an instrument of lease of building for a period of 10 years renewable for further two period of 10 years, stamp duty was levied on 25 per cent instead of 90 per cent of market value of the property.
3	JSR-VI, Nagpur	4726 03/08/2010	2.32	1.16	1.16	On an instrument of lease of building for the first block of 10 years period with renewable clause of subsequent block of five year, stamp duty was levied on 25 per cent instead of 50 per cent of market value of the property.
<b>Total</b>			<b>18.40</b>	<b>6.47</b>	<b>11.93</b>	

After we pointed these cases in November 2011 the Department accepted (between April and August 2012) the omission and agreed to recover the deficit stamp duty.

The matter was reported to Government in May 2013; their reply is awaited. However, SR intimated that full recovery has been made in cases at serial number 1 and 2 and a note of encumbrance has been made in the property card in respect of case at serial number 3. The details of recovery is awaited (January 2014).

### **3.4.6 Short levy of stamp duty and penalty due to incorrect grant of benefit of tenancy for determination of market value**

#### **Collector of Stamps, Mumbai**

As per instruction 2.2 of ASR, benefit of tenanted property is available only if tenants gives at least two of the eight prescribed documents in support of tenancy for last five years and should from part of instrument. Further the area occupied by tenant is required to be stated in detail in the recital of the instrument. As per section 34 (a) (ii) of BS Act 1958, a penalty at the rate of two *per cent* of the deficit portion of the stamp duty for every month from the date of execution of such instrument is leviable provided that in no case the amount of penalty shall exceed double the amount deficient portion of stamp duty.

During test check of records in April 2012, we noticed that an instrument of development agreement executed on 5 June 2008 for inbuilt area of 4,227.31 sqm situated in Tardeo division within Mumbai Municipal Corporation limits was adjudicated by Collector of Stamps, Mumbai in February 2011.

Though the property was stated to be tenanted, the area occupied by tenants,

rent recovered, proof of tenancy and area to be allotted to these tenants in new building were not mentioned in the body of the instrument. The Department had worked out the market value of property at ₹ 1.09 crore incorrectly by giving the benefit of tenancy and levied stamp duty of ₹ 5.44 lakh and penalty of ₹ 3.48 lakh. We noticed that the correct market value of property works out to ₹ 28.62 crore at the rate of 67,700 per sqm on which stamp duty of ₹ 1.43 crore and penalty of ₹ 1.59 crore for the period from June 2008 to March 2013 was leviable. This has resulted in short levy of stamp duty of ₹ 1.38 crore and penalty of ₹ 1.56 crore (upto March 2013)

After we pointed out the case in April 2012, the Collector of Stamps, Mumbai, accepted the observation (September 2012) for deficit stamp duty of ₹ 1.38 crore and penalty recoverable of ₹ 0.85 crore (June 2008 to January 2011) and stated that demand notice to the party for recovery for the amounts pointed out by audit will be issued.

The matter was reported to the Government in June 2013; their reply is awaited (January 2014).



### 3.4.7 Short levy of stamp duty due to non-consideration of market value of property on the date of execution of instrument

#### Joint Sub Registrar VII, Haveli, Pune.

As per Section 2 (na) of Bombay Stamp Act 1958, 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. Further as per Article-25 (b) (vi) of Schedule -I of Bombay Stamp Act 1958, stamp duty at the rate of five *per cent* is leviable on the true market value of property which is the subject matter of conveyance or the consideration stated in the instrument whichever is higher.

**3.4.7.1** During test check of records in February 2010, we noticed that a deed was executed on 23 December 2008 for conveyance of a land admeasuring 5,650 sqm situated at Baner, within the Pune Municipal Corporation limits between vendor and purchaser for a consideration of ₹ 33.90 lakh. The Department worked out the market value of property at ₹ 43.90 lakh and levied stamp duty of ₹ 2.20 lakh on

it. The details of working of market value were not available on record.

We noticed that the correct market value of the property as per the ASR for the year 2008 works out to ₹ 2.61 crore on which stamp duty of ₹ 13.06 lakh at the rate of five per cent was leviable. This has resulted in short levy of stamp duty of ₹ 10.86 lakh.

After we pointed out the case in February 2010, the Joint District Registrar and Collector of Stamps, Pune accepted the observation (January 2013) and instructed Joint Sub Registrar- VII, Haveli, Pune to take action under section 32-A of BS Act 1958 for recovery.

**3.4.7.2** During test check of records in February 2010, we noticed that a deed was executed on 21 August 2008 for conveyance of a land admeasuring 15,290.97 sqm situated at Ghorpadi, within the Pune Municipal Corporation limits between vendor and purchaser for a consideration of ₹ 3.50 crore. The Department worked out the market value of property at ₹ 3.31 crore and levied stamp duty of ₹ 17.50 lakh on consideration amount being higher than market value.

We noticed that the correct market value of the property as per the ASR for the year 2008 works out to ₹ 5.09 crore on which stamp duty of ₹ 25.44 lakh at the rate of five *per cent* was leviable. This has resulted in short levy of stamp duty of ₹ 7.94 lakh.

After we pointed out the case in February 2010, the Joint District Registrar and Collector of Stamps, Pune accepted the observation (January 2013) and instructed Joint Sub Registrar- VII, Haveli, Pune to take action for recovery.

The matter was reported to the Government in June 2013; their reply is awaited (January 2014).

### 3.4.8 Short levy of stamp duty due to incorrect determination of market value in respect of several distinct matters involved in an instrument

#### Joint Sub Registrar (City)-II, Mumbai.

As per Section 5 of Bombay Stamp Act 1958, any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of duties with which separate instruments, each comprising or relating to one of such matter would be chargeable. As per Section 34 (a) (ii) *ibid*, penalty at the rate of two *per cent* per month is also leviable on the amount of the deficit stamp duty subject to maximum of two times of deficit portion of stamp duty.

During scrutiny of registered documents in April 2008, we noticed that a memorandum of understanding and consent terms were executed in March 2005 between the Bombay Cricket Association and Garware Club House, Mumbai for four distinct matters such as (i) Sub-Lease of an area of 58,398.364 sq. ft. for

indefinite period (ii) Transfer of rights in 6000 seats for the members of Garware Club House by way of Permanent reservation at payment of ₹ 1.20 crore; (iii) Construction of FSI 1,00,000 sq. ft. and (iv) Utilization of lawn. The Collector of Stamps, Mumbai worked out the valuation of property as ₹ 5.53 crore and levied stamp duty of ₹ 27.64 lakh at the rate of five *per cent*.

However, in this case, several distinct matters were involved, hence, for the purpose of levy of stamp duty, the valuation of immovable property works out to ₹ 12.24 crore on which stamp duty at the rate of five *per cent* amounting to ₹ 61.20 lakh was leviable. The valuation of moveable property works out to ₹ 1.20 crore on which stamp duty @ three *per cent* amounting to ₹ 3.60 lakh was leviable. Thus, total stamp duty of ₹ 64.80 lakh was leviable. In addition, penalty of ₹ 17.83 lakh is also leviable. As against this, stamp duty of ₹ 27.64 lakh and penalty of ₹ 4.42 lakh was levied and recovered. This has resulted in short levy of SD of ₹ 37.15 lakh and penalty of ₹ 13.41 lakh.

After we pointed out the case in April 2008, Inspector General of Registration and Chief Controlling Revenue Authority (M.S.), Pune has accepted the observation (April 2013). Further, the matter was reported to the Government in June 2013; their reply is awaited (January 2014). However IGR Pune has intimated that full recovery has been made.