

## CHAPTER-III STAMP DUTY AND REGISTRATION FEES

### 3.1 Tax Administration

The overall control on the levy and collection of stamp duty and registration fees rests with the Revenue Department. The Inspector General of Registration (IGR) and Superintendent of Stamps, Gandhinagar is the head of the Department. The IGR is assisted by the Sub-Registrar (at the district and *taluka* level) whereas the Superintendent of Stamps is assisted by the Deputy Collector (Stamp Duty Valuation Officer) [DC (SDVO)] at the district level.

### 3.2 Results of Audit

Our test check of records in the offices of Deputy Collectors (Stamp Duty Valuation Organisation) and Sub-Registrars in the State during the year 2014-15 revealed short realisation of stamp duty and registration fees and other irregularities involving ₹ 29.59 crore in 222 cases, which fall under the categories as mentioned in **Table 3.2**:

**Table 3.2**

Sl. No.	Category	No. of cases	Amount (₹ in crore)
1	Misclassification of documents	44	11.23
2	Undervaluation of property	61	3.19
3	Short levy of stamp duty and registration fees	45	5.72
4	Other irregularities	72	9.45
	<b>Total</b>	<b>222</b>	<b>29.59</b>

During the course of the year, the Department accepted and recovered under-assessment and other irregularities of ₹ 55 lakh in 38 cases.

A few illustrative audit observations involving ₹ 12.80 crore are mentioned in the succeeding paragraphs.

### 3.3 Short levy of stamp duty and registration fees due to misclassification of documents

Under Section 3 of the Gujarat Stamp (GS) Act, 1958, every instrument mentioned in Schedule-I shall be chargeable with duty at the prescribed rates. Further, as defined under Section 2(g) of the Act “conveyance” includes every instrument by which property, whether movable or immovable, or any estate or interest in any property, is transferred to, or vested in, any other person.

During test check of the documents registered with three Sub Registrar Offices<sup>1</sup> during the year 2010 to 2013, we noticed<sup>2</sup> that three documents were classified on the basis of their titles and the stamp duty and registration fees were levied accordingly. Scrutiny of the recitals of these documents revealed that the documents were misclassified. This resulted in short levy of stamp duty and registration fees of ₹ 7.63 crore as mentioned in **Table 3.3**:

**Table 3.3**

(₹ in crore)

Sl. No.	Name of office	Number of documents Consideration / Market Value	Stamp duty and registration fees leviable	Stamp duty and registration fees levied	Short levy of stamp duty and registration fees
1	Sub Registrar-II, Rajkot	<u>1</u> 76.40	4.51	Negligible	4.51
<p><b>Nature of Observation:-</b> Stamp duty leviable on partnership deed is one <i>per cent</i> subject to maximum of ₹ 10,000 while that leviable on conveyance deeds is 4.9 <i>per cent</i>. The land owner had brought his land admeasuring 46,301 sq. mtr. into the partnership firm as capital contribution by way of execution of registered partnership deed. Scrutiny of recitals of the partnership deed revealed that by way of execution of partnership deed, the ownership of land was conveyed from the individual partner to the partnership firm. Since, the individual partner had agreed to transfer the ownership of his land in the name of partnership firm. The Sub Registrar misclassified the document as partnership deed under Article 44 instead of conveyance deed under Section 2(g) of Schedule-1 to the GS Act. This resulted in short levy of stamp duty and registration fees of ₹ 4.51 crore.</p>					
2	Sub Registrar-III, Vadodara	<u>1</u> 60.78	2.98	Negligible	2.98
<p><b>Nature of Observation:-</b>Four co-owners of NA land had brought their land into a partnership firm as capital contribution. It was also mentioned in the document that after obtaining NA permission, the name of the firm would be entered in Revenue Records as owner of the said land. As land was transferred by land owners to partnership firm, the document was required to be classified as conveyance and duty was leviable accordingly. The Sub Registrar misclassified the document as partnership deed under Article 44 instead of conveyance deed under Section 2(g) of Schedule-1 to the GS Act. This resulted in short levy of stamp duty of ₹ 2.98 crore.</p>					
3	Sub Registrar, Waghodia	<u>1</u> 2.48	0.14	Negligible	0.14
<p><b>Nature of Observation:-</b>Land admeasuring 1,886.34 sq. mtr. was in the name of four</p>					

<sup>1</sup> SR-Rajkot-II, Vadodara-III and Waghodia

<sup>2</sup> Between November 2013 and October 2014

partners of a partnership firm M/s Crown Heat Treaters. Thereafter, the said partnership firm was dissolved on 31.3.2007 with the understanding that all the assets of the partnership firm shall vest with one of the partners as proprietor in the name of M/s Crown Heat Treaters. Thus, the said leasehold property of the partnership firm was transferred to proprietorship in name of one proprietor. The Sub Registrar misclassified the document as deed of rectification instead of conveyance. This resulted in short levy of stamp duty and registration fees of ₹ 14 lakh.

	<b>Total</b>				<b>7.63</b>
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We pointed out these cases to Department in March 2015. The Department stated (August 2015) that in one case, demand notice had been issued and in other two cases, proceedings were in progress for revising the demands. We are awaiting their final replies (October 2015).

We pointed out these cases to Government in May 2015. We are awaiting their replies (October 2015).

### 3.4 Non/ short levy of stamp duty and registration fees

#### 3.4.1 Short levy of stamp duty due to non registration of deeds

As per Section 2(g) of the GS Act, 1958, conveyance includes conveyance on sale or every instrument, by which property, movable or immovable, or any estate or interest in any property, is transferred to, or vested in, any other person, *inter vivos*. A conveyance deed is chargeable with stamp duty at the rate of 4.9 *per cent* of the market value of the property or the consideration for such conveyance, whichever is greater. As per Explanation I below Article 20 (d), an agreement to sale an immovable property or an irrevocable power of attorney shall, in case of transfer of possession of property before, at the time of or after the execution of such agreement or power of attorney, be deemed to be a conveyance and the stamp duty thereon shall be chargeable accordingly.

During test check of the records of two Sub Registrar offices<sup>3</sup> for the year 2012, we noticed<sup>4</sup> from the recitals of 12 documents that there was mention to the effect that unregistered deeds were executed which required levy of stamp duty and registration fees thereon. However, the SR failed to take cognizance of the recitals of the document and did not levy stamp duty and registration fees chargeable on each such transactions. This resulted in non/ short levy of stamp duty and registration fees of ₹ 2.62 crore as mentioned in **Table 3.4.1**:

<sup>3</sup> SR-Vadodara-I and III

<sup>4</sup> between December 2013 and April 2014

**Table 3.4.1**

(₹ in lakh)

Sl. No.	Name of office	Number of documents/ Period of registration of documents	Stamp duty and registration fees leviable	Stamp duty and registration fees levied	Non/ short levy of stamp duty and registration fees
1	SR-I,Vadodara SR-III, Vadodara	<u>11</u> January, February, July and October 2012	225.69	-	225.69
<p><b>Nature of observation:-</b>The recital of eight sale deed documents revealed that the property was conveyed from the land owner to developer without executing any conveyance deed mentioned as follows:-</p> <p>1. Agreements to sale/ development agreements were executed between land owners and the developers (also called confirming party). 2. The land owners had received the entire amount of consideration in advance. 3. The property was being sold by the land owners and developers. At the time of sale, the developers were stated having the possession of the land. 4. As the developers had paid the entire land cost to the land owner, they shall be entitled to use and develop the FSI.</p> <p>The “agreements to sale”/ “development agreements” were not found on record in any of the deeds. So it could not be ascertained whether these agreements were registered properly or not. However, since in all these cases confirming party (developer) had got the deed signed by the land owner this indicates that the property was not registered at that time in favour of the developer/ confirming party resulting in short levy of SD and RF.</p>					
2	SR-III, Vadodara	<u>1</u> August 2012	36.64	Negligible	36.64
<p>As per Article 45 (f) of the GS Act, in case of Power of Attorney (PoA) given for consideration and authorizing the attorney to sale any immovable property, stamp duty is leviable as in the case of a conveyance under Article 20.</p> <p><b>Nature of observation:-</b>Recital of the document revealed that -1. Agreement to sale had been executed between land owners and the confirming party. 2. The land owner had already received the entire amount of consideration. 3. The property was being sold by the land owner and confirming party. 4. At the time of sale, the confirming party was stated having the possession of the land.</p> <p>The agreement to sale was not found on record. So it could not be ascertained whether it was registered properly or not. However, since the confirming party has got the deed signed by the land owner this indicates that the property was not registered at that time in favour of the confirming party resulting in short levy of SD and RF.</p>					

### 3.4.2 Short levy of Stamp Duty on documents comprising several distinct matters

Under Section 5 of the Gujarat Stamp Act, 1958, any instrument comprising of several distinct matters or distinct transactions shall be chargeable with aggregate amount of duties with which separate instruments would be chargeable under the Act.

During test check of the records of Sub Registrar office, Gandhinagar for the year 2012, we noticed<sup>5</sup> in recital of one document that -1. Development

<sup>5</sup> In February 2014

agreement had been executed between land owner (i.e. confirming party) and the seller (i.e. developer). 2. The seller (i.e. developer) had received the entire amount of consideration and had confirmed the receipt of the same. 3. The property was being sold by developer in the capacity of sellers. 4. At the time of sale, the developer was stated having the possession of the land.

Thus, the document contained more than one distinct matter or transaction which attracts levy of aggregate stamp duty and registration fees. However, the SR failed to take cognizance of the recitals of the document and did not levy the aggregate stamp duty and registration fees chargeable on each such distinct matter. This resulted in non/ short levy of stamp duty and registration fees of ₹ 22.66 lakh.

We pointed out these cases to Department in March 2015. The Department stated that proceedings were in progress. We are awaiting their final replies (October 2015).

We pointed out these cases to Government in May 2015. We are awaiting their replies (October 2015).

### 3.5 Short levy of stamp duty and registration fees due to undervaluation of properties

Section 32 A of the Gujarat Stamp Act, 1958 provides that if the officer registering the instrument believes that the consideration set forth in the document presented for registration is not as per the market value of the property, he shall refer the same to the Dy. Collector (Stamp Duty Valuation Organisation) for determination of the market value of the property. The market value of the property is to be determined as per the Gujarat Stamp (Determination of Market Value of the Property) Rules, 1984 and the orders issued thereunder.

During test check of the documents registered with the seven Sub Registrar offices<sup>6</sup> during the year 2012 and 2013, we noticed<sup>7</sup> that the market value of the properties was determined incorrectly in 35 documents, which resulted in short levy of stamp duty and registration fees of ₹ 2.32 crore as mentioned in **Table 3.5:**

**Table 3.5**

(₹ in lakh)			
Sl. No.	Name of office	Number of documents Period of Registration of documents	Short levy of stamp duty and registration fees
1	Sub Registrar-III, Surat	3 June and October 2012	74.38
<b>Nature of Observation:-</b> We observed in three conveyance deeds that previously new tenure agricultural lands were converted to old tenure for sale for non-agricultural purpose by orders of the Collector. However, while determining the market value of properties for levy of stamp duty, the Sub Registrar had adopted <i>jantri</i> rates of agricultural lands instead			

<sup>6</sup> SR-Anand, Bharuch, Gandhidham, Gandhinagar, Rajkot-II, Surat-III and Vadodara-III

<sup>7</sup> between November 2013 and October 2014

of <i>jantri</i> rates of non-agricultural lands. The stamp duty levied was ₹ 94.16 lakh instead of ₹ 168.54 lakh. This resulted in short levy of stamp duty of ₹ 74.38 lakh.			
2	Sub Registrar-II, Rajkot	<u>22</u> February and September 2013	43.66
<b>Nature of Observation:-</b> We observed in 22 conveyance deeds that the Sub Registrar had adopted <i>jantri</i> rates of open plots of value zone 13/0/6/A where <i>jantri</i> rate was ₹ 4,000 per sq. mtr. But, conveyed properties fall under various final plot numbers of Draft Town Planning Scheme Number-17 where <i>jantri</i> rate was ₹ 8,500 per sq. mtr. The Sub Registrar had adopted incorrect <i>jantri</i> rates while calculating the market value of properties. The stamp duty levied was ₹ 38.91 lakh instead of ₹ 82.57 lakh. This resulted in short levy of stamp duty ₹ 43.66 lakh.			
3	Sub Registrar, Anand	<u>2</u> June and October 2012	36.83
<b>Nature of Observation:-</b> We observed in two conveyance deeds that the Sub Registrar had adopted <i>jantri</i> rate of ₹ 2,000 per sq. mtr. for levy of stamp duty in case of properties falling under survey number 2619. In <i>jantri</i> , survey number 2619 falls under two value zones i.e. R/0/1 and R/0/2 where <i>jantri</i> rates were ₹ 2,000 per sq. mtr. and ₹ 10,250 per sq. mtr. respectively. The options available for the Sub Registrar were either to adopt higher <i>jantri</i> rate or to refer the document to DC (SDVO) for deciding the correct market value. The stamp duty levied was ₹ 9.91 lakh instead of ₹ 46.74 lakh. Non observance of provisions resulted in short levy of stamp duty of ₹ 36.83 lakh.			
4	Sub Registrar, Gandhinagar	<u>4</u> June and October 2012	29.81
<b>Nature of Observation:-</b> We observed in four conveyance / gift deeds that new tenure agricultural lands were converted to old tenure for sale or gift for non-agricultural purposes by orders of the Collector. However, while determining the market value for levy of stamp duty, the Sub Registrar had considered either consideration amount or market value at agricultural rates as per <i>jantri</i> instead of developed/open land. The stamp duty and registration fees levied was ₹ 25.51 lakh instead of ₹ 55.32 lakh. This resulted in short levy of stamp duty and registration fees of ₹ 29.81 lakh.			
5	Sub Registrar-III, Vadodara	<u>1</u> February 2012	15.38
<b>Nature of Observation:-</b> We observed in case of a conveyance deed that the Sub Registrar had adopted <i>jantri</i> rate of revenue survey number, but the land falls under value zone of 2/0/3/B. Thus, Sub Registrar adopted incorrect <i>jantri</i> rate for calculation of market value of property for levy of stamp duty. The stamp duty levied was ₹ 24.77 lakh instead of ₹ 40.15 lakh. This resulted in short levy of stamp duty of ₹ 15.38 lakh.			
6	Sub Registrar-III, Vadodara	<u>1</u> April 2012	12.99
<b>Nature of Observation:-</b> We observed in case of a conveyance deed that the purchaser had paid premium price on behalf of seller into Government account for conversion of land into old tenure for non agricultural purpose by order of the Collector. The Sub Registrar had adopted <i>jantri</i> of agricultural land instead of non- agricultural land for calculating the market value of property. The stamp duty levied was ₹ 11.14 lakh instead of ₹ 24.13 lakh. This resulted in short levy of stamp duty of ₹ 12.99 lakh.			
7	Sub Registrar, Bharuch	<u>1</u> June 2012	11.32
<b>Nature of Observation:</b> We observed in case of a conveyance deed that the purchaser had paid premium price on behalf of seller into Government account for conversation of land into old tenure for non agricultural purpose by order of the Collector. While calculating the consideration amount for levy of registration fees, the Sub Registrar had not taken into consideration the premium price paid by the purchaser which resulted in short levy of			

<p>registration fees. Further, the conveyed land was converted into old tenure for non-agricultural purpose, but the Sub Registrar had adopted <i>jantri</i> rate of agricultural land instead of <i>jantri</i> rate of non-agricultural land for calculating the market value of property for levy of stamp duty. The stamp duty and registration fees levied was ₹ 7.67 lakh instead of ₹ 18.99 lakh. This resulted in short levy of stamp duty and registration fees of ₹ 11.32 lakh.</p>			
8	Sub Registrar, Gandhidham	<u>1</u> February 2012	7.80
<p><b>Nature of Observation:-</b>We observed in case of a conveyance deed that the land was purchased for <i>bonafide</i> industrial use under Section 63AA of the Gujarat Tenancy and Agricultural Lands Act, 1948. The Sub Registrar had adopted <i>jantri</i> rate of agricultural land instead of <i>jantri</i> rate of non-agricultural land for calculation of market value and levy of stamp duty. The stamp duty levied was ₹ 2.95 lakh instead of ₹ 10.75 lakh. This resulted in short levy of stamp duty of ₹ 7.80 lakh.</p>			

We pointed out these cases to Department in March 2015. The Department stated that in one case, document has been adjudicated as properly stamped. In 23 cases, demand notices have been issued. In five cases, orders for recovery of deficit duty have been issued. In one case, ₹ 11.62 lakh has been recovered. We are awaiting their final replies (October 2015).

We pointed out these cases to Government in May 2015. We are awaiting their replies (October 2015).

