

CHAPTER-IV

***STAMP DUTY AND
REGISTRATION FEES***

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4.1 Tax administration

Receipts from stamp duty and registration fee are regulated under the Indian Stamp Act 1899, (IS Act), the Registration Act, 1908 and the rules framed thereunder as applicable in Andhra Pradesh State and are administered at the Government level by the Principal Secretary (Revenue). The Commissioner and Inspector General of Registration and Stamps (CIGR) is the head of the Revenue Department who is empowered with the task of superintendence and administration of registration work in the State. He is assisted by the zone wise Deputy Inspectors General (DIG). The District Registrar (DR) is in charge of the district. He supervises and controls the Sub-Registrars (SR) in the district concerned.

4.2 Internal audit

There is a separate Internal Audit wing in the Department to examine the lapses of the registering officers, if any, in the cases of undervaluation of properties registered which cause loss of revenue to the State exchequer. DIG intimated (December 2015) that internal audit for the year 2014-15 was conducted by drawing monthly audit programmes.

4.3 Results of audit

Test check of records of 87 offices of Registration and Stamps Department conducted during 2014-15 showed non-levy/short realisation of stamp duty and registration fees etc. and other irregularities involving ₹ 9.85 crore in 366 cases, which broadly fall under the following categories:

Table 4.1: Results of audit

| (₹ in crore) | | | |
|--------------|--|--------------|-------------|
| Sl.No. | Category | No. of cases | Amount |
| 1. | Short levy of stamp duty and registration fees due to non-verification of properties | 220 | 6.13 |
| 2. | Short levy of duties due to undervaluation of properties | 64 | 2.21 |
| 3. | Short levy of duties due to misclassification of documents | 33 | 0.66 |
| 4. | Short levy of duties due to adoption of incorrect rates | 26 | 0.63 |
| 5. | Other irregularities | 23 | 0.22 |
| Total | | 366 | 9.85 |

During the year 2014-15, the Department accepted under-assessment and other deficiencies of ₹ 1.10 crore in 59 cases, of which 52 cases involving ₹ 1.08 crore were pointed out during the year 2014-15 and the rest in earlier years. An amount of ₹ 13.48 lakh was realised in 24 cases during the year

2014-15. A few illustrative cases involving ₹ 5.87 crore are mentioned in the succeeding paragraphs.

4.4 Short levy of stamp duty and registration fees due to non-verification of facts

As per Rule 7 of AP Revision of Market Value (MV) Guidelines Rules, different values have been fixed for agricultural lands fit for house sites/residential localities. Further, Rule 4(1)(ii)(a) *ibid* provides for valuation of agricultural land and non-agricultural land for levy of stamp duty. Acreage rate in respect of agricultural land and square yard rate in respect of non-agricultural land have to be adopted for levy of stamp duty.

During test check of records of eight offices of DRs¹⁴¹ and 12 offices of SRs¹⁴², Audit noticed (between July 2014 and February 2015) that in 100 cases involving 77 sale deeds, 11 general powers of attorney (GPA), five gift settlements, four agreements of sale cum GPA (AGPA), one development agreement cum GPA (DGPA), one exchange deed and one release deed executed between May 2011 and March 2014, the registering officers, while registering the documents, adopted the agricultural rate for the land which had already been converted for non-agricultural purposes by revenue authorities. Due to non-verification of facts by registering authorities, the properties were undervalued resulting in short levy of stamp duty and registration fees by ₹ 3.52 crore.

After Audit pointed out these cases, Government contended (December 2015) that no information about conversion of land was being received from the revenue authorities concerned in time. The reply is not tenable as the properties commented upon by Audit had already been converted for non-agricultural purposes through conversion orders issued by revenue authorities and the registering authorities did not verify the facts before registration as provided under Section 27 of the IS Act. Government's reply indicates that non-coordination between the two wings of Revenue Department resulted in short collection of revenue. Action needs to be taken by the registering authorities for collection of deficit duties.

4.5 Short collection of stamp duty and non-registration of sand leases

As per Article 31(b) of Schedule I-A of Indian Stamp Act, 1899 where lease is granted for a fine or premium or for money advanced, stamp duty is chargeable at the rate of five *per cent* on the market value of the property or the amount or the value of such fine or premium or money advanced as set forth in the lease, whichever is higher. Section 17 (1) (d) of the Registration Act, 1908 stipulates that all leases are to be compulsorily registered with effect from 1 April 1999. Rule 9-I (2) of APMCM Rules, 1966 stipulate that a sand

¹⁴¹ Anakapalli, Bhimavaram, Eluru, Kakinada, Kurnool, Machilipatnam, Ongole, Srikakulam.

¹⁴² Adoni, Bheemunipatnam, Buja Buja Nellore, Chandragiri, Kadapa (Rural), Kallur, Kandukur, Kankipadu, Kavali, Nallapadu, Stone Housepet, Vizianagaram.

lease holder shall execute the lease deed with the ADMG concerned on stamp paper as per the provisions of Registration and Stamp Acts.

Audit noticed (November 2014) during test check of sand lease files of two offices¹⁴³ of the Assistant Directors of Mines & Geology (ADMG), that lease holders had executed three lease deeds where stamp duty was paid at lower rates instead of five *per cent* on the bid amount for the period from 2011-12 to 2012-13. The ADMG while accepting the documents, neither checked the correctness of the stamp duty paid nor insisted upon getting the documents registered. Since the documents were not registered, the Department could not check the quantum of stamp duty paid. This resulted in short levy of stamp duty and registration fees amounting to ₹ 1.33 crore.

After Audit pointed out the cases, ADMG, Kurnool replied (March 2015) that the lessees were addressed to pay the deficit stamp duty as pointed out by Audit. ADMG, Nandigama replied (November 2014) that matter would be examined and Audit intimated.

The matter was referred to the Department in April 2015 and to the Government in September 2015. Government replied (December 2015) that Mines and Geology Department had been addressed for taking necessary action.

4.6 Short levy of stamp duty and registration fees on lease deeds

Article 31 of Schedule I-A to the IS Act, prescribes the rates of stamp duty to be levied on leases. As per Explanation to the Article *ibid*, if the lessee undertakes to pay any recurring charge on behalf of the lessor including taxes/fees due to the Government, it shall be taken to be part of the rent and duties levied accordingly.

4.6.1 During scrutiny of records of two offices¹⁴⁴ of DRs, Audit noticed (December 2014 and February 2015) that in four lease deeds (registered between July 2012 and June 2013), specific clauses stipulated that service tax was to be paid by the lessees on behalf of the lessors. The registering authority did not take into account the service tax payable by the lessee on behalf of the lessor for computation of total rent payable resulting in short levy of stamp duty and registration fees of ₹ 20.36 lakh.

After Audit pointed out these cases, Government replied (December 2015) that Department would seek clarification from Central Excise Department for payment of service tax with regard to Audit observations in offices of DR, Guntur and Rajahmundry.

4.6.2 Under Article 31(d) of Schedule I-A to IS Act, where the lessee undertakes to effect improvements in the leased property and agrees to make the same to the lessor at the time of termination of lease, stamp duty is to be levied at five *per cent* on the value of the improvements to be made by the

¹⁴³ Kurnool, Nandigama.

¹⁴⁴ Guntur, Rajahmundry.

lessee as stated in the deed, in addition to the duty chargeable under other clauses of Article 31. Besides stamp duty, registration fee is also to be levied on the leases at 0.5 per cent of average annual rent.

During test check of records of two offices of SRs¹⁴⁵, Audit noticed (July 2014) that in one case¹⁴⁶ where a lease deed was executed (November 2012) for a lease period of four years, the duties amounting to ₹ 4.23 lakh were short levied due to incorrect computation of average annual rent. In another case¹⁴⁷, stamp duty on improvements under Article 31 (d) was not levied resulting in short levy of stamp duty amounting to ₹ 2.45 lakh.

After Audit pointed out these cases, Government accepted (December 2015) the audit observation and issued necessary instructions to the District Registrars to collect the deficit stamp duty.

4.7 Short levy of duties and registration fees due to undervaluation on sale deeds

As per Section 3 read with Article 47-A of Schedule I-A to the IS Act, instruments of sale are chargeable to stamp duty at rates notified¹⁴⁸ from time to time on the amount set forth in the instrument or market value of the property, whichever is higher. In addition, Transfer duty¹⁴⁹ is also to be levied on sale deeds at applicable rates¹⁵⁰ under provisions of various Acts of Local bodies, besides registration fee.

Audit noticed (between July 2014 and March 2015) during scrutiny of records of three DRs¹⁵¹ and four SRs¹⁵², that in 131 sale deeds (registered between April 2011 and March 2014), the registering authorities undervalued the properties for reasons as mentioned in **Annexure I**.

Undervaluation of these properties resulted in short levy of duties and registration fees of ₹ 33.06 lakh.

In response, Government accepted (December 2015) audit observations in all the cases except in respect of offices of SRs Kallur and Yemmiganur and intimated that necessary instructions were issued to collect the deficit stamp duty and fees. Government stated that observations in respect of Kallur and Yemmiganur were not accepted, without furnishing any reasons.

¹⁴⁵ Bheemunipatnam and Dharmavaram.

¹⁴⁶ Bheemunipatnam.

¹⁴⁷ Dharmavaram.

¹⁴⁸ G.O.Ms.No.719 Revenue (Registration-I) Department, dated 30 July 2010.

G.O.Ms.No.162 Revenue (Registration-I) Department, dated 30 March 2013.

¹⁴⁹ G.O.Ms.No.622 & 625 MA & UD (TC.I) Department, dated 27 June 2005.

G.O.Ms.No.150 & 153 MA & UD (TC) Department, dated 6 April 2013.

¹⁵⁰ G.O.Ms.No.226 PR & UD (PTS.I) Department, dated 6 April 2013.

¹⁵¹ Chittoor, SPSR Nellore, Vijayawada.

¹⁵² Ananthapur (Rural), Kallur, Yemmiganur, Pedagantyada.

4.8 Short levy of stamp duty and registration fees on Construction/ Development Agreements and Power of Attorney documents

4.8.1 As per Article 6(B) of Schedule I-A of IS Act read with Government orders¹⁵³, Development Agreements cum General Power of Attorney (DGPAs) are to be charged with stamp duty at one *per cent* on the amount of MV of property as per basic value guidelines or sale consideration shown in document or estimated MV for land and complete construction made or to be made in accordance with the schedule of rates approved by the CIGR, whichever is higher.

Audit noticed (between July 2014 and February 2015) during test check of records of office of DR Anakapalli and three SRs¹⁵⁴ that of six DGPAs (registered between June 2011 and November 2013) for development of land by building multi-storied residential/commercial complexes, in two documents, the registering authority¹⁵⁵ levied stamp duty on the consideration value instead of on the MV for land and complete construction, which was higher than the value declared in the document. In three other documents, the parking area/land meant for roads and open spaces were not considered for valuation by the registering authorities¹⁵⁶. In case of a document registered in Anakapalli, property was undervalued due to adoption of lesser cost of land and structure as against provided in MV guidelines and CIGR's circular instructions¹⁵⁷. Thus, the short levy of duties on DGPAs due to under valuation of property amounted to ₹ 7.12 lakh.

After Audit pointed out these cases, Government accepted the audit observation and replied (December 2015) that necessary instructions were issued to the DRs concerned to collect the deficit stamp duty and registration fee.

4.8.2 Instruments of Power of Attorney (PA) under Article 42(g) of Schedule I-A, which are given in favour of other than family members to sell/construct/develop/transfer immovable property and Construction Agreements (CA), Agreement of sale cum General Power of Attorney (AGPA) covered under Article 6 of Schedule I-A, are liable for stamp duty at rates prescribed on the MV of the property and registration fees¹⁵⁸ at 0.5 *per cent* on MV subject to a minimum of ₹ 1,000 and a maximum of ₹ 20,000.

During scrutiny of records of office of the DR, SPSR Nellore, Audit noticed (March 2015) that in 13 PA documents and three Agreements for construction, registration fee was collected at ₹ 1000 per document instead of at 0.5 *per cent* of market value resulting in short collection of registration fees amounting to

¹⁵³ G.O.Ms.No.1481 Revenue (Registration-I) Department dated 30 November 2007.

¹⁵⁴ Anandapuram, Kavali, Tadipatri.

¹⁵⁵ Tadipatri.

¹⁵⁶ Anandapuram, Kavali.

¹⁵⁷ Procs.No. MV6/12658/2012 dated 2 February 2013.

¹⁵⁸ G.O.Ms.No.463, Revenue (Regn-I) Department, dated 17 August 2013.

₹ 1.69 lakh. In two other cases¹⁵⁹, stamp duty of ₹ 1.48 lakh was short levied on Power of Attorney/ AGPA documents due to non-adoption of higher value recited in the previous transactions of same properties.

After Audit pointed out these cases, Government accepted the audit observation and replied (December 2015) that necessary instructions were issued to the DRs concerned to collect the deficit stamp duty and registration fee.

4.9 Short levy of duties due to misclassification of documents

4.9.1 As per Article 16 of Schedule I-A to the IS Act, on sale of any property through public auction by a civil court/revenue court/collector or other revenue officer in respect of which a certificate of sale is issued to the purchasers, the stamp duty as applicable to a conveyance deed under Article 20 is to be levied. The Government in its Memo¹⁶⁰ dated 22 June 2012, clarified that sale deeds executed by Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) will be governed by Article 47-A of Schedule I-A of IS Act and not Article 16 of the said schedule. In all other cases of public auction, the transactions should be treated as sale as defined under Section 54 of the Transfer of Property Act, 1882 and duties levied as per Article 47-A of Schedule I-A to the IS Act.

Audit noticed (October 2014 and January 2015) during scrutiny of records of two DRs¹⁶¹, in two documents registered in June 2011 and July 2013, that the registering authorities misclassified the sale deeds executed under the SARFAESI Act by Bank and Asset Reconstruction Company Limited as certificates of sale resulting in short levy of duties amounting to ₹ 30.61 lakh.

4.9.2 As per Article 41 C (a) of Schedule I-A to IS Act, where the property belonging to one or more partners right from the beginning of the partnership is distributed or allotted or given to another partner or partners, at the time of dissolution of partnership, stamp duty is chargeable at five *per cent* on the MV of the property so distributed or allotted or given to the partner or partners under the instrument of dissolution.

Audit noticed (December 2014) during the scrutiny of records of DR, Narasaraopet that in one document styled as release deed, one of the two partners released 50 *per cent* share of the property in favour of the second partner. But the property now released was purchased by them jointly before commencement of the partnership firm and later, a poultry firm established in the said land, after commencement of the partnership. The registering authority treated the document as release deed and levied duties amounting to ₹ 1.50 lakh. As the property was purchased by the members jointly, the instrument has to be treated as dissolution of partnership under Article 41 C(a) of Schedule I-A to IS Act and stamp duty has to be levied at five *per cent* of market value on the half share of the property amounting to ₹ 50 lakh released

¹⁵⁹ Ananthapur, Nallapadu.

¹⁶⁰ Memo No. 3358/Registration-I/A2/2012 dated 22 June 2012.

¹⁶¹ Adoni, Eluru.

to the other member. Thus, misclassification of dissolution of partnership as instrument of release resulted in short levy of duties amounting to ₹ 1.25 lakh.

After Audit pointed out these cases, Government accepted (December 2015) audit observations and stated that instructions were issued to DRs for collection of deficit duty.