

CHAPTER III

STAMP DUTY AND REGISTRATION FEE

3.1 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 Tamil Nadu and are administered at the Government level by the Principal Secretary (Commercial Taxes and Registration Department). The Inspector General of Registration (IGR) is the head of the Registration Department, who is responsible for superintendence and administration of registration work. The IGR is assisted by three Additional Inspectors General. There are nine registration zones in the State, each headed by a Deputy Inspector General of Registration. The State is divided into 50 registration districts for administrative purpose. There are 578 Sub Registrar offices in the State for registration of documents and other purposes like registering marriages and for giving extract from the birth and death registers relating to village panchayats that are preserved by them.

3.2 Results of audit

Test check of the records of offices of the Registration Department in 2015-16 showed non / short levy of stamp duty and registration fee, etc. and other irregularities amounting to ₹ 98.57 crore in 695 cases, which fall under the categories given in Table 3.1.

Table 3.1

Sl. No.	Categories	Number of cases	(₹ in crore)
			Amount
1	Undervaluation of instruments	128	10.72
2	Misclassification of instruments	295	20.28
3	Incorrect grant of exemption	41	37.66
4	Excess / Incorrect allocation of Transfer Duty Surcharge	66	5.76
5	Others	165	24.15
	Total	695	98.57

The Department accepted under-assessments and other deficiencies amounting to ₹ 5.76 crore in 97 cases, out of which, ₹ 2.82 crore involved in 13 cases was pointed out during 2015-16 and the rest during earlier years. Out of the above, an amount of ₹ 4.76 crore had been collected.

Few illustrative cases involving ₹ 43.16 crore are discussed in the following paragraphs.

3.3 Audit Observations

3.3.1 Non-levy of stamp duty and short levy of registration fee in respect of amalgamation

As per Article 23 of Schedule I to the Indian Stamp Act, 1899 (IS Act), in the case of conveyance of immovable property, stamp duty is to be levied at the rate of seven *per cent* including surcharge on the market value of the property. In addition, under the Registration Act, 1908, registration fee is leviable at the rate of one *per cent* on the value on which stamp duty is payable.

During test check (October 2014) of documents in Sub-Registry (SR), Periamet, we noticed that an order of Honourable High Court of Madras sanctioning a Scheme of Arrangement was registered in April 2013. The Scheme of Arrangement involved demerger of Transferee Company into four resulting companies and amalgamation of another Company (Transferor Company) with the Transferee Company. The Scheme, *inter alia*, involved transfer of 6,860 square metres (73,840.42 sqft) of land and building of Transferor Company to one of the resulting companies. The market value of land, at the guideline rate of ₹ 10,000 per sqft worked out to ₹ 73.84 crore. Stamp duty and registration fee leviable on the value of land transferred worked out to ₹ 5.91 crore (excluding the value of building, which was to be determined by the Department). The Registering Officer (RO), however, collected registration fee of ₹ 44.19 lakh on the value of shares allotted. Thus, the failure of the RO to treat the transfer of land involved in the scheme of amalgamation as conveyance resulted in non-levy of stamp duty and short levy of registration fee aggregating ₹ 5.47 crore.

The matter was referred to the Government in March 2015. Government accepted (May 2016) the audit observation and stated that the scheme of amalgamation can be treated as conveyance. The Government, further, stated that action had been initiated to recover the differential stamp duty and registration fee. Further report regarding recovery was awaited (February 2017).

3.3.2 Short collection of stamp duty and registration fee in respect of mortgage deed

As per Article 40 (b) of Schedule I to the IS Act, in the case of mortgage deed, when possession is not given, stamp duty is to be levied at the rate of one *per cent* of the mortgage value subject to a maximum of ₹ 40,000. As per Table of Fees prepared under Section 78 of Registration Act, 1908, registration fee is to be levied at the rate of one *per cent* subject to a maximum of ₹ 10,000. As per

Section 5 of the IS Act, instruments comprising or relating to several distinct matters shall be chargeable with aggregate amount of duties with which separate instruments, each comprising or relating to one of such matters would be chargeable.

During test check (November 2015) of documents in SR, Tiruporur, we noticed that 22 banks had lent ₹ 3,207.48 crore to a Company. The Company had mortgaged several properties in favour of a trustee company, which was formed for securing the interests of the 22 banks. The instrument of mortgage was executed in December 2014 and was registered in March 2015.

We noticed that the RO collected stamp duty and registration fee of ₹ 0.50 lakh in respect of the instrument. The RO, should have collected ₹ 11 lakh by treating the instrument of mortgage as comprising of 22 transactions in accordance with Section 5 of the IS Act. The failure of the RO to consider this mortgage deed as relating to distinct matters under Section 5 of the Act resulted in short collection of stamp duty and registration fee of ₹ 10.50 lakh.

The matter was referred to the Government in March 2016. Government accepted the audit observation (February 2017) and stated that action had been initiated for recovery of deficit stamp duty and registration fee. Further report regarding recovery was awaited (February 2017).

3.3.3 Short collection of stamp duty and registration fee in respect of modified lease deeds

As per Article 63 of Schedule-I to the IS Act, in the case of an instrument of transfer of lease where the lease was transferred by way of assignment, stamp duty was leviable at the rate of five *per cent* of the market value equal to the amount of consideration for the transfer. As per the Table of Fees prepared under Section 78 of the Registration Act, 1908, Registration Fee at the rate of one *per cent* was leviable on the consideration for the transfer of lease. As per Article 35 of Schedule I to the IS Act, lease of properties for period of 30 years and above but not exceeding 99 years attract stamp duty of four *per cent* on the rent, advance, payable. In addition, registration fee at the rate of one per cent, subject to a maximum of ₹ 20,000 was leviable. As per Notification issued in September 2003, reduction of 50 *per cent* of stamp duty was granted in respect of lease of land for first time. Thus, stamp duty of two *per cent* was leviable in respect of lease of land for first time by SIPCOT.

During test check (between March 2014 and March 2016) of documents in three³⁷ Registering Offices, we noticed that SIPCOT had leased out lands for 99 years to seven lessees between February 1985 and December 1993. These lands were transferred to other lessees by SIPCOT through seven instruments

³⁷

SR, Gummidipoondy, Joint-II SR, Cuddalore and SR, Tuticorin Melur

of modified lease deeds executed and registered between February 2013 and February 2015. The modified lease deeds indicated that the leases were transferred to the new lessees at the request of the original lessees and for the remaining period which was determined by deducting from the period of original allotment, the period for which the lands were held by the original allottees. As the instruments of modified lease executed and registered by SIPCOT resulted in transfer of leases from the original allottees to the new lessees, the instruments were required to be classified under Article 63 of the IS Act. Accordingly, stamp duty at the rate of five *per cent* and registration fee at the rate of one *per cent* was required to be collected on the value of ₹ 23.56 crore. This amounted to ₹ 141.36 lakh. However, instead of treating the instruments as transfer of leases, the ROs collected stamp duty at the rates of four and two *per cent* and registration fee at the maximum amount of ₹ 20,000 per instrument by treating the same as lease of lands by SIPCOT. Thus, as against ₹ 141.36 lakh, the ROs collected stamp duty and registration fee of ₹ 90.61 lakh. This resulted in short collection of stamp duty and registration fee of ₹ 50.75 lakh.

After we pointed this out (between March 2014 and March 2016), the RO, Gummidipoondi replied (June 2015 and March 2016) that the original lessee surrendered the properties to SIPCOT and in the absence of the original lessee joining the execution of lease, it could not be treated as transfer of lease. The other two ROs stated (June and August 2015) that since the original lessees were not involved in the execution of the instruments, the same could not be treated as transfer of leases.

The Government in the case pertaining to SR, Tuticorin Melur stated (December 2016) that for a lease to be classified under Article 63, the lessee should assign his lease hold rights to the other party by executing an assignment deed and since the original lessee had not joined in execution, the lease deed could not be considered as transfer of lease.

The replies were not acceptable due to the following reasons:

- (i) The transfer of lease by way of assignment requires the consent of the owner of the land. SIPCOT had executed the modified lease deeds, since it was the owner of the land.
- (ii) The leases were not surrendered by the original allottees. The leases have been granted to entities, which have been identified by the original allottees and therefore, the same cannot be considered as original leases being granted by SIPCOT;
- (iii) The instruments of modified lease deeds executed by SIPCOT had resulted in transfer of leases from the original allottees to the entities identified by the original allottees. Further, the leasehold rights were granted for the remaining period after deducting from the term of original allotment, the

period for which the leases were held by the original allottees. The original allottees also declared that they had no right or claim over the scheduled properties and confirmed that the said properties were taken over by the new lessees and thereby relinquished their legal rights over the properties under the registered lease deeds.

Thus, the assignment of leases for the remaining period of lease in favour of the new lessee amounted to transfer of lease, though the modified lease deeds were executed by SIPCOT.

Reply of the Government in the remaining two cases was awaited (February 2017).

3.3.4 Short collection of stamp duty and registration fee in respect of release deeds

As per the provisions of Clause C of Article 55 of Schedule I to the IS Act, in respect of an instrument of release, whereby a co-owner of a property renounces his right / claim in favour of another co-owner, who is not a family member on any specified property over which they have common right, stamp duty is leviable at the rate of eight *per cent* of the market value of the immovable property which is the subject matter of release. In addition, registration fee is leviable at one *per cent* on the market value of the immovable property which is the subject matter of release. As per the explanation under Article 55 of Schedule I to the IS Act read with explanation under Article 58 of Schedule I to the IS Act, “family” for the purpose of levy of concessional rate of stamp duty and registration fee means father, mother, husband, wife, son, daughter, grandchild, brother, sister and also included adoptive father and mother, adopted son and daughter in the case of any one whose personal law permits adoption. As per Article 55A of Schedule I to the IS Act, instruments of release involving transfer of properties in favour of family members attract stamp duty of one per cent on the value of properties transferred, subject to a maximum of ₹ 10,000 (upto 30 September 2013) and ₹ 25,000 thereafter. Besides, registration fee at the rate of one per cent on the value of properties transferred was also leviable, subject to a maximum of ₹ 2,000 (upto 30 September 2013) and ₹ 4,000 thereafter.

During test check (between April 2015 and January 2016) of documents in ten³⁸ Registering Offices, we noticed that out of properties valued at ₹ 47.23 crore, share of properties valued at ₹ 23.85 crore was transferred through 31 instruments of release deed executed and registered between June 2013 and March 2015. These included transfer of share in properties valued at ₹ 12.42 crore to family members and ₹ 11.43 crore to persons other than ‘family members’, viz., daughter-in-law, aunt, nephew, niece. However, instead of

³⁸ DR, Erode, SR, Alandur, SR, Annur, SR, Avadi, SR, Guduvancherry, SR, Ponneri, SR, Radhapuram, SR, Udumalaipet, SR, Vadavalli and SR, Velachery

collecting stamp duty and registration fee at the rate of nine *per cent* on the value of the properties transferred to persons other than family members, the ROs collected stamp duty at concessional rate prescribed under Article 55A of Schedule I to the IS Act. Thus, as against stamp duty and registration fee of ₹ 106.89 lakh, stamp duty and registration fee of ₹ 8.87 lakh was collected by the department. This resulted in short collection of stamp duty and registration fee of ₹ 98.02 lakh as mentioned in **Annexure 4**.

After we pointed out this, the ROs replied (between April 2015 and January 2016) that there existed co-parcenary right among the parties and the concession for stamp duty and registration fee was also available for the co-parceners. The ROs further stated that the IGR had clarified in January 2014 that Article 55A of the IS Act contemplates release in respect of co-parcenary properties, properties jointly inherited, properties devolved by succession, and since in these cases there existed co-parcenary right over the property among the releasers and the releasees, the documents were classified as family release.

The reply was not tenable because the transfer of share in property in these cases had not taken place among the family members as per the provisions of the IS act, though there existed co-parcenary rights. Moreover, any executive instruction, for example, clarification issued by IGR cannot be a substitute for the statutory provisions contained in the relevant Act. Thus, clarification issued by IGR, being contrary to the provisions of the Act, does not hold good.

The matter was referred to the Government (between January and June 2016). Government accepted (October 2016) the audit observation in the case pertaining to SR, Radhapuram and stated that the District Registrar was directed to initiate action for recovery of deficit stamp duty and registration fee of ₹ 22.18 lakh. Government, in the cases pertaining to SR Avadi and SR Udumalpet, however, did not accept the audit observation and stated that when the release deed is executed between the persons in respect of inherited property devolved by succession by operation of law, the same has to be classified as release falling under Article 55 (A) of Schedule I to the IS Act. .

Reply of the Government was not acceptable as the transfer of share in property through the release deeds was made to persons other than family members and the concessional rate of stamp duty as per the IS Act was applicable only in respect of release of share to family members. Moreover, the Explanation under Article 55 provides that the word 'family' shall have the same meaning as defined in Explanation to Article 58.

Further reply from the Government was awaited (February 2017).

3.3.5 Short collection of stamp duty and registration fee in respect of partition deeds.

As per Article 45 (b) of Schedule I to the IS Act, instrument of partition among persons other than family members is chargeable to stamp duty at the rate of four *per cent* on the amount of the value of the separated share or shares of the property. In addition, registration fee is leviable at one *per cent* on the value of property subject to partition. As per Article 45 (a) of Schedule I to the IS Act, instruments of partition involving transfer of properties in favour of family members attract stamp duty of one per cent on the value of properties transferred, subject to a maximum of ₹ 10,000 (upto 30 September 2013) and ₹ 25,000 thereafter. Besides, registration fee at the rate of one per cent on the value of properties transferred was also leviable, subject to a maximum of ₹ 2,000 (upto 30 September 2013) and ₹ 4,000 thereafter. ‘Family’ as defined under the IS Act includes father, mother, husband, wife, son, daughter, grandchild, brother, sister and also included adoptive father and mother, adopted son and daughter in the case of any one whose personal law permits adoption.

During test check (between May 2015 and February 2016) of documents in seven³⁹ Registering Offices, Audit noticed that through 16 instruments of partition executed between March 2011 and January 2015 and registered between March 2011 and February 2015, immovable properties valued ₹ 83.83 crore were partitioned. Scrutiny of the instruments revealed that share of properties valued at ₹ 53.50 crore was transferred to family members and share of properties valued at ₹ 30.33 crore was transferred to persons, who were not included in the definition of “family” as per the IS Act. The shares allotted to persons not defined within the term “family” were to be classified as non-family partition and stamp duty and registration fee at the rate of five per cent was required to be collected. While registering the instruments, the ROs treated the same as transfer of share in properties to family members and collected stamp duty at the concessional rate prescribed under Article 45 (a) of the IS Act. The instruments of partition involved levy of stamp duty and registration fee of ₹ 1.57 crore. The ROs, however, collected ₹ 11.44 lakh. Thus, failure of the ROs to classify the partition as between non-family members resulted in short collection of stamp duty and registration fee of ₹ 1.46 crore mentioned in **Annexure 5**.

After we pointed this out (between May 2015 and March 2016), the ROs replied (between May and March 2016) that the properties, which were acquired through inheritance / succession were partitioned through partition deeds and the IGR had clarified in January 2014 that in the case of inheritance of property, the instrument could be directly classified under family partition, and there was no need for verification of relationship between the parties.

³⁹ DR, Nagercoil, Joint II SR, Gobichettipalayam, SR, Annur, SR, Acharapakkam, SR, Mylapore, SR, Rajakkamangalam and SR, Tiruporur

The reply was not acceptable for the following reasons. The words ‘sister-in-law, nephew, niece, aunt, uncle, daughter-in-law, cousins’, etc. are not specifically mentioned in the definition of the term “family” under the IS Act. Moreover, any executive instruction, for example, clarification issued by IGR cannot be a substitute for the statutory provisions contained in the relevant Act. Thus, clarification issued by IGR, being contrary to the provisions of the Act does not hold good.

Government accepted (September / October 2016) the audit observation in three cases and stated that District Registrars had been instructed to initiate action for recovery of deficit stamp duty and registration fee of ₹ 24.84 lakh. The Government in other cases did not accept the audit observation stating that as clarified by IGR in March 2005, partition among legal heirs of the deceased daughter or son has to be construed as partition between family members, chargeable under Article 45(a) of Schedule I of the IS Act.

Reply of the Government was not acceptable as the transfer of share in property through the partition deeds was made to persons other than family members and the concessional rate of stamp duty as per the IS Act was applicable only in respect of transfer to family members. Moreover, the Explanation under Article 45 provides that the word ‘family’ shall have the same meaning as defined in Explanation to Article 58.

Further reply from the Government was awaited (February 2017).

3.3.6 Incorrect allowance of exemption in respect of lease deeds

As per Article 35 of Schedule 1 to the IS Act, in respect of lease deeds, where the period of lease is above 99 years, stamp duty is leviable at the rate of eight *per cent* on the amount of rent, fine, premium or advance if any payable. As per third proviso to Section 3 of the IS Act, no duty shall be chargeable in respect of any instrument executed by or on behalf of or in favour of the Developer or unit or in connection with the carrying out of purposes of the Special Economic Zone (SEZ). The guidelines issued by the Government of India, (GoI), Ministry of Commerce and Industries in July 2009 prescribed that under the rules governing SEZ, conveyance of land, buildings, premises, etc by lease or otherwise in an SEZ can be made only to the units in the SEZ or entities permitted to carry out operations within the SEZ area and in such cases alone, the concession of stamp duty exemption will be allowed. The guidelines issued by the GoI, Department of Commerce (SEZ Division) in October 2010, while prescribing that developers should provide low cost housing to the employees depending upon the need of the SEZ, stated that the developers should rent out these houses to the employees of units.

During test check (between September 2013 and October 2015) of records in SR, Cheyyur and Joint-II SR, Chengalpet, we noticed from 719 lease deeds executed and registered between April 2012 and March 2015 that the developers of two SEZ leased out undivided share of land with buildings in the SEZ area to various individual / Corporate lessees for residential purpose on perpetual lease basis by collecting one time lease rental amount of ₹ 336.85 crore as consideration and the same was exempted from levy of stamp duty.

We observed the following:

- i) The lessees were not units or entities / persons employed in the units or permitted to carry out operations within the SEZ area as per SEZ Rules to be eligible for stamp duty exemption. In some cases, the lease was in the name of individuals residing in Tamil Nadu / other States / countries.
- ii) In all the cases, the lease was for a period of 99 years and provided for automatic renewal of period of lease upon expiry of 99 years on identical terms and conditions without payment of any rent. Thus, the land and residential units in SEZ area were leased out ‘perpetually’ on collection of one time lease amount without specifying the terms and conditions for termination of lease period. The automatic renewal of lease on expiry of 99 years was provided in the deeds even though the life span of an employee in an organisation could not be 99 years.
- iii) The lessees were entitled to mortgage their rights in favour of any financial institutions for availing of loan. In the event of default by the lessee, the potential severance of the property from the developer could not be ruled out.

As the lease of land and residential units in the SEZ area were granted to individuals and companies and not to the units in the SEZ or entities permitted to carry out operations within the SEZ areas, the lease deeds did not fulfill the conditions prescribed in the guidelines issued by GoI. The lease deeds were, therefore, not eligible for exemption from levy of stamp duty. The ROs, however, failed to levy and enforce collection of stamp duty of ₹ 26.95 crore.

The matter was referred to the Government during January 2014 and July 2016. Government replied (May 2016) as follows:

“The leased out properties were notified as SEZ area by GoI. Upon such notification, the third proviso to Section 3 of the IS Act exempting stamp duty was applicable to any instruments in connection with SEZ. The lessee could only transfer the lease hold rights and it could not be said that the residential units were sold to lessees in the guise of lease deeds. As per SEZ Rules, exemption of stamp duty was allowed on lease documents irrespective of the period of lease. Therefore, the documents executed by the developer /-co-developer were eligible for exemption of stamp duty and as such there was no loss to Government”.

The reply was not acceptable as the exemption from levy of stamp duty as per the third proviso to Section 3 of the IS Act was subject to fulfillment of the conditions prescribed in the guidelines / instructions etc. issued by the GoI relating to SEZ from time to time. Though the lessor had obtained permission for development of the SEZ land comprising of residential units subject to the SEZ Rules, Regulations and norms applicable from time to time, the lease of land and building in the SEZ area was granted to individuals and companies

and not to the units in the SEZ or entities permitted to carry out operations within the SEZ area. Hence, the deeds were not eligible for stamp duty exemption applicable to SEZ. The Principal Secretary to Government, Commercial Taxes and Registration Department, in the Departmental Audit Committee meeting held in March, 2016, however, instructed the Registration Department to verify such instances and issue notices, if exemption allowed was not in consonance within the provisions. Further report was awaited (February 2017).

3.3.7 Short realisation of stamp duty and registration fee in respect of Cancellation Deeds

According to Section 2(10) of the IS Act, transfer of property includes a transfer on sale and every instrument by which property whether movable or immovable, is transferred *inter vivos* and which is not otherwise specifically provided for by Schedule I to the IS Act. As per Article 23 of Schedule I to the IS Act, in the case of transfer of immovable property, stamp duty is leviable at the rate of seven *per cent* including transfer duty surcharge on the market value of the property. In addition, under the Registration Act, 1908, registration fee is leviable at the rate of one *per cent* on the market value of the property. As per Article 17 of the Schedule I to the IS Act, for instrument of cancellation, if attested and not otherwise provided for, stamp duty of ₹ 50 is to be levied on the same.

We noticed during scrutiny of records in three⁴⁰ Registering Offices (between May and September 2015) that transfer of properties effected through five Sale Deeds was cancelled through 'Deeds of Cancellation' on the ground that consideration was not received and possession was not handed over, etc. and stamp duty and registration fee of ₹ 0.01 lakh was collected by the Department. As the original sale deeds indicated receipt of consideration and handing over possession of properties, subsequent instruments retransferring the properties to the original vendors were to be classified as conveyance deeds and stamp duty and registration of ₹ 50.78 lakh was required to be levied on the market value of the property of ₹ 6.35 crore. Thus, misclassification of re-conveyance deeds as cancellation deeds resulted in short levy of stamp duty and registration fee of ₹ 50.77 lakh.

After we pointed this out (between May and September 2015), the Department replied that the ownership in property can pass only by virtue of a proper sale deed and there was no concept of re-conveyance. There was no recital to the effect of re-handing over possession and transfer of properties. In the absence of such recitals the documents in question can be construed only as a mere cancellation, which is not a valid document in the eye of law. The IGR instructed the ROs to register such cancellation deed with endorsement that this deed of cancellation will not re-vest title.

⁴⁰

DR, Udhagamandalam, SR, Purasaiwakkam and SR, T Nagar

The reply was not acceptable as original sale deeds indicated receipt of consideration and handing over possession of properties. The subsequent instruments retransferring the properties to the original owners are to be classified as Conveyance deeds falling under Article 23 of the Indian Stamp Act.

The matter was referred to the Government in July 2016. Reply of the Government was awaited (February 2017).

3.3.8 Short realisation of stamp duty and registration fee noticed during cross verification of records

As per Article 23 of Schedule I to the IS Act, in the case of conveyance of immovable property, stamp duty is to be levied at the rate of eight *per cent* including surcharge on the market value of the property. As per Table of Fees prepared under Section 78 of the Registration Act 1908, the registration fee shall be levied at the rate of one *per cent* on the value on which stamp duty is payable. As per Section 27 of the IS Act, the consideration, the market value and all other facts and circumstances affecting chargeability of any instruments with duty or the amount of the duty with which it is chargeable shall be fully and truly set forth in the document.

Our scrutiny (November 2015 / January 2016) of income tax assessment records and cross-verification with the records of SR, Pollachi and SR, Karur (West) revealed suppression of actual consideration of ₹ 16.55 crore and corresponding short levy of stamp duty and registration fee of ₹ 1.49 crore as mentioned below:

(₹ in lakh)

Particulars	SR, Pollachi		SR, Karur (West)	Total
	Sale deed registered in April 2009	Two sale deeds registered in December 2010	Sale deed registered in November 2010	
Value of the property mentioned in the sale deed	66.20	81.20	8.72	156.12
Value of property adopted by SR	81.15	81.20	8.72	171.07
Amount of stamp duty and registration fee collected	7.30	7.31	0.79	15.40
Actual consideration received as per Income Tax records	415.20	798.70	612.00	1,825.90
Under valuation of the property due to suppression of actual consideration.	334.05	717.50	602.38	1,653.93
Stamp duty and registration fee due at 9 <i>per cent</i>	37.37	71.88	55.08	164.33
Short collection of stamp duty and registration fee	30.07	64.57	54.29	148.93

We pointed this out to the Department in March 2016 and to the Government in May 2016. Reply was awaited (February 2017).

3.3.9 Short collection of Registration Fee

As per clause “1” of the Table of Fees prepared under Section 78 of the Registration Act, 1908, registration fee is leviable on an agreement to sell or resell at the rate of one *per cent* on the advance or earnest money.

During test check (September / October 2015) of the documents in SR, Peelamedu, we noticed that through an agreement of sale executed and registered on 11 April 2014, the vendor company agreed to sell 32,856 sqft of land with 63,540 sqft building for a sale consideration of ₹ 25.40 crore. The agreement indicated payment of ₹ 5 lakh by the transferee and registration fee of ₹ 0.05 lakh was collected by the RO.

We noticed from the recitals of the sale agreement that the transferee undertook to pay ₹ 19 crore through his bankers within 7 days from the date of the agreement and the remaining consideration of ₹ 6.35 crore on the date of execution of Sale Deed. Thus, the amount of ₹ 19 crore, which was agreed to be paid by the purchaser before execution of sale deed was required to be treated as advance; on which registration fee of ₹ 19 lakh was required to be collected. The RO collected registration fee on the advance amount of ₹ 5 lakh paid by the transferee, but failed to consider the further payment of ₹19 crore, which was agreed to be paid before execution of sale deed as advance and therefore, failed to collect registration fee thereon. The omission to consider the subsequent payments (prior to the execution of sale deed) indicated in the sale agreement as advance resulted in short collection of registration fee of ₹ 19 lakh.

Government accepted (October 2016) the audit observation and stated that the District Registrar has been directed to instruct the Sub Registrar to initiate action under Section 80A of the Registration Act for collecting the deficit registration fee. Further report regarding recovery was awaited (February 2017).

3.3.10 Excess allocation of transfer duty surcharge

As per Section 175 of the Tamil Nadu Panchayat Act, 1994 and Section 94 of the Tamil Nadu Urban Local Bodies Act, 1998, a duty, in the form of surcharge, shall be levied and collected on the instruments of sale, exchange, gift, mortgage with possession and lease in perpetuity and subsequently allocated to the concerned Director of Municipal Administration / Town Panchayats.

We observed (between March 2015 and February 2016) from the periodical quarterly returns of transfer duty surcharge and registers in eight⁴¹ Registering Offices that ₹ 6.12 crore was allocated to local bodies towards TDS as against ₹ 1.19 crore due for allocation. This resulted in excess allocation of ₹ 4.93 crore out of the revenue due to the Government. The excess allocation was due to arithmetical error, incorrect computation of value of properties and allocation of surcharge in respect of ineligible documents.

After we pointed this out (between March 2015 and March 2016), three⁴² ROs replied (between June 2015 and February 2016) that excess allocation of ₹ 1.47 crore was adjusted in allocation made for the subsequent quarters. Reply from the remaining ROs was awaited (February 2017).

The matter was referred to the Government between January and July 2016. Reply of the Government was awaited (February 2017).

3.3.11 Non-realisation of revenue to Government Account

As per Rule 7 (1) of the Tamil Nadu Treasury Rules, all moneys received by or tendered to Government servants in their official capacity, should without undue delay, be paid in full into the treasury or into the bank. As per subsidiary rule 1(b) under Rule 10, a cheque received under this rule shall be treated as a final payment, only after it has been met and the amount has been actually credited to the Government. As per subsidiary rule 9-A under Rule 10, demand drafts shall not be distinguished from cheques for the purposes of these rules. As per Article 9 of Tamil Nadu Financial Code Volume I, departmental Controlling Officer should obtain regular accounts and returns from his subordinates for the amounts realised by them and paid into the treasury. The Controlling Officer should reconcile any differences as early as possible.

During test check of documents in SR, Avadi, we noticed (June 2015) from the remittance register that demand drafts for ₹ 57.91 lakh collected towards stamp duty and registration fee and deposited with bank between October 2014 and March 2015 were not realized and credited into Government account. The RO and the Department failed to watch realisation of these demand drafts and its credit into Government account through monthly reconciliation.

Government stated (October 2016) that the demand drafts for ₹ 57.91 lakh were realised and credited to Government account.

We, however, noticed from the report (August 2015) of surprise inspection of SR, Avadi by the District Registrar (Administration), Chennai (South) that demand drafts for ₹ 18.20 lakh deposited in October 2014 were returned by

⁴¹ DR, Chennai (South), DR, Chennai (North), DR, Trichy, DR, Vellore, Joint II SR, Saidapet, SR, Pallavaram, SR, Tiruparankundram and SR, Vadalur

⁴² DR, Vellore, Joint II SR, Saidapet and SR Pallavaram

the Bank after nine months for revalidation without assigning any reason for the same. These demand drafts were presented again and realised in November 2015. However, the delay in realisation of demand drafts was not noticed either by the SR or by the controlling officer indicating that proper reconciliation of the department figures with that of the Treasury was not done, until the non-realisation of demand drafts was pointed out in audit.

It is, therefore, recommended that the Department may ensure proper reconciliation of the department figures with that of the Treasury is undertaken to ensure early realisation of amount to Government account.