

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), Registration Act, 1908 and the rules framed thereunder as applicable in Andhra Pradesh State. These are administered at the Government level by the Principal Secretary, Revenue (Registration & Stamps). The Director and Inspector General of Registration and Stamps (DIGR) is the head of the Department, who is empowered with the task of superintendence and administration of registration work in the State. Director and Inspector General of Registration and Stamps is assisted by zone-wise Deputy Inspectors General (DIG). The District Registrar (DR) is in charge of the district. District Registrar supervises and controls the Sub-Registrars (SRs) in the district concerned.

4.2 Internal Audit

There is a separate Internal Audit wing in the Department. The team is headed by DR (Market Value and Audit) to conduct Audit of SR offices periodically. Audit programs are drawn up by DR every month and Audit is taken up accordingly. DIG concerned supervises the progress of Audit. Audit reports are reviewed by the DIG, DR and SR zone-wise/ sub-zone wise.

4.3 Results of Audit

Test check of records of 143 offices of Registration and Stamps Department conducted during 2016-17 revealed under-assessment and other observations. These irregularities involved monetary impact of ₹ 8.88 crore in 392 cases. The Audit observations broadly fall under the categories as given in **Table 4.1**.

Table 4.1: Results of Audit

(₹ in crore)			
Sl. No.	Category	No. of cases	Amount
1.	Short levy of stamp duty and registration fee due to conversion of agricultural lands to non-agricultural purposes	237	5.77
2.	Short levy of duties due to under-valuation of properties	39	1.22
3.	Short levy of duties due to adoption of incorrect rates	17	0.22
4.	Short levy of duties due to misclassification of documents	29	0.22
5.	Other irregularities	70	1.45
Total		392	8.88

During the year 2016-17, the Department accepted under-assessment and other deficiencies of ₹ 63.71 lakh in 121 cases. Of these, 27 cases involving ₹ 27.89 lakh were pointed out during the year 2016-17 and the rest in earlier years. An amount of ₹ 44.00 lakh in 108 cases was realised during the year 2016-17.

A few illustrative cases of short levy of duties and fees involving ₹ 3.65 crore are discussed in the succeeding paragraphs.

4.4 Short levy of duties and registration fees on agricultural lands converted for non-agricultural use

Section 27 of Indian Stamp Act requires that an instrument contains details like consideration, Market Value (MV) of the property and all other facts and circumstances affecting the levy of duty on it without any suppression. The registering officer or any other officer appointed under the Registration Act, 1908 may inspect the related property, make necessary local enquiries, call for and examine all the connected records and satisfy that the provisions of this Section are complied with. As per Rule 7 of AP Revision of MV Guidelines Rules, 1998, different values have been fixed for agricultural lands fit for house sites/residential localities. Acreage rate for agricultural land and square yard rate for non-agricultural land have to be adopted for levy of stamp duty.

Scrutiny¹⁴⁵ of records in one DR¹⁴⁶ and nine SR¹⁴⁷ offices disclosed that in 23 documents¹⁴⁸, agricultural rate had been adopted for the lands which had already been converted¹⁴⁹ to non-agricultural use. Due to suppression of fact of conversion by executants and also non-verification of facts by registering authorities, the properties were under-valued. This resulted in short levy of stamp duty and registration fee of ₹ 2.78 crore.

In response, Director & Inspector General of Registration and Stamps (DIGR) contended (December 2017) that there was no information to the registering officers about conversion of the land from the revenue authorities. Further, they had adopted Market Values as per the guidelines prescribed. The reply was not tenable as the registering authorities did not verify the facts before registration as provided under Section 27 of IS Act. Further, Sub-Registrar, Sullurpet accepted audit observation in two cases and ordered collection of stamp duty and registration fees.

¹⁴⁵ Between April and December 2016.

¹⁴⁶ Hindupur.

¹⁴⁷ Allagadda, Kallur, Kamavarapukota, Madakasira, Penukonda, Rayadurg, Renigunta, Sullurpet and Tadipatri.

¹⁴⁸ 20 sale deeds, one release deed, two settlement deeds (executed between January 2013 and March 2016).

¹⁴⁹ Converted by RDOs between November 2010 and October 2015.

4.5 Short collection of registration fees on instruments creating ‘Pari passu’¹⁵⁰ charge

Government in its order¹⁵¹ dated 17 August 2013, prescribed registration fee of 0.5 *per cent* on the amount of loans secured on instruments creating charge on ‘Pari passu’ basis. Commissioner and Inspector General of Registration and Stamps (CIGR) in his proceedings¹⁵² dated 15 October 1982, clarified that the ‘Pari passu’ Agreements come into existence when an industrial firm/company obtain credit facilities from more than one financial institution by offering securities on ‘Pari passu’ basis in the form of ‘Simple Mortgage’, ‘Mortgage by Deposit of Title Deeds’ and ‘Hypothecation of movable properties’.

Scrutiny¹⁵³ of records in offices of two SRs¹⁵⁴ disclosed that in two documents¹⁵⁵, the companies secured loans from various banks by creating charge on ‘Pari passu’ basis on their properties. The registering authorities, however, collected registration fee of ₹ 10,000 each instead of charging fee at 0.5 *per cent* on the amount of loan secured. This resulted in short collection of registration fee of ₹ 30.17 lakh.

In response, DIGR contended (December 2017) that the instrument of ‘Pari passu’ charge was not defined either in IS Act, Registration Act or in the Transfer of Property Act. The reply was not acceptable in view of the above quoted Government Order and CIGR’s instructions. Hence, registration fee was to be collected.

4.6 Short levy of duties and registration fees due to undervaluation of properties

As per Section 3 read with Articles 6(B) and 47A of Schedule I-A to IS Act, instruments of Sale and Agreement of sale cum General Power of Attorney (AGPA) are chargeable to stamp duty on Market Value (MV) of the property or consideration, whichever is higher. Transfer duty¹⁵⁶ is also to be levied on sale deeds besides registration fee. Instruments of Settlement under Article 49(b) and GPA under Article 42(g), which are given in favour of other than family members, are chargeable to stamp duty on the MV of the property besides registration fee.

¹⁵⁰ The rights, in the properties, created in favour of the lenders would rank equal without any preference or priority for any lender over the others for all intents and purposes.

¹⁵¹ G.O.Ms.No.463, Revenue (Registration-I) Department, dated 17 August 2013.

¹⁵² CIGR Proceedings No. S2/24846/82, dated 15 October 1982.

¹⁵³ May and November 2016.

¹⁵⁴ Pulivendula and Renigunta.

¹⁵⁵ Memorandum of Deposit of Title Deeds (Pulivendula) and Supplemental Memorandum relating to deposit of title deeds (Renigunta) (registered in September 2015 and February 2016 respectively).

¹⁵⁶ Transfer duty is leviable in respect of transfer of immovable property situated in the jurisdiction of local bodies.

Scrutiny¹⁵⁷ of records in offices of eight SRs¹⁵⁸ disclosed that in 15 documents¹⁵⁹, properties valuing ₹ 6.91 crore were under-valued by ₹ 3.65 crore. This was in contravention to the MV guidelines and instructions issued by the Commissioner and Inspector General of Registration and Stamps (CIGR). The properties were under-valued, for reasons like not adopting MVs, exclusion of building value from valuation, adoption of lesser MV by splitting land abutting highway, adoption of agricultural land value for layout of plots etc. Under-valuation of these properties resulted in short levy of duties and fees amounting to ₹ 18.65 lakh.

In response to audit observation, DIGR accepted (December 2017) the audit observations in respect of five SRs¹⁶⁰ and issued instructions to DRs concerned to collect the deficit stamp duty.

In respect of SR, Anaparthi, it was contended that there were no structures in the scheduled property as on the date of presentation of the document. The reply was not acceptable since it was recited in the document itself that the property consisted of land along with rice mill.

In respect of SR, Rajanagaram, it was replied that the MV of agricultural lands was adopted since no conversion orders were received from the revenue authorities. The reply was not tenable as the properties had already been converted to non-agricultural properties through conversion orders issued by the revenue authorities.

In respect of SR Yemmiganur, DIGR contended that the procedure of assessing market value on the basis of 18 times annual value was dispensed with from 6 October, 2012. The reply was not acceptable as the relevant documents were registered prior to this date and thus duties, fees short levied were to be recovered.

4.7 Short realisation of stamp duty on leases

As per Article 31 of Schedule I-A to IS Act, read with Government orders¹⁶¹, the rates of stamp duty on lease deeds are to be decided on the basis of tenure of lease and lease rentals. Further, 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. Apart from lease rentals, stamp duty is also leviable where leases are granted for a fine or premium or for money advanced in addition to rent reserved. Besides stamp duty, registration fee is also to be levied at the rates applicable on the value of Average Annual Rent according to the provisions of Registration Act, 1908.

¹⁵⁷ Between September 2014 and November 2016.

¹⁵⁸ Anaparthi, Badvel, Banaganapalle, Dharmavaram, Mydukur, Pidimgoyya, Rajanagaram and Yemmiganur.

¹⁵⁹ Ten sale deeds, three Settlement deeds, two GPA and one AGPA documents (registered between December 2011 and July 2015).

¹⁶⁰ Badvel, Banaganapalle, Dharmavaram, Mydukur and Pidimgoyya.

¹⁶¹ G.O.Ms.No.408, Revenue (Registration-I) Department, dated 11 May 2010, G.O.Ms.No.588, Revenue (Registration-I) Department, dated 4 December 2013.

As per Rule 11 of AP Distillery (Manufacture of IMFL other than beer and wine) Rules, 2006, the Commissioner of Prohibition and Excise may permit the licence holder of a distillery to sub-lease the manufactory / distillery on payment of a sum equal to 10 *per cent* of the proportionate licence fee.

Scrutiny (January 2017) of records in office of the Assistant Commissioner of Distilleries and Breweries, Vijayawada disclosed that a distillery licensee entered into annual sub-lease agreements¹⁶². The licenced capacity of distillery along with land, buildings, plant and machinery was sub-leased for monthly rentals. It was recited in the lease deeds that lessee should pay service tax on lease rentals and also reimburse annual licence fee to be paid by the lessor to the Department of Prohibition and Excise. The registering authority while registering these lease deeds did not ascertain the amount of licence fee to be reimbursed by the lessee and service tax to be paid by the lessee on behalf of the lessor. This resulted in short realisation of stamp duty and registration fee amounting to ₹ 11.25 lakh.

During scrutiny in the office of SR, Dwarakanagar, Audit noticed (September 2016) that in two lease deeds¹⁶³, 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. This resulted in short levy of stamp duty and registration fee of ₹ 0.63 lakh.

DIGR contended (December 2017) in one case (SR, Dharmavaram) that the documents were registered prior to date of instructions (March 2016) for levy of stamp duty on service tax paid in lease deeds. With regard to Vijayawada office, it was replied that the amount of annual licence fee agreed to be paid by the lessee was not disclosed in the documents.

The reply was not acceptable since the provision of treating any government revenue paid by the lessee on behalf of lessor, as rent already exists under explanation to Article 31. Regarding, annual licence fee agreed to be reimbursed by lessee, the department did not collect the details of amounts paid by the lessee though the fact of reimbursement was already recited in documents.

4.8 Non-realisation of stamp duty and registration fees on account of not registering agreements of sale of immovable property

As per Section 17(1)(g) of the Registration Act, documents of Agreement of sale of immovable property were to be compulsorily registered¹⁶⁴. Under Section 3 of IS Act read with Article 6(B) of Schedule I-A to IS Act, in case of agreements relating to sale of property without possession, stamp duty¹⁶⁵ shall be leviable at 0.5 *per cent* on the amount of consideration or the MV of the

¹⁶² For the years 2011-12 to 2015-16.

¹⁶³ Registered in April and November 2014.

¹⁶⁴ AP Amendment Act No. 4 of 1999.

¹⁶⁵ G.O.Ms.No.581, Revenue (Registration-I) Department, dated 30 November 2013.

property whichever is higher. Registration fee¹⁶⁶ shall be chargeable at 0.5 per cent subject to a minimum of ₹ 1,000 and maximum of ₹ 20,000.

Scrutiny¹⁶⁷ of records and cross verification¹⁶⁸ of documents in two DR¹⁶⁹ and four SR¹⁷⁰ offices disclosed that 39 sale agreements had been entered into prior to the date of registration¹⁷¹ of the sale deeds. But none of these agreements of sale was registered though they were compulsorily registerable. Not registering these documents of Agreements of sale resulted in non-realisation of stamp duty amounting to ₹ 7.82 lakh.

In response, DIGR contended (December 2017) that there was no reference to execution of any sale agreement between the parties in either the sale deeds or the deposit of title deeds. The reply was not tenable as the fact of existence of un-registered agreements of sale duly executed prior to registration of respective sale deeds was expressly mentioned in documents of Deposit of Title deeds. This had resulted not only in violation of statutory provisions but also led to loss of revenue of ₹ 7.82 lakh to the Government.

4.9 Short levy of stamp duty on documents involving distinct matters¹⁷²

As per Section 5 of IS Act, any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of duties with which separate instruments would be chargeable under the Act.

During the scrutiny¹⁷³ of records in four offices of DRs/SRs¹⁷⁴, Audit noticed from recitals that four documents¹⁷⁵ contained distinct matters. These distinct matters were (i) release of property for consideration in partition deeds, (ii) conveyance of cash (in DGPA) and (iii) partition of properties (in GPA). The registering authorities while registering the documents did not consider these distinct matters valuing ₹ 2.37 crore for levy of stamp duty. The stamp duty short levied on this account amounted to ₹ 7.29 lakh.

In response, DIGR accepted (December 2017) the audit observations in respect of two offices¹⁷⁶ involving an amount of ₹ 5.06 lakh and partially accepted in respect of DR, Kakinada. No reply was received in respect of DR, Ananthapuram.

¹⁶⁶ G.O.Ms.No.463, Revenue (Registration-I) Department, dated 17 August 2013.

¹⁶⁷ Between March and December 2016.

¹⁶⁸ Cross verification of sale deeds with memorandum of deposit of title deeds.

¹⁶⁹ Chittoor and Rajahmahendravaram.

¹⁷⁰ Bukkapatnam, Kadiri, Renigunta and Tadipatri.

¹⁷¹ Registered between June 2014 and February 2016.

¹⁷² Separate transactions embodied in one document.

¹⁷³ Between December 2014 and March 2016.

¹⁷⁴ DRs-Ananthapuram and Kakinada SRs-Chilakaluripet and Yellamanchili.

¹⁷⁵ Two partition deeds, one Development Agreement cum GPA document (DGPA) and one GPA document registered between September 2012 and March 2015.

¹⁷⁶ SRs-Chilakaluripet and Yellamanchili.

4.10 Short realisation of stamp duty on instruments of Development Agreements/Development Agreements cum General Power of Attorney

As per Article 6(B) of Schedule I-A to IS Act, read with Government orders¹⁷⁷, instruments of Development Agreements and Development Agreements cum General Power of Attorney (DGPA)s are chargeable to stamp duty at 0.5 *per cent* and one *per cent* respectively on the MV of property as per basic value guidelines or the estimated MV of land and complete construction made or to be made in accordance with the schedule of rates approved by the CIGR, whichever is higher.

- Scrutiny¹⁷⁸ disclosed that in six offices of DR/SRs, Development Agreement/DGPA¹⁷⁹s were executed for development of land into plots/building of multi-storied residential complexes, villas. Audit noticed following irregularities in eight documents resulting in short realisation of stamp duty of ₹ 5.89 lakh:

Table 4.2: Short levy of stamp duty on Development Agreements/Development Agreements cum General Power of Attorney.

(₹ in lakh)

Sl. No.	Name of the office	Nature of irregularity	No. of documents / month and year of registration	Market value To be adopted / adopted	Stamp duty leviable / levied	Short levy of stamp duty
1	DR, Bhimavaram	Entire parking area was not taken into account for computation of market value	1 / July 2014	1151.30 / 1082.14	11.51 / 10.82	0.69
2	SR, Santhanuthalapadu		3 / July 2011, February 2012 and March 2013	725.96 / 647.06	7.26 / 6.48	0.78
3	SR, Ananthapuram (Rural)	Total built up area was not taken into account for valuation	1 / October 2014	2948.27 / 2735.21	14.74 / 13.73	1.01
4	SR, Ichapuram	Misclassified Development Agreement-cum-General Power of Attorney as Development Agreement	1 / March 2014	193.00 / 193.00	1.92 / 0.96	0.96
5	SR, Kothavalasa	Adopted the value declared in document instead of total market value of the property proposed for development	1 / October 2012	459.33 / 400.16	4.60 / 4.00	0.60

¹⁷⁷ G.O.Ms. No.1481, Revenue (Registration-I) Department, dated 30 November 2007.
G.O.Ms.No.568, Revenue (Registration-I) Department, dated 01 April 2008.
G.O.Ms.No.581, Revenue (Registration-I) Department, dated 30 November 2013.

¹⁷⁸ Between May 2015 and August 2016.

¹⁷⁹ Registered between July 2011 and February 2016.

(₹ in lakh)

Sl. No.	Name of the office	Nature of irregularity	No. of documents / month and year of registration	Market value To be adopted / adopted	Stamp duty leviable / levied	Short levy of stamp duty
6	SR, Palakonda	Only land value was taken into account leaving aside value of the proposed construction	1 / February 2016	198.35 / 21.97	2.18 / 0.33	1.85
	Total		8	5676.21 / 5079.54	42.21 / 36.32	5.89

After Audit pointed out these cases, DIGR contended (December 2017) in respect of four offices¹⁸⁰ that as per clarification¹⁸¹ of May 2013 with regard to SR, Koretipadu, the total plinth area was inclusive of parking area, hence separate calculation was not necessary. The reply was irrelevant as the clarification was issued with reference to document registered at SR, Koretipadu and not applicable to other cases.

In respect of SR, Ananthapuram (Rural) it was replied that there was no mention of stilt floor in the document. It was added that there was no loss of revenue as observed by audit since the value of the land, cost of proposed construction were taken into account. The reply was not tenable as the Audit observation was not based on stilt floor but on non-adoption of the built up area of complete construction. Thus, stamp duty was leviable on the under-valued property.

With regard to SR, Ichapuram, DIGR contended (December 2017) that in the document the land owners had permitted the developer to sell the flats allocated to him. The reply was not tenable as the recitals in the document clearly stated that the developer was given power to sell his share of flats by executing sale agreements. Hence it was to be treated as DGPA.

4.11 Short levy of duties and fees on instruments of exchange, gift, sale and power of attorney

During scrutiny of records in five offices, the following irregularities were noticed resulting in short levy of duties and fees amounting to ₹ 5.17 lakh:

Table 4.3: Short levy of duties and fees on instruments of sale, gift etc.

(₹ in lakh)

Sl. No.	Name of the Sub-Registrar office	Nature of document	Act / Rule provisions	Nature of irregularity	No. of documents	Duties and fees leviable / levied	Short levy
1	Chilamathur	Power of Attorney	Article 42(g) to Schedule I-A of Indian Stamp Act	Registration fees was incorrectly adopted	13	0.79 / 0.13	0.66

¹⁸⁰ DR-Bhimavaram, SRs-Kothavalasa, Palakonda and Santhanuthalapadu.

¹⁸¹ Memo No. MV6/5127/2013 dated 3 May 2013.

Sl. No.	Name of the Sub-Registrar office	Nature of document	Act / Rule provisions	Nature of irregularity	No. of documents	Duties and fees leviable / levied	Short levy
2	Kamavarapukota	Lease deed and mortgage deed	Article 35 of Schedule I-A to Indian Stamp Act	Separate documents were executed by Mortgagor though lessor and lessee are same	1	0.93 / 0.06	0.87
3	Madanapalle	Gift deed	Article 29 of Schedule I-A to Indian Stamp Act	Transfer duty was not levied	1	3.76 / 2.26	1.50
4	Madhurawada	Exchange deed	Section 118 of Transfer of Property Act	Stamp duty was incorrectly adopted	3	4.61 / 3.69	0.92
5	Yelamanchili	Power of Attorney	Article 42(g) to Schedule I-A of Indian Stamp Act	Misclassification of GPA in favour of 'other than family member' as 'family member'	1	1.23 / 0.01	1.22
	Total				19	11.32 / 6.15	5.17

In response, DIGR accepted (December 2017) the audit observations in respect of four SRs¹⁸² and issued instructions to the DR concerned to collect the deficit stamp duty.

In respect of SR, Kamavarapukota, it was replied that stamp duty was leviable on 'instrument' and not on 'transaction'. It was further stated that the documents were separate instruments and so duties were levied separately based on the recitals of the documents. The reply was not tenable as the mortgagor had leased out the property prior to registration of mortgage deed. The instrument was, therefore, to be treated as mortgage with possession in view of the explanation to the Article.

¹⁸² Chilamathur, Madanapalle, Madhurawada and Yellamanchili; in 18 cases involving an amount of ₹ 4.31 lakh.

