

**CHAPTER IV**  
**STAMP DUTY AND REGISTRATION FEE**



**PART-A**  
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**4.1 Tax administration**

The Registration Department administers the Indian Stamp Act, 1899 and the Registration Act, 1908 and the Rules made thereunder. The administration of the Department is vested with the Inspector General of Registration (IGR). There are 50 registration districts comprising 576 registration offices including three camp offices in the State. The levy and collection of stamp duty and registration fees are done by the registering authorities namely District Registrars (DRs) / Sub-Registrars (SRs). The monitoring and control at the Government level is done by the Secretary, Commercial Taxes and Registration Department.

**4.2 Internal audit**

Internal audit is a vital component of internal controls to enable an organisation to assure itself that the prescribed systems are functioning reasonably well. The Department has a system of internal audit to ensure *cent per cent* audit of all the instruments registered. There are 45 audit units, each headed by a District Registrar. The periodicity of audit of all offices is on monthly basis. The Registration Manual (Part II) provides guidance for establishment and working of internal audit in the department. The Department has also prepared and published a Hand Book of Internal Audit for instant and simplified guidance.

The details of internal audits due and conducted are placed in **Table No. 4.1**.

**Table No. 4.1: Details of Internal Audit**

<b>Year</b>	<b>Number of audits due</b>	<b>Number of audits completed</b>	<b>Balance</b>	<b>Percentage of col.3 to 2</b>
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>
Upto 2014-15	4,053	3,306	747	--
2015-16	1,617	980	637	61
2016-17	1,321	979	342	74
2017-18	2,426	1,916	510	79
2018-19	3,817	3,038	779	80
<b>Total</b>	<b>13,234</b>	<b>10,219</b>	<b>3,015</b>	

(Source: Reply of the Department)

The above table indicates an increasing trend from 2016-17 in the number of offices in respect of which internal audit was in arrears. The Department attributed the reasons for arrears in audit to vacancy of Audit Registrars and stated that a special team has been formed to clear the backlog.

The Department may consider strengthening internal audit so that audit may be conducted for all the units due for audit.

As at the end of 31 March 2019, 34,215 paragraphs involving money value of ₹ 133.43 crore were outstanding as detailed in Table No. 4.2.

**Table No. 4.2: Details of Internal Audit Objections**

(₹ in crore)

Year	Opening Balance		Observations raised		Observations settled		Observations pending	
	Number of cases	Amount	Number of cases	Amount	Number of cases	Amount	Number of cases	Amount
Upto 2016-17	21,249	88.13	27,147	67.09	25,798	58.91	22,598	96.31
2017-18	22,598	96.31	24,078	60.16	16,354	39.49	30,322	116.98
2018-19	30,322	116.98	17,106	41.66	13,213	25.21	34,215	133.43

(Source: Reply of the Department)

It is suggested that action may be taken for speedy clearance of old outstanding objections.

### 4.3 Results of audit

Test check of records of 18 departmental offices out of 599 auditable units conducted during the period from April 2018 to March 2019 revealed short levy of stamp duty and registration fee due to misclassification and other irregularities amounting to ₹ 69.25 crore in 137 cases, which broadly fall under the following categories:

**Table No. 4.3: Results of Audit**

(₹ in crore)

Sl. No.	Category	No. of cases	Amount
1	Misclassification of instruments	32	3.26
2	Undervaluation of instruments	30	1.56
3	Excess/Incorrect allocation of Transfer Duty Surcharge	10	1.07
4	Others	65	63.36
	<b>Total</b>	<b>137</b>	<b>69.25</b>

During the course of the year 2018-19, the department accepted and recovered underassessments and other deficiencies amounting to ₹ 79.88 lakh in 29 cases pointed out in earlier years.

#### 4.4 Audit Observations

Audit scrutiny of records at 18 out of 599 auditable offices (three *per cent*) revealed deficiencies amounting to ₹ 2.01 crore are discussed in the following paragraphs.

##### 4.4.1 Misclassification of conveyance deeds as cancellation deeds

According to Section 2(10) of the Indian Stamp Act, 1899 (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 Indian Registration Act, 1908, registration fee is leviable at the rate of one *per cent* for the period up to 8 June 2017 and four *per cent* thereafter, on the market value of the property on which the stamp duty is levied. As per Article 17 of the Schedule I to the IS Act, for instrument of cancellation, if attested and not otherwise provided for, a stamp duty of ₹ 50 is to be levied.

It was judicially<sup>1</sup> held that there can be no such thing as cancellation of a conveyance under which right of property has already been passed. Property can be retransferred only by re-conveyance. Further, it was judicially<sup>2</sup> held by the Madras High Court that cancellation of a sale deed by a deed of cancellation can be effected only when a condition that title will pass on payment of consideration, was included in the original sale deed.

Audit noticed during scrutiny of records in six<sup>3</sup> out of 18 Registering Offices (between November 2018 and March 2019) that transfer of properties, effected through 24 sale deeds (registered between November 2011 and March 2017), was cancelled by 'Deeds of Cancellation' (registered between May 2016 and September 2017) on the ground that consideration was not received and possession was not handed over, etc., and stamp duty and registration fee of ₹ 0.07 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 fee of ₹ 70.77 lakh was required to be levied on the market value of the property of ₹ 8.25 crore. Thus, misclassification of re-conveyance deeds as cancellation deeds resulted in short levy of stamp duty and registration fee of ₹ 70.70 lakh.

On being pointed out by Audit (between November 2018 and March 2019), the Registering Officer, Peelamedu, replied that as per the instructions of the IGR any deed can be cancelled under Article 17 of the IS Act and that in the absence of any recitals on the act of conveyance, a document should be treated

<sup>1</sup> cf Emperor Vs Rameshardoss 32 All 171 SIC 697.

<sup>2</sup> W.A.Nos.592 & 938 of 2009, in Latif Estate Line India Ltd. Vs. Registration Department.

<sup>3</sup> DR, Chennai (South), SR, Avadi, SR, Kundrathur, SR, Neelankarai, SR, Peelamedu and SR, Periamet.

as mere cancellation only. The reply is 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 IS Act. Replies from the other offices are awaited.

**Recommendation:** Department may ensure that executive instructions do not override spirit of the Act and result in evasion of stamp duty.

#### **4.4.2 Misclassification of instruments**

##### **4.4.2.1 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 seven *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. As per Article 55A of Schedule I, instruments of release involving transfer of properties in favour of family<sup>4</sup> members attract stamp duty of one per cent on the value of properties transferred, subject to a maximum of ₹ 25,000. Besides, registration fee at the rate of one *per cent* on the value of properties transferred was also leviable, subject to a maximum of ₹ 4,000.

Audit noticed during scrutiny of records in four<sup>5</sup> out of 18 Registering Offices (between November 2018 and March 2019) that out of properties valued at ₹ 5.10 crore, share of properties valued at ₹ 3.37 crore was transferred through eight instruments of release deed executed and registered between June 2016 and December 2017. These included transfer of share in properties valued at ₹ 1.60 crore to family members and ₹ 1.77 crore to persons other than 'family members', viz., daughter-in-law, aunt, nephew, niece. However, instead of collecting stamp duty and registration fee at the rate of eight *per cent* on the value of the properties transferred to persons other than family members, the Registering Officers collected stamp duty at the concessional rate prescribed for family members. Thus, against stamp duty and registration fee of ₹ 15.53 lakh, stamp duty and registration fee of only ₹ 2.17 lakh was collected by the department. This resulted in short collection of stamp duty and registration fee of ₹ 13.36 lakh.

On being pointed out by Audit (between November 2018 and March 2019), the Registering Officers of Chennai (North) and Peelamedu stated that the IGR had clarified in January 2014 that Article 55A of the IS Act contemplated

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<sup>4</sup> As per explanation under Article 55A of Schedule I read with explanation under Article 58 of Schedule I, "family" means father, mother, husband, wife, son, daughter, grandchild, brother, sister, and also includes adoptive father and mother, adopted son and daughter in the case of any one whose personal law permits adoption.

<sup>5</sup> DR, Chennai (North), SR, Neelankarai, SR, Peelamedu and SR, Singanallur.

release in respect of coparcenary properties, properties jointly inherited, properties devolved by succession, and since in these cases there existed coparcenary right over the property among the releasors and the releasees, the documents were classified as family release. The reply was not tenable because the relinquishment of share in property in these cases had not taken place among the family members as per the provisions of the IS Act. Further, any executive instructions/clarifications cannot be a substitute for the statutory provisions contained in the relevant Act. Reply from other offices awaited.

#### **4.4.2.2 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 the 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 attracts stamp duty of one *per cent* on the value of properties partitioned, subject to a maximum of ₹ 25,000. Besides, registration fee at the rate of one *per cent* on the value of properties transferred was also leviable, subject to a maximum of ₹ 4,000. ‘Family’ as defined under the IS Act includes father, mother, husband, wife, son, daughter, grandchild, brother, sister and also adoptive father and mother, adopted son and daughter in the case of any one whose personal law permits adoption.

During test check (February and March 2019) of records in five<sup>6</sup> out of 18 Registering Offices, Audit noticed that through seven instruments of partition registered between April 2016 and March 2018, immovable properties valued at ₹ 10.67 crore were partitioned. Scrutiny of the instruments revealed that the share of properties worth ₹ 88.49 lakh allotted to non-family members was also classified by the Registering Officers as partition among family members and stamp duty and registration fee were levied at concessional rates. Thus, against ₹ 12.27 lakh, the Registering Officers collected stamp duty and registration fee of ₹ 8.55 lakh resulting in short collection of stamp duty and registration fee of ₹ 3.72 lakh.

On being pointed out by Audit (February and March 2019), SR, Singanallur replied (March 2019) that the partition was effected between coparceners and stamp duty and registration fee was collected based on the directions given in the circulars issued by the IGR. The reply is 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. Further, the Madurai Bench of Honourable Madras High Court<sup>7</sup> held in February 2014 that the definition of the term “family” given in the Explanation under Article 58 was

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<sup>6</sup> SR, Gandhipuram, SR, Kundrathur, SR, Neelankarai, SR, Singanallur and SR, T.Nagar.

<sup>7</sup> Madurai Bench of Honourable Madras High Court in W.P.No.58 of 2012 in the case of T. Muthu Balu Vs Inspector General of Registration dated 24 February 2014.

exhaustive and the benefit of Explanation under Article 58 would not be applicable to persons other than those mentioned therein. Reply from other offices is awaited.

**Recommendation:** Department may ensure that when the provisions of Act and Rules are clear and unambiguous, executive instructions are not issued.

#### **4.4.3 Excess allocation of Transfer Duty Surcharge**

As per Section 175 of the Tamil Nadu Panchayats 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 local bodies concerned.

Audit observed (between November 2018 and March 2019) from the periodical quarterly returns of transfer duty surcharge (TDS) and registers in six<sup>8</sup> out of 18 Registering Offices that ₹ 109.41 lakh was allocated to local bodies towards TDS as against ₹ 32.75 lakh actually collected. This resulted in excess allocation of ₹ 76.66 lakh 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 TDS in respect of ineligible documents.

On being pointed out by Audit (between November 2018 and March 2019), Department replied that the excess allocation would be adjusted during the subsequent allocation.

**Recommendation:** Department while allocating the transfer duty surcharge, may avoid duplication, arithmetical inaccuracy and incorrect allocation. Further, the Department may introduce a software module so that there will be proper allocation of transfer duty surcharge.

#### **4.4.4 Incorrect remission of Transfer Duty Surcharge**

The Government implemented a Samadhan Scheme in December 2017<sup>9</sup> with a view to realising the revenue blocked in pending cases under Sections 47A and 19B of the Indian Stamp Act, 1899, granting remission of one-third of the difference between stamp duty already paid and stamp duty chargeable on the value of properties as proposed by the Registering Officers based on the market value guidelines in respect of land and Schedule of Rates of Public Works Department in respect of buildings. As per Section 175 of the Tamil Nadu Panchayats 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 local bodies.

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<sup>8</sup> DR, Chennai (South), SR, Neelankarai, SR, Peelamedu, SR, Periamet, SR, Singanallur and SR, T.Nagar.

<sup>9</sup> G.O.Ms.No.189, Commercial Taxes and Registration (J1) Department dated 29 December 2017.

Presently, the rate of the TDS is two *per cent* on the value on which stamp duty is levied and collected.

During the audit of six<sup>10</sup> out of 18 offices (between November 2018 and March 2019), it was noticed that executants of 21 instruments opted for the Samadhan Scheme and were granted one-third of the differential stamp duty as remission as per the Scheme. However, while granting remission to the stamp duty payable, the Registering Officer granted remission of TDS also on all these instruments and collected two-third of TDS of ₹ 39.30 lakh instead of the full amount of ₹ 58.95 lakh. As the Government ordered remission of stamp duty only, one-third remission granted on TDS was not in order. This incorrect remission, resulted in a short collection of ₹ 19.65 lakh.

On being pointed out by Audit (between November 2018 and March 2019), the Registering Officer of Peelamedu, citing an IGR's order dated 25 August 1980, replied that no separate order was required for remission of transfer duty surcharge. The reply is not acceptable since the Government did not alter the market value on which stamp duty was payable but only remitted one-third of the duty payable. Since TDS is collectable on the market value on which stamp duty is payable, the remission of one-third of TDS was not in order. Moreover, levy of TDS is governed by separate Acts and therefore a separate notification is necessary for granting remission of the same. It is pertinent that in the neighboring Union Territory of Puducherry, the Government had issued a separate notification for remission of TDS for women purchasers. Hence, the remission allowed by the Registering officers is not in order. Reply from other Registering Offices is awaited.

**Recommendation:** Department while making internal circulars, may ensure that the circular instructions are not overriding the provisions of the Act and Rules. Department may obtain legal opinion in cases of ambiguities and make use of procedure followed in other States in a similar situation.

#### **4.4.5 Misclassification of conveyance-cum-cancellation of lease deed as cancellation of lease deed**

As per Section 5 of IS Act, any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under this Act. According to Article 1(o) of the Table of Fees prepared under Section 78 of Indian Registration Act, 1908, cancellation of any instrument attracts a registration fee of a maximum of ₹ 50. 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 TDS on the market value of the property. In addition, under the Indian Registration Act, 1908, registration fee is leviable at the rate of one *per cent* for the period upto 8 June 2017 and four *per cent* thereafter, on the market value of the property on which the stamp duty is levied.

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<sup>10</sup> SR, Ashok Nagar, SR, Gandhipuram, SR, Kundrathur, SR, Neelankarai, SR, Peelamedu and SR, Royapuram.

During the test check of 18 lease instruments in the office of the SR, Periya Naicken Palayam (November 2018), it was noticed that through two instruments, lease of vacant lands given previously, was cancelled in December 2016 and January 2018. Based on the field inspections conducted by the Assistant Executive Engineer, the Registering Officer collected a registration fee of ₹ 2.09 lakh including the registration fee on building value of ₹ 2.08 crore and registered the instruments. Even though only land, without any building was originally leased out, the lessor got back the land along with a new built-up portion. Therefore, the transaction should be treated as a conveyance-cum-cancellation of lease deed and stamped as per Section 5 of the IS Act. However, the Registering Officer did not levy and collect stamp duty and registration fee treating the transfer of improvements as conveyance. Thus, against ₹ 18.60 lakh leviable, the Registering Officer collected ₹ 2.09 lakh, resulting in a short collection of ₹ 16.51 lakh.

When this was brought to the notice of the department (November 2018), the Registering Officer stated that the registration fee on the building was collected as per the instructions of the IGR (October 2014). The reply is not acceptable since there is conveyance of building in the transaction which has been overlooked.

**Recommendation:** Department may ensure that clarification through internal circulars is issued after exhaustive analysis and does not result in leakage of revenue.

The issues mentioned in Paragraph Nos. 4.4.1 to 4.4.5 were referred to the Government in October 2019 and reminded in January, March and June 2020. Reply is awaited (October 2020).