

## CHAPTER-VI STAMP DUTY AND REGISTRATION FEES

### 6.1 Tax administration

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

### 6.2 Results of Audit

There are 323 auditable units<sup>1</sup> in the Registration and Stamps Department under the Revenue Department. Out of these, 29 units were selected for test check. During 2018-19, 6,80,224 documents were registered/ adjudicated and 12,806 valuation cases were finalised by these units. Out of these, 10,850 documents (1.59 *per cent* of total cases) and 5,116 valuation cases (39.95 *per cent* of the total cases) were test checked. Scrutiny of these documents/ valuation cases revealed short realisation of stamp duty and registration fees and other irregularities involving ₹ 23.57 crore in 176 documents (1.62 *per cent* of test checked cases) and 11 valuation cases (0.21 *per cent* of test checked cases) aggregating to 187 cases. These cases are illustrative only as these are based on test check of records. Audit had pointed out some of the similar omissions in earlier years. Not only these irregularities persist but also remain undetected till next audit is conducted. There is a need for the Government to improve the internal control system including strengthening of internal audit so that recurrence of such cases can be avoided. Irregularities noticed broadly fall under the following categories:

**Table 01: Results of Audit**

Sl. No.	Category	No. of cases	Amount (₹ in crore)
1	Misclassification of documents	20	2.42
2	Undervaluation of property	19	0.61
3	Short levy of stamp duty and registration fees	30	5.26
4	Other irregularities	31	15.28
	<b>Total</b>	<b>100</b>	<b>23.57</b>

During the course of the year, the Department accepted ₹ 108.86 lakh in 35 cases and recovered ₹ 97.47 lakh in 33 cases, which were pointed out in audit during 2018-19 and earlier years.

<sup>1</sup> Offices of the Inspector General of Registration (IGR) and Superintendent of Stamps (SS): 01, Sub-Registrars: 287, Deputy Collectors (Stamp Duty Valuation Organisation): 35.

A few illustrative audit observations involving ₹ 22.51 crore are mentioned in the succeeding paragraphs.

### **6.3 Non-levy of premium price on unauthorized transfer of new tenure agricultural land**

As per the Revenue Department Resolutions<sup>2</sup> issued under Section 43 of the Gujarat Tenancy and Agricultural Lands (GTAL) Act, 1948, in case of conversion of land under new and restricted tenure to old tenure, premium at the prescribed rates is required to be recovered by the concerned Collector offices. As per Government Resolution dated 03 May 2011, the rate of premium is 25/ 40 *per cent* of the market value of the property as per prevailing *Jantri* for agricultural/ non-agricultural purpose respectively. Revenue Department, vide Circular dated 17 March 2017, has stipulated that in case of *bonafide* purchases, permission may be granted for conversion of land under new tenure to old tenure after recovery of premium price at agricultural rates for the earlier transfer of new and restricted tenure agricultural land plus premium price at non-agricultural rates for the present non-agricultural transfer/ use.

During test check of the records of two Sub Registrar offices<sup>3</sup> for the year 2015 to 2017, audit noticed<sup>4</sup> from the recitals of three documents registered as conveyance deeds, the instances of breach of conditions of Section 43 of GTAL Act, 1948. New tenure agricultural lands measuring 24,515 sq. m. were unauthorisedly transferred in these cases for which 25 *per cent* of the market value of the land was payable towards premium price for regularising the transfer. However, as no directives were given by the Revenue Department to the officials of the Inspector General of Registration and Superintendent of Stamps to report such documents to the concerned District Collector offices, the SR offices engaged in registration and DC (SDVO) offices engaged in adjudication of documents did not report the cases to the office of the District Collectors for initiating recovery of applicable premium price. There had been non-levy of premium price of ₹ 10.20 crore in these three cases as detailed below:

(i) In two cases, lands measuring 21,075 sq. m. (for non-agricultural use) had been conveyed to the purchasers by sellers for consideration of ₹ 18.58 crore. As the lands were under new tenure, necessary previous approval of the Collector had been obtained (in June 2016 and February 2017) for conversion of land from new to old tenure for non-agricultural use/ transfer after payment of premium price (at the rate of 40 *per cent* of market value as per prevailing *Jantri*). Recitals of the documents revealed that the market value of these lands as per prevailing *Jantri* was higher than the consideration set forth in the documents and therefore, the documents had been referred to the DC (SDVO) office for determination of market value and levy of deficit stamp duty, if any. The applicant in his representation to DC (SDVO) office stated that the sales of the new tenure agricultural lands had been affected by

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<sup>2</sup> Dated 13 July 1983 read with the Resolution No NSJ-102006-571-J (Part 2) dated 04 July 2008

<sup>3</sup> SR- Sanand and Surat-I (Athwa)

<sup>4</sup> In May and September 2018

way of execution of unregistered agreements (after receipt of consideration and after passing on the liability of payment of premium to purchasers) long ago (in October 2002 and January 2011). The DC (SDVO) office, based on the representation of the applicant, certified the document as properly stamped in one case and recovered deficit duty of ₹ 2.02 lakh in other case. The DC (SDVO) office had decided the market value of property based on *Jantri* rates prevailing in October 2002 (as per ASR 1999) and January 2011 (as per ASR 2006).

Audit observed that new tenure agricultural lands had been transferred by the sellers to the purchasers without prior permission of the Collector office. In these cases, permissions were required to be granted for conversion of land under new tenure to old tenure after recovery of premium price at agricultural rates for the earlier unauthorized transfer of new and restricted tenure agricultural land plus premium price at non-agricultural rates for the present non-agricultural transfer/ use. However, the land owners did not reveal the unauthorised transfer while applying for the conversion of land and the SR/DC (SDVO) offices also did not report the unauthorised sale to Collector offices due to lack of instruction to do so. Hence, premium was levied and collected at non-agricultural rates only for the present non-agricultural transfer/use. This resulted in non-levy of premium price of ₹ 10.10 crore.

(ii) In case of one document, new tenure agricultural land measuring 3,440 sq. m. had been conveyed to the purchasers by sellers for a consideration of ₹ 41.37 lakh through execution of power of attorney (PoA) with consideration and the document had been registered with the Sub Registrar office. The recitals of the document revealed that all the rights/ title in the property had been vested with the purchasers (PoA holder).

Audit observed that new tenure agricultural land had been irregularly transferred without previous approval of the Collector office. Therefore, premium price for agricultural transfer was required to be recovered. But the SR office did not refer the document to the Collector office due to lack of specific instructions to do so. The Collector office too did not identify the instance of unauthorised transfer of land by the applicants. This resulted in non-levy of premium price of ₹ 10.34 lakh.

After this was pointed out, the Department stated (January 2020) that the three documents have been referred to the concerned branch of the Collector offices for further necessary action.

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

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

During test check of the documents registered with/ cases finalized by eight SR offices<sup>5</sup>, DC (SDVO) office, Navsari and the office of the Additional Superintendent of Stamps and Inspector General of Registration, Gandhinagar during the year 2006 to 2017, audit noticed<sup>6</sup> that the market value of the properties was determined incorrectly in 38 documents which resulted in short levy of stamp duty and registration fees of ₹ 4.37 crore as explained below:

**(i) Undervaluation in cases of conveyance of properties in pursuance of Reconstruction/Amalgamation of Companies**

Sl. No.	Name of office	Number of documents Month of adjudication of document	Short levy of stamp duty (₹ in lakh)
1.	Additional Superintendent of Stamps, Gandhinagar,	2 2015	32.97

As per Article 20(d) of Schedule I to the GS Act, 1958, conveyance, so far as it relates to the scheme for reconstruction or amalgamation of companies by an order of the High Court under Section 394 of the Companies Act, 1956, shall be leviable with stamp duty, subject to maximum of ₹ 25 crore, (i) an amount equal to one *per cent* of the aggregate amount comprising of the market value of share issued or allotted in exchange of or otherwise, or the face value of such shares, whichever is higher and the amount of consideration, if any, paid for such amalgamation, or (ii) an amount equal to one *per cent* of the true market value of the immovable property situated in the State of Gujarat of the transferor company, which is higher. Explanation (III)(a) below Article 20 (d) stipulates that in relation to the transferee company, whose shares are listed or quoted for trading on a Stock Exchange, means the market value of share as on the appointed date mentioned in the scheme of amalgamation, or when the appointed date is not so fixed, the date of order of the High Court.

**Nature of observation: (i)** In one case finalised under Section 31 of the GS Act, 1958, the High Court of Gujarat had approved scheme for amalgamation of five transferor companies with one transferee company under Section 394 of the Companies Act, 1956 on 03.08.2015. As per the scheme, the appointed date fixed by court was 01.4.2014. Audit observed that the AA had adopted value of properties in possession of the transferor companies on the date of High Court order instead of the appointed date. The value of immovable properties of the transferor companies as on the appointed date was ₹ 5,785.00 lakh on which stamp duty of ₹ 57.85 lakh was chargeable. However, the AA had levied the stamp duty of ₹ 32.31 lakh only which resulted in short levy of stamp duty of ₹ 25.54 lakh.

<sup>5</sup> Anand, Gandhinagar, Kamrej (Surat), Kheda, Palanpur, Sanand (Ahmedabad), Surat- I (Athwa), Surat X (Nanpura)

<sup>6</sup> Between February 2017 and October 2018

(ii) In Additional Superintendent of Stamps and Inspector General of Registration office, Gandhinagar, in another case finalised under Section 31 of the GS, 1958, the High Court of Gujarat had approved scheme for amalgamation of one transferor company with one transferee company under Section 394 of the Companies Act, 1956 on 27.11.2014. Audit noticed that the AA, during valuation of the immovable properties of the transferor company engaged in the business of real estate development, had only considered the value of ₹ 217.68 lakh in respect of the freehold and lease hold properties declared by the transferor company while the value of land of ₹ 960.52 lakh mentioned under the Schedule of Inventories in the Balance Sheet of the transfer or was not taken into account. As the value of land under inventories was higher than the value of properties declared by the transferor company, the stamp duty of ₹ 9.61 lakh was required to be levied on the instrument. However, the AA had levied stamp duty of ₹ 2.18 lakh. This resulted in short levy of stamp duty of ₹ 7.43 lakh.

The matter had been reported to the Department/Government in October 2019. The reply is awaited (May 2020).

**(ii) Undervaluation due to adoption of incorrect area**

As per the guidelines of ASR effective from 18 April 2011, for arriving at the built-up area, the carpet area mentioned in the document shall be multiplied by 1.2 times. IGR office in the circular dated 26 September 2007, instructed SR offices to include area of common plot, internal road etc., in total area of land for arriving at the market value of property for the purpose of levy of stamp duty.

Sl. No.	Name of office	Number of documents Month of registration of document	Short levy of stamp duty (₹ in lakh)
1.	SR, Surat - 1 (Athwa) & SR, Surat - 10 (Nanpura)	<u>7</u> Between February 2016 and 2017	12.54
<p><b>Nature of observation:</b> In respect of seven conveyance deeds of shops/ offices, SR offices had adopted carpet area of 1,884.05 sq. m. instead of built-up area of 2,260.86 sq. m. for valuation of property and levy of stamp duty. The total amount of stamp duty chargeable in these cases was ₹ 57.05 lakh while stamp duty of ₹ 44.51 lakh was levied. This resulted in short levy of stamp duty of ₹ 12.54 lakh.</p> <p>After this was pointed out, the Department stated (January 2020) that notices have been issued by Dy. Collector (SDVO) offices in all these cases.</p>			
2.	SR, Palanpur	<u>2</u> March 2013 and April 2014	8.04
<p><b>Nature of observation:</b> In two cases of conveyance of residential/ commercial plots, the SR office did not include area of common plot, internal road, etc. measuring 3,843.64 sq. m. valuing ₹ 164.05 lakh into the total area of land for valuation of property resulting in short-levy of stamp duty.</p> <p>After this was pointed out, the Department while accepting (January 2020) the audit observation recovered an amount of ₹ 4.06 lakh and in the other case order was issued for recovery by the DC (SDVO) office.</p>			

3.	SR, Kheda - Nadiad	<u>1</u> May 2016	28.61
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**Nature of observation:** In one case of conveyance of NA land registered vide document no. 459 dated 31.05.2016, the fact that there had been construction measuring 6,417 sq. m. on the land, had not been mentioned in the document and therefore SR office did not include the area of construction into the total area of land for valuation of property and levy of stamp duty. However, the fact regarding the constructed properties on the land prior to the execution of the conveyance deed was noticed by Audit from the subsequently registered documents (Document No. 509, 519 and 520 dated 06.06.2016). Accordingly, stamp duty was chargeable on the constructed properties as well but SR office failed to refer these documents to DC office for initiating action for evasion of stamp duty and levy of proper stamp duty.

The matter had been reported to the Department/Government in October 2019. Their reply is awaited (May 2020).

### (iii) Undervaluation due to adoption of incorrect rates

Under Section 3 of the GS Act, 1958, every instrument mentioned in Schedule-I shall be chargeable with duty at the prescribed rates, unless specifically exempted. Under Article 20 (a) of Schedule I read with Section 3A of Gujarat Stamp Act, 1958, an instrument of conveyance of immovable property is chargeable with stamp duty at 4.9 *per cent* of the amount of the consideration for such conveyance or as the case may be, the market value of the property which is the subject matter of such conveyance, whichever is greater. As per definition of market value under Section 2 (na) of GS Act, 1958, 'market value' in relation to any property which is the subject matter of an instrument means the price which such property would have fetched, if sold in open market on the date of execution of such instrument. As per the guidelines of ASR 2011, where agricultural land is purchased for industrial purpose with the permission of competent authority and total area of such land is more than 10,000 sq. m., rebate of 20 *per cent* may be allowed in *Jantri* rates for valuation of property. However, the executants have to present copy of the orders of the competent authority at the time of registration of instrument. In case of shops situated in shopping mall, arcade and multiplex, no road frontage reduction benefit shall be allowed during valuation of the property.

Sl. No.	Name of office	<u>Number of documents</u> Month of registration of document	Short levy of stamp duty and registration fees (₹ in lakh)
1.	SR, Surat - Kamrej	<u>1</u> February 2017	5.57

**Nature of observation:** In one conveyance deed of agricultural land, the recitals revealed that the land had been converted for non-agricultural use by order dated 21.05.2014 of the Collector office but the SR office had adopted agricultural land *Jantri* rates instead of residential land *Jantri* rates for valuation of property and levy of SD.

After this was pointed out, the Department stated (January 2020) that notice has been issued by Dy. Collector (SDVO) office to the concerned parties. Further reply awaited.

2.	SR, Kheda-Nadiad	<u>3</u> Between July 2016 and October 2016	21.62
<p><b>Nature of observation:</b> In three cases of development agreements for construction of warehouses, godowns, industrial shades, etc., the SR office had adopted agricultural <i>Jantri</i> rates instead of industrial <i>Jantri</i> rates for valuation of property and levy of SD.</p> <p>The matter had been reported to the Department/Government in October 2019. The reply is awaited (May 2020).</p>			
3.	SR, Anand	<u>17</u> March and June 2016	213.07
<p><b>Nature of observation:</b> In 16 cases of conveyance, plots measuring 76,334 sq. m. were purchased by a Company. The area had been covered under industrial zone vide Gazette notification dated 05.08.1997. But the SR office had adopted commercial <i>Jantri</i> rates instead of industrial <i>Jantri</i> rates for valuation of property and levy of SD. In one other case of conveyance deed, the property was situated in a shopping mall and therefore reduction of 35 <i>per cent</i> in <i>Jantri</i> rate for valuation of the property was inadmissible.</p> <p>After this was pointed out, the Department stated (January 2020) that notices have been issued by Dy. Collector (SDVO) office to the concerned parties. Further reply awaited (May 2020).</p>			
4.	DC (SDVO), Navsari	<u>1</u> June 2015	7.75
<p><b>Nature of observation:</b> In one case of conveyance deed of residential land measuring 1,97,758 sq. m. adjudicated by DC (SDVO) office, Navsari, the land had been purchased under Section 63 of Gujarat Tenancy and Agricultural Lands Act, 1948 for residential use. Reduction of 20 <i>per cent</i> in <i>Jantri</i> rates applicable for industrial purpose was irregularly granted in the case.</p> <p>After this was pointed out in audit, the Department stated (January 2020) that the matter had been referred to CCRA office for adjudication and levy of proper stamp duty. Further reply awaited (May 2020).</p>			
5.	SR, Sanand	<u>1</u> September 2015	10.36
<p><b>Nature of observation:</b> A conveyance deed in respect of non-agricultural land measuring 9,899 sq. m. had been executed and registered for a consideration of ₹ 4.11 crore. On the same day, a development agreement in respect of the same land had also been executed and registered for consideration of ₹ 1.15 crore as per <i>Jantri</i> rates. The SR office instead of considering the market value of the land <i>i.e.</i> ₹ 4.11 crore adopted market value as per <i>Jantri</i> rates, <i>i.e.</i> ₹ 1.15 crore for levy of stamp duty on the development agreement resulting in short levy of stamp duty.</p> <p>After this was pointed out, the Department stated (January 2020) that notice has been issued by Dy. Collector (SDVO) office to the concerned party. Further reply awaited (May 2020).</p>			

6.	SR, Gandhinagar	<u>3</u> Between March 2017 and December 2017	96.35
<p><b>Nature of observation:</b> In three cases, the Government lands purchased in auction had been given to the developers for construction of commercial properties by execution of development agreement. The SR office had adopted market value of ₹ 3.97 crore as per <i>Jantri</i> instead of auction price of ₹ 25.38 crore for levy of stamp duty and registration fees.</p> <p>After this was pointed out, the Department stated (January 2020) that notices have been issued in all these cases. Further reply is awaited (May 2020).</p>			

### 6.5 Short levy of stamp duty on conveyance deeds executed in pursuance of agreements

As per Explanation-I below Article 20 of Schedule I to the GS Act, 1958, an agreement to sell an immovable property or an irrevocable power of attorney shall, in case of transfer of the possession of such property before, at the time of or after the execution of such agreement or power of attorney, be deemed to be a conveyance and the stamp duty thereon shall be chargeable accordingly. The provisions of Section 32-A shall apply *mutatis mutandis* to agreement to sell or irrevocable power of attorney as are applicable to a conveyance. Provided further that where subsequently a conveyance is executed in pursuance of such agreement of sale, or an irrevocable power of attorney, the stamp duty, if any, already paid and recovered on the agreement of sale or an irrevocable power of attorney which is deemed to be a conveyance, shall be adjusted towards the total duty leviable on the conveyance.

During test check of documents registered in two SR offices during the year 2012 to 2017, audit noticed that there was short levy of stamp duty of ₹ 2.57 crore on conveyance deeds executed in pursuance of agreements in the following five cases:

Sl. No.	Name of office	Number of documents Month of registration of document	Short levy of stamp duty (₹ in lakh)
1.	SR, Sanand	<u>1</u> August 2015	105.43

**Nature of observation:** In one case of conveyance deed of 91,230 sq. m. developed NA land, recitals revealed that previously development agreements (original/registered and supplementary/ unregistered) with consideration had been executed in favour of developer in 2009 and 2010. DC (SDVO) office had adjudicated these agreements and ordered (August 2015) to recover SD under Article 45(f). Later, conveyance deed in favour of developer had been executed in respect of same land in 2015. As per the provisions of the GS Act, 1958, *read with* explanation I below Article 20, the stamp duty was required to be levied based on the prevailing *Jantri* rate on the date of execution of the conveyance deed after adjusting the stamp duty paid on the development agreements executed earlier. However, the SR office had levied stamp duty of ₹ 100 only based on the assumption that the present sale deed had been executed in pursuance of development agreements executed during 2009 and 2010.

2.	SR, Surat-1(Athwa)	<u>3</u> Between January and November 2017	151.23
<p><b>Nature of observation: (i)</b> In two cases of conveyance deed, recitals revealed that the DC (SDVO) office had adjudicated the deeds of old tenure NA land registered in 2017 as properly stamped based on the submission of the applicants that the land had been handed over to the purchasers in 2002 in the case of the first deed and the payment towards agreed consideration had been received by the sellers in January 2011 in case of the second deed. In both cases, the land at that time was new tenure agricultural land and liability of payment of premium price for conversion of new tenure land into old tenure land had been passed on to the purchasers. But, no agreement to sell with possession had been found to be executed in both these cases. Hence, these documents were required to be levied with stamp duty calculated with reference to the prevailing <i>Jantri</i> rates of 2017.</p> <p><b>(ii)</b> In another case of conveyance deed, recitals revealed that previously the sellers had bought the plots of land vide 72 documents executed and registered during the year 2012 to 2017. Whereas, the purchasers had already been in possession of the land by virtue of three documents of year 2009. The purchasers filed a petition before the District Civil Court to get their exclusive rights/ title in the land established in December 2016. But, later, both parties agreed to settle the issue amicably and the purchasers agreed to accept/ acknowledge the rights of the sellers in the land. The District Civil Court also endorsed this arrangement. The DC (SDVO)- I office, Surat, based on the representation of the purchasers, decided that the document was properly stamped because the purchasers were the owners of the land since 2009. No document had been executed between the present purchasers and sellers in 2009. Therefore, it cannot be stated that the present document had been executed in pursuance of the document previously executed. The SR office was required to calculate market value as per <i>Jantri</i> rates prevalent in 2017 and recover SD accordingly.</p> <p>After this was pointed out, the Department stated (January 2020) that notices have been issued by DC (SDVO) office in three cases and in one case the document was referred to CCRA office under Section 53 (a) of the Gujarat Stamp Act, 1958.</p>			

### 6.6 Short levy of stamp duty on assignment/transfer of lease deed, partnership deed and dissolution of partnership deed

During test check of documents registered in three SR offices during the year 2012 to 2017, audit noticed<sup>7</sup> that proper stamp duty was not levied in three documents as detailed below which resulted in short levy of stamp duty ₹ 1.21 crore:

Sl. No.	Name of office	Number of documents Month of registration of document	Short levy of stamp duty (₹ in lakh)
1	SR, Ahmedabad – 7 (Odhav)	<u>1</u> February 2017	83.42
<p>Article 57 of Schedule-I to the GS Act, 1958, in case of transfer of lease by way of assignment and not by way of under lease (or by way of decree or final order passed by any civil court or any Revenue officer), the same duty is leviable as is leviable on a conveyance under Article 20 (a) on the amount of the consideration for the</p>			

<sup>7</sup> Between May 2017 and June 2018

<p>transfer or, as the case may be, market value of the immovable property, whichever is greater.</p> <p><b>Nature of observation:</b> In one case of assignment of leasehold property, SR office did not consider market value as per <i>Jantri</i> for levy of stamp duty. But he had taken into account the consideration and annual amount of rent for levy of SD.</p> <p>After this was pointed out, the Department stated (January 2020) that notice has been issued by DC (SDVO) office to the concerned party. Further reply is awaited (May 2020).</p>			
2	SR, Surat - Olpad	1 March 2017	23.02
<p>Article 44 (1) (b) of Schedule I to the GS Act, 1958, stipulates that in case of partnership, where such share of capital is brought in by way of cash and immovable property, with effect from 01.08.2014, stamp duty is leviable as is leviable on a conveyance under Article 20 for the market value of such property.</p> <p><b>Nature of observation:</b> In SR office, Olpad (Surat), from the recitals of a conveyance deed, Audit noticed that previously, unregistered partnership deed in respect of land measuring 77,600 sq. m. had been executed after August 2014 and therefore, stamp duty as leviable on a conveyance deed was leviable. But stamp duty of ₹ 10,000 only had been recovered.</p> <p>After this was pointed out, the Department stated (January 2020) that notice has been issued by DC (SDVO) office to the concerned party. Further reply is awaited (May 2020).</p>			
3	SR, Palanpur	1 August 2014	14.40
<p>Article 44 (3) (a) of Schedule I to the GS Act, 1958, stipulates that in case of dissolution of partnership, where any immovable property is taken as his share on dissolution of partnership by a partner other than a partner who brought that property as his share or contribution to partnership, stamp duty is leviable as is leviable on conveyance under Article 20 for the market value of such property.</p> <p><b>Nature of observation:</b> In one case of dissolution of partnership, the unsold flats situated in the properties of the partnership firm were transferred to the partners at the time of dissolution of partnership. However, stamp duty of ₹ 500 only was levied. Audit noticed that the transfer of properties of the partnership firm to partners tantamount to conveyance and stamp duty of and registration fees of ₹ 14.40 lakh was chargeable on the document.</p> <p>After this was pointed out, the Department stated (January 2020) that notice has been issued by DC (SDVO) office to the concerned party. Further reply awaited (May 2020).</p>			

## 6.7 Blockage of revenue on documents comprising distinct transactions

Under Section 5 of the Gujarat Stamp Act 1958, any instrument comprising several distinct matters or distinct transactions shall be chargeable with aggregate amount of duties with which separate instruments would be chargeable under the Act. As per Article 6 (1)(a) of Schedule I to the GS Act, in case of an agreement relating to deposit of title deeds, stamp duty is leviable at prescribed rates. The Supreme Court in its judgment<sup>8</sup> of 11 August 2015

<sup>8</sup> CA No. 6054 of 2015 in case of CCRA vs Costal Gujarat Power Ltd. and others.

observed that in case a borrower avails loan from a consortium of banks against the security of property mortgaged by way of deposit of title deed, aggregate stamp duty is leviable on distinct transactions of distinct loans availed from different banks. In light of this judgment of Supreme Court, the office of Superintendent of Stamps, Gujarat had issued a Circular and instructed (August 2015) that documents registered in past in view of High Court judgment<sup>9</sup> shall be sent to the competent authority viz. DC (SDVO) offices for recovery of deficit duty.

During test check of the records of three<sup>10</sup> SR offices for the year 2006 to 2017, audit noticed<sup>11</sup> from the recitals of 10 documents that the borrowers had availed loans from consortium of banks and mortgaged their immovable properties by way of deposit of title deeds. Further scrutiny of these documents revealed that these documents had been registered before August 2015 and the SR offices had levied stamp duty as if the loans had been availed from a single bank. The SR offices failed to take corrective action by referring the 10 documents to DC (SDVO) offices for recovery of deficit stamp duty on each such distinct transaction. These documents contained more than one distinct transaction which require levy of aggregate stamp duty. This had resulted in blockage of stamp duty and registration fees of ₹ 2.35 crore.

After this being pointed out, the Department stated (January 2020) that notices have been issued in respect of six documents and reply in respect of the remaining cases is awaited (May 2020).

## 6.8 Non/short levy of stamp duty on development agreements

As per Section 5 of the GS Act, any instrument comprising distinct transactions shall be chargeable with aggregate duties with which separate instruments would be chargeable under the Act. Further, as per Article 5(ga) of Schedule I of the GS Act 1958, the development agreement in the form of agreement, memorandum of records, which gives authority or power to a promoter or a developer for construction on or development of, or sale or transfer of, any immovable property shall be chargeable with stamp duty at the rate of one *per cent* of the market value of the property upto 31 July 2014 and at the rate of 3.5 *per cent* of the market value of the property with effect from 01.08.2014.

During test check of the records of two<sup>12</sup> Sub Registrar offices for the period 2013 to 2017, audit noticed<sup>13</sup> from the recitals of nine conveyance deeds that previously development agreements had been entered into between the land owners and developers. Neither the executants submitted the copy of the development agreements nor the SR offices called for the copy of the agreements to ascertain proper levy of stamp duty on these instruments. There had been no details of registration of development agreement and payment of stamp duty. The stamp duty involved in these cases was of ₹ 63.07 lakh on market value of ₹ 46.79 crore.

<sup>9</sup> The Gujarat High Court had given judgement against Government on 03 December 2012

<sup>10</sup> SR- Ahmedabad-IV (Paldi), V (Narol) and Kheda

<sup>11</sup> Between December 2017 and November 2018

<sup>12</sup> SR-Sanand and Vadodara- II (Danteshwar)

<sup>13</sup> In May and June 2018

After this being pointed out, the Department stated (January 2020) that order for recovery of deficit stamp duty has been issued by DC (SDVO) office in one case. The reply in respect of remaining cases is awaited (May 2020).

## **6.9 Short levy of stamp duty and registration fees on documents containing distinct matters**

As per Section 5 of the GS Act 1958, any instrument comprising distinct transactions shall be chargeable with aggregate duties with which separate instruments would be chargeable under the Act.

During test check of the records of two Sub Registrar offices<sup>14</sup> for the period 2013 to 2017, audit noticed<sup>15</sup> from the recitals of four conveyance deeds that there were more than one distinct transactions, however, the SR offices did not take cognizance of the recitals of the documents and verify the nature of transactions through the document. Stamp duty and registration fees forgone in these cases were ₹ 58.88 lakh as detailed as below:

### **(i) Agreement to sell/ power of attorney cum conveyance treated as conveyance**

As per Article 45 (f) of Schedule I to the GS Act, 1958, in case of Power of Attorney (PoA) given for consideration and authorizing the attorney to sell any immovable property, stamp duty is leviable as in the case of a conveyance deed under Article 20.

In three documents registered as conveyance deeds with SR office, Vadodara-II (Danteshwar), the recitals revealed that previously the land owners had executed agreements to sell/ powers of attorney with Developers/ Confirming Parties. By virtue of execution of these agreements to sell/ powers of attorney, rights/ interest in the properties had been passed on to the Developers/ Confirming Parties. The Developers/ Confirming Parties had been authorized to execute sale deeds on behalf of land owners and receive/ retain the consideration. Thus, it had been evident that the agreements to sell/ powers of attorney executed earlier in favour of Developers/ Confirming Parties was with possession/ consideration and stamp duty and registration fees at the rates applicable to conveyance was required to be recovered in terms of Article 45 (f). These documents comprised two distinct matters: 1. Agreements to sell/ powers of attorney with possession/ consideration between land owners and Developers/ Confirming Parties; and 2. Present deed of conveyance between Developers/ Confirming Parties and purchasers of plots/ units. Aggregate amount of stamp duty on both the transactions was required to be recovered, but the SR recovered stamp duty on the present conveyance only. This resulted in short levy of stamp duty of ₹ 50.03 lakh.

The matter had been reported to the Department/Government in October 2019. Their reply is awaited (May 2020).

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<sup>14</sup> SR-Ahmedabad- IV (Paldi) and Vadodara- II (Danteshwar)

<sup>15</sup> In December 2017 and June 2018

## (ii) Settlement cum Conveyance treated as Conveyance

Conveyance, as defined in Section 2(g) of the GS Act, 1958 includes every instrument by which property, whether movable or immovable, or any estate or interest in any property is transferred to, or vested in, any other person *inter-vivos* and stamp duty at the rate specified under Article 20 would be leviable.

Further, as per Section 2(t), settlement means any non-testamentary disposition in writing of movable or immovable property made for the purpose of distributing property of the settler among his family or those for whom he desires to provide, or for the purpose of providing for some person dependent on him.

In one document registered as conveyance deed with SR office, Ahmedabad-IV (Paldi), non-agricultural constructed property had been conveyed to the purchasers by three co-owners. Recitals of the document revealed that initially, the land had been purchased by two persons in the year 1972. Later, the third person had been introduced as co-owner of the property in the year 2015 based on an affidavit submitted by two persons (i.e. original owners of the land). Thus, the two original owners of the land had settled one-third of the property in favour of one person during their lifetime.

Thus, the documents comprised two distinct matters: 1. Settlement of one-third of property in favour of one person by the two original owners and 2. Present deed of conveyance between three co-owners of property and purchaser. Aggregate amount of stamp duty on both the transactions was required to be recovered, but the SR office recovered stamp duty on the present conveyance only. This resulted in short levy of stamp duty and registration fees of ₹ 8.85 lakh.

After this being pointed out, the Department stated (January 2020) that notices have been issued by DC (SDVO) office to the concerned parties. Further reply is awaited (May 2020).

### 6.10 Short levy of stamp duty due to misclassification of documents

Under Section 3 of the GS Act, 1958 every instrument mentioned in Schedule-I shall be chargeable with duty at the prescribed rates. As per various court judgments, at the time of registration of document, regard should be given to the substance of the document and not to the description at the head of the document.

During test check of the records of two Sub Registrar offices<sup>16</sup> for the period 2014 to 2017, audit noticed<sup>17</sup> from the recitals of two documents that these documents were classified on the basis of their titles and the stamp duty and registration fees were levied accordingly. Further scrutiny of the recitals of these documents revealed that these documents were misclassified. This resulted in short levy of stamp duty of ₹ 38.94 lakh as explained below:

<sup>16</sup> SR-Ahmedabad-13 (Agricultural) and Surat-10 (Nanpura)

<sup>17</sup> In April and June 2018

**(i) Power of Attorney with consideration misclassified as General Power of Attorney**

Under Article 45(f) of the Schedule-I to the GS Act, power of attorney (PoA) when given for consideration and authorising the attorney to sell any immovable property, stamp duty shall be leviable at the rates specified under Article 20 of Schedule-I.

In one document registered as general PoA, audit noticed from the recitals that the land owners (alongwith confirming parties) had given possession of land measuring 16,390 sq. m. agricultural land in lieu of consideration to the PoA holder. The land owners had also given the authority of signing the documents such as sale deeds, mortgage deeds, etc., receiving the consideration, handing over the possession of property, etc. to the PoA holder. Thus, this power of attorney was required to be classified under Article 45 (f) and stamp duty and registration fees were required to be levied accordingly. Stamp duty and registration fees of ₹ 29.49 lakh was required to be recovered on the market value of ₹ 5 crore. But SR office registered the document after recovery of stamp duty and registration fees of ₹ 5 lakh only. This resulted in short levy of stamp duty and registration fees of ₹ 24.49 lakh.

**(ii) Development agreement misclassified as lease**

Under Article 5(ga) of Schedule I to the GS Act, 1958, instrument relating to giving authority or power to a promoter or developer, by whatever name called, for construction on or development of or sale or transfer of, any immovable property shall be chargeable at the rate of 3.5 *per cent* of the market value of the property which is the subject matter of such agreement with effect from 01 August, 2014.

In one document styled and registered as lease deed for indefinite period, audit noticed from the recital that the lessee had been authorized by the lesser to dismantle the old structure, to pass the plan and construct new buildings (Apartment, Mall, Shop, Hotel, Restaurant, etc.) at his own expenses. The lessor had vested the lessee with all powers necessary for execution of construction works and disposal of constructed property. Moreover, all taxes, duties, etc., would be borne by the lessee from the date of lease deed. Thus, the document was required to be classified as development agreement and stamp duty of ₹ 17.54 lakh was required to be recovered on the market value of ₹ 5.01 crore as per *Jantri*. But the SR office treated the document as lease deed for indefinite term and recovered stamp duty of ₹ 3.09 lakh only. This resulted in short levy of stamp duty of ₹ 14.45 lakh.

After this was pointed out, the Department stated (January 2020) that in one case notice has been issued and in the other case DC (SDVO) office had determined the document to be levied with proper stamp duty.

### 6.11 Irregular grant of exemption from payment of stamp duty

Section 9 of the GS Act, 1958 empowers the State Government to reduce or remit the duties chargeable on any instrument or any particular class of instruments or any of the instruments belonging to such class, or any instruments executed by or in favour of any particular class of persons, or by or in favour of any members of such class.

(i) Gujarat Industrial Policy, 2009 (Scheme for Improving Industrial Infrastructure) announced vide Industries and Mines Department GR dated 27 February 2009, provided for development of new industrial estates on Public Private Partnership (PPP) Mode. The policy was further amended vide GR dated 20 October 2011 vide which ‘Scheme for assistance to Industrial Park/ Estates set up by Private Institutions’ was introduced. Under the new scheme, the Developer of the new industrial park/ estate was eligible for exemption on payment of stamp duty on purchase of land required for the project as approved by State Level Approval Committee (SLAC). However, the units in the Industrial Park were required to pay stamp duty at the rate of 50 *per cent* of the duty. The Gujarat Industrial Policy was further revised vide GR dated 21 April 2015 and a scheme viz. ‘Scheme for Financial Assistance to Industrial Park’ was introduced with effect from 01 January 2015. As per the revised policy, the institution developing the industrial park is eligible for reimbursement at the rate of 100 *per cent* of stamp duty paid on purchase of land as required for approved project by State Level Empowered Committee (SLEC). Individual units located in the industrial park are eligible for reimbursement at the rate of 50 *per cent* of stamp duty paid by them on purchase of plot in the industrial park. However, if the institute fails to complete industrial park within prescribed period, action for recovery of incentive already disbursed including reimbursement of stamp duty is attracted.

During test check of the records of the Sub-registrar office, Sanand for the period 2015 to 2017, audit noticed that a Company/Developer had put a scheme of an industrial park. Four plots for industrial use measuring 24,292 sq. m. had been conveyed by way of execution of conveyance deeds to four purchasers for setting up individual industrial units for a total consideration of ₹ 5.95 crore. One of the pre-conditions of the sale provided that construction of industrial units must be completed by the respective purchasers within three years. As per the revised industrial policy, in these cases, the purchasers were required to pay full stamp duty and claim reimbursement of the 50 *per cent* of the stamp duty so paid on fulfilment of the conditions of sale. However, the purchasers availed exemption of stamp duty of ₹ 14.57 lakh in terms of GR dated 20 October 2011. The SR office also allowed the exemption while registering the documents.

Later, these four purchasers did not put-up any industrial construction on land measuring 16,767 sq. m. (out of total area of 24,292 sq. m. initially purchased) and sold it vide execution of five sale deeds. This defeated the very purpose of grant of 50 *per cent* exemption in payment of stamp duty on purchase of plot in the industrial park under the incentive scheme. The transfer of land by the

initial purchasers of units was irregular and exemption of stamp duty amounting to ₹ 10.17 lakh availed by the purchasers on the land sold subsequently was required to be recovered.

After this was pointed out, the Department stated (January 2020) that notices have been issued by DC (SDVO) office to the concerned parties. Further reply is awaited (May 2020).

**(ii)** Under Section 3 of the GS Act, 1958, every instrument mentioned in Schedule-I shall be chargeable with duty at the prescribed rates except any instrument executed by or on behalf of, or in favour of, the Government in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument. Further, as defined under Section 2 (g) of the Act “conveyance” includes every instrument by which property, whether movable or immovable, or any estate or interest in any property, is transferred to, or vested in, any other person.

During test check of the registered documents at Sub-registrar office, Rajkot I (City) for the year 2017, audit noticed that exemption was granted from payment of stamp duty of ₹ 9.88 lakh by the SR office without any authority or order of the Government in a deed of exchange of property executed and registered in favour of Rajkot Municipal Corporation (RMC) during January 2017.

After this was pointed out in audit, the SR office did not accept the audit observation and stated that the deed of exchange had been executed in favour of RMC, hence, the benefit of exemption from payment of stamp duty has been given. The reply is not acceptable to audit in view of the fact that no exemption from payment of stamp duty is applicable for local bodies.

After this being pointed out, the Department stated (January 2020) that notice has been issued by DC (SDVO) office to the concerned party. Further reply is awaited (May 2020).