

# Chapter IV

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## **Stamp Duty and Registration Fee**

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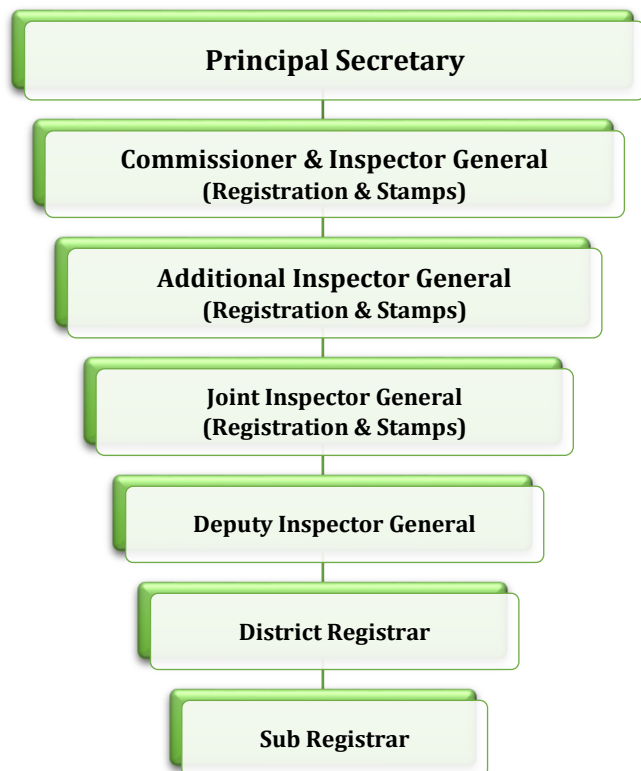
## 4.1 Tax Administration

The Registration and Stamps Department is primarily entrusted with registration of documents and is responsible for determining and collecting stamp duty and registration fees on registration of various documents/instruments by the general public. The Department also enforces administration of the Indian Stamp (IS) Act, 1899 and the Registration Act, 1908, as amended from time to time and rules framed therein.

The Commissioner and Inspector General of Registration and Stamps (CIGRS) exercises overall superintendence of all the registration offices in the State. There are four zones under 12 Deputy Inspectors General. Commissioner 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 and supervises the work of Sub-Registrars (SR) in the district concerned. The important functionaries of the Department are depicted in the organogram below.

Stamp duty and Registration fee forms the third largest source of revenue for the State and accounts for 4.73 per cent of the total revenue of the State. It has increased consistently year-on-year during the period 2014-15 to 2018-19 (except during 2016-17), the increase being 67 per cent during the five-year period. Further, the receipts under this Head have exceeded the budget estimates during the period 2015-16 to 2018-19. During 2018-19, the receipts from stamp duty and registration fees were ₹5,428 crore (an increase of ₹1,157 crore over the previous year receipts (₹4,271 crore)).

**Figure-4.1: Organogram**



## 4.2 Audit Approach

Registration is being carried out through a computerised system called ‘Computer Aided Administration in Registration Department (CARD)’ functioning in a client server architecture. All the documents registered by SROs are scanned and uploaded to the centralised server chronologically and all these scanned image files of the documents are being stored in the central server. The Commissioner and Inspector

General of Registration and Stamps (Registration & Stamps) facilitated audit users with access to image files of the documents.

Audit of Registration and Stamps Department was conducted during April 2018 to March- 2019 through a test check of the relevant records and transactional data pertaining to 2018-19 in 99 out of 321 offices (30.84 *per cent*) in the State, to gain assurance that stamp duty and registration fees are levied, collected and accounted for in accordance with the relevant Acts, Codes and Manuals, and the interests of the Government are safeguarded. These 99 offices were selected on the basis of highest revenue collected.

### 4.3 Results of Audit

Audit brought out instances of non-levy or short levy of duties/fees, *etc*; in 472 cases under seven broad categories, involving an amount of ₹31.98 crore, as detailed in **Table 4.1**. There may be similar irregularities, errors/omissions in other units under the department but not covered in the test audit. Department may, therefore, examine all the units to ensure that the taxes are levied as per provisions of the Act and Rules.

**Table 4.1: Results of Audit**

Sl. No	Subject	(₹ in crore)	
		No. of Paras	Amount
1	Short levy of duties on <i>Paripassu</i> agreement	7	16.33
2	Under valuation of property leading to loss of revenue	69	3.52
3	Short levy of Stamp Duty and Registration fees	89	1.95
4	Misclassification of partition among others as “partition among family members”	7	1.49
5	Non-levy of stamp duty on distinct matters	46	1.24
6	Short levy of Registration Fee on General Power of Attorney documents	16	1.09
7	Other irregularities	238	6.36
	<b>Total</b>	<b>472</b>	<b>31.98</b>

Of the above, 175 cases involving ₹ 57.85 lakh were pointed out and accepted during the year 2018-19. In addition, department accepted audit observations involving ₹ 37.53 lakh in 48 cases which pertain to previous years. In total, the Department accepted under-assessments and other deficiencies of ₹ 95.38 lakh in 223 cases. An amount of ₹ 36.67 lakh in 52 cases was realised during the year 2018-19.

Significant cases of non-compliance with the provisions of the Acts/ Rules by the Registering Authorities (RA) in the cases brought out in the following paragraphs resulted in short realisation of Stamp Duty and Registration Fees of ₹14.74 crore in 57 cases.

#### 4.4 Short collection of Registration fee on instruments creating *Paripassu*<sup>1</sup> Charge

##### Registration fees of ₹11.66 crore was not levied due to non-consideration of *Paripassu* charge created on Deposit of Title Deed

As per the definition of ‘Charge’ under Section 100 of Transfer of Property (TP) Act, 1882, where an immovable property of one person is shown as security for payment of money to another, the latter is said to have a charge on the property.

Government in its Order dated 17 August 2013<sup>2</sup>, prescribed registration fee at the rate of 0.1 *per cent* subject to a maximum of ₹10,000 on the amount of loans secured on Agreements of Deposit of Title Deeds (DOTD). In the same Order, registration fee was prescribed at 0.5 *per cent* on documents creating charge on ‘*Paripassu*’ basis. CIGRS, in his proceedings dated 15 October 1982<sup>3</sup>, clarified that the *Paripassu* charge comes into existence when an industrial unit obtains credit facilities from more than one financial institution by offering securities on ‘*Paripassu*’ basis in the form of ‘simple mortgage’, ‘mortgage by deposit of title deeds’ and hypothecation of movable properties.

Scrutiny of records of SR, Jaggaiahpet office disclosed (October 2018) that documents were registered as Agreement, where the loanees availed of a loan of ₹2,333 crore from various banks by creating *Paripassu* charge, keeping their properties as security. Registration fee is therefore required to be levied at the rate of 0.5 *per cent* on the loan amount. However, registering officers treated these documents as DOTDs and levied Registration fee of ₹10,000. This had resulted in short collection of Registration fee of ₹11.66 crore.

In response to audit observation, the registering authority replied (October 2018) that the matter would be examined and detailed reply would be furnished in due course.

The matter was referred to the Department (August 2019) and to the Government (June 2020). Their reply has not been received (December 2020).

<sup>1</sup> *Paripassu* is a latin phrase meaning “equal footing”.

<sup>2</sup> G.O.Ms.No. 463 Revenue (Registration-I) department dated 17 August 2013.

<sup>3</sup> CIGR Proceeding No. S2/24846/82, dated 15 October 1982.

## 4.5 Short levy of duties and fees due to undervaluation of properties

### 4.5.1 Short levy of Duties and Registration Fees on agricultural lands converted for non-agricultural purposes

**Due to lack of coordination between registration and land revenue departments, land already converted for non-agricultural purposes was undervalued, resulting in short levy of duties by ₹1.26 crore**

Section 27 of the IS 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 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.

Scrutiny<sup>4</sup> of records in the offices of five DR<sup>5</sup> and 10 SR<sup>6</sup> offices disclosed that in 25 (out of 26<sup>7</sup>) documents, agricultural rate had been adopted for the lands which had already been converted for non-agricultural use and developed into layouts. In the office of DR, Vizianagaram, audit observed (July 2017) that in one Development Agreement-cum-GPA, the value of entire extent of 27,684 sq. yards was not taken into account while arriving at the total value of development. Due to suppression of fact of conversion, development into layout by executants, not taking the total extent in DGPA by the registering authority and also non-verification of facts by registering authorities, the properties were undervalued. This resulted in short levy of stamp duty and registration fees amounting to ₹1.26 crore.

After Audit pointed out these cases, the DR, West Godavari (with respect to SR, Chintalapudi) replied (April 2018) that the market value of agricultural lands was adopted since no conversion orders were received from the revenue authorities. The reply is not acceptable as the registering authorities did not verify the facts before registration as provided under Section 27 of IS Act. DR, Vizianagaram, replied (July 2018) that the deficit amount would be collected from the parties concerned and compliance reported to audit. The remaining 13 DRs<sup>8</sup>/SRs<sup>9</sup> assured detailed replies (between May 2017 and February 2018).

<sup>4</sup> between May 2017 and February 2018.

<sup>5</sup> Gudur, Gunadala, Narasaraopet, Ongole and Vizianagaram.

<sup>6</sup> Bapatla, Chintalapudi, Kothavalasa, Mylavaram, Pidimgoyya, Sabbavaram, Samalkot, Sullurupet, Vuyyuru and Yemmiganur.

<sup>7</sup> 18 sale deeds, 4 DGPAs, two GPA, One Settlement Deed and One Gift in favour of local bodies (registered between August 2014 and March 2017).

<sup>8</sup> Gudur, Gunadala, Narasaraopet and Ongole.

<sup>9</sup> Bapatla, Kothavalasa, Mylavaram, Pidimgoyya, Sabbavaram, Samalkot, Sullurupet, Vuyyuru and Yemmiganur.

The matter was referred to the Department (August 2019) and to the Government (June 2020). Their reply has not been received (December 2020).

#### **4.5.2 Short levy of duties due to adoption of incorrect market value etc.**

**Properties were undervalued for reasons like not adopting correct Market Value, exclusion of a portion of structure for valuation/ adoption of lesser structural value/ construction value resulting in short levy of duties amounting to ₹34.48 lakh**

Under the provisions of Article 47-A of Schedule I-A to IS Act read with Government order<sup>10</sup> dated 26 November 2014, stamp duty on instrument of Sale deed has to be charged at five *per cent* of the Market Value (MV) of the property or consideration, whichever is higher. Registration fee has to be levied at one *per cent*. Further, transfer duty at 1.5 *per cent* in municipalities, corporations<sup>11</sup> and at 0.5 *per cent* in Gram Panchayats<sup>12</sup> is also required to be levied in terms of Government orders dated 06 April 2013.

Under the provisions of Article 6(B) of Schedule I-A to IS Act read with Government order<sup>13</sup> dated 01 April 2008, stamp duty on instrument of “Development Agreement cum General Power of Attorney (DGPA)” has to be charged at one *per cent* on the market value of the property or consideration whichever is higher.

Under the provisions of Article 29 of Schedule I-A to IS Act read with Government Order<sup>14</sup> dated 26 November 2014, Stamp duty on instrument of “gift in favour of others” has to be charged at five *per cent* of the market value of the property or consideration, whichever is higher.

Registration fee is leviable at 0.5 *per cent* subject to a maximum of ₹10,000. Further, transfer duty at 1.5 *per cent* on urban and 0.5 *per cent* on rural properties has to be levied in terms of Government order dated 06 April 2013.

As per Article 49 of schedule I-A to IS Act, instruments of “settlement” in favour of family members are chargeable with stamp duty at two *per cent* on the amount or value expressed in the instrument or market value of the property, whichever is higher. Besides stamp duty, registration fee is leviable at the rate of 0.5 *per cent* subject to the minimum of ₹1,000 and maximum of ₹10,000.

<sup>10</sup> G.O.Ms.No.394, Revenue (Registration-I) Department dated 26 November 2014.

<sup>11</sup> G.O.Ms. No. 150, 151, 152, 153 of Municipal Administration & Urban Development (TC) Department, dated 06 April 2013.

<sup>12</sup> G.O.Ms.No.226 Panchayat Raj & Rural Development (PTS-I) Department, dated 06 April 2013.

<sup>13</sup> G.O.Ms.No.568, Revenue (Registration-I) Department, dated 1 April 2008.

<sup>14</sup> G.O.Ms.No.395, Revenue (Registration-I) Department, dated 26 November 2014.

Scrutiny<sup>15</sup> of records in DR Rajamahendravaram and 12 offices of SRs<sup>16</sup> disclosed that in 17<sup>17</sup> cases, stamp duty, transfer duty and Registration fee amounting to ₹34.48 lakh were short levied due to under valuation of the property as detailed in **Appendix 4.1**. The properties were undervalued for reasons like not adopting correct MVs, exclusion of a portion of structure for valuation/ adoption of lesser structural value/ construction value.

In response to audit observations, DR and SR assured a detailed reply.

The matter was referred to the Department (August 2019) and to the Government (June 2020). Their reply has not been received (December 2020).

## 4.6 Irregular exemption

### **Irregular exemption of stamp duty and registration fees for the properties on sale deed transactions contrary to Government Order on 'Gannavaram Airport Land Pooling Scheme' resulted in short levy of duties of ₹94.06 lakh**

Section 27 of IS Act requires that an instrument contains details like consideration, market value 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, may inspect the related property, make necessary local enquiries, call for and examine all the connected records and satisfy himself/herself that the provisions of this Section are complied with. As per Rule 7 of AP Revision of MV Guidelines Rules, 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.

As per Article 47-A of Schedule I-A to the IS Act, stamp duty on sale deeds has to be charged at five *per cent* of the market value of the property. Besides this, transfer duty at the rate of 1.5 *per cent* and registration fee at the rate of one *per cent* is also required to be levied and collected.

During scrutiny of records of the office of SR, Gannavaram, Audit noticed (May 2018) from 13 sale deeds that the scheduled properties covered under the scheme *viz.*, Expansion of Gannavaram Airport, were sold by the owners to the vendees for consideration and the instruments were registered without levying any stamp duty and registration fees. It was recited in the document that the duties were exempted based on Government order<sup>18</sup> dated 27 August 2015. As verified from Government order no exemption to stamp duty and registration fee can be given to those transactions. However, as per Gannavaram Airport Development Land pooling scheme (Formulation & Implementation) Rules 2015 referred to in the GO, stamp duty and registration fee would be exempted to Land owner for registering agreements with competent authority

<sup>15</sup> between April 2018 and April 2019.

<sup>16</sup> SROs- Akiveedu, Gajapathinagaram, Ganapavaram, Jangareddygudem, Kovvur, Mandapeta, Nakkapalli, Piduguralla, Sajjapuram, Sattenapalli, Tuni and Yemmiganur.

<sup>17</sup> 11 Sale deeds, four Development cum General Power of Attorney, one Gift deed to family members and one Settlement deed.

<sup>18</sup> G.O.Ms.No.190, Municipal Administration & Urban Development (M2) Department dated 27 August 2015.



for Development under Land Pooling Scheme (LPS). But the instrument of sale deeds under consideration were not between landowner and competent authority. Hence, exemption allowed was irregular. This resulted in short levy of duties amounting to ₹94.06 lakh.

The matter was referred to the Department (August 2019) and to the Government (June 2020). Their reply has not been received (December 2020).

#### **4.7 Non-levy of Transfer Duty on Gift Deeds**

##### **Transfer duty of ₹14.56 lakh on Gift Deeds was not collected**

As per the provisions of Section 122 of the TP Act, ‘Gift’ is defined as “transfer of existing movable or immovable property made by one person (donor) to another person (donee) voluntarily and without any consideration and is accepted by the donee.

As per Article 29 of Schedule 1-A to the IS Act, read with Government order<sup>19</sup> dated 26 November 2014, Stamp duty on Gift to family member and others is chargeable at the rate of two and five *per cent* respectively on the market value of property. Besides stamp duty, transfer duty at the prescribed rate of 1.5 *per cent* is also leviable on the market value of the property in terms of Government order<sup>20</sup> dated 06 April 2013.

Scrutiny of records in the offices of District Registrar, Vijayawada (East) and Sub-Registrar, Patamata disclosed (April and May 2019) that transfer duty amounting to ₹14.56 lakh was not levied on five gift deeds valuing ₹970.47 lakh (registered between April 2018 and March 2019).

DR and SR assured detailed replies.

The matter was referred to the Department (August 2019) and to the Government (June 2020). Their reply has not been received (December 2020).

#### **4.8 Short levy of duties and fees due to misclassification of transactions in registered documents**

Schedule I-A to IS Act, provides rates of duties and fees to be adopted based on classification of documents. Further, the CIGRS had issued instructions<sup>21</sup> that the Sub-Registrars should scrutinise the recitals of the document presented for Registration thoroughly, so as to arrive at the correct classification of the document for adoption of the applicable rates of duties and fees.

Audit test checked (June 2017 and May 2019) the registered documents in 11 Sub Registrar Offices<sup>22</sup> and 3 DR offices<sup>23</sup> and found that in respect of 26 documents, there

<sup>19</sup> G.O.Ms No. 394 Revenue(Registration) Department dated 26 November 2014.

<sup>20</sup> G.O.Ms. No. 150,151,152,153 of Muncipal Adminstration & Urban Development (TC) Department dated 06 April 2013.

<sup>21</sup> Memo no.FR1/1A/4946/96 dated 16 October 2000.

<sup>22</sup> SROs- Akiveedu, Chodavaram, Ibbrahimpatnam, Madanapalle, Nidadavolu, Nandigama, Narsapur, Narsipatnam, Nuzividu, Vinjamur and Yelamanchili.

<sup>23</sup> DRs- Eluru, Nandyal and Rajamahendravaram.

was short levy of duties and fees due to misclassification of transactions amounting to ₹38.30 lakh as given in **Table 4.2**

**Table 4.2:-Details of short levy of duties and fees**

(₹ in lakh)

SI No	Registering Authority	No. of cases	Details of Transactions	Documents registered as	Documents actual classification	Stamp Duty and Fee short levied
1	2	3	4	5	6	7
1	DR, Rajamahendravaram	3	Settlements/Gift settlement deeds containing features of gift deeds such as transfer of immovable property from donor to donee voluntarily without any consideration	Settlement	Gift	8.93
<p>DR Rajamahendravaram contended (September 2019) based on case law of Kolli Venkatrajshekhar vs Government of Andhra Pradesh 2013(6 ALO89), that the documents were purely 'settlement deeds' but not 'gift deeds' as 'settlors' have transferred their self acquired properties to their family members at free of cost. However, the case law referred to is not relevant to the audit observation as case law relates to settlement through trust. It was also recited in the documents that donors were absolute owners. Properties were accepted by the donees as required under provisions of Transfer of property Act and therefore transfer duty needs to be levied.</p>						
2	SR, Nidadavolu	1	Settlements/Gift settlement deeds containing features of gift deeds such as transfer of immovable property from donor to donee voluntarily without any consideration	Document registered as settlement	Gift	1.53
<p>SR Nidadavolu contended (September 2019) based on case law of Amarnath K Menon vs State of A.P. WP No. 32653 of 2013 that the party was at liberty to treat the instrument as settlement deed since settler's property had been transferred in favour of family member and the instrument needs to be stamped only as settlement deed. The reply is not tenable as the donees do not have any pre existing right over the properties. Properties were accepted by the donees as required under provisions of Transfer of property Act and therefore transfer duty needs to be levied.</p>						
3	SR Chodavaram	1	Settlements/Gift settlement deeds containing features of gift deeds such as transfer of immovable property from donor to donee voluntarily without any consideration	Document registered as settlement	Gift	1.19
4	SR, Narsipatnam	3				2.34
5	SR, Vinjamur	2				1.15
Sub Registrars assured a detailed reply.						

(₹ in lakh)

SI No	Registering Authority	No. of cases	Details of Transactions	Documents registered as	Documents actual classification	Stamp Duty and Fee short levied
1	2	3	4	5	6	7
6	SR, Madanapalle	2	Property was partitioned among family members	Partition among family members.	Settlement	1.57
7	SR, Chodavaram	1				0.94
SR Madanapalle replied (January 2020 in two cases) that the property was acquired with the earnings of joint family. The reply of the department is not acceptable as the property was acquired by one of the executants and others have no right over the property. Hence, the instrument is to be treated as “settlement”. SR Chodavaram replied that the matter would be examined and a detailed reply would be furnished in due course.						
8	SR, Ibrahimpatnam	1	Settlement in favour of others misclassified as Settlement in favour of family members	Settlement in favour of family members	Settlement in favour of others	0.88
SR assured a detailed reply.						
9	SR, Nuzividu	1	Sale certificate executed by public sector bank under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 was treated as Sale certificate	Sale certificate	Sale deed	4.52
SR assured a detailed reply.						
10	DR, Nandyal	1	Simple mortgage deed misclassified as Deposit of Title Deed	Deposit of Title Deed	Simple mortgage deed	0.99
11	SR, Akiveedu	2				1.23
12	SR, Nuzividu	1				5.40
SRs assured a detailed reply.						
13	SR, Narsipatnam	2	Misclassification of sale of ‘flats’ as ‘undivided share of land and construction agreements’	Sale deed for undivided share of land and construction agreements	Sale of flat	1.98
SR assured a detailed reply.						
14	SR, Yelamanchili	1	Partition among other than family members misclassified as partition among family members	Partition among family members	Partition among other than family members	1.34
SR assured a detailed reply.						
15	DR, Eluru	1	Land acquired individually by different members for group housing treated as development agreement	Development agreement	Partition among others	1.04
DR assured a detailed reply.						

(₹ in lakh)

SI No	Registering Authority	No. of cases	Details of Transactions	Documents registered as	Documents actual classification	Stamp Duty and Fee short levied
1	2	3	4	5	6	7
16	SR, Nandigama	1	Possession of property given to mortgagee with all rights, easements and appurtenances as security for the loan.	Simple mortgage	Mortgage with possession	2.55
SR assured a detailed reply.						
17	SR, Narsapur	2	Indenture for the license of daily market yard including sweeping charges and ground rent by the Municipal Council for the use of Municipal area	Lease deed	License	0.72
DR West Godavari (with respect to SR Narsapur) replied (May 2018) that specific period of time was mentioned in the documents and hence documents were leases. The reply is not acceptable since the tenure did not decide whether a document was lease or license. Through these documents, the licensee had been permitted to collect fees and did not create interest in the immovable property. Hence, the documents should have been classified as license and applicable duty & fees collected.						
<b>Grand Total</b>		<b>26</b>				<b>38.30</b>

The matter was referred to the Department (August 2019) and to the Government (June 2020). Their reply has not been received (December 2020).