

Chapter II

Audit of Transactions: Compliance Audit Paragraphs

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The significant results of audit of the Stamp & Registration, Finance and Home (Excise) Departments of GoM relating to deviations in respect of short levy, under assessment, collection and remission of Government Revenue are discussed below:

STAMP DUTY AND REGISTRATION DEPARTMENT

2.1 Short levy of Stamp Duty of ₹ 10.50 crore due to misclassification of document as Article of Agreement

As per Article 5 (g-a) of Schedule-1 of Maharashtra Stamp Act, 1958 (MS Act), in case of instrument relating to giving authority or power to a promoter or a developer, by whatever name called, for construction on development of or, sale or transfer (in any manner whatsoever) of, any immovable property, the same Stamp Duty is leviable as on a conveyance under clause (b) or (c) as the case may be, of Article 25 on the market value of the property or consideration, whichever is higher, which is the subject matter of transfer.

Further GOM vide Government Order No. Mudrank-2020/CR.No.136/M-1 (Policy) dated 29 August 2020, reduced the stamp duty by three *per cent* in Mumbai District and Mumbai Sub-Urban District and by two *per cent* in rest of the State of Maharashtra for the period starting from 01 September 2020 and ending on 31 December 2020 and by two *per cent* in Mumbai District and Mumbai Sub-Urban District and by one and half *per cent* in rest of the State of Maharashtra, for the period starting from 1 January 2021 and ending on 31 March 2021, as otherwise chargeable under clause (b) of Article 25 of Schedule-I appended to the said Act, on the instrument of Conveyance or Agreement to Sale of any immovable property.

Scrutiny of records (Document No. 5378/2020) of Joint Sub Registrar, Boriwali II, Mumbai, revealed (April 2022) that, an Article of Agreement between– Transferee, and the Transferor –was entered into and registered vide document no. 5378/2020 (September 2020). Article of Agreement was earlier adjudicated vide Case No. 649/2020 by Collector of Stamps Boriwali (September 2020). As per agreement to sale, development rights of 48,557.00 Sq.m. along with all rights and benefit of the property at Survey no 34A, Hissa No 1, CTS no 215, Zone 86/391 in Village Magathane, Taluka Boriwali R/C Ward Boriwali (E) admeasuring plot area 3543 Sq.m. along with 421.80 Sq.m. of undivided interest in the land underneath the common internal layout access is transferred in favour of transferee.

The department worked out the market value of the Floor Space Index involved in development rights of 48,557 Sq.m.at ₹ 334.12 crore and assessed consideration of ₹ 350 crore and accordingly levied Stamp Duty of rupees seven crore at the rate of two *per cent* as per GoM Order dated 29 August 2020.

However, Audit noticed that as per GoM order dated 29 August 2020 the reduced rate of Stamp Duty was applicable to the document coming under Article 25(b) of the MS Act, since the instant document was a development

agreement under Article 5(g-a), this order was not applicable to this document and Stamp Duty was leviable at the rate of five *per cent*. Hence incorrect classification of document resulted in short levy of Stamp Duty of ₹ 10.50 crore (*Appendix 2.1*).

On this being pointed out by audit, the Collector of Stamps, Boriwali (June 2022) in reply accepted the audit observation. The matter was also communicated to Inspector General of Registrations and Controller of Stamps, Maharashtra State, Pune, (July 2023). The reply was still awaited (July 2025).

2.2 Short levy of Stamp Duty amounting to ₹ 1.89 crore due to undervaluation of the property

Article 5 (g-a) of Schedule-1 of Maharashtra Stamp Act, 1958 (MS Act) provides, in case of instrument relating to giving authority or power to a promoter or a developer, by whatever name called, for construction on development of or, sale or transfer (in any manner whatsoever) of, any immovable property, stamp duty as is leviable on a conveyance under clause (b) or (c) as the case may be, of Article 25 shall be charged on the market value of the property or consideration, whichever is higher, which is the subject matter of transfer.

Further as per Valuation Guideline No. 21 and Valuation Circular dated 31 March 2018 the Valuation of the property is to be assessed as under:

A : Area available to the developer (FSI) x land Rate

B : Consideration given to the Member of the society as enumerated in the Valuation Circular.

Stamp duty to be levied on higher of the above two A or B

Scrutiny of records (Document No. 11749/2019) of Joint Sub Registrar Mumbai City-III, Mumbai City revealed that a Development Agreement document was executed (20 December 2019) between '**the Society**' (**One Part**) '**the Developer**' and '**Confirming Parties**' for the land admeasuring 3201.00 Sq.m. situated at Survey No. 52 part old C.S. No. 160 (Pt) new C.S. No. 999(Pt) at Shivajinagar Worli Mumbai together with the building standing thereon. As per clause 6.1 & 6.2 of the recital of the document the Developer would provide a new residential premises admeasuring 540 Sq.ft. carpet *i.e.* 50.18 Sq.m. carpet to each member, and other monetary consideration to every member as detailed in appendix. This document was adjudicated by the Collector of Stamps, Mumbai vide case No. ADJ/M/615/2019/4449/ dated 18 October 2019 and Market Value was worked out as ₹ 62.28 crore and Stamp duty was levied at ₹ 3.11 crore under Article 5(g-a).

Audit worked out the Market value at ₹ 100.11 crore and Consideration at ₹ 68.43 crore. The Stamp Duty is leviable at ₹ 5.00 crore as against ₹ 3.11 crore levied by department, this resulted in short levy of Stamp Duty of ₹ 1.89 crore as detailed in *Appendix 2.2*.

On this matter being brought to the Notice of Inspector General of Registration and Controller of Stamps, Maharashtra State, Pune (IGR)

(March 2024), the IGR in reply stated that matter is pending under section 53A¹ and after the decision necessary action regarding recovery will be taken.

2.3 Short levy of Stamp Duty of ₹ 1.50 crore due to irregular concession of stamp duty

As per Article 25(a) of Schedule-1 of Maharashtra Stamp Act, 1958 (MS Act), conveyance, if relating to movable property, the Stamp Duty is leviable at rate to three *per cent* of the market value of the property or consideration, whichever is higher, which is the subject matter of conveyance.

A Deed of Adherence was executed 25 September 2020 and registered vide Document No. 825/2021 dated 19 January 2021 among Original Developer, Joint Developer and New Developer for confirmation of terms and conditions mentioned in the already executed (September 2020) and registered vide Document No. 823/2021 dated 19 January 2021 *i.e.* Agreement for transfer of business (Slump Sale).

Audit observed relating to Document No. 823 that:

- i) As per clause S balance Built up area admeasuring 5363.04 Sq.m. was sale component.
- ii) As per clause T of the recital a Joint Development Agreement No. 6690/2018 was executed on 26 December 2018 for redevelopment of a portion of said property admeasuring 5498.35 Sq.m. by the Joint Developer to the Developer and the Joint Developer was entitled for apartments admeasuring 1783.20 Sq.m. built up area as consideration.
- iii) Clause 3 of the recital, states that document no. 823 had been executed for lump sum consideration of ₹ 70.00 crore payable by the Purchaser.
- iv) This case was adjudicated by the Collector of Stamps, Andheri (COS Andheri) and computed the market value of the property ₹ 95.55 crore and consideration was ₹ 111.27 crore on which Stamp Duty of ₹ 2.23 crore was levied.

On being pointed out by the audit, IGR (April 2024) adjudicated the classification of document and stated that the document was to be classified under Article 25(a) of schedule-I of the Maharashtra Stamp Act, 1958. Further IGR had also stated that concession of one *per cent* was allowed as per the Gazette notification dated 29 August 2020. Therefore, IGR had stated that the total short levy of stamp duty was ₹ 77.21 lakh, which had been recovered from the purchaser.

Audit observed that the concession of stamp duty as per the notification dated 29 August 2020 by IGR in his adjudication (April 2024) was not correct as applicable concession was available only for document executed under Article 25(b) and not applicable to Article 25(a). Allowing the concession of stamp duty of one *per cent* under the notification was not justifiable and accordingly, the objected amount has been revised and short levy of stamp duty was worked to ₹ 1.50 crore even after the recovery of ₹ 77.21 lakh as detailed in **Appendix 2.3**.

¹ Section 53A of the MS Act, 1958 grants the IGR revisionary powers to call for and examine the record of any inquiry or proceeding under Chapter III (which includes Sections 32 and 33) or Chapter IV (which includes Section 51 regarding allowances for stamps) of MS Act, 1958 to ensure the regularity of the proceedings and the correctness of the order passed.

Revised audit observation was communicated to IGR (November 2024). Compliance from the IGR was awaited (July 2025).

2.4 Short levy of Stamp Duty of ₹ 76.18 lakh due to non-consideration of full plot area for market value of property

As per section 2(na) of Maharashtra Stamp Act, 1958, (MS Act) definition of market value under “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, or the consideration stated in the instrument whichever is higher. Further as per Article 25(b) of MS Act relating to immovable property situated within the limits of any Municipal Corporation or any cantonment area annexed to it or any urban area not mentioned in sub clause, Stamp Duty at the rate prescribed should be levied on the market value of the property, which is the subject matter of transfer.

Scrutiny of records adjudicated by Collector of Stamps, Andheri revealed that an Indenture of Conveyance (instrument No. ADJ/1100900/78/2019) was made between VENDOR and PURCHASER, for the sale of a land parcel admeasuring 1101.18 Sq.m. The market Value of property was computed at ₹ 3.70 crore and Consideration was ₹ 3.50 crore. Stamp Duty amounting ₹ 22.20 lakh at the rate of six *per cent* was levied on the Market Value.

Scrutiny of the recital of the instrument revealed that Vendor was owner of land and seized and possessed admeasuring 1101.18 Sq.m. alongwith structure standing thereon known as “JxxxxxBxxxx” referred to as the said old Building. Thereafter, vendor entered into development agreement with “ERSTWHILE DEVELOPER” and put up additional construction on said land adjoining the said old building comprising of ground plus three upper floors. All the holders of flats of Old and New Building formed themselves a Co-operative Society. Further, vendor has granted lease of said land in favour of society for a period of 98 years commencing from 1 July 1972 at a monthly rent of ₹ 692 reserved thereby on the terms and conditions retaining *REVERSIONARY OWNERSHIP RIGHTS* onto himself in respect of said land.

The Vendor has agreed to sell, convey and transfer his reversionary rights and Purchaser agreed to acquire himself the reversionary rights, title and interest of said land.

Further, according to this indenture (page no. 17, para 4) on termination of lease period of the society, purchaser shall be solely entitled to receive possession of the said land from society and its members. Now the rights of receiving the rent of ₹ 692 per month till the expiry period of lease *viz.* 30 June 2070 is hereby transferred by vendor to the purchaser alongwith all entitlements of the vendor under this indenture.

As all the rights, title and interest of whole land has been transferred by this indenture to purchaser, the valuation should have been done accordingly considering complete land area, however the department had done the valuation of balance FSI and TDR potential to be loaded on the said land. This resulted in short levy of Stamp Duty amounting to ₹ 76.18 lakh as detailed in *Appendix 2.4*.

The Collector of Stamps Andheri accepted (May 2023) the audit observation.

The matter was communicated to Inspector General of Registration and Controller of Stamps, Maharashtra State, Pune (October 2023). However, reply was awaited (July 2025).

2.5 Short levy of Stamp Duty and Registration Fee of ₹ 29.71 lakh due to misclassification of leave and license

As per Article 36(ii) of the Schedule I appended to the Maharashtra Stamp Act, 1958, any instrument related to lease, including under lease or sub lease and any agreement to let or sublet or any renewal of lease for a period exceeding five years but not exceeding ten years, with a renewal clause contingent or otherwise shall be levied same stamp duty to the extent as is leviable on a conveyance under clause (b) or (c) as the case may be of Article 25 on 25 per cent of the market value of the property. Further as per explanation II of the Article 36 The renewal period, if specifically mentioned, shall be treated as part of the present lease.

Scrutiny of leave and license Documents No. 8479 of 2021 in the office of Joint Sub Registrar, Haveli-V, Pimpri Chinchwad, Pune revealed that the document was executed (July 2021) between "Licensor" and "Licensee" for leave and license of premises admeasuring built up area of 3491.26 Sq.m. in MIDC area within the limits of Pimpri Chinchwad Municipal Corporation area for an initial period of five years and thereafter may be renewed for one more additional period of five years at lessee's sole option.

During scrutiny, audit noticed that while calculating the market value of the property, the department had considered the document as leave and license agreement for a period of 60 months only and accordingly Stamp Duty was levied on market value. However, as per clause three of the document it can be renewed for an additional period of 60 months making the actual period of leave and license agreement as 10 years instead of five years. The Stamp Duty would be leviable on 25 per cent of the market value of the property. However, the Department levied Stamp Duty and Registration fee of ₹ 1.80 lakh considering the agreement for the period of five years only. This resulted in short levy of Stamp Duty and Registration Fee amounting to ₹ 29.71 lakh (*Appendix 2.5*).

In reply, the Joint District Registrar, Pune city, accepted (March 2023) the para.

On being brought to notice (October 23) of Inspector General of Registration and Controller of Stamps, Maharashtra State, Pune (IGR), the IGR in reply did not accept (December 2023) the audit observation and stated that as per Judgement of High Court of Bombay in a similar case, the lease period of further 60 months cannot be counted as renewal period.

The reply of the IGR is not acceptable as explanation-II given below article 36 of the Maharashtra Stamp Act, 1958 says that if specific renewal period is given in the agreement, then it should be considered for calculation of Market Value. Moreover, the Judgement of High Court of Bombay referred in reply is in respect of the renewal clause where it is not automatic but dependent upon mutually acceptable terms and conditions between the parties whereas in this

instant case renewal is possible only at option of the Lessee. Hence, this court order is not identically applicable to this case.

FINANCE DEPARTMENT

2.6 Excess allowance of set-off under Rule 53(3)(a) of MVAT Rules resulted in short levy of tax and interest of ₹ 96.84 lakh

As per Rule 53(3), MVAT if the claimant dealer dispatches any taxable goods outside the State, to any place within India, not by reason of sale, to his own place of business or of his agent or where the claimant dealer is a commission agent, to the place of business of his principal, then an amount equal to four *per cent* of the purchase price of the corresponding taxable goods (not being goods treated as capital assets or used as fuel and natural gas) shall be deducted from the amount of set-off otherwise available in respect of the said purchases.

Further, Section 30(3) states “In the case of a registered dealer, in whose case, any tax other than the tax on which interest is leviable under sub-section (2) has remained unpaid up to one month after the end of the period of assessment, such dealer shall be liable to pay by way of simple interest, for each month or part thereof from the date next following the last date of the period covered by an order of assessment till the date of the order of assessment and where any payment of such unpaid tax whether in full or part is made on or before the date of the order of assessment, the amount of such interest shall be calculated by taking into consideration the amount and the date of such payment”.

The dealer, M/s KLT Automotive and Tabular Products bearing TIN 27910298741V was assessed under Section 23 of MVAT 2002 for the period 2014-15. GTO of sales and purchases were determined at ₹ 299.18 crore and ₹ 255.15 crore respectively. The Assessment order resulted in refund of ₹ 43.74 lakh and Nil dues under MVAT and CST respectively.

During scrutiny of the records of Dy. Commissioner of State Tax, (PAL-VAT-E-002), Palghar, Audit observed that the Assessing Authority had allowed deduction of Branch Transfer of ₹ 27.12 crore and had allowed set-off of ITC ₹ 15.57 crore under Rule 52 of MVAT Rules. The set-off was allowed after reduction of ₹ 41.14 lakh under Rule 53(3)(a) from ITC eligible for set-off. However, audit worked out set-off reduction under Rule 53(3)(a) as ₹ 93.70 lakh. This resulted in excess allowance of set-off of ₹ 52.56 lakh which further resulted in a short levy of tax to the tune of ₹ 96.84 lakh including interest of ₹ 44.28 lakh @ 84.25 *per cent* under Section 30(3). The detailed calculation is at *Appendix 2.6*.

On this being pointed out, the JCST accepted (November 2023) the observation and stated that the revision order under section 25 was under progress.