

CHAPTER III

COMPLIANCE AUDIT PARAGRAPHS

Revenue Department

3.1 Short levy of Stamp Duty on allotment of Government land

Stamp Duty was levied on the concessional value on Government land which was allotted to Co-operative Societies instead of market value, resulting in short levy of Stamp Duty of ₹ 25.53 lakh.

As per Section 2(g) of the Gujarat Stamp Act, 1958 (GS Act), conveyance includes a conveyance on sale, by which a property, whether movable or immovable, or any estate or interest in any property, is transferred to or vested in any other person *inter vivos*. Further, under Article 20 of Schedule-1, read with Section 3A of the GS Act, Stamp Duty at the rate of 4.9 *per cent* is leviable on any instrument of conveyance on the market value of the property or the consideration amount, whichever is higher. The Revenue Department, vide Circular dated 1 April 2002 had instructed all District Collectors and other Revenue Authorities concerned to include conditions of payment of Stamp Duty in the allotment orders and not to hand over possession of land till proper Stamp Duty is paid by the allottees.

During test-check of records of the office of the Collector, Morbi, for the period 2013 to 2018, Audit noticed (January 2019) that in four cases, Government land measuring 18,606 m² was allotted at the concessional rate of 10 *per cent* of *Jantri*¹ rate, as per Government Resolution dated 17 December 2015, to four Co-operative Societies between September 2016 and July 2018. Audit noticed that Stamp Duty of ₹ 28.37 lakh was chargeable on the land value of ₹ 579.02 lakh. However, the Department levied and collected Stamp Duty of ₹ 2.84 lakh only in these cases on the concessional land value of ₹ 57.90 lakh. This resulted in short levy of Stamp Duty of ₹ 25.53 lakh.

The Superintendent of Stamps stated (February 2022) that Stamp Duty of ₹ 0.55 lakh had been recovered in three cases whereas Demand Notice had been issued in the remaining one case. Further reply is awaited (July 2024).

The matter had been brought to the notice of the Department in October 2021, February 2024 and March 2024; their reply has not been received (July 2024).

¹ Annual Statement of Rates issued by the Government showing the rates for the purpose of determination of value of immovable properties and levy of Stamp Duty.

3.2 Short levy of Premium Price

Premium Price of ₹ 10.07 crore, leviable under Gujarat Tenancy and Agricultural Lands Act, 1948 was short recovered in 104 cases of conversion of land under 'new and restricted' tenure to 'old' tenure.

As per the Government of Gujarat, Revenue Department Resolutions² issued under Section 43 of the Gujarat Tenancy and Agricultural Lands Act, 1948 (the Tenancy Act), in case of conversion³ of land under 'new and restricted tenure' to 'old tenure', premium at the prescribed rates is required to be recovered by the Collector concerned. Further, Government Resolution (GR) dated 03 May 2011 prescribed the rate of premium as 25/ 40 per cent of the market value of the property for agriculture/ non-agricultural (NA) purpose, respectively. The market value of the property is to be determined in accordance with the *Jantri*⁴ rates and subject to the conditions prescribed therein.

During scrutiny of records of the following Collector offices, Audit noticed (between April 2017 and July 2021) that Premium Price of ₹ 10.07 crore was short recovered in 104 cases, as detailed in **Table 3.1** below. The observations in detail have been narrated in **Appendix XI**.

Table 3.1: Details of short levy of Premium Price

| Sl. No. | Name of the Unit | Number of cases Period of audit | Area of land (In m ²) | Premium Price leviable (₹ in lakh) | Premium Price levied (₹ in lakh) | Short levy of Premium Price (₹ in lakh) |
|---------|--|------------------------------------|--------------------------------------|--|--|---|
| 1. | Collector, Ahmedabad | 2 2017-18 | 9,616 | 17.50 | 11.19 | 6.31 |
| 2. | Collector, Ahmedabad | 2 2018-20 | 14,880 | 27.08 | 18.75 | 8.33 |
| 3. | Collector, Mahisagar | 7 2013-18 | 44,771 | 28.33 | 14.94 | 13.39 |
| 4. | Collector, Ahmedabad | 1 2017-18 | 900 | 202.01 | 180.77 | 21.24 |
| 5. | Collector, Ahmedabad | 1 2017-18 | 13,962 | 136.83 | 96.34 | 40.49 |
| 6. | Collector, Surendranagar | 6 2015-17 | 1,07,445 | 148.96 | 70.18 | 78.78 |
| 7. | Principal Secretary, Revenue Department | 1 2016-17 | 26,406 | 248.22 | 182.20 | 66.02 |
| 8. | Collector, Jamnagar | 1 2014-18 | 25,152 | 47.16 | 23.62 | 23.54 |
| 9. | Collector, Kachchh- Bhuj | 10 2014-16 | 3,20,716 | 838.07 | 771.69 | 66.38 |

² Dated 13 July 1983 read with the Resolution No NBI-102006-S 71-J (Part 2) dated 04 July 2008.

³ 'New and restricted' tenure land means the tenure of occupancy of the land which is non-transferrable and impartible without the prior approval of the District Authority whereas 'Old' tenure land means land free of all restrictions of transfer but subject to permitted purpose of usage of land.

⁴ Annual Statement of Rates issued by the Government showing the rates for the purpose of determination of value of immovable properties and levy of Stamp Duty.

| | | | | | | |
|--------------|-------------------------|----------------------|----------|----------|----------|----------------|
| 10. | Collector, Mahisagar | 1 2013-18 | 44,540 | 114.13 | 47.32 | 66.81 |
| 11. | Collector, Ahmedabad | 1 2018-20 | 27,013 | 221.51 | 216.10 | 5.41 |
| 12. | Collector, Ahmedabad | 1 2018-20 | 7,815 | 15.79 | 12.82 | 2.97 |
| 13. | Collector, Mehsana | 4 2017-19 | 36,595 | 57.37 | 40.13 | 17.24 |
| 14. | Collector, Ahmedabad | 65 2018-20 | 8,19,434 | 2,293.86 | 1,713.15 | 580.71 |
| 15. | Collector, Ahmedabad | 1 2017-18 | 11,230 | 31.44 | 22.46 | 8.98 |
| Total | | 104 cases | | | | 1006.60 |

The matter had been brought to the notice of the Department in October 2021, June 2023, December 2023, February 2024, March 2024 and April 2024. However, only partial replies were received in respect of cases pertaining to the Collectors, Ahmedabad and Mehsana. Replies in respect of the remaining cases were awaited (July 2024).

3.3 Non/ short levy of fine/ penalty under the Tenancy Act

The District Collector short levied fine amounting to ₹ 34.39 lakh under the Gujarat Tenancy and Agriculture Lands Act in 19 cases due to adoption of old rates or incorrect computation. In another case, the Authority did not levy penalty of ₹ 11.76 lakh for invalid transfer of agricultural land to a non-agriculturist.

As per Explanation below Section 65B of the Gujarat Land Revenue Code, 1879 (GLRC), 'bona fide industrial purpose' means an activity of manufacture, preservation or processing of goods, including construction of industrial buildings used for the manufacturing process or purpose and includes ancillary industrial usage, like research and development, godown, canteen and office building of the industry concerned.

Section 63AA of the Gujarat Tenancy and Agricultural Lands Act, 1948 (GTALA) permits sale of 'new and restricted tenure' agricultural land (without prior approval of the Collector) for *bona fide* industrial purpose provided the purchaser sends a notice of such purchase to the Collector within 30 days from the date of the purchase of the land. With effect from 19 August 2019, in case, the purchaser fails to send the notice and other particulars to the Collector within the period specified, he shall be liable to pay, after one month from the date of such purchase, fine of one *per cent* of the prevailing *jantri* every month. Prior to 19 August 2019, a maximum fine of ₹ 2,000/- was prescribed irrespective of the period of delay in sending the notice to the Collector. Further, Section 63AD of the GTALA provides for levy of penalty at the rate of three times the value of the land as per prevailing *jantri* in case 'new and restricted tenure' agricultural land had been transferred invalidly in breach of provisions of the GTALA.

During scrutiny of the records of the District Collector, Ahmedabad for the period 2017-18 to 2019-20, Audit noticed (December 2018 and June 2021) that

in 20 cases, fine/ penalty under the GTALA was short levied to the tune of ₹ 46.15 lakh. The details are as under:

- In 19 cases involving sale of agriculture land (of new and restricted tenure) measuring 4,32,488 sq. m. situated in nine villages⁵ of six Talukas⁶, permission/ certificate under Section 63AA of GTALA had been issued (between February and September 2020) for *bona fide* industrial use. In these cases, the purchasers had sent notices to the Collector after lapse of the prescribed time period of 30 days from the date of purchase of the agriculture land. Therefore, the Collector, while issuing Certificates, levied fine for such delayed furnishing of notices by the purchasers. However, in three cases fine was levied at old rates, i.e. maximum of ₹ 2,000/-, while in the remaining 16 cases, fine leviable was incorrectly computed. These resulted in short levy of fine to the tune of ₹ 34.39 lakh.

On this being pointed out, the Revenue Department stated (June 2024) that proceedings had been initiated for the recovery of the differential amount of fine. Further reply is awaited (July 2024).

- In case of 'new and restricted tenure' agriculture land measuring 2,956 sq. m. of Survey No. 677 (Old No. 77) situated at village Karsanpura, Taluka Mandal, permission under Section 63AA was given (June 2018) by the Collector for *bona fide* industrial use after obtaining (March 2018) prior approval of the Revenue Department. Further scrutiny of the records revealed that the purchaser (Rai Infrastructure & Logistics Private Limited), engaged in the business of builder/ real estate developer/ contractor, had purchased (January 2016) the said land for construction of 'industrial godown'. However, the General Manager, District Industry Centre (DIC), Ahmedabad opined (January 2016) that construction of 'industrial godown' does not fall under the category of 'industry' and informed the Collector that his approval was not required for processing the application of the purchaser. However, the Department granted permission under Section 63AA of the GTALA, ignoring the opinion of the General Manager, District Industry Centre.

As per GLRC, only godown, ancillary to 'industrial' activity as per GLRC is eligible for permission under Section 63AA. The interpretation of the Department, thus, was not correct as the purchaser was not engaged in the activity of manufacture, preservation or processing of goods. The present transfer of the new and restricted tenure agricultural land to a non-agriculturist was therefore invalid as per provisions of the GTALA. Thus, the Collector was required to levy penalty at three times of the value of the land under Section 63 AD of the GTALA, which however was not done. This resulted in short levy of penalty of ₹ 11.76 lakh⁷, after adjusting premium of ₹ 1.98 lakh levied while giving permission under Section 63AA of the GTALA.

⁵ Bhayla, Dasasna, Dholka, Gangad, Kalyangad, Keshardi, Manpura, Nidhrad, Piplaj.

⁶ Bavla, Dholka, Mandal, Sunand, Vastva, Virangam.

⁷ ₹ 13,74,540 (3 X 2,956 sq. m. X ₹ 155 per sq. m.) minus ₹ 1,98,052 = ₹ 11,76,488.

On this being pointed out, the Collector stated (December 2018) that the matter would be referred to the jurisdictional Mamlatdar for further verification of nature of business activity of the purchaser and use of the godown. However, the Revenue Department stated (June 2024) that in a similar case pertaining to Agriculture Produce Market Committee (APMC), Bavla, the DIC had treated 'godown' as an industrial activity.

The reply of the Department is not convincing as the decision of the DIC in the other case cannot be the basis for treating construction of the godown as an industrial activity in the present case. Here, the applicant was engaged in the business of construction/ real estate. Thus, the nature of use of the godown is required to be ascertained to ensure that the same is ancillary to an industrial activity as specified in the explanation below Section 65B of the GLRC, and not for commercial/ real estate use.

3.4 Non levy of Non-Agricultural Assessment on advance possession/ lease of Government land

The Revenue Authority did not levy NAA at applicable rates while giving advance possession of Government land/ allotting Government land on lease. This resulted in non-levy of NAA amounting to ₹ 29.12 lakh.

As per Section 48 of the Gujarat Land Revenue Code 1879, the land revenue/ Non-Agricultural Assessment (NAA) leviable shall be assessed with reference to the use of land, viz. residence/ industry/ commerce/ any other purpose. The NAA shall be liable to be fixed with effect from the commencement of the revenue year in which the land is so permitted or deemed to have been permitted, to be used for non-agricultural (NA) purpose. The Government, vide Notification of March 2008, revised the rates of NAA and classified the areas in three categories, i.e. A, B and C, for levy of NAA. The NAA is leviable with effect from the commencement of the revenue year in which the land is used for NA purposes with or without permission of the competent authority. Further, as per Government Resolution No. JMN-3995-3170-A dated 18 December 2006; though requirement of obtaining NA permission from the competent authority was waived off in case of grant of Government land for NA purpose, Conversion Tax and NAA are leviable as per prevailing policy.

During scrutiny of records of the office of the District Collector, Ahmedabad for the period from 2018-19 to 2019-20, Audit noticed (July 2021) that in three cases, NAA at applicable rates was not levied while giving advance possession of Government land/ Government land given on lease. This resulted in non levy of NAA amounting to ₹ 29.12 lakh⁸ for the year 2018-19 (₹ 6.60 lakh) and 2019-20 (₹ 22.52 lakh), as detailed below:

⁸ $(7,21,102 * 0.60 = ₹ 4,32,661) + (1,50,15,201 * 0.15 = ₹ 22,52,280) + (15,13,027 * 0.15 = 2,26,954) = ₹ 29,11,895.$

| Sl. No. | Allottee/ Date of order | Description of land | Area (in sq. m.) | Purpose | NAA leviable (in ₹) | Remarks |
|--------------|--|---|--------------------|---|---------------------|--|
| 1 | Ahmedabad Municipal Corporation (AMC)/ 19.02.2020 | Survey No.: Bin Numberi (without survey number) Village (s): Acher, Motera, Dariyapur-Kajipur and Hansol | 7,21,102 | Development of public utilities, green space, parking space, etc. under Sabarnati Riverfront Development Project Phase-II | 4,32,661 | Advance possession of the land given on 20.03.2020 (for token amount of ₹ 1) |
| 2 | Dholera International Airport Co. Ltd. Dholera/ 05.01.2019 | Revenue Survey No. 171 and 481 Village: Navagam, Taluka Dholera | 1,50,15,201 | Construction of Airport | 22,52,280 | Leased at annual rent of ₹ 1 for 30 years |
| 3 | Ministry of Shipping, GoI/ 19.02.2020 and 04.09.2020 | Revenue Survey No. 656/1 (Grazing/ Gauchar land) and 656/1/1 Village: Saragwada, Taluka: Dholka | 15,13,027 | Setting up National Maritime Heritage Complex, Lothal (including commercial use and sub-letting to private person/ institute) | 2,26,954 | Leased at token amount of ₹ 1 for 99 years. |
| Total | | | 1,72,49,330 | | 29,11,895 | |

The above NAA was required to be levied on annual basis for subsequent years also, i.e. from 2019-20/ 2020-21 onwards.

On this being pointed out, the District Collector, Ahmedabad stated (June 2021) that Dholera International Airport Co. Ltd. had requested the Revenue Department for relaxation of some conditions in the allotment order. After receipt of direction/ orders from Revenue Department, suitable action would be taken. In respect of land allotted to the Ministry of Shipping, GoI, the Collector stated that the matter would be referred to the Revenue Department, GoG for obtaining necessary directions on action to be taken. Further reply is awaited (July 2024).

The matter had been brought to the notice of the Department in June 2023, December 2023 and April 2024. The Department stated (April 2024) that advance possession of land was given to AMC and applicable taxes would be levied at the time of issuance of final allotment order.

The reply of the Department/ District Collector is not acceptable as NAA is leviable with effect from the commencement of the revenue year in which the land is permitted or deemed to have been permitted, to be used for the NA purpose.

Reply in respect of the remaining two cases was awaited (July 2024).

3.5 Loss of Lease Rent

There was loss of lease rent to the extent of ₹ 26.20 lakh for the first five years of the lease period and subsequent recurring loss of revenue to the Government due to incorrect valuation of the land and not considering applicable Government Resolution (GR) governing allotment of Government land on Right of Use (RoU) basis.

As per GR dated 26 April 1962, the rent payable annually for the use of the Government land for the laying of water pipes, underground cables, etc. should be fixed at a sum not exceeding 2.5 *per cent* of the market value of the land occupied. The State Government neither revised this GR nor issued any fresh GR governing allotment of Government land on Right of Use (RoU) basis for laying pipelines/ cables, etc. (other than crude oil/ gas/ water pipelines) by private parties. However, the Government vide its GR dated 30 July 1999 fixed compensation (to be paid to the State Government) at the rate of 10 *per cent* of the market value of the land allotted on RoU basis for laying underground crude oil pipeline. Further, Section 10 (4) of the Gujarat Water and Gas Pipelines (Acquisition of Right of User in Land) Act, 2000 provides for payment of compensation at the rate of 10 *per cent* of the market value of the land to the owner of the land where such land has been acquired on RoU basis by the State Government/ any Corporation for laying water/ gas pipeline.

As per the Guidelines for the valuation of Government land (issued vide GR dated 11 September 2018), in case of urban areas, the base rate arrived at by considering sale deeds of land parcels (situated in Town Planning Scheme/ TPS) is to be increased by:

- 100 *per cent* for the sale deeds executed between the period from publication of intention of Draft Town Planning Scheme (DTPS) to its submission to Government, and
- 200 *per cent* for sale deeds executed after DTPS is approved and roads are opened.

However, no incremental factor is to be considered where sale deeds had been executed after approval of the final TPS.

During the audit of office of the Additional Chief Secretary, Revenue Department, Government of Gujarat, Gandhinagar for the period 2019-21, Audit noticed (July 2021) that the Department allotted (November 2020) Government land⁹ measuring 412 sq. m. on RoU basis to Mother Dairy, Bhat (the Company) for laying underground cable after recovery of occupancy price of ₹ 18.83 lakh at the rate of 10 *per cent* of the market value of ₹ 1.88 crore by relying on the provisions of Section 10 (4) of the Gujarat Water and Gas Pipelines (Acquisition of Right of User in Land) Act, 2000. In this regard, the following was observed:

⁹ Survey No. 38, 42-A and 43-A, Village: Bhat to Koteshwar, Taluka and District: Gandhinagar.

- The District Level Valuation Committee (DLVC) (January 2019) and the State Level Valuation Committee (SLVC) (July 2020) had fixed the rate of the land as ₹ 45,700/- per sq. m. However, Audit observed that while determining market value of the land, applicable incremental factor of 200 *per cent* was not applied to the base rate arrived at in respect of eight sale deeds pertaining to two DTPSs, namely DTPS-80 and DTPS-239 of village Bhat, where as per maps available on record, roads were operational on the date of valuation by the SLVC. As a result, the rate was fixed by the SLVC on lower side instead of correct rate of ₹ 87,431/- per sq. m. Thus, the correct market value of the land would be ₹ 3.60 crore.
- The allotment of land on RoU basis for laying underground cable by recovering occupancy price at the rate of 10 *per cent* of the market value under the Gujarat Water and Gas Pipelines (Acquisition of Right of User in Land) Act, 2000 was irregular as the said Act was not applicable in the instant case. Moreover, GR of July 1999 was also not applicable as this was specifically issued for grant of Government land on RoU basis for laying crude oil pipeline. Thus, the Department was required to allot the land on RoU basis on lease to the Company by recovering annual rent at the rate of 2.5 *per cent* of the market value of the land as per GR of April 1962, subject to revision after every five years (as a corollary of the provisions of GR dated 05 April 2003, governing lease of Government land for commercial/ residential/ industrial purpose).

This would result in loss of lease rent to the extent of ₹ 26.20 lakh for the first five years and subsequent recurring loss of revenue to Government.

On this being pointed out, the Department stated (July 2021) that final reply would be furnished after obtaining detailed report/ information from the concerned Collector/ Authority.

The matter had been brought to the notice of the Department in June 2023, December 2023 and April 2024; their reply has not been received (July 2024).

3.6 Short levy of Stamp Duty/ Registration Fee due to misclassification of documents

The classification of the documents not in accordance with the Articles of Schedule I of the Gujarat Stamp Act, 1958 resulted in short levy of Stamp Duty and Registration Fees of ₹ 1.11 crore.

Under Section 3 of the Gujarat Stamp Act, 1958, every instrument mentioned in Schedule-I shall be chargeable with duty at the prescribed rates.

During test-check of the records of five Deputy Collectors (Stamp Duty Valuation Organisation) [DC (SDVO)]/ Sub-Registrar (SR) offices¹⁰, Audit

¹⁰ DC (SDVO) Division-II, Ahmedabad and Division-II, Vadodara; Sub Registrar offices: Chorasi (Surat-9), Anand and Anjar.

noticed¹¹ from the recitals of five documents¹² that these documents were classified on the basis of their titles, and Stamp Duty and Registration Fees were levied accordingly. Further scrutiny of the recitals of these documents/ finalised cases revealed that these documents were misclassified which resulted in non/short levy of Stamp Duty/ Registration Fees of ₹ 1.11 crore, as mentioned below:

(i) Misclassification of Power of Attorney

Under Article 45 (f)(ii)(b) of the Schedule-I to the Gujarat Stamp Act, power of attorney (PoA) if given in any case except to father, mother, brother, sister, wife, husband, son, daughter, grandson, granddaughter, authorizing to sell or transfer any immovable property without consideration or without showing any consideration, Stamp Duty is leviable at the rates specified under Article 20 of Schedule-I.

In one case finalised by the office of DC (SDVO), Division-II, Vadodara and registered as sale deed with office of SR Padra, Audit noticed (March 2019) that PoA holder signed the document on behalf of the landowners. The PoA document was notarised (December 2014) on stamp paper of ₹ 100. The SR impounded the sale document and forwarded it, along with PoA, to DC (SDVO), Division-II, Vadodara who in his order (March 2018) certified the PoA document as of Proper Duty. However, there was nothing on the records which could establish that there was any relationship as specified in Article 45(f)(ii)(a) between the landowners and the PoA holder. Thus, the Power of Attorney was covered under Article 45(f)(ii)(b) and Stamp Duty of ₹ 8.72 lakh was required to be recovered on the market value of ₹ 1.78 crore, which was not done. This resulted in short levy of Stamp Duty of ₹ 8.72 lakh.

On this being pointed out, the office of the DC (SDVO), Vadodara-II replied (May 2024) that as per Article 53(a) of Gujarat Stamp Act, 1958, order of short levy of Stamp Duty of ₹ 6.23 lakh was passed and charge created on the property.

(ii) Conveyance treated as Agreement to sell

Under Explanation-I of Article 20 of Schedule I of Gujarat Stamp Act, 1958 Act, an Agreement to Sell an immovable property or an irrevocable power of attorney shall, in case of transfer of 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.

During test-check of cases finalised by DC (SDVO), Division-II, Ahmedabad for the year 2018-2019, Audit noticed that one document was executed as conveyance deed for the land and the purchasers also entered into a Development Agreement with a partnership firm (confirming party in the deed)

¹¹ Between March 2019 and January 2020.

¹² Three documents registered between March 2018 and August 2018. One document was registered in March 2012 and finalized by DC (SDVO) Division-II, Ahmedabad in August 2018. One case was referred to DC(SDVO) Division-II Vadodara and finalised in March 2018.

for construction of a bungalow on the land. The recitals revealed that the landowner had already entered into an Agreement to Sell land admeasuring 9618 sq. m. for ₹ 9.14 crore with the same partnership firm which was notarized on 28 July 2010. Thus, the partnership firm had the possession of the land. The present conveyance deed therefore clearly reveals that the Agreement to Sell earlier notarized was with possession which attracts Stamp Duty applicable to conveyance deed as per the explanation under Article 20. However, the competent authority did not verify these aspects which resulted in non levy of Stamp Duty of ₹ 44.77 lakh and Registration Fee of ₹ 9.14 lakh, aggregating to ₹ 53.91 lakh¹³.

On this being pointed out, the Department (July 2023) stated that DC (SDVO), Division-II, Ahmedabad had passed order (December 2020) for recovery of Stamp Duty of ₹ 44.77 lakh and penalty of ₹ one lakh. Further, notice under Section 152 of the Land Revenue Code was issued and charge on property was created (July 2021) against the due. The Department did not accept the audit observation on Registration Fee and stated that as the partnership firm was included as co-signer in the document based on the notarized deed of 2010, these are two different articles and not two different matters. Further, the document was not submitted for registration purpose.

Reply of the Department is not convincing as the matter relates to conveyance and order of recovery of deficit Stamp Duty was also passed by the DC (SDVO) considering the transaction under Article 20 of the Gujarat Stamp Act, 1958. As the DC (SDVO) accepted the transaction for levy of Stamp Duty under Article 20 of the Gujarat Stamp Act, 1958, the Registration Fee of ₹ 9.14 lakh at the rate of one *per cent* was also leviable on the consideration amount of ₹ 9.14 crore under the same Article 20 of the said Act. Since the consideration amount was determined by DC (SDVO), the Registration Fee was leviable on the consideration amount.

Further progress of recovery of Stamp Duty was awaited (July 2024).

(iii) Release Deed treated as Partition Deed

Article 49 of Schedule I of Gujarat Stamp Act, 1958 stipulates that (a) if the release deed of an ancestral property or part thereof is executed by or in favour of brother or sister (children of renouncer's parents) or son or daughter or son of pre-deceased son or daughter of pre-deceased son or father or mother or spouse of the renouncer or the legal heirs of the above relations, Stamp Duty of ₹ 100 is leviable ; and (b) in other case, same duty as is leviable on a conveyance under Article 20 on the share, interest, part or claim renounced in immovable property whichever is greater.

As per proviso of Explanation-1 below Section 2(g)(v) of the Act *ibid*, effective from 01 September 2001, where a co-owner of any property transfers his interest to another co-owner of the property and which is not an instrument of partition, shall be deemed to be an instrument by which property is transferred

¹³ Stamp Duty at the rate of 4.9 *per cent* of ₹ 9,13,71,000 and Registration Fee at the rate of one *per cent* of ₹ 9,13,71,000.

inter vivos. Thus, if one co-owner releases his claim over the property held by them as co-owners in favour of another co-owner, such release is to be treated as conveyance and Stamp Duty is chargeable accordingly.

During test-check of the documents registered in the Sub-Registrar Office, Chorasi, Surat-9, Audit noticed (November 2019) from the recital of one document styled and registered (11 June 2018) as partition that three different lands¹⁴ were purchased by six co-owners and subsequently, a co-owner released its part in favour of one of the remaining five co-owners. Now, by the present document, one of the five co-owners released its part in one of the land parcels in favour of remaining four co-owners and other four co-owners *vice versa* released their parts from other two land parcels in favour of that co-owner. Hence, the document is required to be classified as Release Deed between the co-owners and the Stamp Duty of ₹ 37.56 lakh¹⁵ was to be levied as per Article 49 read with Explanation-1 below Section 2(g)(v) of the Act. However, Stamp Duty of ₹ 1.83 lakh only was levied in the document. This resulted in short levy of Stamp Duty of ₹ 35.73 lakh.

On this being pointed out, the office of the DC (SDVO), Division-II, Surat while accepting the audit observation replied (June 2023) that the order was passed (December 2022) imposing additional Stamp Duty of ₹ 35.73 lakh and penalty of ₹ 3.57 lakh. For recovery of the amount, charge on property was also created in June 2023. Further progress of recovery was awaited (July 2024)

(iv) Conveyance treated as Partition Deed

“Partnership” as defined in Section 4 of the Partnership Act, 1932, is the relation between persons who agreed to share the profits of a business carried on by all or any of them acting for all. In the case of Chief Controlling Revenue Authority (CCRA) vs. Chaturbhuj, the Gujarat High Court (1976) has held that there is no concept of co-ownership among the partners during the subsistence of the partnership. The partnership properties are not held by the partners as co-owners. The property belongs to the firm. At the time of dissolution of partnership according to the terms of the dissolution, after satisfying all the liabilities, each partner is handed over his share of the surplus of partnership assets. Thus, as the partners are not the co-owners, an instrument of partition cannot be executed between them as per the definition of “instruments of partition” under Section 2(m) of the Gujarat Stamp Act, 1958.

As per Section 2(g) of the Gujarat Stamp Act, 1958, conveyance includes a conveyance on sale or 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*. As per Article 20(a) of Schedule-I of Gujarat Stamp Act, 1958, an instrument of conveyance of immovable property is chargeable with Stamp Duty at the rate of 4.9 *per cent* of the amount of the consideration for such conveyance or the market value of the property which is the subject matter of such conveyance, whichever is greater.

¹⁴ 17,402 sq. m. (land 1) + 5,666 sq. m. (land 2) + 35,107 sq. m. (land 3).

¹⁵ At the rate of 4.9 *per cent* on market value of ₹ 766.56 lakh (at the rate of ₹ 3,000 per sq. m. for 2,900.33 sq. m. (1/6 share of land 1) + at the rate of ₹ 2,000 per sq. m. for 33,977.49 sq. m. (5/6 share of land 2 & 3).

During test-check of the documents registered in Sub-Registrar Office, Anand, Audit noticed from the recital of a document styled and registered (30 March 2018) as Deed of Partition that on the land admeasuring 234.3956 sq. m., the partnership firm¹⁶ constructed a building consisting of various flats and shops and by this Partition Deed, the flats and shops were now appropriated among the four partners. However, as the rights and title of the land/ construction were vested with the partnership firm, the said properties could not be transferred/ partitioned in the name of individuals before the dissolution of the partnership firm. Thus, the document was required to be classified as Conveyance Deed under Article 20(a) of the Gujarat Stamp Act, 1958, instead of being classified as Partition Deed. This being not done resulted in short levy of Stamp Duty of ₹ 5,56,792 and Registration Fee of ₹ 45,397, aggregating to ₹ 6,02,189¹⁷.

On this being pointed out, the Department accepted (July 2023) the audit observation and stated that the document has been forwarded to DC (SDVO), Anand. However, specific reply citing reasons why the document had been treated as Deed of Partition despite the fact that the firm was not dissolved and was still in operation at the time and after division of property among partners was not furnished. No further response has been received from the Department (July 2024).

(v) Share of capital brought in by way of immovable property in partnership treated as cash

As per Article 44(b) of Schedule-I to the Gujarat Stamp Act, 1958, instrument of partnership where share of capital is brought in by way of immovable property, Stamp Duty is leviable as conveyance under Article 20 at the rate of 3.5 per cent of the market value of such immovable property. As per Registration Act, 1908, Registration Fee on partnership deed shall be levied at the rate of one per cent on the amount or value of the property.

During test-check of the documents registered in Sub-Registrar Office, Anjar, Audit noticed (January 2020) from the recital of a document styled and registered (18 July 2018) as supplementary partnership deed that two non-agricultural (residential) plots admeasuring 31,905.38 sq. m. were brought in the partnership firm as share of capital by a partner. The document was forwarded to DC (SDVO), Bhuj, who under Section 41 determined (30 July 2018) the Stamp Duty of ₹ 10,000 along with penalty of ₹ 1,000. The valuation sheet of DC (SDVO) Bhuj was not available with the document. As per Article 44(b) *ibid* Stamp Duty of ₹ 5,30,427 at the rate of 3.5 per cent of market value¹⁸ of the property was required to be levied. However, Stamp Duty of only ₹ 10,000 was levied, which is the maximum Stamp Duty leviable in case where the share of capital is brought in by way of cash under Article 44(1)(a). Further, against the required levy of Registration Fee of ₹ 1,51,550¹⁹ only ₹ 30 was levied as Registration Fee. Thus, there was an aggregate short levy of Stamp Duty and Registration Fee of ₹ 6,71,947.

¹⁶ The partnership deed was notarised on 12 July 2013 and Stamp Duty of ₹ 1,000 was paid.

¹⁷ This has been worked out after considering Stamp Duty of ₹ 28,500 and Registration Fee of ₹ 74,050 levied on the document.

¹⁸ ₹ 1,51,55,056 (31905.38 sq. m. x ₹ 475 per sq. m. *jantri* rate).

¹⁹ RF leviable at the rate of one per cent on ₹ 1,51,55,056.

On this being pointed, the Department accepted (July 2023) the audit observation and stated that DC (SDVO), Bhuj has referred the document to Chief Controlling Revenue Authority for review under Section 53(2) of the Gujarat Stamp Act, 1958. No further response has been received from the Department (July 2024).

3.7 Short levy of Stamp Duty and Registration Fee on documents containing distinct matters

The non-cognizance of the recital of the documents having distinct matters, for which separate Stamp Duty on each matter was leviable but not levied distinctly resulted in short levy of Stamp Duty of ₹ 66.85 lakh.

As per Section 5 of the Gujarat Stamp Act, 1958, any instrument comprising or relating to several distinct matters or distinct transactions shall be chargeable with aggregate duties with which separate instruments would be chargeable under the Act. As per Article 36(b) read with Article 6(1)(a) of Schedule I, the Stamp Duty shall be levied subject to a maximum of eight lakh rupees at the rate of twenty paise for every hundred rupees or part thereof, where the amount of debt does not exceed ₹ 10 crore, and at the rate of fifty paise for every hundred rupees or part thereof where the amount of loan or debt exceeds ₹ 10 crore.

During test-check of the records of three Sub-Registrar (SR) Offices²⁰ for the period 2016-19, Audit noticed²¹ that there was more than one distinct transaction. However, the SRs did not take cognizance of the recitals of the documents and did not verify the nature of transactions through the documents. Stamp Duty and Registration Fees forgone in these cases amounted to ₹ 66.85 lakh as mentioned below:

- In one document styled and registered as Trust Deed in SR office, Vadaj, the recitals revealed that an amount aggregating ₹ 5,850 crore was raised for issue of Bonds (₹ 5,000 crore and ₹ 850 crore) having different maturity periods²² and different allotment dates²³ against the mortgage of the property. As the Bonds had been issued in two tranches having different maturity periods and having different allotment dates, the two transactions should have been treated as two distinct transactions for levy of Stamp Duty and Registration Fee. However, the SR levied Stamp Duty of ₹ 11.20 lakh²⁴ and Registration Fee of ₹ 0.05 lakh only treating it as a single transaction against the leviable Stamp Duty of ₹ 22.40 lakh and Registration Fee of ₹ 0.10 lakh. This resulted in short levy of Stamp Duty and Registration Fee of ₹ 11.25 lakh.

On this being pointed out, the Department stated (February 2024) that DC (SDVO), Ahmedabad has issued (January 2024) notice to the party for

²⁰ Sub Registrar offices: Ahmedabad- II (Vadaj), Vadodara-III (Akota) and Bopal.

²¹ Between March 2019 and March 2020.

²² 24 August 2032 and 5 November 2022.

²³ 24 August 2017 and 6 November 2017.

²⁴ Maximum Stamp Duty of ₹ 8 lakh leviable under Article 36(b) and additional Stamp Duty of ₹ 3.20 lakh at the rate of 40 per cent as per Section 3A of the Gujarat Stamp Act, 1958.

recovery of Stamp Duty. Further, Registration Fee of ₹ 0.05 lakh has been recovered (August 2019).

- In another case, in one document styled and registered as Mortgage Deed in SR office Vadaj, five different borrowers availed individual loans (ranging from ₹ 200 crore to ₹ 550 crore) from the lender bank. As the loan had been sanctioned by the lender to five different borrowers, the transactions should have been treated as five distinct transactions for levy of Stamp Duty and Registration Fee. However, the SR levied Stamp Duty of ₹ 19.20 lakh and Registration Fee of ₹ 0.10 lakh only treating it as a single transaction against the leviable Stamp Duty of ₹ 56 lakh²⁵ and Registration Fee of ₹ 0.25 lakh. This resulted in short levy of Stamp Duty and Registration Fee of ₹ 36.95 lakh.

On this being pointed out, the Department stated (February 2024) that DC (SDVO), Ahmedabad has issued (January 2024) notice to the party for recovery of Stamp Duty. Further, notice has been issued (September 2023) to the party for recovery of Registration Fee.

- In one document styled and registered as Mortgage Deed without possession in SR Office, Akota, the mortgagors were sanctioned the loan/ credit of ₹ 39.10 crore (₹ 24.60 crore plus ₹ 14.50 crore) by two different banks against the mortgage of the properties. As loan/ credit had been availed/ sanctioned from different banks, the transaction should have been treated as two distinct transactions for levy of Stamp Duty and Registration Fee. However, the SR levied the Stamp Duty of ₹ 11.20 lakh and Registration Fee of ₹ 0.05 lakh only, treating it as single transaction against the leviable Stamp Duty of ₹ 21.35 lakh and Registration Fee of ₹ 0.10 lakh. This resulted in short levy of Stamp Duty and Registration Fee of amount of ₹ 10.20 lakh.

On this being pointed out, the Department stated (February 2024) that DC (SDVO), Vadodara has issued (January 2024) notice to the party for recovery of Stamp Duty. Further, Registration Fee of ₹ 0.05 lakh has been recovered (March 2021).

- In a document styled and registered as Mortgage Deed with SR Office Bopal, two different borrowers availed the credit facilities of an amount of aggregate of ₹ 32 crore²⁶ from the lender bank. As the loan was sanctioned by lender bank to two different borrowers, the transactions should have been treated as two distinct transactions for levy of Stamp Duty and Registration Fee. However, SR levied the Stamp Duty of ₹ 11.20 lakh and Registration Fee of ₹ 0.05 lakh treating it as a single transaction only against the leviable Stamp Duty of ₹ 19.60 lakh²⁷ and Registration Fee of ₹ 0.10 lakh. This resulted in short levy of Stamp Duty and Registration Fee of ₹ 8.45 lakh.

²⁵ Maximum Stamp Duty of ₹ 8 lakh leviable under Article 36(b) and additional Stamp Duty of ₹ 3.20 lakh at the rate of 40 per cent as per Section 3A of the Gujarat Stamp Act, 1958 for each of the five distinct transactions.

²⁶ ₹ 20 crore to the first borrower and ₹ 12 crore to the second borrower.

²⁷ ₹ 11.20 lakh on amount of loan of ₹ 20 crore and ₹ 8.40 lakh on amount of loan of ₹ 12 crore as per Article 6(1)(a) of Schedule I.

On this being pointed out, the Department accepted (July 2023) the audit observation and stated that DC (SDVO), Ahmedabad has issued the notice to the party. No further response has been received from the Department (July 2024).

3.8 Short levy of Stamp Duty due to undervaluation of properties

The adoption of incorrect area/ jantri rate resulted in short levy of Stamp Duty of ₹ 22.13 lakh.

Under Section 3 of the Gujarat Stamp Act, 1958 every instrument mentioned in Schedule-I shall be chargeable with duty at the prescribed rates, unless specifically exempted.

As per Article 5(ga), an Agreement or Memorandum of an agreement or its records, if 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 (in any manner whosoever) of any immovable property, then Stamp Duty at the rate of 3.5 *per cent* is chargeable on the market value of the property which is the subject matter of such agreement.

During test-check of the documents registered in two Sub-Registrar Offices²⁸ during the years 2016 to 2018, Audit noticed²⁹ that the Stamp Duty on properties was determined incorrectly in three documents, which resulted in short levy of Stamp Duty of ₹ 22.13 lakh as explained below:

(i) Undervaluation due to adoption of incorrect area

Chief Controlling Revenue Authority (CCRA) in his circular dated 26 September 2007 instructed 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.

Table 3.2: Details of undervaluation due to incorrect area

| Sl. No. | Name of office | Number of documents Month of registration of document | Short levy of Stamp Duty (₹ In lakh) |
|---------|-----------------------------|--|--------------------------------------|
| 1. | SR, Memnagar, Ahmedabad III | 1 December 2017 | 7.49 |

Nature of Observation: In respect of a Development Agreement of housing society for residential purposes, SR had adopted partial area of 357 sq. m. instead of total area of 969 sq. m. for valuation of property given for development and levy of Stamp Duty. The total amount of Stamp Duty leviable in this case was ₹ 11.87 lakh against which Stamp Duty of only ₹ 4.38 lakh was levied. This resulted in short levy of Stamp Duty of ₹ 7.49 lakh.

On this being pointed out, the Department stated (February 2024) that DC (SDVO), Ahmedabad has issued (January 2024) notice for recovery of Stamp Duty.

²⁸ Sub Registrar: Bapod-Vadodara, Memnagar- Ahmedabad-III.

²⁹ February 2019 and May 2019.

(ii) Undervaluation due to adoption of incorrect *Jantri* rates

Table 3.3: Details of undervaluation due to incorrect *jantri* rates

| Sl. No. | Name of office | Number of documents Month of registration of documents | Short levy of Stamp Duty (₹ In lakh) |
|---------|---------------------|---|---|
| 1. | SR, Bapod, Vadodara | 2 July 2017 and February 2018 | 14.64 |

Nature of Observation: In two Development Agreements, the recitals revealed that land falls in Value Zone 3/4/1 (Town Planning-4, Final Plots 46 and 47) but the registering authority adopted rate of Value Zone 3/4/2/E/A instead of *jantri*³⁰ rates of correct Value Zone for valuation of property and levy of Stamp Duty. The total amount of Stamp Duty leviable in these cases was ₹ 27.39 lakh, against which Stamp Duty of only ₹ 12.75 lakh was levied. This resulted in short levy of Stamp Duty of ₹ 14.64 lakh.

On this being pointed out, the Department stated (February 2024) that DC (SDVO), Ahmedabad has issued (January 2024) notice for recovery of Stamp Duty.

3.9 Short levy of Stamp Duty due to incorrect valuation of immovable property

Non-consideration of value of plant and machinery and capital work in progress resulted in short levy of Stamp Duty of ₹ 17.85 lakh.

Under Section 3 of the Gujarat Stamp Act, 1958 every instrument mentioned in Schedule-I shall be chargeable with duty at the prescribed rates, unless specifically exempted.

As per Article 20(d) of Schedule I of the Gujarat Stamp Act, 1958, a Deed of Conveyance, relating to the scheme for reconstruction of the company or companies involving merger or the amalgamation of any two or more companies by an order of the National Company Law Tribunal under Section 232 of the Companies Act, 2013 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, whichever is higher.

As defined under Section 2 (ja) read with Explanation inserted vide Act No.11 of 2007 w.e.f. 01 April 2007, 'immovable property' includes land, benefits to arise out of land and things attached to earth, or permanently fastened to anything attached to the earth. Where any plant and machinery of a factory transferred or sold with the intention of running the said factory, such transaction shall be deemed to be a transaction of the immovable property.

During test-check of records of the office of the Superintendent of Stamps, Gandhinagar for the period January 2018 to March 2019, Audit noticed (October 2019) that in one case of scheme of amalgamation of four companies

³⁰ Annual Statement of Rates issued by the Government showing the rates for the purpose of determination of value of immovable properties and levy of Stamp Duty.

(Transferors) with another company (Transferee), the adjudicating authority in its order³¹ did not consider the value of plant and machinery as well as capital work in progress of ₹ 17.85 crore³² to arrive at the true market value of the immovable property of one of the transferor company. This resulted in undervaluation of immovable property of transferor companies with consequent short levy of Stamp Duty of ₹ 17.85 lakh.

On this being pointed out, the Department while accepting the audit observation stated (July 2023) that order regarding short payment of Stamp Duty of ₹ 17.85 lakh was issued to the party in April 2021. Further, notice under Section 152 of the Gujarat Land Revenue Code was issued (14 October 2022) by DC(SDVO), Rajkot-II to the party concerned for recovery of the outstanding demand. No further response has been received from the Department regarding recovery of short payment of Stamp Duty (July 2024).

3.10 Non levy of Stamp Duty on Development Agreement

The non-registration of Development Agreement resulted in non levy of Stamp Duty of ₹ 13.71 lakh.

As per Article 5(ga) of Schedule I of the Gujarat Stamp Act 1958, if an agreement or memorandum of an agreement or its records, relates to giving authority or power to a promoter or a developer for construction on or development of, or sale or transfer of, any immovable property, it shall be chargeable with the 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 w.e.f. 01 August 2014.

During test-check of the records of Sub-Registrar Office, Odhav for the period 2018, Audit noticed (November 2019) that the Sub-Registrar Office did not take cognizance of the recital of the document. The document was registered (02 April 2018) as a Sale Deed between the seller and the purchaser. As per the recital of this document, earlier a Development Agreement for development of the land admeasuring 24486.51 sq. m. was executed between the then owner and the developer, which was notarized in January 2007. The Development Agreement was not registered, therefore no Stamp Duty was paid. However, as per the then existing provisions, Stamp Duty at the rate of one *per cent* was required to be levied. Thus, there was a non levy of Stamp Duty of ₹ 13.71³³ lakh.

On this being pointed out, the Department accepted (July 2023) the audit observation and stated that document was forwarded to the DC (SDVO). Further DC (SDVO) issued (June 2023) notice to the party. No further response has been received from the Department (July 2024).

³¹ No. Stamp/Ashani/52/2018/8779 dated 24 May 2018.

³² Value of Plant and Machinery of ₹ 16,91,31,000 + Capital work in progress of ₹ 93,70,000.

³³ one *per cent* on the market value of ₹ 13.71 crore (24486.51 sq. m. x ₹ 5.600 per sq. m. (*jantri* rate)).

Port and Transport Department

3.11 Non-realisation of Motor Vehicle Tax

Non issuance of Demand Notices for recovery of dues resulted in non-realisation of Motor Vehicles Tax of ₹ 7.08 crore.

The Gujarat Motor Vehicles Tax (GMVT) Act prescribes that transport vehicles such as contract carriage³⁴, goods carriage vehicles and non-transport vehicles³⁵ are required to pay tax on monthly/ half yearly/ yearly basis respectively except for the period where the vehicles are not in use. As per Section 8A (1) of the Act, in case of delay in payment, interest at the rate of 18 *per cent per annum* and as per Section 18 and Commissioner of Transport's (CoT) Circular³⁶, if the delay exceeds one month, a penalty at the rate of two *per cent per month* subject to a maximum of 25 *per cent* of tax is also chargeable. Section 12 of the Act authorises the Department to recover unpaid tax as arrears of land revenue. Section 12B of the Act empowers the Department to detain and keep in custody the vehicles of those owners who defaulted in payment of Government dues.

The test-check of the Demand and Collection Registers and VAHAN system of nine³⁷ RTO/ ARTOs revealed that the operators of 1,373 transport³⁸ vehicles (goods vehicles, omnibuses³⁹/ maxi cabs⁴⁰, *etc.*) and 84 non-transport⁴¹ vehicles had neither paid tax nor filed non-use declarations⁴². The Demand Notices for recovery of dues were either not issued to the defaulters or recovery action subsequent to issuance of Demand Notice as per the provisions of Act mentioned above was not initiated by the respective RTO/ ARTOs. This indicates weak internal control system in the Department. This has resulted in non-realisation of Motor Vehicles Tax of ₹ 7.08 crore. Besides, interest penalty was also leviable at the rates prescribed in the Act.

All the nine RTO/ ARTOs accepted the audit observations and agreed to issue demand notices to defaulters. Subsequently, CoT intimated (January 2024) recovery of ₹1.89 crore⁴³ from 506 cases. Further reply and details of recoveries are awaited (July 2024).

³⁴ Maxicab, Motorcab, *etc.*

³⁵ Cranes, Compressors, Rigs, Excavators and Loaders, *etc.*

³⁶ No. CoT/ Tax Default/Comp./On/5598 dated 16 November 2009.

³⁷ Ahmedabad, Ahmedabad East (Vastral), Bardoli, Palanpur, Porbandar, Rajpipla, Surat, Surendranagar and Valsad.

³⁸ Registered between August 1984 and November 2017.

³⁹ Any motor vehicle constructed or adapted to carry more than six persons excluding the driver.

⁴⁰ Any motor vehicle constructed or adapted to carry more than six persons, but not more than 12 passengers excluding the driver, for hire or reward.

⁴¹ Registered between May 1984 and April 2017.

⁴² For various periods between 2011-12 and 2018-19.

⁴³ ₹1.89 crore; 449 transport vehicles and ₹ 3.50 lakh; 57 non-transport vehicles.

3.12 Short/ non-levy of Entry Tax

Non-observance of departmental instruction resulted in short/ non-levy of Entry Tax amounting to ₹22.66 lakh.

Under Section 3(1) read with Section 2(k) of the Gujarat Tax on Entry of Specified Goods into Local Area Act, 2001, there shall be levied and collected on the entry of specified goods into a local area a tax on the purchase value thereof at the rates fixed by Government. The Government of Gujarat fixed the rate of Entry Tax at 15 *per cent* up to 31 March 2016 and 20 *per cent* with effect from 01 April 2016 on the purchase value of motor vehicles brought by specified persons from other States in Gujarat. The Commissioner of Commercial Tax had requested (September 2003 and October 2015) the Commissioner of Transport not to release registration documents till payment of proper Entry Tax. The Commissioner of Transport (CoT) had instructed (in August 2013 and December 2015) all the RTOs/ ARTOs to recover Entry Tax in case of motor vehicles brought from other States in Gujarat before registration of such vehicles in Gujarat.

During test-check of the registration records and other records of RTO, Surat in June 2018 and RTO, Valsad in September 2019, Audit noticed that in the case of 19 registered vehicles brought from other States between March 2013 and March 2017, the departmental officials did not levy Entry Tax on the purchase value of vehicles while registering the said vehicles. This resulted in short/ non-levy of Entry Tax amounting to ₹ 22.66 lakh.

On this being pointed out, RTO, Surat stated (June 2018) that notices would be served to the owners of the vehicles for the recovery of outstanding tax and the RTO, Valsad stated (September 2019) that the matter would be verified from the records. Subsequently, CoT intimated (January 2024) recovery of ₹ 10.54 lakh from 10 cases. Further reply and details of recoveries are awaited (July 2024).

Roads and Buildings Department

3.13 Extra expenditure due to delay in completion of work

Preparation of incorrect estimates led to excess quantity execution that delayed work completion and extra expenditure of ₹ 1.26 crore.

The Ministry of Road, Transport and Highway, Government of India accorded (November 2016) the administrative approval (AA) of ₹ 48.10 crore for the widening and strengthening of the Ahmedabad-Paldi-Navapura-Saroda-Dholka road from km 14/200 to 39/000 under the Central Road Fund to be completed by 2018-19. The Roads and Building Department (R&BD) accorded (February 2017) the technical sanction of ₹ 48.24 crore and approved (March 2017) the Draft Tender Papers (DTP) for ₹ 45.53 crore for the work. The work was to be carried out through the office of Executive Engineer (EE), R&B Division, Ahmedabad (hereinafter called 'the Division').

The R&BD, Government of Gujarat (GoG) had issued the directions (July 2012) that the rate for the asphalt prevailing in the month of approval of the Draft Tender Paper (DTP) should be mentioned in the tender papers to be issued to the bidders. This rate is called 'the Star Rate'. As per the terms & conditions of the Tender Agreement (March 2017) issued by the Division, the price variation for the quantity of asphalt used, is to be recovered from/ paid to the Contractor, based on the 'Star Rate' mentioned therein.

The Division awarded (June 2017) the work to the lowest bidder at the quoted rates of ₹ 27.72 crore against the estimated cost of ₹ 45.53 crore with the stipulated completion by September 2018. The work was completed (July 2019) at a cost of ₹ 35.06 crore. The R&BD also approved (December 2019) the extension of time limit till July 2019.

Audit observed that during the execution of the work, the Division noticed that the carriageway of the existing road between chainage 26/600 to 26/950 was actually 5.50 meter, which was wrongly taken as 7 meter in the original work plan. In addition, the Division also identified other reasons which warranted execution of excess items. For this, the Division proposed (March 2018) execution of the excess items valued at ₹ 6.18 crore. Against this, the R&BD approved (March 2018) execution of excess quantity valued to ₹ 5.83 crore. Audit analysis revealed that the Division identified the following reasons for execution of excess quantities:

- The excess quantity of material was required to augment the road width to 10 meter from actual 5.5 meter instead of wrong estimation of 7 meter.
- The construction of Cement Concrete (CC) Road was considered in the road length from km 26/250 to 26/950 instead of the asphalt road included in the original work estimate in order to avoid frequent damaging of the road during the monsoon season due to water logging.
- The Benkelman Beam Deflection⁴⁴ (BBD) test, which should have been ideally done before preparation of estimates, was conducted only in February 2018 *i.e.* after award of the work in June 2017. Owing to this, the Division proposed to provide an additional layer of 50 mm Dense Bitumen Macadam/ 75 mm Built-Up Spray Grout in the entire road length in line with the BBD test.

Audit noticed that during execution of the work, the Contractor sought (August 2018) extension of the time limit to complete the work, citing existence of underground pipeline and trees along the stretch of the road. Audit observed that the Division became aware of the fact (August 2018) about the existence of an underground pipeline of the Gujarat Water Supply and Sewerage Board (GWSSB) in the road length of 2.5 km after being pointed out by the Contractor. As such, the Division initiated the process for shifting the pipeline with GWSSB in September 2018, *i.e.* after one year of award of the work, which got completed in June 2019.

⁴⁴ Benkelman Beam Test (BBD) is a test meant for evaluating the strengthening requirement of existing road using BBD technique. In Benkelman Beam Deflection Test, a static load is applied to the pavement surface and rebound deflections are measured at one or more locations with use of Benkelman beam.

Audit observed that due to preparation of incorrect estimates, change of specification of the road from asphalt to CC after award of work, delayed conduct of BBD test and improper planning for shifting of utilities led to execution of excess quantities besides delay in completion of the work. As the reasons for the delay were attributable to the Division, it had to pay price variation for the quantity of asphalt based on the 'Star Rate' during extended time. As per tender documents, Star Rate of asphalt (VG-30 grade) was ₹ 33,577 per metric ton (MT). The Division recovered ₹ 13.46 lakh from the contractor for 1,626 MT asphalt consumed for the work executed during the stipulated time limit as the asphalt purchase rate remained lower (except in January 2018) than the Star Rate during that period. However, during extended time limit⁴⁵ 2,379.46 MT asphalt was consumed that was purchased at higher rates (except in January, February, and June 2019) than Star Rate. This resulted in additional payment of ₹ 1.26 crore, being the price variation as the purchase rate of asphalt was higher than the Star Rate during this period.

The Department accepted (February 2024) the reasons for delay in completion of the work. Regarding the road width of 5.5 meter, the Department stated that the relevant items were overlooked while preparing estimates. As regards change of asphalt road to CC road, the Department stated that though the necessary surveys and investigation are required to be conducted before preparation of estimates for road work but due to financial constraints, some of the required treatment envisaged in such survey are not included in the work order. Subsequently, if there are overall savings in the work, such left out items are accommodated at a later point. As such, the CC road which was left out due to financial constraints while granting the AA, was taken up subsequently during the execution of work.

The Department needs to take action regarding the oversight, which led to execution of excess items of ₹ 5.83 crore which was 21.03 per cent of tender cost and consequently extra expenditure due to price variation of Star Rate amounting to ₹ 1.26 crore.

Industries and Mines Department

3.14 Irregular grant of VAT/SGST subsidy on *ad hoc* basis

Irregular payment of incentive instead of reimbursement (in violation of scheme guidelines) amounting to ₹ 2.65 crore without any claim made by the unit or without submission of document

In supersession of earlier scheme⁴⁶, the Government of Gujarat (GoG) declared (January 2017) a revised scheme for Plastic Industry to promote manufacturing industries in Gujarat with an operative period of 5 years from 01 January 2015. Under the Scheme, the industrial units engaged in manufacturing of plastic products/ items/ articles by using plastic as main raw materials⁴⁷ were

⁴⁵ From 29 September 2018 to 27 July 2019.

⁴⁶ Scheme for assistance for plastic industry dated January 2015.

⁴⁷ Plastic material means organic polymers of high molecular mass such as Polyolefin (LLDPE, LDPE, HDPE, PP), PVC, Nylon, Polyesters, Polystyrene, Polycarbonate, polyamide (nylon 6, nylon 66), etc.

considered. The scheme provides for assistance in the form of Interest Subsidy and Value Added Tax (VAT)/ State Goods and Services Tax (SGST) incentive as per quantum below:

- (i) **Interest Subsidy:** Reimbursement of interest subsidy at the rate of seven *per cent* per annum out of the interest payable on the Term loan availed from Bank or Financial Institutions during the operative period of the scheme.
- (ii) **VAT/SGST related incentive:** The eligible unit will be allowed reimbursement to the extent of 80 *per cent* of the Net VAT⁴⁸ paid. This reimbursement will be available for a period of seven years from the date of production or the completion of limit of 75 *per cent* of the eligible fixed capital investment. The eligible fixed capital investment means the investment made in new building, new plant & machinery, equipment and/ or imported second hand Plant and Machinery/ equipment having a residual life of minimum five years as certified by Chartered Engineer, including cost of installation, erection, transportation, electrification and other related assets (except cost of land, Stamp Duty and registration charges) required for the manufacturing of the product. Para 3.3 of the revised scheme reiterate that the incentive of Net VAT/ Net SGST shall be available in the form of reimbursement only.

The Industries & Mines Department also issued (15 November 2018) GR providing modalities for reimbursement of SGST incentives in place of VAT wherein it has been stated that Commissioner of State Taxes shall provide to the Industries Commissioner duly certified copies of returns⁴⁹ as provided under Section 39 of Gujarat Goods and Services Tax Act, 2017, filed through the common portal by the eligible unit.

Audit reviewed (March/April 2021) the assistance given by O/o Joint Commissioner of Industries and General Manager, District Industries Centre, Ahmedabad (DIC, Ahmedabad) during the period 01 April 2016 to 31 March 2020. M/s. Sambhav Exim (the Unit) applied (July 2017) for seven *per cent* interest subsidy and VAT/SGST incentive under the revised scheme. The unit claimed an amount of ₹13.27 crore under the revised scheme on account of expenditure incurred on actual gross fixed capital investment in commissioning of the unit. Provisional eligibility certificate (PEC) was also issued (May 2019) by DIC Ahmedabad to the unit for availing assistance under the scheme including eligible amount entitled for reimbursement of Net VAT/ Net SGST paid with limit up to ₹14.40 crore. The unit was disbursed (October 2019) an amount of ₹2.65 crore⁵⁰ as Net VAT/ SGST incentive on ad-hoc basis.

In this regard, Audit observed that the Net VAT/ SGST incentive should have been reimbursed in seven eligible years only to the extent of 1/7th of monetary ceiling in particular year after making e-payment and submission of e-returns by the unit to DIC, Ahmedabad (condition no. 3.3.5 of the Scheme). However, in violation of Scheme condition, DIC Ahmedabad has irregularly paid

⁴⁸ Net VAT/SGST means the tax including additional tax paid on sale of product after adjusting the tax credit of tax, including Additional tax on purchase.

⁴⁹ Various returns related to input tax credit payable/ paid electronically by a registered taxable unit.

⁵⁰ ₹ 1,326.98 lakh * 20 *per cent*.

incentive to the unit amounting ₹2.65 crore, instead of reimbursement, without any claim made by the unit or without submission of document, *i.e.* e-payment for payment of VAT/ SGST by the unit. DIC, Ahmedabad also did not obtain the certified copies of returns from the Commissioner of State Taxes before releasing the incentive. The asset verification for the amount of eligible fixed capital investment and recovery of the incentive paid is also pending (February 2024).

DIC Ahmedabad accepted (July 2023) the observation and stated that due to some misunderstanding in interpretation of the scheme, the officials concerned had paid the said benefit without getting the necessary claims along with the e-returns. It further informed that the benefit paid to the party is recoverable and due notice has been served (August 2022) to the beneficiary unit for effecting the recovery. Regarding officials responsible for the mistake, it was stated that the same are being departmentally examined separately for the said act of mistake. The Industries & Mines Department also accepted (February 2024) the observation and further informed that during the site verification (November 2023) of the unit, it was found that the unit was non-working for 18 months and all the machinery was transferred to other places. Moreover, alongwith the Recovery Notice served to the beneficiary, it has also informed the District Collector for effecting the recovery.

The fact remains that the recovery of the excess incentive paid is still not effected (February 2024). Further, the asset verification for the amount of eligible fixed capital investment is also pending.

3.15 Short levy of Compounding Fees on transportation of illegally mined minerals

Short/ non-levy of compounding fees of ₹ 48.06 lakh on the transportation of illegally mined minerals

In accordance with powers conferred by Section 23 C of the Mines and Minerals (Development and Regulation) Act 1957, the Government of Gujarat notified (26 September 2017) the Gujarat Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules 2017. The Rule 22 of these Rules 2017 stipulates that any offence punishable under these rules may, either before or after the institution of prosecution, be compounded by the authorised officer⁵¹ on payment of an amount compounded in the manner specified in Schedule III, which also includes Compounding Fees to be levied as described below:

- (a) Whenever any person undertakes transportation of any mineral without a Transit Permit or Delivery Challan, such person shall be liable to pay Compounding Fees at the rate of ₹ 5,000 per tonne.
- (b) Whenever any person undertakes illegal transportation of any mineral or illegal mining or illegal storage thereof, the following Compounding Fees may

⁵¹ An officer authorised by the Government to perform functions under these rules and having such jurisdiction as specified in Schedule I (which includes District Geologist or District Assistant Geologist, as the case may be).

be charged in addition to the costs specified in clause (a) above, for releasing the seized equipment/ vehicle/ tools, etc.

| Sl. No. | Name of Equipment/Vehicle/Tools | Compounding Fee for each item (In ₹) |
|---------|--|--------------------------------------|
| 1. | Tractor Trolley/ Compressor/ Drilling Machine/ Wire Saw and Other Tools etc. | 25,000 |
| 2. | Half Body Trucks/ Small Dupers/ Crane etc. | 50,000 |
| 3. | Full Body Trucks/ Heavy Duty Dumpers/ Crusher/ Power Hammer etc. | 1,00,000 |
| 4. | Trolla/ Excavator/ Loader etc. | 2,00,000 |

During the test-check of records of the Office of Geologist Junagadh, Jamnagar, Valsad, Dahod and Porbandar viz. Demand and Collection Register/ Notices issued⁵² to vehicle owner/ Challan of cash paid in the Banks for releasing the detained Vehicle for the period 2013-14 to 2018-19, Audit noticed (between September 2018 to July 2019) that in 65 cases, Compounding Fees amounting to ₹ 48.06 lakhs⁵³ was either short-levied or not levied by the authorised officer (Geologist/ Asst. Geologist) on the vehicles transporting illegally mined Ordinary Sand/ Limestone/ Black Trap/ Murram, etc. This has resulted in non-recovery of Compounding Fees amounting to ₹48.06 lakhs (November 2023).

The matter was reported (March 2023) to all the five Geologist Offices, Commissioner of Geology & Mining and Industries & Mines Department, Government of Gujarat in March 2023. Out of the five Geologist Offices, four Geologist Offices, i.e. Jamnagar, Valsad, Junagadh and Porbandar, replied (June 2023) that they had issued notices (between December 2018 to June 2023) for recovery of Compounding Fees. The office of the Geologist Junagadh replied that it has informed Regional Transport Office to cancel the registration of such vehicle which have not paid the Compounding Fees. The reply from Geologist Office, Dahod and the Commissioner of Geology & Mining and that of the Government is awaited (July 2024), even after repeated reminders issued in June 2023, August 2023, November 2023 and July 2024.

⁵² Under Section 24 (1)(d) and (e) of Mines and Minerals (Development and Regulation) Act, 1957 and Rule no. 3, 5, 6, 13 and 19 (a) to (e) of Prevention of Illegal Mining, Transportation and Storage Rules 2005.

⁵³ Junagadh ₹9.50 lakh (20 cases), Jamnagar ₹17.69 lakh (22 cases), Valsad ₹7.75 lakh (11 cases), Dahod ₹8.62 lakh (seven cases) and Porbandar ₹4.50 lakh (five cases).