

## CHAPTER VI STAMP DUTY AND REGISTRATION FEES

### 6.1 Results of Audit

Test check of the records of offices of district registries and sub registries conducted during the year 2004-05, revealed non/short levy of stamp duty and registration fees amounting to Rs.27.13 crore in 294 cases which broadly fall under the following categories.

(Rupees in crore)			
Sl. No.	Nature of irregularity	No. of cases	Amount
1	Misclassification of documents	29	0.64
2	Adoption of incorrect rate of stamp duty	60	21.70
3	Undervaluation of properties	22	0.40
4	Incorrect exemption of duties	32	0.14
5	Short levy of stamp duty and registration fees	107	0.50
6	Loss of revenue due to incorrect adjustment of stamp duty	12	1.35
7	Deficit stamp duty and registration fees on lease of tolls/ build operate and transfer schemes	8	2.27
8	Other irregularities	24	0.13
<b>Total</b>		<b>294</b>	<b>27.13</b>

During the year 2004-05, the Department accepted under assessments etc., of Rs.238.73 lakh in 71 cases, of which 41 cases involving Rs.213.63 lakh were pointed out during the year 2004-05 and the rest in earlier years. Out of 71 cases, an amount of Rs.27.69 lakh in 23 cases was realised during the year.

A few illustrative cases involving Rs.23.64 crore are mentioned in the following paragraphs.

## 6.2 Short levy of stamp duty due to adoption of incorrect rate

According to Section 5 of Indian Stamp Act (IS Act), 1899, any instrument comprising of or relating to several distinct matters shall be chargeable with the aggregate amount of stamp duties with which separate instruments, each comprising or relating to one of such matters would be chargeable under the Act. Under Article 42 (g) of Schedule I-A to the Act when power of attorney is given for construction on, development of, or sale or transfer of any immovable property, stamp duty is leviable at five *per cent* on the market value of the property for which the attorney is given power to sell. According to clarification<sup>≠</sup> issued by the Commissioner and Inspector General of Registration and Stamps (IGR) stamp duty of Rs.50 only is chargeable.

**6.2.1** During the course of audit of eight district registries<sup>♦</sup> and 41 sub registries<sup>f</sup> it was noticed that 6,357 documents valued at Rs.414.48 crore styled as “agreement of sale cum general power of attorney” registered during the years 2002-03 and 2003-04 contained two distinct matters namely one relating to agreement of sale and another appointing the purchaser as attorney on behalf of vendors to carry out all acts and deeds including sale of property. The vendors were liable to pay stamp duty of Rs.20.72 crore. However, registering authorities incorrectly levied a stamp duty of Rs.3.17 lakh. This resulted in short realisation of Government revenue of Rs.20.69 crore. A few illustrative cases are given under:

Sl. No.	Name of the Registry/ office	Deed No./ DOE	Nature of the deed	Market value (Rs.)	Stamp duty leviable (Rs.)	Stamp duty levied (Rs.)	Short levy (Rs. in lakh)
1	District Registrar, Guntur	11,509 6.12.03	Agreement of sale-cum-GPA	65,40,000	3,27,000	50	3.27
2	District Registrar, Ranga Reddy	5,715 7.5.03	- do -	3,30,00,000	16,50,000	50	16.50
3	District Registrar, Visakhapatnam	218/04	Agreement of sale-cum-GPA	5,73,84,000	28,69,200	50	28.69

<sup>≠</sup> MVI/18289/95, Dt. 1 July 1995

<sup>♦</sup> Bhimavaram, Guntur, Nalgonda, Nellore, Ongole, Ranga Reddy, Visakhapatnam and Warangal

<sup>f</sup> Amalapuram, Banjara Hills, Bhongir, Biccavole, Champapet, Charminar, Chikkadapally, Choutuppal, Deverakonda, Doodbowli, Gajuwaka, Ghatkesar, Golconda, Gopalapatnam, Hayatnagar, Huzurabad, Ibrahimpatnam, Janagaon, Kanchikacherla, Kankipadu, Kavali, Kukatpally, Malkajgiri, Marredpally, Medchal, Miryalaguda, Palakol, Patamata, Peddamberpet, Peddapuram, Pithapuram, Rajendranagar, Sanjeevareddy nagar, Saroornagar, Secunderabad, Shamshabad, Suryapet, Tallarevu, Tanuku, Uppal and Vallabh nagar

**6.2.2** During the course of audit of three district registries<sup>⊕</sup> and eight sub registries<sup>⊙</sup> it was noticed that 92 documents styled as “development agreement cum general power of attorney” for construction of multi storeyed complexes registered during 2003-04 contained several distinct matters. However, stamp duty was not levied in terms of these provisions resulting in short levy of stamp duty of Rs.1.01 crore.

After this was pointed out, registering authorities stated that stamp duty was levied in accordance with a clarification issued by IGR, which specified payment of stamp duty at the rate of Rs.50 only for each document. The reply was not tenable as the clarification was not in consonance with the provisions of the Act and as the documents were registered under Article 42(g), stamp duty for the GPA component is also chargeable at the rate of five *per cent* of market value of the property.

The above matter was referred to the Department in March and April 2005 and Government in June 2005, response was not received (September 2005).

### **6.3 Loss of revenue due to incorrect adjustment of stamp duty**

When a sale deed is executed in pursuance of an agreement falling under Explanation I to Article 47-A or Article 6(B) of Schedule 1A to the IS Act, as the case may be, stamp duty already paid on such agreement shall be adjustable towards the final duty payable on that sale deed. As per section 16 of the Act, where duty leviable on a document depends upon the duty actually paid on another document, payment of such last mentioned duty is required to be adjusted on that first document, if an application is made in writing. Further, according to section 28(4) of the Act, when a person having contracted for the purchase of a property but not obtained conveyance of the same in his favour, has contracted to sell the same property in whole or in parts, to any other person (third parties), then the original seller has to convey the property in favour of such third parties. According to a clarification<sup>Ⓜ</sup> issued by IGR, stamp duty paid on ‘agreement of sale’ can be adjusted from duty payable on subsequent sale of the same property if the claimant under the sale deed is either an agreement holder or agent or his nominee as per terms of the agreement.

During the course of audit of one<sup>♦</sup> district registry and 11<sup>Ⓜ</sup> sub registries it was noticed between August 2004 and February 2005 in 620 documents registered during 2002-03 and 2003-04 that stamp duty paid on agreements included in the documents styled as ‘agreement of sale cum general power of attorney

<sup>⊕</sup> Nellore, Rangareddy and Warangal

<sup>⊙</sup> Banjara Hills, Chikkadapally, Golconda, Kukatpally, Malkajgiri, Marredpally, Saroornagar and Secunderabad

<sup>Ⓜ</sup> SI/3405/1999 dated 2 April 1999

<sup>♦</sup> Nalgonda

<sup>Ⓜ</sup> Bhongir, Champapet, Charminar, Choutuppal, Hayatnagar, Kankipadu, Malkajgiri, Marredpalli, Miryalaguda, Shamshabad and Rajendranagar

(GPA)' was adjusted from subsequent sale deeds even though the claimant was neither the agreement holder nor his agent. These sale deeds were executed by agreement holders themselves claiming that the original sellers gave them power of attorney through the above documents of agreement of sale cum GPA to execute subsequent sale deeds on behalf of the original sellers. Such power of attorney included in those documents was classifiable under Article 42(g) with a stamp duty at the rate of five *per cent* on the market value of the property. Contrary to this, the Department classified the same under Article 42(c) involving fixed duty of Rs.50 in each case. Therefore, the earlier documents (Agreements of sale-cum-GPA) cannot be said to have been properly classified and duly stamped in respect of such "power of attorney" included therein. As such the present sale deeds in favour of third parties cannot be considered as having been properly executed due to non payment of proper duty. Therefore, adjustment of stamp duty already paid on earlier documents of above nature is against the said provisions of the Act. Incorrect classification adjustment of stamp duty resulted in loss of revenue of Rs.1.35 crore.

After this was pointed out, Department replied between August 2004 and February 2005 that adjustments were made in accordance with the above clarification of the IGR. Reply is not tenable, since, though the document enabled the agreement holder to execute subsequent sale deeds on behalf of the principal, it was not properly stamped under the provisions of the Act. Hence the claim of such unlawful attorney for adjustment of duty is not maintainable.

The above matter was referred to the Department in April 2005 and Government in June 2005, response was not received (September 2005).

#### **6.4 Deficit stamp duty and registration fee on lease deeds**

Indian Stamp Act defines 'lease' as a lease of immovable property and includes an undertaking in writing to occupy the property and any instrument by which tolls of any description are let. Under Registration Act, 1908, all leases are compulsorily registerable with effect from 1 April 1999.

As per Article 31(a) of Schedule I-A to the I S Act, where the lease is granted for rent reserved, stamp duty is chargeable at three *per cent* on the value of average annual rent reserved whereas under Article 31(b), where the lease is granted for a fine or premium or for money advanced and where no rent is reserved, stamp duty is chargeable at five *per cent* on the value of such premium as setforth in the lease.

During the course of audit of district registrar, Guntur in December 2004, it was noticed that three lease documents granted for a premium and advance of Rs.10.21 crore were executed between March 2000 and March 2002. However, stamp duty of Rs.13.29 lakh was charged instead of Rs.36.27 lakh. Thus, there was a total non/short levy of Rs.27.09 lakh including registration fee of Rs.4.11 lakh due to non registration of these documents.

After this was pointed out, it was stated in December 2004 that notices would be issued to the respective parties after examining the cases.

The above matter was referred to the Department in February 2005 and Government in June 2005, response was not received (September 2005).

### 6.5 Misclassification of 'Conveyances on sale' as 'Releases'

A document by which one of the co-owners of a property purports to abandon or relinquish his claim in favour of the remaining co-owners in consideration of a certain sum of money would be in the nature of a release document. A release which does not operate on all other coparceners or copartners is a conveyance on sale. Further as per a judicial decision<sup>Φ</sup>, documents executed by some of the co-owners relinquishing their shares in the property in favour of the remaining co-owners for certain consideration were held as deeds of conveyances on sale and not release deeds.

In one district registry<sup>Ψ</sup> and three sub registries<sup>δ</sup>, it was noticed that 21 deeds titled as 'release deeds' valued at Rs 95.09 lakh were executed between April 2002 and August 2003. However, three releases did not operate on all the coparceners/co-owners of the properties and 18 releases were executed separately by 18 co-owners relinquishing their shares in the property in favour of one co-owner and not all co-owners for certain consideration. Misclassification of 'conveyances on sales' as 'releases' as stated resulted in short levy of duty of Rs.9.74 lakh.

After this was pointed out, it was stated between May 2003 and February 2005 that the matter would be examined. Further reports have not been received.

The above matter was referred to the Department in March 2005 and Government in May 2005, response was not received (September 2005).

### 6.6 Under valuation of property

According to Article 47-A of Schedule 1-A to the IS Act, instruments of sale are chargeable to stamp duty at seven *per cent* on the amount or value of the consideration for such sale as set forth in the instrument or the market value of the property, whichever is higher, where the property is situated in any area situated in selection or special grade municipality. Besides, transfer duty at five *per cent* under the provisions of various Acts of local bodies is also leviable. Market value of the properties is determined by the registering officer based on register of market value guidelines supplied by the Registration and Stamps Department.

<sup>Φ</sup> 1985 -2 ALT 437 (F.B)

<sup>Ψ</sup> Ranga Reddy

<sup>δ</sup> Gopalapatnam, Hindupur and Kanumole

During the course of audit of sub registry, Saroornagar in November 2004, it was noticed that market value of Rs.1,500 per square yard was adopted in August 2003 for a property close to the national highway (i.e. within 100 yards) having higher market value of Rs.3,750 per square yard fixed as per the market value guidelines. Adoption of lower rate resulted in undervaluation of property and consequential short levy of duty to the extent of Rs.8.84 lakh.

After this was pointed out, it was stated that notice would be issued to the concerned party under section 27 of the Act, if necessary.

The above matter was referred to the Department in January 2005 and Government in June 2005, response was not received (September 2005).

### **6.7 Deficit stamp duty and registration fee on lease deeds for collection of toll fee**

Indian Stamp Act defines lease as a lease of immovable property and includes an undertaking in writing to occupy the property and any instrument by which tolls of any description are allowed to be collected. Under Section 17 (as amended with effect from 1 April 1999) of the Registration Act, 1908, all lease deeds have to be compulsorily registered.

During the course of audit between March 2004 and March 2005, it was noticed in two district registries<sup>♦</sup>, sub registry<sup>\*</sup> and a national highway(s) division<sup>#</sup> that four lease deeds for collection of toll fee on various bridges in the State were executed between July 2002 and March 2004 in Road and Buildings Department by the respective lessees. Out of the four documents, two were registered by the district registry and a sub registry. But the requisite stamp duty/registration fee under the provisions was not levied resulting in short levy of Rs.7.22 lakh. Further, due to non registration of remaining two documents, there was a loss of registration fee of Rs.0.49 lakh. Thus there was a total non/short levy of Rs.7.71 lakh.

After this was pointed out, sub registrar, Bapatla stated in April 2005 that an amount of Rs.0.89 lakh was collected and district registrar, Karimnagar stated (March 2005) that action would be initiated to recover stamp duty from lessees, while in the remaining two cases reply is awaited.

The above matter was referred to the Department in April 2005 and Government in June 2005, response was not received (September 2005).

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♦ Adilabad, Karimnagar  
\* Bapatla  
# Perkit (Nizamabad)

**6.8 Misclassification of a 'mortgage with possession of property' as a 'lease'**

As per Article 31(a)(iii) of Schedule I-A to the I S Act, a lease deed for a term exceeding five years but not exceeding 10 years is chargeable to stamp duty at five *per cent* on the value of the average annual rent reserved while a mortgage deed where possession of the property is given by the mortgagor is chargeable to stamp duty and transfer duty at five *per cent* each on the amount secured by such deed.

In district registry, Warangal in November 2003, it was noticed that a lease deed for 10 years was executed in November 2002 with a monthly rent of Rs1.01 lakh adjustable to loan account of lessor with the lessee and charged with a stamp duty and registration fee of Rs.0.75 lakh. However, the recitals of the lease deed revealed that it was a 'mortgage deed with possession of property' to secure outstanding loan amount of Rs.55.94 lakh. Thus duties and fee of Rs.5.87 lakh were chargeable. Misclassification of the document as 'lease' resulted in short levy of duty of Rs.5.12 lakh.

After this was pointed out in April 2005, it was stated that the deed was a lease for 10 years and charged with duties accordingly. The reply is not tenable as the recitals of deed revealed that it was a mortgage deed.

The above matter was referred to the Department in April 2005 and Government in June 2005, response was not received (September 2005).