

## CHAPTER V STAMP DUTY AND REGISTRATION FEES

### 5.1 Results of audit

Test check of the records of the offices of the district registries and sub registries conducted during the year 2006-07, revealed non/short levy of stamp duty and registration fees amounting to Rs. 28.33 crore in 329 cases, which broadly fell under the following categories.

(Rupees in crore)			
Sl. No.	Nature of irregularity	No. of cases	Amount
1.	Adoption of incorrect rate of stamp duty	103	22.75
2.	Loss of revenue due to incorrect adjustment of stamp duty	16	1.62
3.	Undervaluation of properties	38	1.59
4.	Misclassification of documents	23	1.04
5.	Short levy of stamp duty and registration fees	90	0.81
6.	Incorrect exemption of duties	33	0.19
7.	Other irregularities	26	0.33
<b>Total</b>		<b>329</b>	<b>28.33</b>

During the year 2006-07, the department accepted underassessments and other deficiencies of Rs. 1.33 crore in 68 cases, of which 36 cases involving Rs. 1.26 crore were pointed out during the year 2006-07 and the rest in the earlier years. Out of this, Rs. 25.18 lakh in 44 cases was realised during the year.

A few illustrative cases involving Rs. 25.76 crore are mentioned in the following paragraphs.

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

According to Section 5 of the Indian Stamp (IS) Act, 1899, any instrument comprising 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(c) of Schedule I-A to the IS Act, when not more than five persons (acting jointly and severally) are authorised by a general power of attorney (GPA) to enter into more than one transaction, stamp duty is to be charged at a flat rate of Rs. 50. Under Article 42(g) of Schedule I-A to the IS Act, stamp duty is leviable at five *per cent* on the market value of the property on a GPA given for construction, development, sale or transfer of any immovable property.

**5.2.1** During the audit of 14<sup>1</sup> district registries (DRs) and 71<sup>2</sup> sub registries (SRs) it was noticed between April 2005 and February 2007 that 11,950 documents valued as Rs. 430.70 crore styled as “agreement of sale cum GPA” were registered during the years 2004-05 and 2005-06 (upto the end of July 2005). These contained two distinct matters viz., agreement of sale and appointing attorney on behalf of the vendor to carry out all acts and deeds including the sale of property. While stamp duty was correctly levied on the agreement of sale, it was incorrectly levied on the GPA at the rate of Rs. 50/- each instead of five *per cent* on the market value of the properties. This resulted in short levy of stamp duty of Rs. 21.48 crore.

**5.2.2** During the audit of two<sup>3</sup> DRs and five<sup>4</sup> SRs, it was noticed between May and October 2006, that 43 documents styled as “development agreement cum GPA” valued as Rs. 49.99 crore for construction of multi storied complexes were registered during 2004-05 and 2005-06 (upto the end of July 2005). These contained two distinct matters viz., development agreement and GPA given by the land owner to the developer in respect of the share of the land allotted to the developer. While stamp duty was correctly levied on development agreement, it was incorrectly levied on the GPA at the rate of Rs. 50 each instead of five *per cent* on the market value of the properties. This resulted in short levy of stamp duty of Rs. 47.38 lakh.

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<sup>1</sup> Bhimavaram, Eluru, Guntur, Hyderabad, Kakinada, Karimnagar, Khammam, Medak, Nalgonda, Ongole, Srikakulam, Vijayawada, Vizianagaram and Warangal

<sup>2</sup> Amalapuram, Amaravathi, Anakapalli, Anaparthi, Azampura, Bapatla, Biccavolu, Bodhan, Bowenpally, Champapet, Chebrolu, Chevella, Chikkadapally, Chirala, Dwarakanagar, Gudivada, Gunadala, Ibrahimpatnam, Jangaon, Kamareddy, Kanchikacherla, Kandukur, Kankipadu, Kanumolu, Kodad, Kovvur, Krosuru, Kukatpally, Kusumanchi, Madhira, Malkajgiri, Mancherial, Medchal, Mummidivaram, Nallapadu, Nandigama, Nidadavole, Nirmal, Nuzvid, Palakol, Parkal, Pedakakani, Peddamberpet, Peddapuram, Phirangipuram, Pithapuram, Ponnur, Prathipadu, Rajanagaram, Rajendranagar, Sadasivapet, Sanjeevareddynagar, Saroornagar, Sattenapalli, Secunderabad, Shadnagar, Shamirpet, Siddipet, Singarayakonda, Sircilla, Suryapet, Tadepalligudem, Tadikonda, Tanuku, Tenali, Tuni, Vallabhanagar, Vikarabad, Vissannapet, Wyra and Yerragondapalem

<sup>3</sup> Hyderabad and Warangal

<sup>4</sup> Azampura, Banjara Hills, Chikkadapally, Golconda and Kukatpally

**5.2.3** During the audit of DR, Hyderabad between August and September 2006, it was noticed that a document styled as “development agreement-cum-GPA” registered in May 2005 contained two distinct matters viz., development agreement and agreement of sale with possession of property. Stamp duty of Rs. 60.22 lakh was correctly levied on the development agreement but was omitted to be levied on the agreement of sale with possession of property. This resulted in short levy of stamp duty of Rs. 46.78 lakh.

The matter was referred to the department between February and April 2007 and the Government between April and May 2007; their reply has not been received (December 2007).

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

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. When a sale deed is executed in pursuance of an agreement, stamp duty already paid on such agreement shall be adjustable towards the final duty payable on that sale deed.

During the audit of six<sup>5</sup> DRs and 10<sup>6</sup> SRs, it was noticed between September 2005 and November 2006 in 752 documents that stamp duty paid on the part of the agreement included in the documents styled as ‘agreement of sale-cum-GPA’, was adjusted on the subsequent sale deeds even though the claimant was a third party i.e., neither the agreement holder nor the agent. Therefore, adjustment of stamp duty already paid on earlier documents was incorrect and resulted in loss of revenue of Rs. 1.62 crore.

The above matter was referred to the department in April 2007 and the Government in May 2007; their reply has not been received (December 2007).

### **5.4 Undervaluation of properties**

**5.4.1** As per departmental instructions<sup>7</sup>, for determining the market value of property for the purpose of levying duties, the registering officers should adopt the highest rate applicable to a property in the neighbourhood in the case of a missing house/survey/sub-division number.

During the audit of DR, Karimnagar between November and December 2006, it was noticed that six open plots sold/agreed to be sold through six documents were registered between April and July 2005 by adopting the market values applicable to the door numbers which were not the nearest door number to the

<sup>5</sup> Bhimavaram, Guntur, Hyderabad, Kakinada, Nalgonda and Vizianagaram

<sup>6</sup> Azampura, Ibrahimpatnam, Jangaon, Kanchikacherla, Kukatpally, Mandavalli, Medchal, Pedakakani, Shamirpet and Tenali

<sup>7</sup> Item (iv) of proceedings circulated under No. MV1/20363-A/90 dated 10.8.1990

properties involved. As actual door number of the properties was missing in the market value guidelines, the highest market value applicable to the nearest door number should have been adopted as market value for the purpose of registration. Adoption of incorrect market value had resulted in undervaluation of property and consequential short levy of duties of Rs. 46.50 lakh.

**5.4.2** As per the instructions issued under the market value scheme, different rates are to be adopted for agricultural properties and for house sites. The market value of house sites is more than that of agricultural properties.

During the audit of SR, Shadnagar in November 2006, it was noticed that a sale deed was registered in August 2005 by adopting agricultural/acreage rate of Rs. 3 lakh per acre for the property instead of house site rate of Rs. 320 per sq. yd., even though the land had already been converted into house sites by the vendor in 2004 itself. Thus, there was undervaluation of property of Rs. 4.39 crore involving short levy of duties of Rs. 41.72 lakh.

The matter was referred to the department in April 2007 and the Government in May 2007; their reply has not been received (December 2007).

### **5.5 Misclassification of 'mortgages' as 'deposit of title deeds'**

As per the departmental instructions<sup>8</sup>, if there is a clause in the deed of deposit of title deeds that the borrower shall not create any mortgage on the property and keep the property free of any encumbrances, a charge is deemed to have been created on such property and such document is chargeable as a mortgage at the rate of three *per cent* on the value secured under Article 35(b) of Schedule I-A to the Act.

During the audit of SR, Uppal in October 2006, it was noticed that two documents styled as "memorandum of deposit of title deeds" registered in February 2006 contained recitals to the effect that the borrower shall not create any other mortgage on the property and keep the property free of any encumbrance. Therefore, these documents were to be treated as mortgages and charged with stamp duty of three *per cent* on the value secured by such documents as against stamp duty of Rs. 50,000 each levied. Misclassification of 'mortgages' as 'agreements relating to deposit of title deeds' resulted in short levy of stamp duty of Rs. 67.24 lakh.

After the case was pointed out, Commissioner and Inspector General of Registration and Stamps (IGR) accepted (August 2007) the audit observation and issued instructions for the recovery of deficit stamp duty.

The matter was referred to the Government in May 2007; their reply has not been received (December 2007).

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<sup>8</sup> G4/6009/81 dated 28-4-82

### 5.6 Short levy of stamp duty due to incorrect computation of lease period

As per Article 31(a)(v) of Schedule I-A to the IS Act, a lease deed for a term exceeding 20 years but not exceeding 30 years is chargeable to stamp duty at five *per cent* on the value of five times the average annual rent reserved.

During the audit of DR, Hyderabad between August and September 2006, it was noticed that a lease deed for a monthly rent of Rs. 4.50 lakh with an yearly enhancement of five *per cent* was executed by the lessors in favour of the lessee on 5 November 2005 for a period of 20 years from the date of registration of the lease. The lease deed was registered on 8 November 2005 on levy of stamp duty as applicable to a lease for 20 years. Though the lease rent was payable from 1 January 2006 to 31 December 2025, the scheduled premises was demised to the lessee on 8 November 2005 itself and the lessee was liable to pay all other charges, taxes etc., including electricity, water and maintenance charges from that date. Therefore, the lease period should be reckoned as more than 20 years and stamp duty levied accordingly. Thus, incorrect computation of lease period resulted in short levy of stamp duty of Rs. 9.15 lakh.

After the case was pointed out, IGR accepted (April 2007) the audit observation and issued instructions for the recovery of deficit stamp duty.

The matter was referred to the Government in March 2007; their reply has not been received (December 2007).

### 5.7 Misclassification of 'conveyance on sale' as 'release'

According to a decision<sup>9</sup> of Andhra Pradesh High Court, a release deed should be executed by or in favour of all the persons having right/title/interest in the property. Such a deed which does not operate on all other co-parceners<sup>10</sup> or co-partners is a 'conveyance on sale'.

During the audit of SR, Dharmavaram, it was noticed in August 2006 that a release deed was executed in August 2005 in favour of a co-parcener/legal heir by four other legal heirs to the property. However, it was noticed from the recitals of another document executed on the same day that one more legal heir to the property who also had right/title/interest in the property was not included in the release deed thereby making the release chargeable as conveyance on sale. Misclassification of 'conveyance on sale' as 'release' resulted in short levy of duty of Rs. 7.65 lakh.

The above matter was referred to the department in January 2007 and the Government in March 2007; their response has not been received (December 2007).

<sup>9</sup> No. 83/70 dated 18-1-1974

<sup>10</sup> A person who inherited the property from the Hindu undivided family