

CHAPTER-V

STAMP DUTY AND REGISTRATION FEES

5.1 Results of Audit

Test check of assessment records in the registration offices and offices of the Collectors of Stamp Duty (valuation of property) in the State, conducted in audit during the year 2004-05 disclosed short realisation of stamp duty and registration fees amounting to Rs.49.84 crore in 204 cases, which fall under the following categories:

| (Rupees in crore) | | | |
|-------------------|---|--------------|--------------|
| Sl. No. | Category | No. of cases | Amount |
| 1 | Misclassification of documents | 86 | 9.27 |
| 2 | Under valuation of property | 46 | 12.03 |
| 3 | Incorrect grant of exemption | 4 | 0.09 |
| 4 | Under assessment of stamp duty on instruments of mortgage deeds | 19 | 1.59 |
| 5 | Irregular acceptance of time barred cases resulting in postponement of realization of Government duty | 23 | 23.98 |
| 6 | Other irregularities | 26 | 2.88 |
| | Total | 204 | 49.84 |

During the year 2004-05, the Department accepted and recovered under assessment of Rs.3.95 lakh in five cases pertaining to earlier years. A few illustrative cases highlighting important audit observations involving Rs.15.12 crore are given in the following paragraphs.

5.2 Loss of revenue by way of stamp duty due to acceptance of time barred appeal cases

Under Section 32-B of Bombay Stamp (BS Act) Act, 1958, as applicable to Gujarat, any person aggrieved by an order passed by the Collector, valuation of property (VOP) under Section 31 or 32-A determining the market value, may represent his case to the Chief Controlling Revenue Authority (CCRA) through the Collector (VOP), within 60 days from the date of order passed by the Collector (VOP). Section 53(1) (a) of the Act further provides that the CCRA shall not entertain an appeal application made by a person unless such an application is presented within a period of 60 days from the date of order of the Collector.

During test check of records of 16^s Dy.Collectors (VOP) it was noticed between December 2003 and October 2004 that the Dy.Collectors had determined the market value of 569 documents between February 1992 and September 2003. The aggrieved parties filed appeals between April 2000 and March 2004. The appeal applications were submitted after expiry of the prescribed period of 60 days with delays ranging from two to 4,063 days. The Dy. Collectors had referred these appeals to the CCRA between April 2001 and April 2004. Out of these, 20 cases involving Rs.49.66 lakh pertaining to Dy.Collector (VOP), Bharuch were remanded by the CCRA on 8 April 2003 with orders to refund the amount of deposit to the parties. Remaining cases were pending for final decision. Acceptance of appeal applications submitted by persons beyond the limitation period specified in the Act by the Dy.Collectors (VOP) and decision of the CCRA in favour of the parties on such time barred references were beyond the powers vested in them under the Act. Failure of the Dy.Collector (VOP) to take action under provisions of the Act for recovery either by attachment and sale of movable/immovable property and/or under the provisions of the BLR code resulted in loss of stamp duty of Rs.49.66 lakh and non-realisation of stamp duty of Rs.5.47 crore. Though internal audit had conducted inspection of these offices, they had failed to highlight this omission of the departmental officers.

The above facts were brought to the notice of the Department between February 2004 and December 2004 and of the Government in March 2005. The Government replied (June 2005) that the CCRA had to decide whether application for appeal filed beyond the prescribed time was to be considered or not on merits of each case. It was also stated that Government was contemplating seeking opinion of the State Legal Department in the matter. The reply is not tenable as the Act does not provide for any discretion to the Collector (VOP) or CCRA to accept and decide application for appeal beyond the prescribed time.

5.3 Short levy of stamp duty and registration fees due to misclassification of documents

Under Section 3 of the BS Act, every instrument mentioned in Schedule-I shall be chargeable with duty at prescribed rates. If an instrument falls under more than one description given in the Schedule and duties chargeable under those descriptions are different, highest of such duties shall be charged on such a document as per Section 6 of the Act. For the purpose of levy of stamp duty, an instrument is required to be classified on the basis of its recitals given in the document and not on the basis of its title.

During test check of records of 38[#] Sub-Registrars (SRs), it was noticed between January and October 2004 that 436 documents registered between 2001 and 2003 were classified on the basis of their titles and stamp duty was levied accordingly. Scrutiny of the recitals of these documents, however,

^s Amreli, Bhavnagar, Bharuch, Bhuj, Dahod, Godhra, Jamnagar, Junagadh, Palanpur, Patan, Rajkot-I and II, Surat I & II, Surendranagar and Valsad

[#] Seven of Ahmedabad, four of Surat, three each of Rajkot and Vadodara, two of Jamnagar and one each of Amreli, Anand, Bhavnagar, Bhuj, Chikhli, Gandhinagar, Gondal, Himatnagar, Junagadh, Kadi, Kheda, Kodinar, Kunkavav, Mehsana, Palanpur, Sanand, Savarkundla, Wadhwan and Wankaner.

revealed that these documents were misclassified. This resulted in short levy of stamp duty and registration fees of Rs.8.60 crore. A few illustrative cases are given below:

(Rupees in lakh)

| Sl. No. | No. of offices | No. of documents | Short levy | Nature of irregularity |
|---|----------------|------------------|------------|--|
| 1 | 28 | 157 | 459.52 | The documents were classified as equitable mortgage/deposit of title deeds and stamp duty levied accordingly. However, recitals of these documents revealed that the guarantors had deposited the title deeds of their properties in the bank on behalf of the borrowers. These documents were, therefore, classifiable as bonds. As stamp duty on bonds is higher than that for equitable mortgage deeds/deposit of title deeds, higher rates are chargeable. |
| <p>Remarks: The Department stated that in case of documents of deposit of title deeds stamp duty was leviable treating it as equitable mortgage under Article 6 as per circular issued by the IGR in January 2002. Reply is not tenable as where a person undertakes liability for a debt due by another to get certain property mortgaged to the creditor for the debt and on failure to do so, it was held[@] that though the document did not come exactly within the definition of a bond, it was still a bond as it was attested and by it the executant obliged himself to pay a certain sum of money to another if he did not perform a specified act.</p> | | | | |
| 2 | 17 | 160 | 290.96 | The documents were misclassified as "agreement", though as per the recitals of the documents possession of the property had been handed over/full rights to develop, market and use the properties, right and interest were transferred to the purchasers. The documents were, therefore, required to be classified as conveyance deeds. |
| <p>Remarks: The Department stated that in case of one office (six cases) order for levy of deficit duty had been issued.</p> | | | | |

[@] Nand Lal v.Karam Chand, 2 Lah LJ 224.

| | | | | |
|--|----|----|-------|--|
| 3 | 11 | 99 | 25.89 | The documents were classified as deposit of title deeds/equitable mortgage though as per the recitals right or interest in the property was created in favour of the mortgagees by executing separate loan agreements, writings and giving power of attorney. These documents were, therefore, classifiable as mortgage deeds as clarified by the IGR in letter dated 31 July 1993. |
| <p>Remarks: The Department stated that concerned Dy.Collectors (VOP) had declared four documents as properly stamped. Dy.Collector(VOP)'s action was not proper as these documents contained recitals falling within the definition of "Mortgage" as per IGR's clarification dated 31 July 1993 and hence deficit stamp duty as pointed out was leviable.</p> | | | | |
| 4 | 02 | 16 | 80.77 | The documents were classified as development agreement though as per the recitals, possession of the properties were handed over to the developers, rights and title of the property were transferred with full right to develop/sell the property, accept consideration, execute conveyance/transfer/ lease deeds in favour of individual purchasers. The developers also paid full/part consideration/post dated cheques etc. The developers were also liable to pay all taxes from the date of execution of agreement. These documents were, therefore, classifiable as conveyance deeds. |
| <p>Remarks: The Department stated that Dy.Collectors(VOP) had issued notices to parties and final decision would be intimated after following the procedure prescribed under the Act.</p> | | | | |

The above facts were brought to the notice of the Government in March/April 2005; replies have not been received (June 2005).

5.4 Short levy of stamp duty and registration fees on instruments comprising several distinct matters

Under Section 5 of the BS Act, any instrument comprising or relating to several distinct matters is chargeable with the aggregate amount of the duties for which such separate instrument would be chargeable under the Act.

During test check of records of 11[#] SRs, it was noticed between July 2003 and October 2004 that 73 documents comprising several distinct matters of immovable properties valued at Rs.47.29 crore were charged to stamp duty and registration fees for only one matter/transaction. This resulted in short levy of stamp duty and registration fees of Rs.5.46 crore. Two illustrative cases are given below:

(Rupees in crore)

| Sl. No. | Location | No of documents | Value of property | Short levy | Nature of irregularity |
|---------|--|-----------------|-------------------|------------|--|
| 1. | Ahmedabad, Kalol, Rajkot, Surat and Vadodara | 42 | 26.03 | 2.36 | As per recitals of the documents registered, the transaction involved three parties whereas stamp duty was levied as if it was a sale between the seller and the third person though full consideration was paid by the second person to the seller and not by the third person. In addition in the case of document of Kalol, no stamp duty was levied though the property was also mortgaged for obtaining loan. |
| 2 | Surat | 17 | 19.18 | 2.97 | Though instruments contained elements of sale and irrevocable power of attorney, duty was levied only on sale. |

The above facts were brought to the notice of the Department between September 2003 and December 2004 and of the Government in April 2005; replies have not been received (June 2005).

5.5 Short levy of stamp duty due to undervaluation of properties

Under the BS Act, if the officer registering the instrument has reasons to believe that the consideration set forth in the document presented for registration is not as per the market value of the property, he shall, before registering the document, refer the same to the Collector (VOP) for determining the market value of the property. The market value of the property is to be determined in accordance with the Valuation Rules and instructions issued by the Government from time to time.

[#] Three of Ahmedabad, two each of Surat and Vadodara and one each of Kalol, Navsari, Rajkot and Surendranagar

During test check of the records of Dy. Collector (VOP) Junagadh and eight[§] SRs it was noticed between April 2002 and October 2004 that the market value of the property was determined incorrectly in 37 documents registered between 2001 and 2003 which resulted in short levy of stamp duty of Rs.47.00 lakh.

The above facts were brought to the notice of the Department between May 2002 and December 2004 and of the Government in March 2005; reply has not been received (June 2005).

5.6 Non levy of interest

Under the BS Act and Gujarat Stamps Rules made thereunder, if any person required to pay any amount of duty, penalty or other sums, fails to pay the same within the prescribed time limit, simple interest at the rate of 24 *per cent* per annum is chargeable from 4 April 1994 to 31 March 2002 and at the rate of 15 *per cent* thereafter on such amount or on any less amount thereof for the period for which such amount remains unpaid.

During test check of records of three[®] Dy. Collectors (VOP) it was noticed between February and June 2004 that in 51 cases finalised between September 1991 and December 1999, payment of duty of Rs.4.61 lakh was made between October 1999 and January 2004. The delay in payment ranged between five and 137 months from the date of service of order. In 14 cases where notices were issued between December 1998 and June 2003 based on the recommendations of SRs but final orders were not passed by the Dy. Collectors (VOP), payment of duty was made with delays ranging between nine and 57 months from the date of issue of notices. In these cases, interest was neither demanded nor levied. Interest leviable in 51 cases worked out to Rs.8 lakh and loss of interest due to delay in finalisation of 14 cases worked out to Rs.1.37 lakh.

The above facts were brought to the notice of the Department between April and August 2004 and of the Government in March 2005. Government in their reply stated that as per instructions issued in April 1994 by the Superintendent of Stamps, interest was not leviable in cases finalised prior to the date of introduction of provision for levy of interest. Reply is not tenable as interest becomes payable on any amount due and outstanding on the date of introduction of the provision and is chargeable from 4 April 1994 to the date of payment. The date of finalisation of cases has no relevance to levy of interest.

[§] Two of Ahmedabad and one each of Kheda, Morbi, Padra, Palanpur, Rajkot and Savli
[®] Bhuj, Surat and Surendranagar