

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 during the year 2005-06 disclosed short realisation of stamp duty and registration fees amounting to Rs.58.12 crore in 209 cases, which fall under the following categories:

(Rupees in crore)			
Sl. No.	Category	No. of cases	Amount
1	Misclassification of documents	93	23.70
2	Under valuation of property	8	0.27
3	Incorrect grant of exemption	4	0.02
4	Under assessment of stamp duty and instruments of mortgage deeds	44	21.17
5	Irregular acceptance of time barred cases resulting in postponement of realisation of Government duty	21	5.34
6	Other irregularities	39	7.62
	Total	209	58.12

A few illustrative cases involving important audit observations involving Rs.49.27 crore are given in the following paragraphs.

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

Under section 32 B of Bombay Stamp Act (BS Act), 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 it is presented within a period of 60 days (upto 10 June 2004)/90 days (from 11 June 2004 onwards) from the date of order of the Collector.

During test check of records of 21^s Deputy Collectors (VOP), it was noticed between August 2004 and November 2005 that the market value in 839 documents was determined between 1993-94 and 2004-05. The aggrieved parties filed appeals between December 1996 and March 2005. The appeals were submitted after expiry of the prescribed period of 60 days/90 days with delays ranging from one day to 129 months. The Dy. Collectors referred these appeals to the CCRA between February 2001 and March 2005. Out of these, six cases pertaining to two* Dy.Collectors (VOP) were remanded by the CCRA to the Dy.Collectors. These cases were finalised by the Dy.Collectors. Stamp duty levied in these cases was short by Rs.5.59 lakh. Remaining cases were pending for final decision. Acceptance of appeals beyond the stipulated time by the Dy.Collectors and finalisation of remanded cases in favour of the parties on such time barred references were beyond the powers vested in them under the BS Act. This resulted in loss of stamp duty of Rs.5.59 lakh and non realisation of stamp duty of Rs.10.44 crore.

After this was pointed out between January and December 2005, the department replied that the Legal Department had opined that the Collector was not legally empowered to entertain time barred appeal and would not have any authority to condone the delay even for sufficient cause. In light of Legal Department's opinion, the CCRA had returned all pending time barred appeals lying with him to concerned Dy. Collectors (VOP) with instructions to intimate all the parties concerned to pay deficit stamp duty as per original order of the Dy. Collector (VOP).

This was brought to notice of Government in April 2006; reply has not been received (October 2006).

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

^s Ahmedabad I&II, Anand, Bharuch, Bhuj, Gandhinagar, Godhra, Himatnagar, Jamnagar, Mehsana, Nadiad, Navsari, Palanpur, Porbandar, Rajkot-II, Surat I&II, Surendranagar, Vadodara I&II and Valsad.

* Bhuj and Porbandar

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 45^{##} sub registrars (SRs), it was noticed between September 2004 and December 2005 that 363 documents registered between 2002 and 2004 were classified on the basis of their titles and stamp duty was levied accordingly. Scrutiny of the recitals of these documents revealed that these documents were misclassified. This resulted in short levy of stamp duty and registration fees of Rs.26.90 crore. A few illustrative cases are depicted below:

(Rupees in lakh)

Sl. No.	No. of offices	No. of documents	Short levy	Nature of irregularity
1	18	97	151.40	As per the recitals of the documents, possession of the property was handed over and full rights were given to develop, market and use the property. Right and interest over properties were transferred to the purchasers. Seller executed irrevocable power of attorney in favour of the purchasers. Hence, these documents were required to be classified as conveyance deed instead of "agreement to sell".
2	9	29	206.40	The documents were classified as development agreement though as per the recitals, possession of properties was handed over to the developers, rights and title of the property were also transferred with full right to develop/sell the property, accept consideration, execute conveyance/lease deeds in favour of individual purchasers. The developers also paid full/part consideration and/or gave 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 instead of development agreement.

^{##} Ahmedabad-I,II,III,IV,V, VI and VII, Amreli, Anand, Anjar, Bharuch, Bhavnagar I and II, Bhuj, Deesa, Dehgam, Dholka, Gandhidham, Gandhinagar, Himmatnagar, Jamnagar I and II, Kadi, Kalol (NG), Mehsana, Nadiad, Navsari, Palanpur, Porbandar, Rajkot I, III and IV, Surat II, III and IV, Tharad, Unjha, Upleta, Vadodara I, II, III and IV, Veraval, Vijapur and Viramgam.

3	1	1	62.71	“Agreement to lease” was executed (June 2004) with a condition to hand over the land with all rights and privileges and lease deed was to be executed on payment of premium price of Rs.4.94 crore of said land within three months. By a mortgage deed lessee mortgaged the same leasehold land in September 2004 as an absolute holder of the land. Thus he had already taken possession of the land. As such lease deed was required to be executed and duty at the rate of lease was to be paid. No lease deed was executed (March 2006).
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After this was pointed out between January and December 2005, the department stated that the Inspector General of Registration (IGR) had instructed all SRs vide circular dated 13 April 2005 to classify the document on the basis of its recitals given therein and not on the basis of its title. All documents had been sent to respective Dy.Collectors (VOP). Three* Dy.Collectors (VOP) had passed orders for recovery of deficit stamp duty in 11 cases. Further, department had also preferred Legal Department’s opinion on the matter (July 2006).

This was brought to notice of Government in March/April 2006; replies have not been received (October 2006).

5.4 Short levy of stamp duty & registration fees on documents comprising distinct matters

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

During test check of records of 17# SRs, it was noticed between November 2004 and September 2005 that 88 documents comprising several distinct matters of immovable properties valued at Rs.89.50 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.10.71 crore. A few illustrative cases are depicted below:

* Amreli, Bhuj and Porbandar

Ahmedabad IV, V, VI & VII, Bhavnagar-II, Gandhinagar, Junagadh, Kalol(NG), Nadiad, Navsari, Rajkot-I, Surat-IV, Unjha and Vadodara I, II, III & IV.

(Rupees in lakh)

Sl. No.	Location	No of documents	Value of property	Short levy	Nature of irregularity
1	Vadodara	15	4,128.41	514.67	Though instruments contained elements of sale and power of attorney with consideration named or styled as development agreement/agreement to sell, duty was levied only on sale.
2	Ahmedabad and Navsari	8	97.86	9.43	Though instruments contained elements of release of right by one co-owner in favour of another co-owner of the property and sale of the property to the purchasers, duty was levied only on sale.

After this was pointed out between January and November 2005, the department stated that progress report had been called for from respective Dy.Collectors (VOP) regarding levy of stamp duty and registration fees in respect of all documents. Dy.Collector (VOP), Nadiad had passed an order of recovery of stamp duty in one case. In the remaining cases notices have been issued by respective Dy.Collectors (VOP).

This was brought to notice of Government in April 2006; reply has not been received (October 2006).

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. The market value is to be determined in accordance with the BS (Determination of Market Value of the Property) Rules, 1984 (Valuation Rules) and instructions issued by Government from time to time. In case of amalgamation of companies, the consideration for stamp duty in respect of shares of transferee company which are not listed or listed but not quoted for trading in a stock exchange shall be the market value of shares issued or allotted with reference to the market value of the shares of transferor company.

During test check of the records of the Additional Superintendent of Stamps, Gandhinagar, three* Dy.Collectors (VOP) and seven[§] SRs, it was noticed between November 2004 and October 2005 that market value of the property was determined by adopting incorrect market value in 26 documents registered between 2002 and 2004. This resulted in short levy of stamp duty of Rs. 1.09 crore.

* Ahmedabad-II, Bhavnagar and Valsad

§ Ahmedabad-III & VI, Ankleshwar, Bhuj, Mandvi(Kutch), Surat-II and Valsad

After this was pointed out between January and November 2005, the department accepted audit observations in four cases and recovered an amount of Rs.1.40 lakh. Particulars of recovery and replies in remaining cases have not been received.

This was brought to notice of Government in April 2006; reply has not been received (October 2006).

5.6 Loss of revenue due to non revision of jantri rates

Under section 2(na) of the BS Act, “market value” in relation to any property which is the subject matter of an instrument means the price which such property would have fetched if sold in open market on the date of execution of such instrument. With effect from 1.4.2000 under section 32 A(1) of the BS Act read with Rule 3(2) of the Valuation Rules, if an officer registering the instrument has reason to believe that the consideration set forth in the instrument does not approximate to the market value of the property which is the subject matter of such instrument or market value has not been truly set forth therein, he shall immediately after presentation of such instrument give intimation of his belief to the person concerned. For determining the true market value of open land, SRs take into consideration the rates prescribed in “jantri” i.e. ready reckoners. The *jantri* was updated by Government from 1 August 1998.

It was noticed in three cases of non agricultural land in Bodakdev and Kochrab area of Ahmedabad and Dashrath village of Vadodara that stamp duty was paid on consideration actually shown in document which was 86 to 196 *per cent* higher as compared to corresponding rates fixed in *jantri*, whereas in 11 other documents in the same area, market value was determined by SR as per rates shown in *jantri* which were far less than the prevailing market rates. Thus non revision of rates of *jantri* for over seven years not only defeated the very purpose of determining true market value but also led to loss of revenue by way of stamp duty and registration fees of Rs.2.77 crore in 11 cases. These cases are only indicative of an area of loss of revenue to the Government. The exact amount involved would be many times more.

After this was pointed out in November 2005, the department stated that process of revision of *jantri* in a scientific manner is in progress and is expected to be completed by February 2007.

This was brought to notice of Government in April 2006; reply has not been received (October 2006).

5.7 Non realisation of registration fee

Under the provisions of para 223 of the Bombay Registration Manual as applicable to Gujarat, on “cancellation of agreement to sell” of immovable property, registration fee is leviable at *ad valorem* rate on consideration fixed for agreed sale provided the deed is executed by the claimant and executant under the original agreement to sell.

During test check of records of two^s SRs, it was noticed between November 2004 and September 2005 that in two documents of cancellation of agreement to sell registered between 2003 and 2004, though documents were signed by both the claimant and executant, registration fee of Rs.7.38 lakh was not levied.

After this was pointed out between April 2004 and October 2005, the department stated that respective Dy.Collectors (VOP) have been instructed to initiate recovery proceedings.

This was brought to notice of Government in April 2006; reply has not been received (October 2006).

^s Ahmedabad-IV and Vadodara-III