

CHAPTER III: STAMP DUTY AND REGISTRATION FEE

3.1 Results of audit

Test check of the records of various registration offices during the year 2007-08 revealed non/short levy of stamp duty and registration fee amounting to Rs. 44.43 crore in 85,543 cases, which fall under the following categories:

(Rupees in crore)

Sr. No.	Category	Number of cases	Amount
1.	Grant of exemptions and remissions of stamp duty and registration fee (A review)	1	24.69
2.	Irregular exemption of stamp duty on mortgage deeds	41,648	5.86
3.	Non/short recovery of stamp duty due to undervaluation of immovable property	3,177	4.38
4.	Short recovery of stamp duty due to non-charging of residential rates on purchase of land by builders	70	3.05
5.	Short realisation of stamp duty due to sale of property at lower consideration than the amount mentioned in the agreement deeds	65	1.56
6.	Short recovery of stamp duty due to misclassification of instruments	716	0.51
7.	Miscellaneous irregularities	39,866	4.38
Total		85,543	44.43

During the year 2007-08, the department accepted underassessments and other deficiencies of Rs. 6.04 crore involved in 2,136 cases, of which 2,024 cases involving Rs. 6 crore had been pointed out during 2007-08 and the remaining in the earlier years. The department recovered Rs. 6.63 lakh in 240 cases of which Rs. 2.40 lakh in 112 cases related to the year 2007-08 and balance to the earlier years.

A few illustrative cases involving Rs. 1.70 crore and a review of “**Grant of exemptions and remissions of stamp duty and registration fee**” involving Rs. 24.69 crore are mentioned in the succeeding paragraphs.

3.2 Grant of exemptions and remissions of stamp duty and registration fee

3.2.1 Highlights

- Revenue remitted during 2003-04 to 2006-07 on account of exemptions/ remissions in stamp duty (SD) and registration fee (RF) could not be quantified by the department in the absence of a centralised database.

(Paragraph 3.2.7)

- Irregular remission of RF of Rs. 9.58 crore in the absence of enabling provisions to remit the fee under the Indian Registration Act, 1908.

(Paragraph 3.2.8)

- Irregular availing of exemption of SD and RF of Rs. 1.26 crore due to non-execution of lease deeds by 12 entrepreneurs for collection of toll let by the Government departments/Corporation for concession periods ranging between two to eight years.

(Paragraph 3.2.9.1)

- Incorrect grant of exemption of SD of Rs. 4.58 crore on conveyance deeds registered by developer under Special Economic Zone (SEZ) wherein the land was already in his possession and without passing on the consideration.

(Paragraph 3.2.11.1)

- Irregular availing of exemption of SD of Rs. 4.20 crore due to non-execution of conveyance deed by Haryana Power Generation Corporation Limited, Panchkula (HPGCL) which had taken possession of land after making payment of the entire consideration.

(Paragraph 3.2.12)

- Irregular availing of exemption of SD of Rs. 3.15 crore due to non-execution of conveyance deeds by Housing Board, Haryana for the purchase of land for the construction of houses other than cheap houses.

(Paragraph 3.2.13.1)

3.2.2 Introduction

The exemptions/remissions from stamp duty (SD) and registration fee (RF) which are levied under the Indian Stamp Act, 1899 (IS Act) and Indian Registration Act, 1908 (IR Act) are granted mainly to encourage co-operative movement and such other developmental projects for small farmers and rural community and purchase of land by the Housing Board for the construction of cheap houses. With a view to set up special economic zones (SEZs) to promote and establish large self contained industrial townships with world

class infrastructure to accelerate and facilitate both public and private sector participation in an internationally competitive and hassle free environment for export promotion, the State Government remits SD on all transactions and transfers of immovable property or documents relating to SEZ. The exemptions/remissions from payment of SD and RF are allowable on the fulfilment of certain prescribed conditions.

It was decided by audit to review the mechanism for ensuring that the exemptions and remissions were granted correctly. The review revealed a number of system and compliance deficiencies which are mentioned in the succeeding paragraphs.

3.2.3 Organisational set up

At the Government level, the Financial Commissioner and Principal Secretary, Revenue Department, Haryana, Chandigarh (FCR) is responsible for the administration of the IS Act and IR Act and the rules framed thereunder relating to the registration of various documents. The overall control and superintendence over levy and collection of SD and RFs vests with the Inspector General of Registration (IGR), Haryana, Chandigarh. The IGR is responsible for ensuring the correctness of the grant of concessions. The IGR is assisted by the Deputy Commissioners (DCs), teshildars and naib teshildars acting as Registrars, Sub Registrars (SRs) and Joint Sub Registrars (JSRs) respectively. The State has been divided into four¹ commissionerates, 20¹ districts having 20 Registrars, 67 SRs and 46 JSRs. The Registrars exercise superintendence and control over the SRs and JSRs of the districts, hear appeals against the orders of the latter refusing to admit the documents for registration and collect and consolidate returns/data and decide the cases referred under section 47-A of the IS Act, relating to the districts. The SR and JSR can also grant concessions in SD after verifying the compliance with all the conditions governing the grant of concession.

3.2.4 Audit objectives

The review was conducted with a view to:

- ascertain whether a record of exemptions and remissions granted in SD and RF was available to monitor the results of exemptions and remissions for periodically reviewing their continuance;
- ascertain whether adequate system and procedures were in place to ensure that the exemptions/remissions were correctly granted/administered;

¹ Ambala commissionerate: Ambala, Kaithal, Kurukshetra, Panchkula and Yamunanagar at Jagadhri; Gurgaon commissionerate: Faridabad, Gurgaon, Mewat at Nuh, Mahendragarh at Narnaul and Rewari, Hisar commissionerate: Bhiwani, Fatehabad, Hisar, Jind and Sirsa, and Rohtak commissionerate: Jhajjar at Bahadurgarh, Karnal, Panipat, Rohtak and Sonipat.

- assess the effectiveness of the internal control mechanism installed by the department to ensure the correctness of the exemptions/concessions granted; and
- ascertain whether any evaluation study had been conducted by the Government/department to determine its impact on socio-economic conditions of the beneficiaries.

3.2.5 Audit methodology and scope of audit

The instruments and other relevant records relating to the exemptions/remissions from the payment of SD and RFs in 37 registering offices in seven² districts out of 113 registering offices in 20 districts in the State for the years 2003-04 to 2006-07 were test checked between August 2007 and March 2008. The seven districts were selected on random sampling selection basis keeping in view the collection of SD during these years and included three³ districts with duty exceeding Rs. 100 crore, three⁴ districts with duty ranging between Rs. 50 crore and Rs. 100 crore and one district with duty less than Rs. 50 crore. Points of similar nature noticed in audit during the period 2003-04 to 2006-07 have also been included.

3.2.6 Acknowledgement

The Indian Audit and Accounts Department acknowledges the co-operation of the Revenue Department in providing necessary information and records for audit. An entry conference was held on 24 August 2007 with the representatives of the department in which the audit objectives, audit methodology and selection of districts of the review were discussed. The draft review report was forwarded to the Government and the department in May 2008 and was discussed in the Audit Review Committee meeting held in June 2008. Views of the Government have been incorporated in the relevant paragraphs.

Audit findings

System deficiencies

3.2.7 Absence of database of revenue foregone

The Government in extending exemptions or remissions decides to forego revenue in pursuance of certain defined objectives. A reliable database of revenue foregone is, therefore, a pre-requisite for informed decision making. It was noticed in audit that the computerised system for registration of instruments introduced in the State in July 2001 had the facility for recording concessions in SD granted by SRs/JSRs at the time of registration of instruments. **However, this facility was not being used and the consolidated database of the revenue foregone due to grant of exemptions and concessions was not available with the FCR and IGR.** Consequently,

² Faridabad, Gurgaon, Hisar, Karnal, Kurukshetra, Rewari and Sonipat.

³ Faridabad, Gurgaon and Karnal.

⁴ Hisar, Kurukshetra and Rewari.

the revenue remitted during the years 2003-07 on account of grant of concessions in SD and RF could not be quantified by the department.

After the case was pointed out in May 2008, the Revenue Department admitted the audit observations and issued (June 2008) instructions for keeping an account/database of revenue foregone.

The Government may consider maintenance of a centralised database of remissions/concessions in SD and RF for effective monitoring and instituting deterrent penalties for their abuse.

3.2.8 Irregular grant of exemption of RF

Section 78 of the IR Act empowers the State Government to fix the fee for the registration of various documents and other instruments enumerated in clauses (a) to (i). **However, there is no enabling provision in the IR Act similar to Section 9 of the IS Act, empowering the State Government to remit fees payable in respect of any matter enumerated in clauses (a) to (i) of Section 78 of the Act.** The RF was leviable at the prescribed rates subject to a minimum of Rs. 1.75 and maximum of Rs. 500 upto 5 November 2006 and thereafter at the revised rates subject to a minimum of Rs. 50 and maximum of Rs. 15,000.

The State Government issued a notification on 5 October 1983 remitting RF on any instrument executed by the agriculturists in favour of any commercial bank for securing loans upto specified amount and for specified purposes under Section 78 of the IR Act. **In the absence of an explicit provision in the IR Act to remit the RF, the notification issued by the State Government was not valid.**

Test check of the records of 24 SRs/JSRs in four⁵ districts and information supplied by 18 SRs/JSRs in three⁶ districts revealed that 1,52,473 deeds of mortgage (without possession of the property) were registered during the years 2003-04 to 2006-07 by the agriculturists for securing loans from the banks, but no RF was charged under the aforesaid notification. Since the notification issued was not in conformity with the provisions of the IR Act, the department instead of bringing out these facts to the notice of the Government, allowed remission of RF of Rs. 9.58 crore.

After the cases were pointed out, the Revenue Department stated in June 2008 that section 21 of the General Clauses Act, 1897 (GC Act) empowers the State Government to add, amend, vary or rescind the table of fees so prepared. The reply of the department is not tenable since the Government remitted the fee under section 78 of the IR Act which did not empower the State Government to remit or exempt or reduce the fee and there was no explicit provision/clause in the GC Act empowering the Government to remit the fees payable. Seven⁷ States have amended the IR Act by inserting a provision under section 78 which empowers the Government to remit the fees payable in respect of any

⁵ Hisar, Karnal, Kurukshetra and Rewari.

⁶ Bhiwani, Jhajjar and Narnaul.

⁷ Goa, Kerala, Pondicherry, Rajasthan, Tamil Nadu, Uttar Pradesh and West Bengal.

matters enumerated in clauses (a) to (i) under section 78 either generally or for any particular class or persons.

The Government may consider inserting an explicit provision under the IR Act to specify the power to remit or exempt the RF.

3.2.9 Absence of mechanism to detect availing of irregular exemption by not presenting documents for registration

Section 9 of the IS Act empowers the Government to reduce or remit, whether prospectively or retrospectively, the duties with which any instrument is chargeable. **However, audit came across many areas in which transactions were not being subjected to duty even though these were covered in the Act and had not been specifically exempted from payment of SD by the Government. It was observed that there was no mechanism with the Revenue Department to check the proliferation of such de facto exemptions. In many cases the department replied that SD would have been charged had the instrument been presented for registration. This was indicative of a serious shortcoming as the department was dependent upon the executants' for presentation of the documents for registration and had not devised any proactive or control measures to ensure that documents due for registration were brought before the registering authorities.**

3.2.9.1 Contracts for collection of toll by private entrepreneurs

The public private partnership (PPP) route is being increasingly resorted to by the Government to attract private enterprise especially in the field of infrastructure. The concession agreement signed under a PPP project is a lease agreement as defined in Section 2 (16) (c) of the IS Act, which states that 'lease' means a lease of immovable property and includes any instrument by which tolls of any description are let, a *patta*⁸, a *kabuliyat* or other undertaking in writing, not being a counterpart of a lease, to cultivate, occupy or pay or deliver rent for immovable property. Any instrument of toll contracts is chargeable to SD as an instrument of lease deed at the prescribed rates. The expenses on SD are to be borne by the lessee in the case of a lease or agreement to lease under section 29 (c) of the Act. Section 17 of the IR Act provides that lease of immovable property from year to year, or for any term exceeding one year is to be registered compulsorily. SD on lease deed is chargeable at the prescribed rates for a consideration equal to the amount or value of fine, premium or advance in addition to the amount of the average annual rent reserved and on the basis of the period of lease. Right to catch fish is *profit a prendre*⁹ and benefit to arise out of land is an immovable property for the purpose of levy of SD. **Audit observed that though the PPP projects are being undertaken by various departments/corporations of the Government of Haryana, these agreements are not being registered as instruments of lease by the entrepreneurs and accepted by the department/corporation like Public Works Department (PWD), Haryana**

⁸ A patta is a lease of land for cultivation.

⁹ Profit a prendre means a right to take the produce of the soil.

State Road and Bridges Development Corporation etc. The Registration Department did not have a system of obtaining periodic information from the departments/corporations undertaking PPP projects on the execution of agreements for collection of toll on build, operate and transfer (BOT) basis or executing contracts on annual basis to ensure correctness of classification of instruments for the purpose of levy of SD as instruments of lease and RF.

- Scrutiny of the records of PWD, Building and Roads Branch, revealed that in the following cases, agreements for collection of toll (toll contract) were executed with private entrepreneurs for construction of road overbridges on BOT basis but lease deeds were not executed as the department accepted the agreements on non-judicial stamp paper of Rs. 100 in each case. This deprived the State Government of revenue of Rs. 1.14 crore in the shape of SD and RF as mentioned below:

(Rupees in crore)

Name of the work	Concession period	Consideration	SD and RF chargeable
Four lane overbridge on Delhi-Agra railway line at Faridabad	6 January 1998 to 5 January 2007	24.00	0.72
Two lane overbridge on Pipli Pehowa road at Kurukshetra	10 January 2003 to 25 November 2010	13.86	0.42
Total		37.86	1.14

Of these, Rs. 42 lakh pertained to the period falling within the last five years.

After the cases were pointed out in October 2007, the Registrar, Kurukshetra stated in January 2008 that SD would have been charged in case the instrument had been presented before the SR for registration. A report on action taken and reply from SR Faridabad has not been received (August 2008).

- Similarly, Haryana State Road and Bridges Development Corporation, Panchkula (Corporation) entered into agreements with 10 entrepreneurs in September 2005 for collection of toll for the concession periods of two years from 20 September 2005 to 19 September 2007 on different roads near borders of the State for the total consideration of Rs. 16.43 crore. These toll contracts exceeding one year were required to be registered compulsorily as lease deeds in the offices of six¹⁰ SRs which was not done. The Corporation accepted the agreements on non-judicial stamp paper of Rs. 100 in each case. This deprived the Government of revenue of Rs. 12.38¹¹ lakh in the shape of SD and RF.

¹⁰ Bhuna, Kaithal, Narnaul, Rewari, Sirsa and Tohana.

¹¹ SD: Average annual contract money: Rs. 8.21 crore X 1.5 per cent =Rs. 12.33 lakh and RF: Rs. 5,000.

3.2.9.2 Contracts for catching fish from public ponds

Scrutiny of the information collected from the office of the Director of Fisheries, Haryana, in November 2007 revealed that the Fisheries Department granted licences to 58 licensees on annual basis to catch fish in the public waters specified for the period between 2003-04 and 2006-07. The licensees paid consideration of Rs. 1.33 crore for the grant of licences and also furnished security. The Fisheries Department accepted the instruments as agreements on non-judicial stamp paper of Re. 1 to Rs. 20 and did not insist upon the licensees to get these instruments registered as lease deeds with the concerned 19 SRs/JSRs¹² after levying proper SD and RF. Non-execution of lease deeds by these licensees resulted in irregular availing of exemption of SD amounting to Rs. 4.27 lakh (including RF of Rs. 29,000).

After the case was pointed out, the Revenue Department admitted the audit observations and issued (June 2008) instructions to the Director of Fisheries that documents of contract/agreement for the period exceeding one year between the entrepreneurs and Fisheries Department were compulsorily registerable and attracted SD under the provisions of IS Act and IR Act.

With a view to curb the incidence of evasion of SD, the Government may consider declaring all offices, in which documents are presented, as public offices¹³ and laying down norms/targets for the inspection of departments/corporations by the Registrars/SRs of the concerned districts to ensure the correctness of property classified for the purpose of levy of SD and prescribing a periodical return to be furnished by them to the Revenue Department on the number and nature of documents presented and SD found deficient.

3.2.10 Internal audit

Internal audit is generally defined as the control of all controls as it is a means for an organisation to assure itself that the prescribed systems are functioning well. The Finance Department (Revenue) conducts audit of the offices of SRs/JSRs in the State. For the purpose, one stamp auditor has been posted at each district headquarter (except two stamp auditors at Faridabad) who conducts pre audit of registrable documents in the offices of the SR/JSR before these are returned to the persons/parties presenting the document for registration. The system of pre audit was in vogue upto 23 January 2007 and thereafter the system had been abolished vide Government order dated 24 January 2007. Thus, the internal audit parties were required to conduct *cent per cent* audit of the instruments registered in the registration offices. Post audit was to be conducted by stamp auditors from 24 January 2007. The information regarding the extent of audit, issues raised and compliance was not made available to audit. As such audit is unable to comment on the adequacy and efficacy of internal audit. The irregularities discussed in this review are an indicator of ineffective internal control mechanism relating to

¹² Ambala, Bhiwani, Faridabad, Fatehabad, Gurgaon, Hisar, Jhajjar, Jind, Kaithal, Karnal, Kurukshetra, Mahendragarh, Panchkula, Panipat, Rewari, Rohtak, Sirsa, Sonapat and Yamunnaagar.

¹³ All offices, in which documents are presented.

grant of exemptions/remissions in SD as none of the irregularities pointed out by statutory audit were detected by internal audit.

After the case was pointed out, the Revenue Department stated in June 2008 that since the pre-audit system had been abolished in January 2007, the stamp auditors had been directed to conduct thorough audit.

The Government may consider making the internal audit operational to ensure timely detection and correction of errors in levy and collection of revenue and avoid recurrence of mistakes pointed out.

Compliance deficiencies

3.2.11 Incorrect grant of exemption on instrument of SEZ/real estate developer

Section 2 (10) of the IS Act provides that 'conveyance' includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred inter-vivos¹⁴ and which is not otherwise specifically provided for by Schedule-1A of the Act. As per Section 54 of the Transfer of Property Act, 1882, 'sale' is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. Under Section 6 of the Haryana Special Economic Zone Act, 2005, a developer shall identify the area for the development of SEZ and apply to the Director, Industries and Commercial Department Haryana, for setting up of the SEZ. The project approval committee (Committee) shall accord approval in principle if land for the project is not in the possession of the developer. The Committee shall forward the final concurrence to the Central Government subject to the terms and conditions as laid down by it, after the physical possession of the land has vested in the developer. All transactions and transfers of immovable property or documents related thereto within the SEZ shall be exempted from SD.

3.2.11.1 During test check of the records of SR Gurgaon, it was noticed that four conveyance deeds in favour of a developer of New Delhi were registered in December 2006 for the transfer of land measuring 454 kanal 8 marla for a consideration of Rs. 76.41 crore. Audit scrutiny revealed that the said land was already in the possession of the vendee and no consideration was passed on to the vendors (member of the family) at the time of registration of conveyance deeds as the vendee promised to pay the consideration after two days from the date of registration. The registering authority irregularly allowed exemption from payment of SD in the absence of any consideration paid and transfer of the immovable property. Incorrect grant of exemption resulted in non-realisation of SD of Rs. 4.58 crore.

After the cases were pointed out, the Revenue Department stated in June 2008 that the cases were pending in the court of the Collector for decision since January 2008.

¹⁴ From one living person to another.

3.2.11.2 During test check of the records of SR Faridabad, it was noticed that a firm of Faridabad (the owner) entered into a collaboration agreement-cum-memorandum of understanding with a real estate developer of New Delhi (developer) on 14 December 2006 wherein the owner of the industrial plot measuring 31,245.56 square yards had agreed to transfer and convey the rights/interest of the property in favour of the developer. The developer paid Rs. 1.60 crore to the owner on 4 December 2006 as earnest money/part consideration and promised to pay the balance consideration of Rs. 11.05 crore by 31 December 2007. The owner had also delivered and handed over the physical possession of the entire said land to the developer for developing and selling a plotted industrial colony. The document was required to be registered as a conveyance deed. The SR registered the instrument as an agreement on non-judicial stamp paper of Rs. 100 only. This resulted in non-levy of SD of Rs. 1.01¹⁵ crore.

After the case was pointed out in November 2007, the SR Faridabad stated in May 2008 that the case had been sent to the Collector for decision in January 2008.

3.2.12 Irregular exemption to Haryana Power Utility

Proviso (i) to Section 3 of the IS Act, exempts from payment of SD any instrument executed by or on behalf of or in favour of the Government in cases where, but for this exemption, the Government would be liable to pay duty chargeable in respect of such instrument. The Act and the Rules framed thereunder do not provide any specific exemption/remission to the State owned enterprises (public sector undertakings).

During test check of the records of the office of the Executive Engineer, Haryana Vidyut Prasaran Nigam Limited, Panchkula (Nigam), it was noticed (April 2007) that the Nigam transferred land measuring 1,132 acre at Yamunanagar to Haryana Power Generation Corporation Limited (HPGCL) in October 2005 and received a consideration of Rs. 69.92 crore between July 2006 and April 2007. Since the Nigam had received full consideration and transferred the possession of the land, a conveyance deed was required to be registered with the SR Yamunanagar under the Act. The mutation of the immovable property was also carried out by the SR in favour of HPGCL in November and December 2005 without the execution of a conveyance deed and charging SD and RF. Non-execution of conveyance deed deprived the Government of revenue of Rs. 4.20 crore in the shape of SD and RF.

After the case was pointed out, the department stated in June 2008 that the audit observation was justified and reply would be furnished on receipt of comments from the Nigam.

¹⁵ SD: Rs. 12.65 crore X 8 per cent.

3.2.13 Exemption of SD for a purpose not qualifying for exemption

By a notification issued on 19 November 1973, the Government remitted the SD chargeable on the instruments of conveyance deeds executed in favour of the Housing Board, Haryana (Board), for the purchase of land for the construction of cheap houses from the Government or local bodies.

3.2.13.1 Scrutiny of the information collected from the Board in September 2007 revealed that the Board purchased land (excluding land for cheap houses) measuring 45.43 acre from HUDA and Haryana Industries and Infrastructure Development Corporation (HSI IDC) during the years 2003-04 to 2006-07 for a consideration of Rs. 39.36 crore. The Board took possession of land and paid the entire consideration to HUDA and HSI IDC. But the Board had not registered the conveyance deeds with the concerned RAs though these documents did not fall under the ambit of aforesaid notification and were also compulsorily registrable as per provision of Section 17 (b) of the IR Act. Non-execution of conveyance deeds deprived the Government of revenue of Rs. 3.15¹⁶ crore in the shape of SD and RF.

3.2.13.2 The Board purchased land measuring 18.51 acre (excluding land for cheap houses as per information supplied by the Board) from Gram Panchayat, Matlauda (Panipat) and Haryana State Handloom and Handicraft Corporation, Bhiwani during the years 2004-05 and 2006-07. The Board got registered the conveyance deeds in the offices of SR Bhiwani and Matlauda (Panipat) for the consideration of Rs. 1.15 crore and Rs. 28.18 lakh in March 2007 and May 2006 respectively, without paying SD and RF. Since the Board had purchased land for the construction of houses other than cheap houses, the documents did not fall under the ambit of aforesaid notification and the Board is also not a Government department. Thus, SD was chargeable on the instruments as conveyance deeds. The omission resulted in incorrect grant of exemption of SD amounting to Rs. 10.85 lakh¹⁷.

3.2.14 Exemption of SD on collusive decrees

Under the IR Act, non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of Rs. 100 and upwards, to or in immovable property are compulsory registrable documents. Thus, a compromise decree¹⁸ which is not bonafide¹⁹ is liable to be charged as an instrument of conveyance. The FCR issued instructions in September 1996 to all the registering authorities that mutated property registered on the basis of a compromise decree which is not bonafide is liable to be charged as an instrument of conveyance as per Schedule I-A of the IS Act.

¹⁶ SD: Rs. 39.36 crore X 8 per cent: Rs. 3.14 crore and RF: Rs. 1.05 lakh.

¹⁷ SD: Rs. 114.50 lakh X 8 per cent=Rs. 9.16 lakh and Rs. 28.18 lakh X 6 per cent = Rs. 1.69 lakh.

¹⁸ Settlement of property by mutual consent.

¹⁹ Which is related by blood relation.

During test check of the records of nine²⁰ SRs/JSRs, it was noticed that 22 compromise decrees which were not bonafide were registered between April 2003 and March 2007 without charging SD on total consideration of Rs. 13.40 crore. These parties obtained collusive decrees to evade SD. The SRs did not comply with the instructions of the FCR issued in September 1996 and allowed exemptions from payment of SD without confirming the fact that property mutated was executed between blood relations. This resulted in irregular exemption of SD of Rs. 66.92 lakh.

After the cases were pointed out, the Revenue Department stated in June 2008 that all the cases of deficiency of Rs. 66.92 lakh had been referred to the Collector under section 47 A of the IS Act for decision. Further report has not been received (August 2008).

3.2.15 Remission of SD on instruments of compensation awards

By a notification issued on 11 August 1995, the Government remits SD in respect of the sale deeds to be executed by the farmers whose land is acquired by the Government of Haryana for public purposes and who purchase agricultural land in the State within one year of the amount of compensation received by them for the acquired land. This remission is subject to the conditions viz. the remittance will be limited to the compensation amount only and the additional amount involved for the purchase of agricultural land will be liable to SD as per the rules. Such farmers will have to obtain a certificate from the concerned Land Acquisition Controller (LAC) regarding acquisition of their land by the Government and the amount of compensation being paid to them and produce the same before the registering authority while getting the sale deed registered in respect of the agricultural land being purchased with the amount of compensation.

During test check of the records of documents registered in the offices of 18²¹ SRs/JSRs, it was noticed that the registering authorities had registered deeds of conveyance in the following cases and did not levy SD under aforesaid notification without verifying the conditions specified therein as mentioned below:

(Rupees in lakh)

Name of the registering authority	Number of instruments	Period	SD leviable	Nature of irregularity
12 ²²	50	2003-07	39.91	Certificate from LAC was not produced.
SR Bawal	4	Between April and October 2006	7.66	SD on the additional amount in purchase of land was not levied.

²⁰ Faridabad, Gurgaon, Hansi, Hisar, Hodal, Kalka, Narnaund, Sonipat and Thanesar.

²¹ SRs/JSRs: Ateli, Ballabgarh, Ballah, Bawal, Bawanikhera, Bhiwani, Farukhnagar, Ganaur, Gurgaon, Hisar, Ismailabad, Kharkhanda, Narnaund, Palwal, Pataudi, Pehowa, Rewari and Sohna.

²² SRs/JSRs: Ballah, Bawal, Bawanikhera, Bhiwani, Farukhnagar, Hisar, Ismailabad, Narnaund, Palwal, Pataudi, Pehowa and Rewari.

Name of the registering authority	Number of instruments	Period	SD leviable	Nature of irregularity
Seven ²³	8	2003-07	13.41	Remission was incorrectly allowed on purchase of residential/commercial land.
SR Sohna	2	August 2007	1.00	Sale deed was not executed within one year of the receipt of compensation.
Total	64		61.98	

After the cases were pointed out, the Revenue Department stated in June 2008 that all the cases of deficiency of Rs. 61.98 lakh on sale deeds of immovable property had been referred to the concerned Collectors under section 47 A of the IS Act for decision. Further report has not been received (August 2008).

3.2.16 Incorrect grant of remission of SD

By a notification in July 1948 under the IS Act, the Government remitted the SD chargeable on instruments executed by or on behalf of any society for the time being registered or deemed to be registered under the Co-operative Societies Act or instruments executed by any officer or member of any such society and relating to the business of the society. By another notification issued in October 2003, the Government added explanation at the end of notification of July 1948 that such remission shall no more be permissible on the instruments executed by any person to secure loans for the purposes other than agricultural activities specified in the instant notification.

During test check of the records of 23²⁴ registering authorities, it was noticed that 519 deeds of mortgage (without possession of the property) were registered between April 2003 and November 2006 by the agriculturists for securing the loans from Primary Co-operative Agriculture Rural Development Banks for non-agricultural purposes such as purchase of land and construction/repairs of houses etc., but no SD and RFs was recovered from them. The registering authorities did not verify these deeds keeping in view the agricultural activities specified in the notification and registered these deeds without charging SD leviable thereon. The omission resulted in incorrect grant of exemption of SD and RF amounting to Rs. 15.64 lakh.

After the cases were pointed out, the Revenue Department admitted the audit observations and stated in June 2008 that efforts were being made by the concerned registering authorities for the recovery of the deficient amount after verifying the purpose of the loan from the concerned banks.

²³ SRs/JSRs: Ateli, Ballabgarh, Ganaur, Gurgaon, Kharkhauda, Palwal and Pataudi.

²⁴ SRs Bawanikhera, Bhiwani, Charkhi Dadri, Fatehabad, Hansi, Jakhhal, Loharu, Narnaund, Ratia, Sohna, Tohana, Tosham, and JSRs Bahal, Badhra, Bass, Bawal, Bhattukalan, Bhuna, Bondkalan, Farukhnagar, Kanina, Raipur Rani and Uklana.

3.2.17 Irregular exemption of SD on supplementary deed

Under Para 159 (a) of the Haryana Registration Manual, 1967, registration of a document may take place where a deed is altered after registration, by consent of parties, to correct an error of description and in furtherance of their original intention. Such alteration, in fact, makes the document a new one, different from the one already registered; and if it is a document covered by Section 17 of the IR Act, re-registration becomes obligatory. Another mode of correcting such a mis-description is to draw up a supplementary document, reciting the error in the former one and the correction now intended to be made and to register this document also. Such supplementary document will, however, have to be treated in every respect in the same way as the original and will be liable to the same fee. Moreover, it should be properly stamped and unless section 9 of the IS Act operates to reduce the SD, it will generally be found preferable to draw up an entirely new instrument and have it registered.

During test check of the records of four²⁵ SRs, it was noticed that five parties registered rectification deeds involving consideration of Rs. 50.59 lakh, where the deeds were altered after registration by consent of parties to correct an error of description and the furtherance of their original intention. Since there was material change in furtherance of the original intention of the vendor and vendee, such alteration made these documents new one requiring re-registration after levy of proper SD thereon. This resulted in irregular exemption of SD of Rs. 3.07 lakh.

After the cases were pointed out, the Revenue Department stated in June 2008 that the matter was pending for decision before the Collector.

3.2.18 Conclusion

SD and RF is an important tax revenue of the State. A reliable database of revenue foregone which is a pre-requisite for informed decision making was absent. Hence, the revenue remitted during 2003-04 to 2006-07 on account of grant of remissions/exemptions in SD/RF could not be quantified by the FCR and IGR. Evasion of SD and RF is commonly effected through non-presentation of documents in the offices of SRs/JSRs. The system failure led to widespread leakage of revenue which remained undetected. Further, it is the duty of the department to have a detailed look at the working of the SRs/JSRs and its procedure with a view to ensure proper and actual realisation of SD and RF and implementation of the provisions of the Acts, Rules and departmental instructions. The provisions of the notifications for concession of SD/RF to different categories of institutions or different types of registrable instruments were also not complied with. The internal control mechanism to monitor grant of exemptions/remissions in SD was weak and ineffective as the departmental authorities and internal audit could not detect the irregularities pointed out by audit in this review.

²⁵ Gurgaon, Palwal, Pehowa and Shahabad.

3.2.19 Summary of recommendations

With a view to curb incidence of evasion of SD, the Government may consider:

- maintenance of a centralised database of the remissions/concessions in SD and RF for effective monitoring and instituting deterrent penalties for their abuse;
- inserting an explicit provision under the IR Act to specify the power to remit or exempt the RF;
- declaring all offices, in which documents are presented, as public offices and laying down norms/targets for the inspection of various departments/corporations by the Registrars/SRs of the concerned districts ensuring the correctness of property classified for the purpose of levy of SD and prescribing a periodical return to be furnished by them to the Revenue Department on number and nature of documents presented and SD found deficient; and
- making the internal audit operational to ensure timely detection and correction of errors in levy and collection of revenue and avoid recurrence of mistakes pointed out.

3.3 Delay in implementation of enhanced rates

As per notification issued in November 2006, the Government revised the rates of RF with effect from 6 November 2006. The RF was leviable at the prescribed rates subject to a minimum of Rs. 1.75 and maximum of Rs. 500 upto 5 November 2006 and thereafter at the revised rates subject to a minimum of Rs. 50 and maximum of Rs. 15,000 depending upon the value of the consideration of the document.

During test check of the records of 33 SRs/JSRs of six²⁶ districts between September 2007 and March 2008 for the year 2006-07, it was noticed that the registering authorities registered 2,240 documents/instruments relating to the immovable property between 6 November 2006 and 5 December 2006 and charged RF amounting to Rs. 11.20 lakh at the pre revised rates instead of Rs. 1.16 crore at the revised rates. This resulted in short realisation of RF of Rs. 1.05 crore.

After the cases were pointed out, the Government clarified in May 2008 that the notification regarding enhancement in the rates of RF was applicable from 6 November 2006. They further directed the Registrars to recover the differential amount in case the documents had been registered by charging RF at the pre revised rates. A report on recovery has not been received (August 2008).

²⁶ Faridabad, Hisar, Karnal, Kurukshetra, Rewari and Sonipat.

3.4 Evasion of stamp duty due to undervaluation of immovable property

The IS Act, as applicable to Haryana, provides that consideration and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of duty with which it is chargeable, should be fully and truly set forth therein. The Act further provides that any person who, with the intent to defraud the Government, executes an instrument in which all the facts and circumstances required to be set forth in such instrument are not fully and truly set forth, is punishable with a fine which may extend to Rs. 5,000 per instrument.

During test check of the records of 10²⁷ registering offices between June 2007 and January 2008, it was noticed that 29 conveyance deeds were registered between May 2006 and May 2007 on account of sale of immovable properties. The total value of properties set forth in all these conveyance deeds was Rs. 4.58 crore. Cross verification of these deeds with the agreements executed between the affected parties during January 2006 to February 2007 and recorded with the various document writers revealed that the total sale value of the agreements worked out to Rs. 10.04 crore. Thus, the conveyance deeds were got executed and registered at a consideration less than that agreed upon between the parties. Undervaluation of immovable properties in conveyance deeds resulted in evasion of SD of Rs. 25.28 lakh. Additionally, penalty not exceeding Rs. 1.45 lakh for undervaluation made with intent to defraud the Government was also leviable.

After the cases were pointed out between June 2007 and January 2008, the SRs, Dhand, Fatehpur Pundri, Rajaund and Kaithal stated in March 2008 that notices to effect the recovery of SD were being issued to the concerned parties. SRs, Beri and Tosham stated in January and March 2008 that necessary action was being taken to effect recovery. SRs, Ferozepur Jhirka, Nuh and Ratia stated in December 2007 and March 2008 that the cases had been referred to the Collector under section 47 A of the Act for determination of value of the immovable property. The reply is not tenable as the value of the property had already been agreed upon between the parties and there was no need to refer the cases to the Collector for decision. Reply from the SR, Palwal has not been received (August 2008).

The matter was reported to the department and the Government between October 2007 and March 2008; their reply has not been received (August 2008).

²⁷ Beri, Dhand, Fatehpur Pundri, Ferozepur Jhirka, Kaithal, Nuh, Palwal, Rajaund, Ratia and Tosham.

3.5 Loss of stamp duty due to misclassification of documents

Under the provisions of the IS Act, separate rates have been prescribed for different types of instruments. The classification of an instrument depends upon the nature of the transaction recorded therein. In case possession of the property is handed over after receipt of the full amount of consideration, the instrument becomes a conveyance deed and SD becomes leviable under the IS Act.

During test check of the records of the JSR, Dharuhera and SR, Rewari in March 2008 for the year 2006-07, it was noticed that 76 instruments conveying possession and transfer of property valued as Rs. 3.98 crore to the vendees were executed between April 2006 and March 2007. In all the cases, the vendors received full amount in lieu of the property sold and the possession of immovable property was also handed over to the purchasers. The deeds were liable to be treated as conveyance deeds and SD of Rs. 20.27 lakh was leviable. However, the registering authorities misclassified these documents and registered the deeds as agreements to sell charging SD of Rs. 2,000 which was incorrect. This resulted in short realisation of SD of Rs. 20.25 lakh.

After the cases were pointed out in March 2008, the registering authorities stated in March 2008 that progress of recovery would be intimated after taking necessary action as per provisions of the IS Act. Further report has not been received (August 2008).

The matter was reported to the department and the Government in April 2008; their reply has not been received (August 2008).

3.6 Short levy of stamp duty due to application of incorrect rates of immovable property

In order to check evasion of SD in sale deeds, the Government issued instructions in November 2000 to all registering authorities in the State to the effect that agricultural land sold with an area less than 1,000 square yards in urban areas and near residential areas in village be valued at the rate fixed for the residential property of that locality for the purpose of levying SD.

During test check of the records of SRs, Narnaul and Rohtak in September 2006 and May 2007 for the years 2005-06 and 2006-07, it was noticed that 10 sale deeds of plots with an area less than 1,000 square yards in urban areas and near residential areas in villages were registered between May 2005 and April 2006. The deeds were liable to be assessed for Rs. 3.32 crore based on the rates fixed for residential areas and SD of Rs. 26.55 lakh was chargeable. However, the registering authorities assessed the deeds for Rs. 84.12 lakh on the rates fixed for agricultural land and levied SD of Rs. 6.72 lakh. This resulted in short levy of SD of Rs. 19.83 lakh.

After the cases were pointed out in September 2006 and May 2007, the SR Rohtak stated in April 2008 that cases had been sent to the Collector in November 2006 under section 47-A of the Act for decision. The Collector, Narnaul decided the case for effecting recovery of Rs. 8,700 in one case and

also intimated in June 2008 that notice for recovery had been issued. A report on recovery has not been received (August 2008).

The matter was reported to the department and the Government in November 2006 and July 2007; their reply has not been received (August 2008).