

CHAPTER V: STAMPS AND REGISTRATION FEES

5.1 Results of audit

Test check of documents registered in the offices of the registrars and sub registrars, conducted during the year 2005-06, disclosed underassessments of stamp duty and registration fees amounting to Rs.101.76 crore in 58 cases, under the following broad categories:

(Rupees in crore)

Sl. No.	Category	Number of cases	Amount
1	Non/short levy of stamp duty and registration fees	41	0.60
2	Incorrect grant of exemption	3	0.27
3	Other irregularities	14	100.89
	Total	58	101.76

During the course of the year 2005-06, the department accepted underassessments of Rs.2.52 lakh involved in five cases which were pointed out in audit in earlier years and recovered the entire amount.

Details of cases involving Rs.100.75 crore are given in the following paragraphs.

5.2 Non/short realisation of stamp duty

The Karnataka Stamp (KS) Act, 1957 prescribes that all instruments chargeable with duty as per the schedule of the Act and executed by any person in the State of Karnataka shall be stamped before or at the time of execution. Any person executing or signing otherwise than as a witness any instrument chargeable with duty, without the same being duly stamped, shall for every such offence be punishable with imprisonment for a term which shall not be less than one month but which may extend to six months or with fine which may extend to Rs.5,000 or with both. The Inspector General of Registration is also the Commissioner of Stamps and is the head of the Stamps and Registration Department.

The KS Act empowers specified¹⁸ authorities to require every public officer or any person to produce or permit inspection of records in any form which may tend to secure any duty or to prove or lead to the discovery of any fraud or omission in relation to any duty and take notes and extracts and to seize and impound them. The inspecting officer is also empowered to require the person concerned to pay the proper duty or the amount required to make up the same and also penalty, not exceeding five times the amount of the deficient duty. However, audit scrutiny revealed that there was no system in the Stamps and Registration Department to obtain information periodically from all the persons regularly executing instruments of the nature attracting stamp duty, amount realised or to be realised thereunder, the stamp duty payable thereon together with details of payment. Consequently, the extent of compliance with the provisions of the Act was not ascertainable from the records of the department.

Test check of records of 26¹⁹ Government departments, statutory corporations and public sector undertakings for the years 2000-01 to 2004-05 revealed that stamp duties were not realised or realised short in respect of acknowledgements, certificates of sale, conveyances of industrial property, leases of immovable or movable property and licences of immovable or movable property. The stamp duty not realised or short realised amounted to Rs.100.19 crore. Details are given in the following paragraphs.

¹⁸ Deputy Commissioner (DC) or Assistant Commissioner or any officer not below the rank of sub registrar authorized by DC or Chief Controlling revenue authority

¹⁹ Railways, Postal, Service Tax, Transport, Energy, Police, Education, Drugs Control, Labour, Food and Civil Supplies, Industries and Commerce, Weights and Measures, State Excise, Sericulture, Debt Recovery Tribunal, Karnataka State Financial Corporation, Karnataka State Industrial Investment and Development Corporation, Bangalore Water Supply and Sewerage Board, Karnataka Industrial Areas Development Board, Karnataka Urban Water Supply and Drainage Board, Karnataka Housing Board, Mysore Sales International Limited, Airports Authority of India, Bangalore Development Authority, Bangalore Metropolitan Transport Corporation, Karnataka State Road Transport Corporation

5.2.1 Acknowledgements

By the KS (Amendment) Act, 1995, Article No.1 of the schedule was amended from 1 April 1995 to include 'acknowledgement of a letter, article, document, parcel, package or consignment, of any nature or description whatsoever or by whatever name called, given by a person, courier company, firm, or body of persons whether incorporated or unincorporated to the sender of such letter, article, document, parcel, package or consignment'. The proper stamp duty prescribed was Re.1 for every Rs.100 or part thereof of the amount charged therefor.

As per data collected from railways, post offices and four Commissionerates of service tax in respect of couriers for the years 2000-01 to 2004-05, the charges collected by them from the senders for delivery of the parcels, etc. amounted to Rs.4,032.37 crore. The acknowledgements issued by them attracted stamp duty of at least Rs.40.32 crore, as detailed below:

Year	Gross collection of revenue					Total	Minimum stamp duty due
	2000-01	2001-02	2002-03	2003-04	2004-05		
Railways ²⁰	NF	437.11	474.54	967.65	1,347.21	3,226.51	32.26
Post offices ²¹	38.63	45.70	42.81	44.37	43.51	215.02	2.15
Couriers ²²	103.69	121.21	112.73	133.85	119.36	590.84	5.91
Total	142.32	604.02	630.08	1,145.87	1,510.08	4,032.37	40.32

NF: Not furnished

No stamp duty was realised in these transactions.

5.2.2 Certificate of sale

Certificate of sale is granted to the purchaser of any property sold by public auction by a Court or tribunal or officer of Government or by any other authority under any enactment. Article 15 of the Act prescribes levy of stamp duty for certificate of sale at rates as applicable for a conveyance when the purchase price is more than Rs.25.

²⁰ The total revenue from parcels/luggage earned during each year as furnished by the south western zone, Hubli has been adopted. The revenue earned for 2000-01 has not been furnished.

²¹ The post offices carried parcels, etc. under registered post/speed post services. The exact figures of charges collected by them on each of the parcels originating in the State were not made available. The total revenue from these services as furnished by the Chief Postmaster General, Karnataka circle have been adopted (The revenue from registered post is based on the minimum charges collected on the number of parcels handled since total revenue from this source was not made available. This does not include revenue from registered post for 2000-01 as the number of parcels booked was not made available).

²² The gross realisation of revenue has been computed with reference to the data on service tax paid by them as obtained from the Commissioner of Service Tax, Bangalore. In respect of Belgaum, Mangalore and Mysore Commissionerates, it includes figures for 2000-01 and 2001-02 only, as figures for 2002-03 to 2004-05 were not made available.

The Debts Recovery Tribunal, Bangalore issued a certificate of sale to the purchaser for movable and immovable properties of a company sold by it in a public auction in November 2004 for Rs.15.40 crore. This was liable to stamp duty of Rs.1.23 crore. However, it was noticed in audit that the certificate of sale had been executed on document sheets of the value of Rs.6 only. Thus, there had been escapement of the levy of stamp duty of Rs.1.23 crore.

There was no mechanism in the department to ensure correct levy of stamp duty at the time of execution of the document.

5.2.3 Non levy of stamp duty on sale of industrial property

Article 20(5) of the schedule covers 'conveyance relating to industrial machinery whether treated as movable or immovable property'. The stamp duty was two *per cent* of the market value till March 2003 and five *per cent* thereafter.

Test check of records of the Karnataka State Financial Corporation (KSFC) and the Karnataka State Industrial Investment and Development Corporation (KSIIDC) between December 2005 and January 2006 revealed that, during the years 2000-01 to 2004-05, the corporation sold movable properties of 196 industrial concerns defaulting in repayment of loans provided to them, issued letters of confirmation of sale and obtained acknowledgements of the purchasers for having taken delivery of the properties and realised Rs.24.12 crore as consideration. No stamp duty was paid though these instruments attracted stamp duty of Rs.0.84 crore, as detailed below:

(Rupees in crore)

Name of the seller	Number of cases	Sale consideration	Stamp duty due
Karnataka State Financial Corporation	151	13.37	0.44
Karnataka State Industrial Investment and Development Corporation	45	10.75	0.40
Total	196	24.12	0.84

After this was pointed out in April 2006, the department directed KSFC and KSIIDC in May 2006 to collect the stamp duty from the concerned and remit it to Government.

5.2.4 Lease of immovable and movable property

Article 30 of the schedule covers 'lease of immovable property' and includes any instrument by which tolls of any description are let. The stamp duty was to be determined considering the average annual rent reserved, premium or fine paid and money advanced, as also the term for which lease was given.

5.2.4.1 Short levy of stamp duty on lease of tolls

Test check revealed that in three²³ national highway divisions, 11 agreements for collection of tolls on specified bridges/highways were executed with six persons during the years 2000-01 to 2004-05 for periods ranging from one to three years. None of these were registered. In accordance with the terms of the leases, the stamp duty due on these agreements amounted to Rs.0.91 crore on consideration of Rs.11.42 crore. However, the total stamp duty paid on all of them was only Rs.1,080. Hence, there was short realisation of stamp duty of Rs.0.91 crore, as detailed below:

(Rupees in crore)

Name of the Division	Number of agreements	Period (months)	Consideration for stamp duty	Stamp duty due
Chitradurga	5	12	3.30	0.26
Karwar	4	12/36	5.77	0.46
Mangalore	2	12	2.35	0.19
Total	11		11.42	0.91

5.2.4.2 Short levy of stamp duty on leases of immovable properties

Test check revealed that the following 11 lessors leased their immovable properties for periods ranging from 11 months to 10 years and entered into 128 lease agreements with 106 lessees during the years 2000-01 to 2004-05. None of these were registered. In accordance with the terms of the leases, stamp duty due on these agreements amounted to Rs.88.31 lakh on consideration of Rs.17.51 crore against which stamp duty of only Rs.0.13 lakh was paid. This resulted in short realisation of Rs.88.18 lakh, as detailed below:

²³ Chitradurga, Karwar, Mangalore

(Rupees in lakh)

Sl. No.	Name of the lessor	Number of Lessees/ Leases	Period of lease Years-Months	Total consideration liable to stamp duty	Rate of stamp duty (percentage)	Amount of stamp duty		
						Due	Paid	Shortfall
1	Mysore Sales International Limited (MSIL), Bangalore	7/15	3-0	65.28	5	3.26	0.01	3.25
		1/1	6-0	2.81	10	0.28	0.00	0.28
2	Ramaiah Reddy	1/2	5-0	31.08	5	1.55	0.00	1.55
3	Nirmithee Property Developers	1/2	3-0	37.62	5	1.88	0.00	1.88
4	Gaverappa and Others	1/1	3-0	8.18	5	0.41	0.00	0.41
5	Smt. Fathima	1/1	5-0	11.44	5	0.57	0.00	0.57
6	P.Sukumaran and S.Radhamani	1/1	5-0	16.18	5	0.81	0.00	0.81
7	Karnataka Housing Board (KHB)	4/8	3-0	97.91	5	4.90	0.01	4.89
		1/1	5-0	0.69	5	0.03	0.00	0.03
8	Karnataka Industrial Areas Development Board (KIADB)	4/4	5-0	3.27	5	0.16	0.01	0.15
		1/1	6-0	0.38	10	0.04	0.00	0.04
		1/1	9-0	1.04	10	0.10	0.00	0.10
		13/13	2-0	3.53	5	0.18	0.02	0.16
		41/41	0-11	6.06	5	0.31	0.04	0.27
9	Bangalore Water Supply and Sewerage Board (BWSSB)	6/7	3-0	29.92	5	1.50	0.01	1.49
		1/1	2-0	0.29	5	0.01	0.00	0.01
		1/1	9-0	5.62	8	0.45	0.00	0.45
10	Karnataka Urban Water Supply and Drainage Board (KUWSDB)	1/1	10-0	12.16	8	0.97	0.00	0.97
		1/1	0-11	24.33	5	1.22	0.00	1.22
11	KSIIDC	1/1	1-1	23.62	5	1.18	0.00	1.18
		1/1	1-0	9.62	5	0.48	0.00	0.48
		14/20	3-0	1,237.81	5	61.89	0.02	61.87
		1/2	2-5	74.12	5	3.71	0.01	3.70
		1/1	5-0	48.34	5	2.42	0.00	2.42
Total		106/128		1,751.30		88.31	0.13	88.18

After this was pointed out in April 2006, the department directed MSIL, KHB, BWSSB, KSIIDC and KUWSDB to collect the deficit stamp duty and remit it to Government. Replies in respect of remaining cases have not been received (November 2006).

5.2.4.3 Short levy of stamp duty on lease of mines

Section 27 of the KS Act stipulates that in the case of lease of mine granted by or on behalf of Government in which royalty is received as rent, it shall be sufficient to have such amount or value estimated by the Deputy Commissioner having regard to all the circumstances of the case and the whole amount of such royalty shall be claimable under such lease. Government issued a circular in September 1990 reiterating that mining leases shall be registered based on royalty and not on dead rent as was being done hitherto.

Test check of records of the Mines and Geology Department revealed that in respect of 268 mining/quarrying leases granted during 2000-01 to 2004-05, stamp duty of Rs.24.36 lakh was charged on dead rent of Rs.1.60 crore instead of royalty of Rs.64.53 crore. This resulted in short realisation of stamp duty of Rs.5.01 crore.

5.2.5 Licences of immovable or movable properties

The licences granted by owner or authority for rent or fee or by whatever name it is called were made liable to duty. Stamp duty was to be determined as per the rates prescribed considering the term for which licence was given and the amounts payable thereunder.

5.2.5.1 Test check revealed that five authorities licensed their immovable properties for periods ranging from one to eight years through 687 agreements executed during the years 2000-01 to 2004-05. Stamp duty of Rs.1.66 crore was leviable on these instruments on consideration of Rs.31.07 crore against which stamp duty of Rs.1.09 lakh only was paid. This resulted in short realisation of stamp duty of Rs.1.65 crore, as detailed below:

Name of the authority	Number of licences	Period of licences (years)	Total consideration liable to stamp duty	Rate of stamp duty (Percentage)	(Rupees in lakh)		
					Amount of stamp duty	Due	Paid
Airports Authority of India	53	1 to 5	1,170.10	5	58.51	0.01	58.50
Bangalore Development Authority	469	2 to 5	1,426.64	5	71.33	0.02	71.31
Bangalore Metropolitan Transport Corporation (BMTC)	86	1 to 8	101.05	5 to 10	9.22	0.68	8.54
Karnataka State Road Transport Corporation (KSRTC) (Kempegowda Bus Station)	71	1 to 6	339.59	5 to 10	23.29	0.37	22.92
KSIIDC	8	3	69.53	5	3.48	0.01	3.47
Total	687		3,106.91		165.83	1.09	164.74

After this was pointed out in May 2006, the department directed BMTC, KSRTC and KSIIDC to collect deficit stamp duty and remit to Government.

5.2.5.2 Test check revealed that 12 departments of the State Government issued licences for various purposes during the years 2000-01 to 2004-05 and realised fees of Rs.986.73 crore. Stamp duty at minimum rate of 5 per cent of the fees realised as applicable to leases of period of one year was due on them. The minimum amount of stamp duty realisable was Rs.49.34 crore, as detailed below. However, no stamp duty was realised.

(Rupees in lakh)							
Sl. No.	Name of the department	Amount realised as fees during the year					Total
		2000-01	2001-02	2002-03	2003-04	2004-05	
Purpose for which licences were issued							
1	Transport	431.36	939.30	1,097.01	1,152.27	1,437.01	5,056.95
For use of motor vehicles on roads under the Motor Vehicles Act, 1988							
2	Energy	24.89	29.71	27.59	29.58	0	111.77
To enable electrical contractors carry out certain duties under the Karnataka Licensing Rules, 1976							
3	Police	7.98	91.22	24.22	16.06	20.85	160.33
For acquisition, possession and carrying of arms and ammunition under the Arms Act							
4	Education	9.60	5.24	0.47	10.93	20.50	46.74
Exhibition of motion pictures under the Karnataka Cinemas (Regulation) Rules, 1971							
5	Drugs Control	10.77	261.31	354.88	19.77	101.00	747.73
For sale of drugs under the Drugs and Cosmetics Act							
6	Labour	74.48	56.95	196.94	534.29	692.12	1,554.78
Regulation under the Karnataka Shops and Commercial Establishments Rules, 1963							
7	Fisheries	3.68	1.18	7.43	1.04	7.28	20.61
		Issue of fishery rights under inland fisheries					
7	Fisheries	10.84	13.56	11.83	5.81	1.61	43.65
		Issue of fishery rights under reservoir fisheries development units					
8	Food and Civil Supplies	6.06	6.49	16.02	0	0	28.57
For running fair price shops under public distribution system							
9	Industries and Commerce	2.47	4.07	5.13	4.89	5.76	22.32
For sugar and allied industries							
10	Sericulture	10.79	1.27	45.35	0	13.35	70.76
		For rearers, reelers, weavers, traders, etc. under the Karnataka Silkworm Seed, Cocoon and Silk Yarn (Regulation of Production, Supply, Distribution and Sale) Act, 1959					
11	Weights and Measures	1.36	1.36	1.49	1.57	1.62	7.40
For verification of weights and measures							
12	State Excise	17,824.00	18,113.00	18,535.00	18,549.00	17,780.00	90,801.00
For manufacture and sale of liquors							
Total		18,418.28	19,524.66	20,323.36	20,325.21	20,081.10	98,672.61

After the above non/short realisation of stamp duty was pointed out, department stated in August 2006 that as per the Act, the basic responsibility of payment of proper duty was on the executant first and on the person or agency who subsequently acts upon it like various Government departments, semi Government agencies, etc. The department further stated that the loss of revenue was not due to failure of department but due to total absence of mechanism to oversee whether proper stamp duty is collected at the time of execution by the various agencies. It stated that proposals for establishing self contained and independent enforcement machinery were being finalised for submission to Government. It also reported that correspondence had been initiated with Government and semi Government agencies to recover the deficit stamp duty pointed out in audit.

The matter was referred to Government in May 2006; reply has not been received (November 2006).

5.3 Incorrect classification of power of attorney

Under the KS Act, stamp duty is levied at prescribed rates for different types of instruments. The Act prescribes stamp duty of Rs.1,000 in respect of power of attorney given to a builder or developer for construction, development or sale or transfer of any immovable property. Stamp duty at eight *per cent* of the market value of the property is leviable in respect of power of attorney given to a person other than father, mother, wife or husband, sons, daughters, brothers, sisters in relation to the executant authorising such person to sell the property.

In Sub Registry (SR), Yelahanka, Bangalore, a document titled 'general power of attorney (GPA)' was registered in December 2004 in respect of 84 acres and 09 guntas of land. On this, stamp duty of Rs.1,000 and registration fees of Rs.1,000 were levied as applicable to an instrument giving power of attorney to builder or developer. Audit scrutiny in May 2005 revealed that the recitals did not include any clause authorising the holder to promote/develop the scheduled properties; instead it authorised the holder to have possession of the properties and to sell, manage the same, apply or negotiate with all agencies, claim and receive compensation, arrears, dues and other payments. Hence the instrument was a GPA to a person other than family for selling the property and was to be stamped accordingly. Incorrect classification of the instrument as giving GPA to a builder or developer resulted in short levy of stamp duty of Rs.26.94 lakh and registration fees of Rs.3.36 lakh on market value of Rs.336.90 lakh of the scheduled property.

After this was pointed out in May 2005, the department reported in August 2006 that the district registrar had taken up the case for review.

The matter was referred to Government in May 2006; reply has not been received (November 2006).

5.4 Short levy due to incorrect classification

Stamp duty on various instruments is charged under the provisions of the KS Act. Where a document which purports to be a deed of rectification to a previously registered document creates rights, it is an instrument in so far as it relates to the rights created and stamp duty is chargeable under the concerned article of the schedule. According to the Transfer of Property Act 1955, when two persons mutually transfer the ownership of one thing for the ownership of another, the transaction is called an 'exchange'.

In SR, Kengeri (Bangalore), 16 documents titled 'deed of rectification' were registered levying stamp duty of Rs.0.57 lakh and registration fees of Rs.0.09 lakh. Audit scrutiny revealed that the rectification deeds brought out material alterations to the original sites allotted, by change in location of sites and also dimension of the sites. As these deeds created new rights and were in the nature of exchange of sites, the documents were to be classified as 'exchange'. Incorrect classification of documents as deeds of rectification resulted in short levy of Rs.11.53 lakh (stamp duty: Rs.10.39 lakh and registration fees: Rs.1.14 lakh).

After this was pointed out in July 2005, Government reported in June 2006 that the department had directed the district registrar to initiate action for recovery of deficit stamp duty in February 2006. Report of recovery has not been received (November 2006).

5.5 Short levy due to undervaluation

Under the KS Act, if the registering officer while registering any instrument has reason to believe that the market value of the properties has not been truly set forth, he shall compute the estimated market value and upon payment of duty on such market value, register the document. Further, under the provisions of the Act, Government constituted committees for estimation of market value of any area in each taluk.

In four²⁴ SRs, 10 documents had been registered between February 2002 to March 2005 on which stamp duty of Rs.21.85 lakh and registration fees of Rs.2.61 lakh was levied. Audit scrutiny between October 2004 and August 2005 revealed that stamp duty was levied on market value which was less than

²⁴ Davanagere, Gangavathi, Jayanagar, Mandya

the estimated guideline values in nine cases and on value for land of lesser extent than conveyed in one case. Stamp duty of Rs.29.66 lakh and registration fees of Rs.3.71 lakh were leviable in accordance with the estimated guideline values in these cases. This had resulted in short levy of stamp duty of Rs.7.81 lakh and registration fees of Rs.1.10 lakh.

After these were pointed out, department reported that action was initiated to recover the deficit amount in five cases relating to SRs Jayanagar and Davanagere; in one case relating to SR, Mandya, the case had been taken up for review for undervaluation and in four cases relating to SR, Gangavathi, deficit duty had been ordered to be recovered from the SRs concerned.

After the matter was referred to Government in May 2006, Government endorsed the reply of the department in respect of SR, Gangavathi. Replies in respect of other cases have not been received (November 2006).

5.6 Escapement of stamp duty

Under the provisions of the KS Act, stamp duty on various instruments is charged. According to the KS Act, 'settlement' means any non testamentary disposition in writing of movable or immovable property made for any religious or charitable purpose and includes any instrument recording whether by way of declaration, of trust or otherwise, the terms of such disposition. Under the Act, any instrument comprising of several distinct matters shall be chargeable with the aggregate amount of duties with which separate instruments, each comprising of one such matter, would be chargeable under the Act. In case of settlement, stamp duty is leviable as for a conveyance.

In SR, Shivajinagar (Bangalore), a document titled 'deed of settlement of properties' in favour of an education trust was registered in January 2005 as 'declaration of new trust' levying stamp duty of Rs.500 and registration fee of Rs.0.65 lakh. Audit scrutiny, however, revealed that the owner of the scheduled property conveyed his properties valued at Rs.65.24 lakh to the trust of which he was the founder. The documents therefore involved distinct matters relating to creation of a trust and settlement of the properties to the trust. Settlement attracts stamp duty of Rs.5.85 lakh which was not levied. This resulted in short levy of Rs.5.85 lakh.

After this was pointed out in audit, the department reported in June 2006 that show cause notice for short levy had been issued.

The matter was referred to Government in March 2006; reply has not been received (November 2006).

