

CHAPTER V: STAMPS AND REGISTRATION FEES

5.1 Results of audit

Test check of the documents registered in the offices of the registrars and sub registrars, conducted during the year 2006-07, disclosed under assessments of stamp duty and registration fees amounting to Rs.37.06 crore in 53 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	49	6.54
2	Incorrect grant of exemption	1	0.01
3	Other irregularities	3	30.51
Total		53	37.06

During the course of the year 2006-07, the department accepted under assessments of Rs.2.82 lakh involved in four cases which were pointed out in audit in earlier years and recovered Rs.2.66 lakh in three of them.

A few illustrative cases involving Rs.31.26 crore are mentioned in the following paragraphs.

5.2 Non/short realisation of stamp duty and registration fees

The Karnataka Stamp Act, 1957 (KS Act) 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 (IGR) is also the Commissioner of Stamps and is the head of the Stamps and Registration Department.

Test check of the records of the State Excise, Forest departments and information obtained from South Western Railway and six city corporations for the years 2001-02 to 2005-06 revealed that stamp duty and registration fees was not realised or realised short in respect of leases of immovable/movable property and licences of immovable/movable property. The stamp duty and registration fees not realised or realised short amounted to Rs.30.46 crore. The details are mentioned in the following paragraphs.

5.2.1 Leases of immovable and movable property

Article 30 of the schedule to the KS Act covers 'lease of immovable and movable property'. The proper stamp duty for lease of immovable property was to be determined considering the average annual rent reserved, premium or fine paid and money advanced as also the term for which the lease was entered into. The proper stamp duty for lease of movable property was Re.1 for every Rs.100 or part thereof on the average annual rent reserved subject to a maximum of Rs.2 lakh. Among the documents of which registration under the Registration Act, 1908 is compulsory are lease of immovable property from year to year or for any term exceeding one year, or reserving a yearly rent.

Test check of the records of the Forest Department and information obtained from South Western Railways and six city corporations, revealed non/short realisation of stamp duty of Rs.19.51 crore and registration fees of Rs.2.38 crore in respect of 530 lease documents executed between 2001 and 2006 as detailed below:

Name of the city corporation/ department/ division	Number of lease agreements	Period (months)	Consideration for stamp duty	Rate of stamp duty (Percentage)	(Rupees in lakh)		
					Due	Paid	Short fall
1. Six ³¹ city corporations	344	11 to 360	116.28	5 and 8	6.09	0.05	6.04
Six city corporations had executed lease documents for their immovable properties for different periods ranging from 11 months to 30 years. Audit scrutiny revealed that none of the lease documents had been registered but had been executed on stamp paper of denominations varying between Rs.50 and Rs.500. Hence, there was short realisation of stamp duty.							

³¹ Bangalore, Belgaum, Bellary, Hubli-Dharwad, Mangalore, Mysore

Name of the city corporation/ department/ division	Number of lease agreements	Period (months)	Consideration for stamp duty	Rate of stamp duty (Percentage)	(Rupees in lakh)		
					Stamp duty		
					Due	Paid	Short fall
2. Forest	107	60 to 360	23,775.46	5 and 8	1,904.99	0.17	1,904.82
Under the Forest Conservation Act, 1980 when any forest land is diverted for non-forestry purposes, the net present value of the forest land is recoverable from October 2002 at the prescribed rates. Lease documents were executed in 21 divisions during the period from October 2002 to March 2006 for diversion of 3,446.47 hectares of forest land for non-forestry purposes for different periods ranging from 5 to 30 years. Audit scrutiny of the lease documents revealed that there was short realisation of stamp duty of Rs.19.05 crore. The lease documents were also not registered though compulsorily registerable as the lease periods exceeded one year. Registration fees of Rs.2.39 crore was also not realised.							
3. South Western Railway	79	12 to 36	6,854.44	1	39.75	0	39.75
South Western Railway had executed lease agreements for VPH facility (providing parcel vans), SLR (Side Luggage Room) and Assistant Guard Cabins for different periods ranging from one to three years. However, the lease agreements had not been duly stamped resulting in non realisation of stamp duty.							
Total	530		30,746.18		1,950.83	0.22	1,950.61

5.2.2 Licences of immovable or movable property

By the KS (Amendment) Act, 1995 (Act No.8 of 1995), Article No.32-A was inserted into the schedule from 1 April 1995 to cover 'licence of immovable or movable property'. The licences granted by the owner or authority for rent or fee or by whatever name it is called were made liable to duty. Proper stamp duty was to be determined considering the term for which licence was given and the amount payable thereunder.

5.2.2.1 Test check revealed that the State Excise Department issued licenses for retail vend of Indian and foreign liquors under the Karnataka Excise (Sale of Indian and Foreign Liquors) Rules, 1968 and executed 7,799 agreements during the year 2005-06. In accordance with the terms of the licences, stamp duty due on these licences worked out to Rs.8.47 crore on the consideration of Rs.169.47 crore at the rate of five *per cent*. However, no stamp duty was realised.

5.2.2.2 Test check revealed that the South Western Railway issued licences for use of railway premises for sole advertisement rights, installation of closed circuit television, commercial plots for loading/unloading facilities and collection of parking fees in various railway stations and entered into 77 agreements during 2001-02 to 2005-06. In accordance with the terms of the licences, stamp duty due on these licences worked out to Rs.8.69 lakh on the consideration of Rs.1.74 crore at the rate of five *per cent*. However, no stamp duty was realised.

The matter was referred to the IGR and Commissioner of Stamps between March and May 2007 and referred to the Government in May 2007; their replies have not been received (October 2007).

5.3 Short levy due to misclassification of documents

According to the KS Act, 'conveyance' includes a conveyance on sale and every instrument by which immovable or movable property is transferred to or vested in any other person. The IGR by issue of a circular in February 2004 directed that when a cancellation deed to a registered sale deed is sought to be registered, it was required to be treated as a deed of conveyance and stamp duty was required to be charged accordingly.

In Sub Registry (SR), Bangalore (South), two documents were registered in July 2005 and December 2005 as 'cancellation deeds' after levying stamp duty of Rs.350 and registration fees of Rs.300. Audit scrutiny of the recitals revealed that one document was cancellation of a cancellation deed executed in pursuance of a sale deed. Sale deed executed in June 2004, conveying 9 acres of land, was cancelled vide cancellation deed of February 2005. Further, in July 2005, this cancellation deed was cancelled vide execution of another cancellation deed. Hence, the cancellation of a sale deed executed in June 2004 had conveyed back the property to the seller and cancellation of the cancellation deed executed in February 2005 resulted in conveyance of the property back to the purchaser. Since, there was transfer of immovable property, the document was liable to stamp duty of Rs.30.24 lakh and registration fees of Rs.3.38 lakh for a 'conveyance' on the guideline market value of Rs.3.38 crore of the property. Another document was cancellation of a sale deed registered in September 1966 against refund of the consideration of the sale. Since right of property had passed on to the purchaser through the sale deed of 1966, property could be retransferred only by reconveyance. Hence the 'cancellation deed' was liable to be classified as 'conveyance' and stamp duty Rs.5.42 lakh and registration fees of Rs.60,000 on the guideline market value of Rs.60 lakh of the property was to be realised. Misclassification of the documents resulted in short levy of stamp duty of Rs.35.66 lakh and registration fees of Rs.3.97 lakh.

After the cases were pointed out in January 2007, the Sub Registrar contended that the documents were 'cancellation deeds' and had accordingly been stamped under the Act. The reply is not tenable since there can be no cancellation of a conveyance under which right of property has already passed. The property can be retransferred only by reconveyance as reiterated by the Department's circular of 2004.

The cases were reported to the IGR and Commissioner of Stamps in March 2007 and referred to the Government in May 2007; their replies have not been received (October 2007).

5.4 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 property has not been truly set forth, he shall compute the estimated market value and unless the party pays the duty on the basis of such valuation, shall keep the process of

registration pending and refer the matter along with a copy of such instrument to the Deputy Commissioner for determination of the market value of the property and the proper duty payable thereon. By a notification issued in July 1985, District Registrars were vested with the powers of the Deputy Commissioner for this purpose. Further, under the provisions of the Act, the Government constituted committees for the estimation of market value of any area in each taluk.

In four³² SRs, six documents had been registered between April 2005 and February 2006 on which stamp duty of Rs.48.20 lakh and registration fees of Rs.5.37 lakh were levied. Audit scrutiny between November 2006 and January 2007 revealed that stamp duty was levied on the market value which was less than the estimated guideline value. Stamp duty of Rs.85.36 lakh and registration fees of Rs.9.52 lakh were leviable in accordance with the estimated guideline value in these cases. This resulted in short levy of stamp duty of Rs.37.16 lakh and registration fees of Rs.4.15 lakh.

After the cases were pointed out, Sub Registrar, Bangalore (South) stated that these would be referred to the District Registrar for determination of market value of the properties and Sub Registrar, Anekal stated that the deficit duty would be recovered from the concerned. The replies in respect of the remaining cases have not been received (October 2007).

The cases were reported to the IGR and Commissioner of Stamps between November 2006 and March 2007 and referred to the Government in May 2007; their replies have not been received (October 2007).

³² Anekal, Bangalore (South), Hubli, Kengeri