

**CHAPTER III :**  
**STAMP DUTY & REGISTRATION FEES, STATE**  
**EXCISE AND TAXES ON MOTOR VEHICLES**

**3.1 Results of audit**

Test check of records relating to stamp duty and registration fees, State excise and taxes on motor vehicles conducted during the year 2005-06 revealed short/non levy of duty/tax etc., amounting to Rs 197.42 crore in 3,950 cases as detailed below:

(Rupees in crore)			
Sl. No.	Category	No. of cases	Amount
	<b>A – STAMP DUTY AND REGISTRATION FEES</b>		
1.	Evasion of stamp duty due to misclassification of documents	1	59.06
2.	Non levy of stamp duty on instruments executed by co-operative societies	20	18.42
3.	Incorrect grant of exemption of stamp duty and registration fees	83	4.33
4.	Short levy due to misclassification of documents	60	70.19
5.	Short levy due to undervaluation of property	436	32.94
	<b>Total</b>	<b>600</b>	<b>184.94</b>
	<b>B – STATE EXCISE</b>		
6.	Non/short levy of excise duty	13	0.01
7.	Short recovery of licence/privilege fees/escort charges/interest	541	3.35
8.	Short/non recovery of supervision charges/bonus	59	0.42
9.	Non recovery of toddy instalments	184	0.42
	<b>Total</b>	<b>797</b>	<b>4.20</b>
	<b>C – TAXES ON MOTOR VEHICLES</b>		
10.	Non/short levy of tax due to incorrect application of rates	2,121	8.12
11.	Short levy of tax due to incorrect exemption/classification	4	0.01
12.	Miscellaneous	428	0.15
	<b>Total</b>	<b>2,553</b>	<b>8.28</b>
	<b>Grand Total</b>	<b>3,950</b>	<b>197.42</b>

During the year 2005-06, the department accepted underassessment in 1,016 cases and recovered Rs 2.22 crore, of which 338 cases involving Rs 73.61 lakh were pointed out during 2005-06 and the rest in the earlier years.

A few illustrative cases noticed during 2005-06 and in earlier years, involving a financial effect of Rs 61.36 crore are given in the following paragraphs:

## A – STAMP DUTY AND REGISTRATION FEES

### 3.2 Evasion of stamp duty due to misclassification of documents

Levy of stamp duty in Maharashtra is governed by the Bombay Stamp Act, 1958 (Act). Every instrument executed in the State is chargeable with duty on the amount indicated in the instruments as classified in Schedule I of the Act. Further, if any instrument is so framed as to come within two or more classifications in Schedule I with duty chargeable at different rates, then the highest of such duty is to be charged.

#### 3.2.1 *Misclassification of instruments of conveyance*

Under the provisions of the Act, instrument of conveyance includes every instrument by which moveable or immovable property or interest therein is transferred to other person and is chargeable under Article 25 of Schedule I to the Act. The stamp duty on these instruments is higher than that on development agreements<sup>1</sup>.

Test check of 74 instruments of 15 sub registrar (SR) offices of nine<sup>2</sup> districts, revealed between November 2005 and April 2006 that owners of properties transferred/assigned/conveyed the rights/interest of the property valued at Rs 230.13 crore during the period from January 2001 to December 2005 in favour of developers/promoters on receipt of consideration. The SRs, however, classified these instruments as development agreements instead of conveyance deeds. Consequently, stamp duty of Rs 18.44 crore was leviable as against Rs 2.31 crore levied by the department resulting in short levy of stamp duty of Rs 16.13 crore.

After this was pointed out, the department during November 2005 and April 2006 accepted the audit observation in eight<sup>3</sup> cases, six<sup>4</sup> cases were referred to the Collector of Stamps of the district while in the remaining 60 cases the department did not accept the audit observation stating that stamp duty was levied correctly.

The replies were not tenable as the recitals of these instruments indicated that the rights/interest of the property were conveyed against full consideration and therefore, they were conveyance deeds and not development agreements as contended.

3.2.2 Similarly, in seven instruments registered between January 2001 and December 2005 in three<sup>5</sup> SR offices of Nagpur district, it was noticed that though the vendors/owners executed the agreements to develop and sell, the SRs treated these instruments as development agreements instead of

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<sup>1</sup> Development agreements: - Agreements giving authority or power to a promoter or a developer, by whatever name called, for construction on, development of or sale or transfer (in any manner whatsoever) of, any immovable property.

<sup>2</sup> Ahmednagar, Aurangabad, Kolhapur, Mumbai, Nagpur, Nashik, Pune, Raigad and Thane

<sup>3</sup> One case in SR-I Andheri, Mumbai accepted by Collector of stamps, Bandra, Mumbai; five cases in SR-I Nagpur and two cases in SR Haveli – IV Pune accepted by SRs.

<sup>4</sup> SR-II, Borivili, Mumbai Suburban.

<sup>5</sup> SR-II, Nagpur, SR-IV Nagpur, and SR-IX, Nagpur

instruments of conveyance. Misclassification, thus, resulted in short levy of stamp duty of Rs 24.50 lakh.

After this was pointed out, the SRs stated between November 2005 and April 2006 that the instruments were correctly classified as development agreements and stamped accordingly. The replies are not tenable as the recitals of the instruments clearly indicated that the owners of the property had transferred/assigned/conveyed the rights/interest of the property in favour of the developers/promoters by receiving full consideration.

### **3.2.3 Misclassification of instruments of power of attorney**

Under Article 48(f) of the Act, in an instrument of power of attorney, when given for consideration and authorised to sell an immovable property, stamp duty is leviable at the rate as applicable to an instrument of conveyance.

Audit scrutiny of 137 instruments in 20 SR offices of nine<sup>6</sup> districts revealed that though the vendors/owners paid/received consideration authorising them to develop/construct and sell the immovable property, these instruments were misclassified as development agreements instead of power of attorney with consideration. Misclassification of instruments as development agreements resulted in short levy of stamp duty of Rs 35.46 crore.

Further, it was observed in 64 instruments executed between January 2001 and December 2005, that powers of attorney were also executed simultaneously to evade higher stamp duty. Though the owners received consideration from the developers and authorised them to enter into agreement to sell the immovable property, i.e., flats, shops, offices etc., these documents were classified as development agreements instead of power of attorney with consideration. This resulted in short levy of stamp duty of Rs 4.58 crore.

After this was pointed out, the SRs stated that the instruments were correctly classified as development agreements. The replies are not tenable as it is evident from the recitals of the instruments that the owners on receipt of consideration from the developers/promoters authorised the developer to enter into agreement to sell the constructed property to the prospective buyers and therefore, instrument should have been construed as power of attorney with consideration and stamped accordingly.

### **3.2.4 Misclassification of instruments of transfer of development rights**

Under the provisions of the Act, instrument of transfer of development rights from one developer to another developer attracts stamp duty at the rate of three *per cent* on the true market value of the property or the consideration whichever is higher.

Test check of nine instruments registered in six SR offices<sup>7</sup> of three districts between January 2001 and December 2005 revealed that the developers transferred development rights as a moveable property, which they acquired from the owners, to another developer(s) by receiving consideration of Rs 77.60 crore. The department misclassified these instruments as

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<sup>6</sup> Ahmednagar, Aurangabad, Kolhapur, Mumbai, Nagpur, Nashik, Pune, Raigad and Thane.

<sup>7</sup> SRs Andheri II, Borivali II and Kurla II of Mumbai, Nagpur IX and Haveli I & IV.

development agreements and levied stamp duty of Rs 0.77 crore<sup>8</sup> instead of Rs 2.33 crore. This resulted in short levy of stamp duty of Rs 1.56 crore.

The SRs during November 2005 and April 2006 accepted audit observation in six cases<sup>9</sup>. In the remaining three cases, the SRs stated that the audit observation would be referred to higher authority for final action. Further report had not been received (December 2006).

### **3.2.5 Misclassification of instruments of transfer of lease**

As per Article 60 of the Act, in case of instruments of transfer of lease by way of assignment, stamp duty as is leviable on a conveyance shall be charged on the market value of the property which is the subject matter of transfer.

In SRs Kurla-II (Mumbai district) and Panvel-I (Raigad district), three instruments of transfer of lease of land were executed between August 2004 and December 2005, wherein the lease was transferred/assigned from the assignor to the assignee. These instruments were misclassified as lease/development agreements and stamp duty of Rs 12.82 lakh was levied instead of Rs 1.21 crore leviable on transfer of lease. This resulted in short levy of stamp duty of Rs 1.08 crore.

After this was pointed out, the SRs stated that the instruments were adjudicated by the Collector of Stamps and hence, were referred to him for final action. Reply of the Collector of Stamps had not been received (December 2006).

The cases were referred to Government in May 2006; their reply had not been received (December 2006).

## **3.3 Short levy of stamp duty due to undervaluation of property**

As per provisions of the Act and Registration Act, stamp duty and registration fee on conveyance deed is leviable on the true market value of the property at the rates applicable to the area in which the property is situated. These rates are prescribed in the ready reckoner<sup>10</sup>.

In four<sup>11</sup> offices of the SR/joint sub registrars (JSRs), five instruments of conveyance were registered between May 2001 and July 2004 and stamp duty and registration fee of Rs 97.43 lakh was charged on consideration of Rs 16.07 crore. The true market value of the property amounted to Rs 21.15 crore as per prescribed rates on which stamp duty and registration fee of Rs 138.91 lakh was payable. Thus, undervaluation of the properties resulted in short levy of stamp duty and registration fee of Rs 41.48 lakh.

After this was pointed out between June 2002 and May 2005, the Inspector General of Registration (IGR) in February 2005 accepted the omission in the cases of JSRs, Andheri – I and III. In the cases of SRs, Andheri-II and Haveli-I, the IGR stated in February 2006 that these documents were adjudicated and

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<sup>8</sup> Being one percent of Rs 77.60 crore as leviable on development agreements.

<sup>9</sup> SR-II, Andheri, SR-IX Nagpur and SR-Haveli –IV Pune.

<sup>10</sup> Ready reckoner is an annual statement of rates of property prescribed by Government.

<sup>11</sup> SRs Andheri-II (Mumbai) & Haveli-I (Pune) and Joint Sub registrars Andheri-I, III (Mumbai).

the adjudicating authority (Collector of Stamps) had accepted the audit observation. The IGR was required to take further action in these cases since the revision of the Collector's order can only be done by the IGR. Further reply was awaited (December 2006).

The cases were reported to Government in March 2006; their reply had not been received (December 2006).

### **3.4 Short levy of stamp duty on lease deeds**

**3.4.1** Under the provisions of Act, where the lease purports to be for a period in excess of 29 years and granted for a premium/money advanced in addition to the rent fixed, stamp duty is leviable at the rates prescribed in the Act on 10 times of the annual average rent and amount of premium/advance.

In the office of the JSR Borivali-II, Mumbai, it was noticed in February 2005 that in an adjudicated lease deed document of July 2003, stamp duty of Rs 4.25 lakh at one *per cent* was levied by the adjudicating authority on Rs 4.25 crore instead of Rs 42.17 lakh at 10 *per cent* of Rs 4.21 crore leviable. Thus, application of incorrect rate of stamp duty resulted in short levy of stamp duty of Rs 37.92 lakh.

After this was pointed out in April 2005, the IGR while accepting the audit observation stated in February 2006 that action would be taken to revise the order of the adjudicating authority and demand raised accordingly under section 53-A<sup>12</sup> of the Act.

**3.4.2** Under the provisions of the Act, where the lease purports to be for period between 10 and 29 years, stamp duty is leviable at five times of the annual average rent including the municipal taxes to be paid by the lessee.

In the office of the JSR Andheri-I, Mumbai, it was noticed in April 2005 that in an adjudicated lease deed document of December 2004, stamp duty of Rs 6 lakh was levied considering the lease period as five years against the lease period of 20 years<sup>13</sup> on which stamp duty of Rs 14.03 lakh was leviable. Omission to reckon the correct lease period resulted in short levy of stamp duty of Rs 8.03 lakh.

After this was pointed out in April 2005, the IGR stated in February 2006 that the Collector of Stamps (adjudicating authority) had accepted the audit observation and final action under the Act would be taken. Further reply was awaited (December 2006).

The cases were reported to Government in May 2006; their reply had not been received (December 2006).

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<sup>12</sup> Section 53-A deals with revision of Collector's decision by the IGR.

<sup>13</sup> Initial period of 5 years with three options of renewal at the end of every five-year term.

## **B – STATE EXCISE**

### **3.5 Short realisation of licence fees**

Under the provisions of the Maharashtra Potable Liquor (periodicity and fees for grant, renewal or continuance of licences) Rules, 1996, the Commissioner of State Excise revised the rates of licence fees for storage/sale of imported foreign liquor/Indian made foreign liquor in bars (FLI, FLII and FLIII), retail sale of country liquor (CLIII) and toddy on 30 January 2001 and on 30 May 2003. Government revised licence fee for possession and use of rectified spirit (RS-I and RS-II) in March 2001. In case of default in payment of dues, interest at the prescribed rate was leviable.

During test check of records in seven offices<sup>14</sup>, it was noticed that in respect of 136 licences (FLI, FLII, FLIII, CLIII, RSI, RSII and toddy) renewed for periods between 2001-02 and 2005-06, the licensees paid licence fees at incorrect rates. This resulted in short realisation of licence fees of Rs 76.36 lakh.

After this was pointed out between October 2003 and June 2005, the department recovered Rs 49.71 lakh, along with interest in 98 cases between January 2004 and November 2006. Report on recovery of the balance amount had not been received (December 2006).

The matter was reported to Government in May 2006; their reply had not been received (December 2006).

### **3.6 Non recovery of toddy instalments**

Under the provisions of the Maharashtra Toddy Shops (grant of licence by auction or tender) Order, 1968, licence for sale of toddy in shops for the period from 1 September of a year to 31 August of the following year is issued to the highest bidder. Every successful bidder is required to pay on the spot or on the next working day, one fourth of the amount of the bid and the balance in six equal monthly instalments within the time prescribed in the order. Besides, interest is recoverable for delay in payment of instalment as per provisions in the Rules.

It was noticed during test check of records in three offices<sup>15</sup> between April and June 2005 that 107 bidders had not paid toddy instalments amounting to Rs 16.18 lakh payable for the toddy year 2004-05 within the prescribed time.

After this was pointed out, the department recovered Rs 15.49 lakh including adjustment of Rs 1.92 lakh against excess fees recovered for the period 2004-05 along with interest of Rs 1.94 lakh from 99 bidders between April 2005 and July 2006. Report on the recovery of the balance amount had not been received (December 2006).

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<sup>14</sup> Superintendent of State Excise: Amravati, Kolhapur, Nagpur, Nashik, Pune, Raigad and Thane.

<sup>15</sup> Superintendent of State Excise: Ahmednagar, Ratnagiri and Sindhudurg

The matter was reported to Government in May 2006; their reply had not been received (December 2006).

## **C - TAXES ON MOTOR VEHICLES**

### **3.7 Non realisation of motor vehicles tax/one time tax**

Under the Bombay Motor Vehicles Tax Act, 1958 (BMVT Act) and Rules made thereunder, tax at the prescribed rate is leviable on all vehicles used or kept for use in the State. The Act further provides that tax leviable shall be paid in advance by the registered owner of the vehicle. Payment of one time tax (OTT) was made compulsory for light motor vehicles used for carriage of goods registered on or after 1 May 2000 and extended from 1 June 2001 to existing light motor vehicles paying tax at the annual rate. Interest at the rate of two *per cent* of the amount of tax for each month or part thereof is payable in each case of default in payment of tax dues.

During test check of records in 13 offices<sup>16</sup>, it was noticed between September 2002 and September 2005 that in respect of 456 motor vehicles, tax was either not/short recovered from the vehicle owners for periods falling between 2001-02 and 2005-06, resulting in non realisation of motor vehicles tax or OTT of Rs 67.20 lakh.

After this was pointed out, the department recovered between February 2003 and May 2006 tax amounting to Rs 18.19 lakh along with interest of Rs 4.39 lakh from 161 vehicle owners. Report on recovery of the balance amount had not been received (December 2006).

The matter was reported to Government in March and May 2006; their reply had not been received (December 2006).

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<sup>16</sup> Dy. RTOs: Chandrapur, Gadchiroli, Gondia, Hingoli, Latur, Osmanabad, Pimpri-Chinchwad, Ratnagiri and Solapur.  
RTOs: Nagpur, Nanded, Thane and Yavatmal.