

CHAPTER III : STAMP DUTY AND REGISTRATION FEES

3.1 Results of audit

Test check of the records of the stamp duty and registration fee conducted during the year 2007-08, revealed non/short levy of duty and loss of revenue etc., amounting to Rs. 59.02 crore in 344 cases as shown below:

(Rupees in crore)

Sl. No.	Category	No. of cases	Amount
1.	Short levy due to under valuation of property	301	55.65
2.	Short levy due to misclassification of documents	14	2.15
3.	Incorrect grant of exemption of stamp duty and registration fees	16	0.94
4.	Non-levy of stamp duty on instruments executed by Co-operative societies	9	0.27
5.	Other Irregularities	4	0.01
Total		344	59.02

In response to the observations made in the local audit reports during the year 2007-08 as well as during earlier years, the department accepted underassessments and other deficiencies involving Rs. 10.53 crore in 164 cases, out of this seven cases involving Rs. 95 lakh were pointed out during 2007-08 and rest during earlier years. During the year 2007-08, the department recovered Rs. 10.53 crore in 164 cases of which seven cases involving Rs. 95 lakh were pointed out in 2007-08 and rest in earlier years.

A few illustrative cases involving Rs. 25.83 crore are mentioned in the succeeding paragraphs, against which Rs. 10.92 lakh had been recovered (November 2008).

3.2 Evasion of stamp duty

As per article 5 (g-a) and article 25 (b) to Schedule-I of the Bombay Stamp(BS) Act, 1958, stamp duty on development agreement and conveyance is leviable at the rate of one and 10 *per cent* respectively on the market value or consideration set-forth in the instrument, whichever is higher. Further Section 33 of the BS Act provides for examination and impounding of instruments not duly stamped. It also provides that every person having by law or consent of parties, authority to receive evidence and every person in charge of a public office before whom any instrument is chargeable in his opinion with duty is produced or comes in the performance of his functions shall, if it appears to him that such instrument is not duly stamped, impound the same irrespective of, whether the instrument is or is not valid in law. Section 39 of BS Act provides that if in the opinion of the collector the instrument is chargeable with duty and is not duly stamped then he shall require the payment of the proper duty together with a penalty of an amount equal to two *per cent* of the deficient portion of the stamp duty for every month or part there of, from the date of execution of instrument, subject to minimum penalty of Rs. 100 and maximum of double the deficient portion of the stamp duty.

Cross verification of information collected from the Income Tax Department with the records of the Superintendent of Stamps (SOS), Mumbai, in April 2008, revealed that the assessee in the capacity of administrator of Edulji Framroze Dinshaw Estate (EFD) entered into two development agreements with M/s. Ivory Property and Hotels Pvt. Ltd. and M/s. Ferani Hotels Pvt. Ltd. respectively, on 2 January 1995 to carry out development of land admeasuring 27.69 lakh sq. meter in village Malad, Kanheri and Borivali of Mumbai Suburban district, on stamp paper of Rs. 20 each, which were neither registered nor stamped.

Further scrutiny revealed that by an indenture dated 26 September 2001, one Mrs. Bachoobai Woronzow in the capacity of executrix of the aforesaid EFD Estate, transferred and conveyed the rights, title, interest into and over the proceeds of the sale or disposal of the entire EFD Estate to the administrator in individual capacity and four others, for a consideration of Rs. 20 lakh. The instrument was not registered though the stamp duty of Rs. 60,000 was paid.

The stamp duty leviable on these instruments on the market value of the property worked out to Rs. 39.76 crore. Besides, maximum penalty of Rs. 79.51 crore was also leviable.

After the case was pointed out (April 2008), the Collector of Stamps (Enforcement-II), Mumbai, issued (May 2008), a notice of demand for Rs. 155.77 crore to the concerned parties. A report on recovery has not been received (November 2008).

The matter was reported to the Government in May 2008; their reply has not been received (November 2008).

3.3 Short levy of stamp duty due to incorrect computation of market value

Under the provision of the BS Act, stamp duty at prescribed rate is leviable on the market value of the property conveyed or delivered through instruments of conveyance or development agreements. Further where property is sold and sale is subject to a mortgage or other incumbrance, any unpaid mortgage money due on the same shall be deemed to be part of the consideration for the sale.

During test check of the records between May 2005 and March 2007, it was noticed that in five instruments, stamp duty of Rs. 13.17 crore was short levied due to under valuation of property as mentioned below:

(Rupees in lakh)

Sl. No.	Name of the Sub Registrar	Document no. and date of execution	Market Value as per ready reckoner	SD leviable	SD levied	Short levy of SD
1	Igatpuri	1197/08-11-2004	41,226.00	1,649.04	373.82	1,275.22
2	Miraj	3042/18-06-2005	385.70	19.28	1.78	17.50
3	Wai	730/04-03-2004	479.95	37.49	20.00	17.49
4	Haveli-XX	3660/22-12-2005	581.40	5.81	1.25	4.56
5	Borivali-I	3329/17-06-2005	229.00	11.45	9.19	2.26
Total			42,902.05	1,723.07	406.04	1,317.03

After the cases were pointed out, the department accepted the omissions between September 2007 and November 2007 except in case of Sub Registrar (SR) Igatpuri (November 2008) and Borivali-I (December 2008) and stated that action to recover the amount has been initiated. SR, Wai recovered Rs. 10.92 lakh (September 2008). A report on recovery in the remaining cases has not been received (November 2008).

The matter was reported to the Government in May 2008; their reply has not been received (November 2008).

3.4 Insufficient stamped instrument

Under the provision of BS Act, market value in relation to any property which is the subject matter of an instrument means the price which such property would have fetched, if sold in open market on the date of execution of such instrument or the consideration stated in the instrument whichever is higher.

An unregistered Business transfer agreement (BTA) in June 2006 was executed between M/s. Raymond Ltd. (transferor) and M/s. Raymond UCO Denim Private Ltd. (transferee) for purchase of entire Raymond Denim division situated in Yavatmal District in Maharashtra for a consideration of Rs. 321.89 crore.

During test check of the records in the office of the Joint District Registrar (JDR), Yavatmal, in June 2007, it was noticed that the transferee had discharged on 24 August 2006 stamp duty of Rs. 50.18 lakh on market value of Rs. 12.54 crore in respect of deed of assignment of lease hold land situated in Yavatmal, whereas stamp duty was payable on entire consideration of

Rs. 321.89 crore. Thus non-discharge of stamp duty on balance consideration of Rs. 309.35 crore had resulted in insufficient payment of stamp duty of Rs. 12.37 crore.

After the case was pointed out, the Inspector General of Registration (IGR), Pune stated (March 2008) that action has been initiated under the provision of the BS Act. Further report has not been received (November 2008).

The matter was reported to the Government in May 2008; their reply has not been received (November 2008).

3.5 Short levy of stamp duty due to misclassification of instrument

Under the provisions of the BS Act, on instruments of conveyance and development agreements stamp duty at five *per cent* and one *per cent* respectively is leviable on the market value of the property. Further, for charging stamp duty, the instrument is not to be treated by the name it bears but by the substance or real nature of the transaction as derived from its recitals.

During test check of the records of the Sub Registrar (SR) Pune-XVII, and Nagpur-IV, between June 2006 and October 2006, it was noticed that, on three instruments of conveyance executed between November 2004 and February 2005, stamp duty of Rs. 35.33 lakh was leviable on the market value of the properties amounting to Rs. 6.92 crore. The SR, however, levied stamp duty of Rs. 6.78 lakh only, treating these instruments as development agreements. Misclassification of the instruments as development agreements resulted in short levy of stamp duty of Rs. 28.55 lakh.

After the cases were pointed out, the Joint District Registrar (JDR), Pune (City) in November 2007 and Nagpur in February 2007 accepted the omission and directed the SRs to recover the deficit stamp duty. A report on recovery has not been received (November 2008).

The matter was reported to the Government in March 2008; their reply has not been received (November 2008).