

CHAPTER III
STAMP DUTY AND REGISTRATION FEES

3.1 Results of audit

Test check of records of departmental offices conducted during the period from April 2005 to March 2006 revealed under valuation, etc., amounting to Rs.275.89 crore in 444 cases, which broadly fall under the following categories.

(Rupees in crore)

Sl.No.	Categories	No. of cases	Amount
1	Under valuation	34	9.57
2	Misclassification	70	0.90
3	Others	339	14.63
4	Review on Receipts from stamp duty and registration fees	1	250.79
	Total	444	275.89

During the course of the year 2005-06, the department accepted under assessment etc., amounting to Rs.1.16 crore in 189 cases, out of which, Rs.32.52 lakh involving 48 cases were pointed out during the year and the rest in earlier years. Of these, department recovered Rs.81.96 lakh.

After issue of draft paragraphs, the department recovered Rs.1.26 crore by way of adjustment in a single case during the year 2005-06.

A review on **Receipts from stamp duty and registration fees** and a few illustrative cases involving Rs.76.66 crore are discussed below:

3.2 Review on the receipts from stamp duty and registration fees

Highlights

- **Absence of provision for levy of stamp duty on power of attorney registered without consideration, resulted in foregoing of Government revenue of Rs.141.55 crore in 2,846 instruments.**

[Paragraph 3.2.6]

- **Unconditional exemption of stamp duty in case of transfer of property between holding and subsidiary companies resulted in foregoing of revenue of Rs.19.97 crore.**

[Paragraph 3.2.7]

- **Short levy of stamp duty due to misclassification of bonds of Rs.21.24 crore.**

[Paragraph 3.2.9]

- **Omission to collect stamp duty on the issue of bonds through demat system resulted in non realisation of revenue of Rs.39.10 crore.**

[Paragraph 3.2.10]

- **Failure to prescribe the rate of stamp duty on value basis in respect of shares issued through demat system by companies resulted in non levy/collection of stamp duty of Rs.5.63 crore.**

[Paragraph 3.2.11]

- **Absence of provision in the Indian Stamp Act for registration of apartments resulted in non realisation of revenue of Rs.11.84 crore.**

[Paragraph 3.2.12]

Recommendations

Government may consider

- providing conditions for exemption of stamp duty granted to transfer of immovable properties between a parent company and its fully owned subsidiary,

- introducing a comprehensive legislation to provide for levy of stamp duty for the existing building structures in addition to undivided share of land,
- introducing a complementary provision to Section 8A of the Indian Stamp Act specifying the rate of duty to be paid on the value of securities issued in demat form,
- evolving mechanism for co-ordination among Registration Department, SEBI²⁰, Registrar of Companies and Reserve Bank of India in respect of issue of securities to avoid leakage of revenue; and
- fixing rate for registration of deed of apartments.

Introduction

3.2.1 The Indian Stamp Act, 1899, (IS Act) as amended by Government of Tamil Nadu from time to time provides for levy of stamp duty on various instruments. The rates of stamp duty which are prescribed in Schedule I to IS Act are adopted by Government of Tamil Nadu with suitable amendments. Besides, registration fee is levied in accordance with Registration Act, 1908.

Organisational set up

3.2.2 The Inspector General of Registration (IGR) is the head of the department. He is assisted by nine Deputy Inspectors General of Registration at zonal level. There are 50 registration districts and 558 sub districts supervised by Assistant Inspectors General of Registration/District Registrars and District Registrars/Sub Registrars respectively. In addition, there are two District Revenue Officers (Stamps) and nine Special Deputy Collectors (Stamps) for determination of market value of properties in certain classes of documents under Section 47 A of IS Act. The monitoring and control at Government level is done by Secretary, Commercial Taxes and Registration Department.

Scope of audit

3.2.3 Records for the period from 2000-01 to 2004-05 of the IGR and 175 out of 558 registering offices were test checked between August 2005 and May 2006. The units were selected on the basis of revenue realisation and in case of bonds/securities, the required information was collected from selected companies/bodies that issued the bonds/securities.

²⁰ Securities and Exchange Board of India.

Audit objectives

3.2.4 The review was conducted with a view to

- examine the efficiency and effectiveness of the system and procedures relating to collection of stamp duty and registration fee;
- examine whether there are any lacunae in the Act/absence of specific provisions in the Act, with revenue implications to Government.

Trend of revenue

3.2.5 The budget estimates and actuals of stamp duty and registration fees for the years 2000-01 to 2004-05 are given below:

(Rupees in crore)

Year	Budget estimates	Actuals	Variations excess (+) or short fall (-)	Percentage of variation
2000-01	947.40	910.20	(-) 37.20	(-) 4
2001-02	990.39	1,137.89	147.50	15
2002-03	1,285.30	1,079.12	(-) 206.18	(-) 16
2003-04	1,278.61	1,316.40	37.79	3
2004-05	1,350.23	1,604.36	254.13	19

As per the budget manual, whenever the budget is prepared, the aim is to achieve as close an approximation to the actuals as possible. It is essential that not merely should all items of revenue that can be foreseen be provided but only so much as is expected to be realised, including past arrears should be provided in the budget.

However, from the above table it is seen that there was a huge variation between budget figures and actuals during 2001-02, 2002-03, 2004-05 indicating therein that budget estimates were not realistic. The department stated that shortfall of actuals during the year 2002-03 was due to more payment of stamp duty to local bodies by Government.

Loss of revenue due to lacuna in the Act

3.2.6 As per the IS Act, rate of stamp duty for a deed of “power of attorney” when given for a consideration was the same as that applicable to conveyance deed. However, the Act is silent about “power of attorney” when given without consideration.

Test check of 2,846 instruments revealed that the executants had given absolute right to their agents for demolition, promotion, construction, sale, etc., of the properties. All these properties were registered in 28²¹ sub registries without any consideration charging a stamp duty of Rs.100 for each document. It means a transfer of property in the guise of power of attorney which should otherwise be treated as conveyance. Due to absence of provision of charging stamp duty on these documents, revenue of Rs.141.55 crore was foregone.

After this was pointed out to the department, the IGR stated in February 2006 that proposal to revise the stamp duty rates for general power of attorney was under consideration of the department. Government stated in July 2006 that amendment for levying higher rate of duty would be considered.

Unconditional exemption of stamp duty in case of transfer of property between holding and subsidiary companies

3.2.7 As per Section 2(6) of the IS Act, chargeability of stamp duty arises on the date of execution. Section 9 of the Act empowers Government to reduce or compound or remit the stamp duty. Accordingly, Government issued an order (April 1964) wherein it was stated that instruments evidencing transfer of properties between parent company and its wholly owned subsidiary company (holding 90 *per cent* or more of the shares) are exempted from stamp duty. Availing the said concession, 43 transfers were effected during the period from April 2000 to March 2005 without payment of any stamp duty.

Mention was made in the Audit Report 1988-89 for withdrawal of the above mentioned concession granted to the companies. Government, while discussing the report stated before PAC²² that the concession granted was not justified and IGR would be directed to send a fresh proposal regarding the same.

Proposals for withdrawal of the exemption were sent to Government by the IGR in August 2001, but orders have not been issued so far.

An examination of four cases in the light of the Government Order (GO) granting concession revealed a loss of stamp duty of Rs.19.97 crore as detailed below:

²¹ Adyar, Ambattur, Anna Nagar, Avadi, Chengalpattu, Ganapathy, Guduvanchery, Kundrathur, Mylapore, Neelangerai, Padappai, Pallavaram, Pammal, Peelamedu, Periamet, Poonamallee, Purasawakkam, Rajaveedhi, Royapuram, Saidapet, Sembium, Tambaram, Thiruporur, Thousand Lights, T.Nagar, Vadavalli, Velachery and Virugambakkam.

²² 94th Report/XI Assembly presented on 22 April 1998.

3.2.7.1 In Sub Registry, Adyar it was noticed that a company “X”, transferred its property valued at Rs.13.75 crore to three subsidiaries in February 1999. Subsequently another company “Y” acquired the shares of these three subsidiaries from company “X”. In December 2002 the three subsidiaries transferred the said property valued at Rs.13.75 crore to the company “Y” without any liability to pay stamp duty. Thus, the transfer of property through subsidiaries deprived Government of stamp duty of Rs.3.51 crore.

3.2.7.2 In Sub Registry, Virugambakkam, it was noticed that capital of a company “A” was increased from Rs.5 lakh to Rs.50 lakh and the increased capital of Rs.45 lakh was acquired by another company “B” which became the parent company. Within 18 days of such transfer of shares, the subsidiary company “A” sold property valued at Rs.97 crore by just paying Rs.20 as stamp duty which was objected to by the registering officer and the district registrar but was allowed later on by Chief Controlling Revenue Authority (CCRA) stating that the GO issued in April 1964 did not specify any condition other than fulfilling the condition of 90 *per cent* holding. Thus lacuna in the GO resulted in loss of stamp duty of Rs.12.61 crore.

3.2.7.3 It was noticed in Joint I Sub Registry, Ooty, that a property worth Rs.1.12 crore was transferred from a company “P” to another company “Q” on 27 January 1995. The document was registered on 3 July 2001 allowing exemption from payment of stamp duty treating it as transaction between parent and subsidiary company. A scrutiny of the records, however, revealed that the instrument was executed on 27 January 1995 itself and the transferee company became the subsidiary of the parent company only on 30 January 1995. As such, the exemption allowed was not in order and resulted in non levy of stamp duty amounting to Rs.13.44 lakh.

3.2.7.4 In Sub Registry, Uthukuli, it was noticed that a company ‘A’ allotted 1.55 crore shares to another company ‘B’ on 30 June 2000. Through a sale deed executed on the same day, the property was transferred from ‘B’ to ‘A’ with a specific clause for consideration, the shares to be allotted subsequently. Thus, it was evident, that at the time of execution, the transferor company was not holding 90 *per cent* shares of the transferee company as allotment of shares took place only after the execution of instrument. This resulted in incorrect exemption of stamp duty of Rs.3.72 crore.

After this was pointed out, Government stated that the withdrawal of the said exemption was under consideration.

Inordinate delay in amending the law to prevent leakage of revenue

3.2.8 As per Article 5(i) inserted by Tamil Nadu Act 38 of 1987, in respect of an agreement relating to construction of a house or building including the multi unit house or building by the vendor on land sold by such vendor and containing stipulation that such land together with such house/building/multi unit house or building so constructed shall be held either individually or jointly by the vendee of such land, stamp duty is leviable on the cost of the proposed construction. The article attracts only those agreements entered into by the vendor of the land and the vendee but does not include agreements between builder and the ultimate buyer.

The department in 1988 issued a circular instructing all DIGs to physically verify whether there was any suppression on registration of building portion of the property alongwith the undivided share of land and such cases should be registered only on collection of deficit amount of stamp duty involved. The Honourable High Court of Madras (1990)²³ while holding the circular as untenable, had also opined that the provisions of Article 5(i) are valid, though badly drafted. The court had also observed that the amendments effected were far short of the loopholes which required to be plugged and a more rigorous and comprehensive legislation than enacted in Delhi and Maharashtra was required to be enacted expeditiously without any power of exemption in Government to relax any of these provisions under any circumstance. In 2000, the Supreme Court confirmed the verdict of the High Court, but no amendment was brought out (till date) to arrest leakage of revenue.

Cross verification of records of two²⁴ corporations and Chennai Metropolitan Water Supply and Sewerage Board with sale deeds registered in four registering offices in Chennai and Madurai revealed that in respect of 455 flats, sale deeds were executed only for the undivided share of land. The buildings constructed on the land were not included though they were in existence at the time of execution of the deeds. This resulted in foregoing of revenue of Rs.2.02 crore as detailed below:

(Rupees in crore)

Sl. No.	Name of the registering office	No.of documents	Value of the building portion	Amount involved
1	Virugambakkam	139	4.96	0.52
2	Annanagar	174	7.19	0.95
3	Kodambakkam	113	3.39	0.44
4	Arasaradi	29	0.79	0.11
	Total	455	16.33	2.02

²³ Messers Park View Enterprises Vs. State of Tamil Nadu.

²⁴ Chennai and Madurai.

As building was constructed through an agreement between builder and the buyer, stamp duty could not be levied as no provision existed in IS Act. This resulted in foregoing of revenue of Rs.2.02 crore.

After this was pointed out in November 2005/May 2006, Government stated in December 2005/July 2006 that proposal to amend IS Act to provide for levy of stamp duty for the building portion would be considered.

Short levy of stamp duty due to misclassification of bonds

3.2.9 Bond comes under the meaning of securities as per Section 2(16-A) of IS Act, read with Section 2(h) of the Securities Control (Regulation) Act, 1956. It is capable of being sold in any stock market in India whereas promissory note is not marketable in the stock market. According to Section 2(12) of Companies Act, 1956, “debenture” includes bonds. Bond specifies a particular period or date as the date of repayment. It also provides for the payment of a specified principal and interest at the specified date.

During the course of audit, it was noticed that five companies paid stamp duty on bonds at the rate applicable to the promissory notes. The bonds were issued under the name ‘bonds in the nature of promissory note’. But recitals of these documents revealed that they could not be redeemed during their tenure and were capable of being sold in stock market. Therefore, they had the essential features of bonds and stamp duty should have been levied accordingly. Incorrect classification of instrument resulted in short levy of stamp duty amounting to Rs.21.24 crore in respect of 14 issues as detailed below:

(Rupees in crore)

Sl. No.	Name of the issuer	Number of issues	Value of bonds issued	Stamp duty due	Stamp duty paid	Short levy of stamp duty
1	Indian Overseas Bank, Chennai-2.	8	1,129.22	27.10	8.54	18.56
2	Lakshmi Vilas Bank Ltd.	2	70.00	1.68	0.23	1.45
3	Canara Bank	2	25.00	0.60	0.25	0.35
4	Madras Fertilisers Ltd., Chennai-68	1	1.30	0.03	0.01	0.02
5	Bharat Overseas Bank Ltd., Chennai-2	1	40.00	0.96	0.10	0.86
	Total	14	1,265.52	30.37	9.13	21.24

After this was pointed out, the Government stated in August 2006 that to treat an instrument as a Bond there must be an obligation on the part of the borrower to pay money to another on condition that the obligation shall be void if a specified act is performed or is not performed and such an instrument should be attested by a witness and there should not be any words like, payable to order or bearer. In the instant cases of Bonds issued in the nature of promissory notes, there is no obligation on the part of the issuer to pay the amount. Further, the instruments in question are not attested and also transferable by endorsement and delivery. Hence, the instruments in question are chargeable to duty as applicable to a promissory note only. This is not tenable since, besides the points mentioned above, bonds are not encashable during the tenure period available on the bonds issued and no put/call options is provided. Further eventhough the issue comprises the properties of both 'bond' and 'Promissory Note' stamp duty should have been levied at higher rate as provided for under Section 6 of IS Act.

Omission to collect stamp duty on the issue of bonds through demat system (depositories)

3.2.10 According to the provisions of Section 8A(a) of the IS Act, an issuer by issue of securities which include, bonds to one or more depositories in respect of such issue, be chargeable with duty on the total amount of security issued by it and such securities need not be stamped at the rates specified under Article 15 of the Act *ibid*.

Details regarding issue of bonds through demat obtained from two depositories and two registrars (share transfer agents) revealed that 11 issues of bonds were made during the period from 2000-01 to 2004-05 for which stamp duty was not levied. This resulted in non realisation of stamp duty of Rs.39.10 crore.

After this was pointed out, department in their reply in May 2006 stated that the companies/corporation/banks mentioned have not applied, seeking permission to pay consolidated stamp duty. The above facts reveal that department should evolve a mechanism for co-ordination among Registration Department, SEBI, Registrar of Companies and RBI in respect of issue of securities to avoid leakage of revenue.

Failure to prescribe the rate of stamp duty on value basis in respect of shares issued through depositories

3.2.11 The Act envisages that an issuer by issue of securities which include share to one or more depositories in respect of such issue, be chargeable with duty on the total amount of security issued by it and such securities need not be stamped. No rate has been provided in the Act for levy of duty on value of shares issued through demat.

Information regarding issue of shares by listed public companies in the State of Tamil Nadu during the period from 2000-01 to 2004-05 was collected from the respective registrars/depositories of the listed companies as shown below:

(Rupees in crore)

Sl. No	Name of the Registrar/ depositories	No. of listed public companies involved	Total value of shares issued	Value of shares issued in physical form	Value of shares issued in electronic mode	Stamp duty at one per cent on the value of shares issued
1	M/s.Integrated Enterprises (India) Limited, Chennai 600 017.	10	80.34	13.76	66.59	0.67
2	M/s. Cameo Corporate Services Limited, Chennai 600 002.	7	489.32	241.89	247.38	2.47
3	National Securities Depositories Limited/ Central Depositories Services (India) Limited	23	718.01	469.41	248.61	2.49
Total		40	1,287.67	725.06	562.58	5.63

It was noticed that none of the companies had paid any stamp duty on the ground that there was no article provided in the Act to levy stamp duty. Even if a minimum rate of one *per cent* based on issue of securities by local bodies under Section 8 was collected, Government would have earned a revenue of Rs.5.63 crore in respect of 40 companies.

After this was pointed out, Government replied in July 2006 that suitable amendments would be made to prescribe the rate for such issues at one *per cent*.

Absence of provisions in the IS Act for registration of apartments

3.2.12 The Tamil Nadu Apartment Ownership Act, 1994, which came into force with effect from 7 April 1997 stipulates that a deed of apartment together with the floor plan of the building shall be registered compulsorily. Though the above provisions were promulgated in 1997, no rate for levy of stamp duty and registration fees has been provided in the IS Act. The IGR recommended to Government in June 1997 for introducing a new Article 66 under Schedule I of the Stamp Act, fixing stamp duty at the rate of Rs.500 and fee of Rs.50 per apartment.

It was noticed in Chennai Corporation and five²⁵ municipalities adjoining Chennai, that 2.15 lakh apartments were not registered as on 31 March 2005. Consequently stamp duty and registration fees were not paid by the owners. Government has foregone a revenue of Rs.11.84 crore towards stamp duty and registration fees.

²⁵ Alandur, Erode, Pallavaram, Tambaram and Thiruvotriyur.

After this was pointed out, Government in July 2006 accepted the audit observation and stated that since the Act was passed by the Housing Department, they would be consulted to arrive at a decision.

Loss of revenue due to incorrect exemption

3.2.13 According to notification dated 29 June, 1966 issued under Co-operative Societies Act, remission of stamp duty chargeable under the IS Act was admissible in respect of instruments executed by a member of a registered co-operative society provided that the executant was a member of such society continuously for a period of not less than two years.

Scrutiny of instruments registered in nine²⁶ offices in Chennai zone revealed that in 410 cases, members of societies sold their lands to the societies. These instruments were exempted for payment of stamp duty incorrectly eventhough the executants were not members of the society for a continuous period of not less than two years. Incorrect grant of exemption resulted in a loss of revenue of Rs.4.05 crore.

After this was pointed out, the registering officer replied in December 2003 that as clarified by IGR in May 1995 two years continuous membership condition was applicable only to house construction co-operative societies and hence the remission was in order. The clarification issued by IGR was incorrect as the second proviso of the notification clearly indicates that exemption is admissible only to those members who are in continuous membership of two years or more.

Incorrect remission granted on registration fees under samadhan scheme

3.2.14 Government of Tamil Nadu issued orders²⁷ for implementation of samadhan scheme by which remission of 40 *per cent* of the difference of duty chargeable on value of the properties as proposed by the registering officer and duty already paid was ordered to be given in respect of instruments referred to SDC (Stamps). The scheme was implemented from 28 December 2004 to 27 March 2005. The said GO did not provide for remission of registration fees.

IGR issued a circular extending the remission to registration fees also. This circular was not in consonance with the GO and remission resulted in loss of revenue of Rs.5.39 crore in 33,067 documents.

²⁶ Ambattur, Chengalpattu, Joint-II Chennai, Konnur, Kunrathur, Neelangerai, Pammal, Saidapet and Thirukazhikundram.

²⁷ vide G.O. Ms No 193 CT & RE Department, dated 27 December 2004.

After this was pointed out, the Government stated in August 2006 that it had clarified that remission granted to stamp duty would be applicable to registration fee also. This is not tenable since the clarification is merely an executive order. It cannot supercede a notification. In view of this, the remission is not correct and hence the objection is reiterated. Further reply is awaited (November 2006).

Conclusion

3.2.15 No periodical review has been done in the cases of exemption from stamp duty. There are certain lacunae in the IS Act leading to leakage of revenue. Further no mechanism exists for co-ordination among the department/institutions concerned for preventing leakage of revenue in case of securities and for valuation of buildings. The above deficiencies have resulted in foregone of revenue due to Government.

Acknowledgement

3.2.16 The review was discussed with Government/department in the Audit Review Committee meeting held in July 2006. The views expressed at the meeting by Government have been incorporated in the respective paragraphs.

3.3 Short levy due to under valuation of property

According to Section 27 of the IS Act, consideration, market value and all other facts and circumstances affecting the chargeability of any instrument with duty or the amount of duty with which it is chargeable shall be fully and truly set forth in the instrument. As per Sub Rule 3 of Rule 3 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968, the registering officer may, for the purpose of finding out, whether market value has been correctly furnished in the instrument, make such enquiries as he may deem fit. The rate of stamp duty was 13 *per cent* upto 20 November 2003 and eight *per cent* thereafter. The rate of registration fees is one *per cent*.

3.3.1 Test check of records of office of the Joint-IV Sub-Registrar, Madurai between November 2004 and February 2006 revealed that lands measuring 18.46 lakh square feet in Madakulam village, within Madurai Corporation area were conveyed through seven sale deeds registered in April 2003 and March 2005 for a consideration of Rs.30.49 crore. Market value prevailing in the nearby area was Rs.291 per square foot. However, while executing the deed a portion of land measuring 28.76 acres was under valued by Rs.25.12 crore. The rates applied for this portion were Rs.82.50, Rs.88 and Rs.195 per square foot. This resulted in short levy of stamp duty and registration fees of Rs.2.63 crore.

This was pointed out to the department in December 2005/ February 2006 and Government in March 2006. The department replied that the rate of Rs.291 per square foot was fixed for the property abutting the main road and not for all fields situated away from the main road without road accessibility. Further Government contended (September 2006) that (i) there was no violation in having registered the documents for a value higher than the guideline value and (ii) even though no transaction was there in the said lands, normal growth rate had been adopted during guideline revision.

The replies were not tenable since (i) for the lands situated nearer to the road, the rate adopted was Rs.82.50 per square foot and for the lands situated away from the road, the rates adopted were Rs.195 and Rs.291 per square foot, (ii) as explained in the Tamilnadu Stamp (Prevention of Under valuation of instruments) Rules, 1968 that the entries made in the guideline register regarding value of properties, cannot be a substitute for market price and (iii) even though the departmental authorities themselves had fixed higher rate ranging from Rs.250 per square foot to Rs.350 per square foot in July 2003 itself, documents were allowed to be registered with a rate of Rs.88 per square foot. Further report is awaited (November 2006).

3.3.2 In the office of the Joint II Sub-Registrar, Saidapet, land measuring 34,109 square feet was conveyed in August 2003 by a sale deed. It was noticed in January 2005 that consideration/market value of the land was arrived at by adopting the rate of Rs.689 per square foot applicable to the area 'PCM Colony' even though the land conveyed is actually on the 'GST Road' for which the rate applicable was Rs.970 per square foot. Thus, due to adoption of incorrect rate there was an under valuation of property by Rs.95.85 lakh and consequent short levy of stamp duty and registration fees of Rs.8.63 lakh.

3.4 Incorrect classification of an instrument of conveyance as certificate of sale

According to Article 18 of Schedule I to the IS Act, if certificate of sale, in respect of each property put up as a separate lot and sold, is granted to purchaser of any property sold by public auction by a civil or revenue court or collector or other revenue officer and the purchase money exceeds Rs.50, stamp duty is leviable as a conveyance for a market value equal to the amount of the purchase money. As per Article 23, duty on conveyance shall be charged on the market value.

During scrutiny of records of office of District Registrar (Chennai Central) in November 2005, it was noticed that a property which was referred to debt recovery tribunal was sold for a consideration of Rs.3.10 crore as agreed to by the parties. As the sale consideration was not determined by conducting any public auction, the instrument was liable to be charged stamp duty as that of a conveyance deed on the market value of Rs.5.88 crore. However, the registering officer incorrectly treated the sale as certificate of sale by public

auction and charged stamp duty of Rs.21.70 lakh instead of Rs.52.90 lakh leading to short realisation of stamp duty of Rs.31.20 lakh.

The matter was reported to the department and Government (March 2006). Government accepted the audit observation in June 2006; report on recovery is awaited (November 2006).