

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 2008-09, indicated non-levy/short levy of duty and loss of revenue etc. amounting to Rs. 93.76 crore in 485 cases, which could be classified under the following categories:

(Rupees in crore)

Sl. no.	Category	No. of cases	Amount
1.	Short levy due to under valuation of property	356	50.64
2.	Incorrect grant of exemption of stamp duty and registration fees	40	21.81
3.	Short levy due to misclassification of documents	44	4.28
4.	Non-levy of stamp duty and registration fees	18	0.27
5.	Other irregularities	27	16.76
Total		485	93.76

In response to the observations made in the local audit reports during the year 2008-09 as well as during earlier years, the department accepted under assessments and other deficiencies involving Rs. 78.14 lakh in 420 cases which was recovered. Out of this, 17 cases involving Rs. 14.34 lakh were pointed out during 2008-09 and rest pertained to earlier years.

A few audit observations involving Rs. 3.39 crore are mentioned in the succeeding paragraphs.

3.2 Audit observations

Scrutiny of the records of the various registration offices revealed several cases of non-compliance of the provision of the Bombay Stamp Act, 1958 and Government modifications/instructions and other cases as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out in audit. Such omissions are pointed repeatedly, but irregularities still persist. There is need for the Government to improve the internal control system so that such omissions can be avoided.

3.3 Non-compliance of provisions of the Acts/Rules

The provisions of the Bombay Stamp Act, 1958 require:

- levy of Stamp Duty on market value of the property;
- exemption of Stamp Duty on fulfillment of prescribed conditions; and
- correct classification of documents.

The registering authorities did not observe some of the above provisions at the time of registration of document in cases mentioned in the paragraphs 3.3.1 to 3.3.6. This resulted in short levy of stamp duty of Rs. 3.39 crore.

3.3.1 Short levy of stamp duty due to undervaluation of property

As per the Bombay Stamp Act, 1958, stamp duty on conveyance deed is leviable on the 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.¹

During test check of records, between December 2007 and January 2009, it was noticed that in six instruments, stamp duty of Rs. 2.25 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.	Nagpur-II	2,217 31-03-2006	628.16	62.82	46.37	16.45
2.	Haveli-V	4,201 18-05-2007	103.78	10.38	3.30	7.08
3.	North Solapur-I	3,409 20-06-2007	256.00	13.10	0.90	12.20
4.	North Solapur-I	3,311 15-06-2007	184.56	9.23	2.90	6.33
5.	Nagpur – VI	3,557 08-08-2006	282.00	15.51	8.63	6.88
6.	Borivali – I	1,520 01-03-2006	4,015.00	201.00	25.00	176.00
Total			5,469.50	312.04	87.10	224.94

¹ Ready reckoner is an annual statement of rates of property prescribed by the Government.

The department (between October 2008 and April 2009) accepted the omission and stated that action has been initiated to recover the amount.

The matter was reported to the Government in April 2009; their reply has not been received (November 2009).

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

Under the provision of Bombay Stamp Act, 1958, stamp duty at prescribed rate is leviable on the market value of the property conveyed or delivered through instrument of conveyance.

During test check of the records of the office of the Sub-Registrar City-I Mumbai, it was noticed that a conveyance deed executed in December 2006 and stamp duty of Rs. 79.42 lakh was levied on consideration of Rs. 14.73 crore. Scrutiny of instrument, however, indicated that, while calculating the market value, the built up area of car parking and store room was not taken into account. The correct market value of the property works out to Rs. 17.86 crore on which stamp duty of Rs. 89.31 lakh was leviable. Incorrect computation of market value thus led to short levy of stamp duty of Rs. 9.89 lakh.

After the case was pointed out (January 2008), the Deputy Inspector General of Registration, Mumbai accepted the observation and directed (April 2008) the Sub-Registrar to initiate the action under the provisions of Bombay Stamp Act, 1958. Further report has not been received (November 2009).

The matter was reported to the Government in February 2009; their reply has not been received (November 2009).

3.3.3 Incorrect grant of exemption of stamp duty

By a notification issued on 5 May 2001, the Government remits the stamp duty on instruments of hypothecation, pawn, pledge, deposit of title deeds, conveyance, further charge on mortgage of property, lease, mortgage deed etc. for starting a new industry/new extension of industry in notified areas on the basis of a certificate issued by the Development Commissioner (Industries) or any authorised officer.

During test check of the records of the office of the Sub-Registrar VI Nagpur, it was noticed that an instrument of transfer of leasehold property was executed in January 2004, wherein Sub-Registrar remitted the stamp duty chargeable on instrument by classifying the instrument as instrument of sale. Further scrutiny revealed that as per recital in the instrument, the classification was incorrect, as the instrument is of assignment/transfer of lease and is chargeable to stamp duty under the provisions of the Bombay Stamp Act 1958. This led incorrect grant of exemption of stamp duty of Rs. 5.60 lakh.

After the case was pointed out in December 2005, the Inspector General of Registration, Pune accepted the observation (February 2009) and directed the Sub-Registrar concerned to recover the deficit stamp duty. A report on recovery had not been received (November 2009).

The matter was reported to the Government in March 2009; their reply had not been received (November 2009).

3.3.4 Short levy of stamp duty due to incorrect application of rate

Under the provisions of the Bombay Stamp Act, 1958, instrument of assignment of transfer of the 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. This rate was reduced from three *per cent* to one *per cent* with effect from 7 May 2005 by an amendment of the act.

Test check of the records of the Sub Registrar-VIII and XII Haveli, Pune, between April 2006 and July 2006 indicated that in five instruments, the first developer transferred development rights acquired by him from the owner to the second developer. The department levied stamp duty at the rate of one *per cent* instead of three *per cent*, though these instruments were executed and registered prior to 7 May 2005. This resulted in short levy of stamp duty of Rs. 63.74 lakh.

The matter was reported to the Government in November 2009; their reply has not been received (November 2009).

3.3.5 Short levy of stamp duty on mortgage deed

Under the provisions of Bombay Stamp Act, 1958 when possession of the property or any part of the property comprised in such deed is given by the mortgager or agreed to be given, stamp duty and registration fee is chargeable as same as leviable on conveyance. However, when possession of the property is not given, stamp duty is chargeable five rupees for every one thousand or part thereof for the amount secured by such deed, subject to the minimum of one hundred rupees and the maximum of ten lakh rupees.

During test check of records between December 2007 and April 2008, it was noticed that in following two instruments stamp duty and registration fee of Rs. 29.79 lakh was short levied.

- In Sub-Registrar VIII, Nagpur, an instrument was executed in January 2006 for securing a loan of Rs. 4.68 crore. Since the instrument was a mortgage deed, with the right of possession by the mortgager, stamp duty of Rs. 25.76 lakh at the usual rate was to be levied as against which only Rs. 2.34 lakh was levied. This resulted in short levy of stamp duty of Rs. 23.42 lakh.
- In Sub-Registrar, Wardha, an instrument was executed in January 2006 for securing a loan of Rs. 12.15 crore. Since the document was a mortgage deed, without confirming any right to possession, stamp duty of Rs. 6.07 lakh and registration fee of Rs. 30,000 was leviable, as against which only Rs. 200 was levied. This resulted in short levy of stamp duty and registration fee of Rs. 6.37 lakh.

After the cases were pointed out in December 2007 and April 2008, the department accepted the omission (September 2008 and December 2008) and directed the Sub-Registrars to recover the deficit stamp duty and registration fee. A report on recovery has not been received (November 2009).

The matter was reported to the Government in March 2009; their reply has not been received (November 2009).

3.3.6 Short levy of stamp duty on deed of assignment

Under the provision of Bombay Stamp Act, 1958, in case of instrument 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 or consideration, whichever is higher, which is the subject matter of transfer. Further any charges unpaid or paid due on the same shall be deemed to be part of the consideration.

In Sub-Registrar II, Andheri, Mumbai, an instrument of transfer of lease of land was executed in August 2006, wherein the lease was assigned from assignor to the assignee. Further scrutiny revealed that, as per recital in the instrument gross amount of consideration worked out to Rs. 205.62 crore including Rs. 1.02 crore being 10 *per cent* of the assignment charges which the assignee had undertaken to pay. However, while levying the stamp duty, this was not included and stamp duty of Rs. 10.23 crore was levied on consideration value of Rs. 204.60 crore, which led to short levy of stamp duty of Rs. 5.11 lakh.

After the case was pointed out (April 2007), the Inspector General of Registration, Pune accepted the observation and stated (March/October 2008) that, action has been initiated under the provisions of Bombay Stamp Act, 1958 for recovery. Further report has not been received (November 2009).

The matter was reported to the Government in January 2009; their reply has not been received (November 2009).