

## CHAPTER-III : STAMP DUTY AND REGISTRATION FEES

### 3.1 Introduction

#### 3.1.1 Tax administration

At the apex level, Principal Secretary, Relief and Rehabilitation (R&R) heads the Department. Responsibility for overall administration of stamp duty is entrusted to the Inspector General of Registration (IGR), Pune. He is assisted by 9<sup>1</sup> Deputy Inspectors General of Registration (DIG), Superintendent of Stamps (SOS) at Mumbai, six collector of stamps at Mumbai, 31 Joint District Registrars (JDRs) and 317 Sub-Registrars (SRs).

#### 3.1.2 Trend of receipts

Actual receipts from Stamp Duty and Registration Fee, etc., during the years 2005-06 to 2009-10, alongwith the total tax receipts during the same period is exhibited in the following table:

(Rupees in crore)

Year	Budget estimates	Actual receipts	Variation excess (+)/shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts vis-à-vis total tax receipts
2005-06	4,500.00	5,265.86	(+) 765.86	(+) 17.02	33,540.24	15.70
2006-07	5,600.00	6,415.72	(+) 815.72	(+) 14.57	40,099.24	16.00
2007-08	7,200.00	8,549.57	(+) 1,349.57	(+) 18.74	47,528.41	17.99
2008-09	9,600.00	8,287.63	(-) 1,312.37	(-) 13.67	52,029.94	15.93
2009-10	9,600.00	10,773.65	(+) 1,173.65	(+) 12.23	59,106.33	18.23

As can be seen from the above table, the revenue collection of the State under Stamp duty and Registration Fee increased by 62.36 *per cent* in 2007-08 as compared to 2005-06 and then decreased by three *per cent* in 2008-09 over 2007-08. In 2009-10, the revenue increased by 30 *per cent* over 2008-09.

#### 3.1.3 Impact of Audit Reports

##### Revenue impact

During the last five years, 2004-05 to 2008-09, we had pointed out cases of underassessments/non/short levy/loss of revenue of stamp duty, etc., interest and other irregularities with revenue implication of ₹ 229.28 crore in 560 cases. Of these, the Department had accepted audit observations in 67 cases involving ₹ 11.45 crore and had recovered ₹ 2.45 crore in two cases. The

<sup>1</sup> Including one Dy.IGR, Headquarter at Pune.

details are shown in the following table:

(Rupees in lakh)

Year	Amount objected		Amount accepted		Amount recovered	
	Number of cases	Amount	Number of cases	Amount	Number of cases	Amount
2004-05	22	425.45	17	330.55	1	234.00
2005-06	301	6,016.07	17	266.57	Nil	Nil
2006-07	212	13,570.00	19	220.00	Nil	Nil
2007-08	9	2,582.00	3	56.00	1	11.00
2008-09	16	335.00	11	272.00	Nil	Nil
<b>Total</b>	<b>560</b>	<b>22,928.52</b>	<b>67</b>	<b>1,145.12</b>	<b>2</b>	<b>245.00</b>

**The Government may consider issuing instructions to the Department to recover the amount involved in accepted cases on priority.**

### 3.1.4 Results of audit

We reported underassessment, short levy, non-levy of stamp duty, loss of revenue etc., amounting to ₹ 35.39 crore in 457 cases as shown below, on the basis of test check of records of stamp duty and registration fees conducted during the year 2009-10:

(Rupees in crore)

Sl. No.	Categories	No. of cases	Amount
1.	Non-levy of stamp duty and registration fee	33	3.81
2.	Incorrect grant of exemption of stamp duty and registration fees	20	2.40
3.	Short levy due to misclassification of documents	35	5.10
4.	Short levy due to under valuation of property	364	22.35
5.	Other irregularities	5	1.73
	<b>Total</b>	<b>457</b>	<b>35.39</b>

In response to the observation made in the local audit during the year 2009-10 as well as during earlier years, the department accepted under assessments and other deficiencies involving ₹ 1.07 crore in 204 cases; out of which 16 cases involving ₹ 6.51 lakh were pointed out during 2009-10 and the rest during earlier years.

In one case of irregular remission of stamp duty, after we pointed out the case in June 2008, the Department recovered the full duty of ₹ 77.03 lakh in September 2010.

A few audit observations involving ₹ 4.97 crore are included in the succeeding paragraphs, against which ₹ 2.70 lakh had been recovered upto November 2010.

### **3.2 Audit observations**

*During scrutiny of records of the various registration offices, we noticed several cases of non-compliance of the provisions of the Bombay Stamp Act, 1958, Registration Act, 1908 and Government notifications and instructions and other cases as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on our test check of records. The Government/Department need to improve internal control mechanisms so that such cases can be avoided, detected and corrected.*

### **3.3 Non-compliance of provisions of Acts/Rules**

*The provisions of Bombay Stamp Act, 1958, Registration Act, 1908 and Government notifications and instructions require:-*

- (i) Levy of stamp duty on market value of the property;*
- (ii) levy of registration fee as per the rate prescribed in the table of fee;*
- (iii) levy of stamp duty at prescribed rate; and*
- (iv) levy of stamp duty as per the substance or real nature of transaction.*

*We observed that the registering authorities did not observe some of the above provisions at the time of registration of documents in cases mentioned in the paragraphs 3.3.1 to 3.3.6. This resulted in short levy of stamp duty and registration fee of ₹4.97 crore.*

### 3.3.1 Short levy of stamp duty and registration fee due to undervaluation of property

As per the Bombay Stamp (BS) Act, 1958, stamp duty (SD) and as per the rate prescribed in table of fee to the Registration Act, 1908, registration fee (RF), on conveyance deed is leviable on the true market value of the property. Further, under the provisions of the BS Act, where the lease purports to be for a period exceeding 29 years, then SD&RF is leviable on instrument of lease as conveyance on 90 *per cent* of the market value (MV). The market value (MV) of open developed land is calculated as per potential/ consumed Floor Space Index (FSI). Moreover, when several instruments are used in a single transaction SD is leviable only on the principal instrument. The market value of the property is worked out by applying the rates of the ready reckoner applicable to the area in which the property is situated.

During test check of the records, we found that undervaluation of the property resulted in short levy of SD&RF of ₹ 4.05 crore. The details are mentioned in the following table :

Sl. No.	O/o the SR/ JSR	SD& RF Levied (₹ in lakh)	SD&RF leviable (₹ in lakh)	SD&RF short levied (₹ in lakh)	Irregularities in brief.
1.	JSR. City-II, Mumbai	5.00	323.00	318.00	The duty was levied considering market value of ₹ One crore without considering the incentive FSI of 2.5 as well as market valuation of tenanted property whereas correct market value of the property conveyed was to be ₹ 64.60 crore.
2.	JSR, City-II, Mumbai	26.66	57.90	31.24	On eight instruments of conveyance deeds the duty was levied considering market value of ₹ 5.26 crore whereas correct market value of the property conveyed was ₹ 11.58 crore.
3.	SR-VII Haveli, Pune	265.00	289.00	24.00	On the instrument of agreement deed the duty was levied considering market value of ₹ 50 crore whereas correct market value of the property conveyed worked out to ₹ 57.89 crore as per the ready reckoner.
4.	JSR. City-II, Nanded	10.22	24.90	14.68	On 10 instruments of conveyance deeds, the duty and fee was levied considering market value of ₹ 1.89 crore whereas correct market value of the properties conveyed worked out to ₹ 4.82 crore as per the ready reckoner.

5.	SR-V, Thane	5.68	17.30	11.62	The duty was levied considering market value of ₹ 1.14 crore whereas correct market value of the property conveyed worked out to ₹ 3.46 crore as per the ready reckoner.
6.	SR, Roha, District Raigarh	0.52	6.46	5.94	On the instrument of lease deed for 15 years, further renewable by 15 years, the duty and fee was levied considering market value of ₹ 14.73 lakh whereas correct market value of the property was ₹ 2.28 crore as per the ready reckoner.
<b>Total</b>		<b>313.08</b>	<b>718.56</b>	<b>405.48</b>	

After we pointed out these cases (between May 2008 to June 2010), the Department accepted the omissions and recovered an amount of ₹ 2.70 lakh in one case in respect of case at Sl. No. 4 of the table. Further report on recovery is awaited in the cases pointed above (November 2010).

We reported the matter to the Government (between February to June 2010); their reply is awaited.

### 3.3.2 Incorrect application of rate of stamp duty resulted in short levy of stamp duty

#### Sub Registrar II, Kurla, Mumbai and Jt. Sub Registrar, City - I, Mumbai

Under the provisions of the Bombay Stamp (BS) Act, 1958, an agreement to sell wherein the possession of any immovable property is transferred to the purchaser shall be deemed to be a conveyance and stamp duty thereon shall be leviable at the rate applicable at the time of execution of the agreement.

During test check of the records of **Sub Registrar II, Kurla, Mumbai** in March 2007, we noticed that an instrument of conveyance was executed in March 2006 and stamp duty of ₹ 45.47 lakh was levied on the market value of ₹ 9.09 crore at the rate of 5 per cent prevalent in the year 2006. However, the agreement to sale had already been executed on 16 September 2002 which attracted stamp duty of ₹ 72.33 lakh at the Slab rate<sup>2</sup> of the BS Act applicable at the time of

execution of agreement to sale as the possession was transferred to the purchaser in December 2002. Thus, incorrect application of rate of stamp duty resulted in short levy of stamp duty of ₹ 26.86 lakh.

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Slab	Rates
Upto Rs. 1,00,000/-	- Nil -
Between Rs. 1,00,000 and Rs. 2,50,000	0.5 per cent of the value
Between Rs. 2,50,001 and Rs. 5,00,000	3 per cent of the value
Between Rs. 5,00,001 and Rs. 10,00,000	6 per cent of the value
Above Rs. 10,00,000	8 per cent of the value

Similarly, in case of **Joint Sub Registrar, City - I, Mumbai** during test check of the records in November 2007 we noticed that an instrument of sale deed executed in February 2006 and stamp duty of ₹ 5.49 lakh was levied on the market value of ₹ 1.09 crore at the rate of five *per cent* prevalent in the year 2006 instead of ₹ 10.99 lakh leviable at the rate of 10 *per cent* applicable at the time of agreement to sell which was executed on 27 February 2003. Possession was transferred to the purchaser in April 2003, itself. This resulted in short levy of stamp duty to the extent of ₹ 5.49 lakh.

Thus, incorrect application of rate of stamp duty in the above two cases resulted in short levy of stamp duty of ₹ 32.35 lakh.

After we pointed out these cases, the Inspector General of Registration (IGR), Pune accepted (March 2009 and May 2010) the omission. A report on recovery is awaited (November 2010).

The matter was reported to the Government in April and June 2010; their reply is awaited (November 2010).

### 3.3.3 Incorrect application of market value resulted in short levy of stamp duty

#### Sub Registrar City-I, Mumbai

Under the provisions of the Bombay Stamp Act, 1958, where the lease purports to be for a period exceeding twenty nine years, then stamp duty (SD) is leviable on instrument of lease as conveyance on 90 *per cent* of the market value (MV). The market value (MV) of open developed land is calculated as per potential/consumed Floor Space Index (FSI). Further, when several instruments are used in a single transaction SD is leviable only on the principal instrument.

During scrutiny of records in February 2009, we noticed that an instrument of lease was executed (January 2007) for demise of land admeasuring 1000 square meters (Sq M) for a period of 30 years. The market value of the land was calculated at ₹ 15.32 crore by considering the FSI of 1.33 and SD of ₹ 68.96 lakh was levied on 90 *per cent* of market value

i.e. on ₹ 13.79 crore including the SD of ₹ 17.10 lakh paid on the development agreement executed earlier (March 1995) by treating the present lease deed as the principal instrument. We noticed from the instrument that the lessee had constructed a building by consuming floor space index of 1793.68 Sq M. based on which, the market value of land worked out to ₹ 20.66 crore. Thus SD of ₹ 92.98 lakh was leviable on 90 *per cent* of MV i.e. on ₹ 18.60 crore, which resulted in short recovery of SD of ₹ 24.02 lakh.

After we pointed out the case, the Inspector General of Registration (IGR), Pune accepted (August 2009) the omission. A report on recovery is awaited (November 2010).

The matter was reported to the Government in May 2010; their reply is awaited (November 2010).

### **3.3.4 Incorrect application of rate of stamp duty resulted in short levy of stamp duty**

#### **Sub Registrar Haveli XV, Pune**

Under the provisions of the Bombay Stamp (BS) Act, 1958, stamp duty at the rate of five *per cent* is leviable on conveyance when the property is situated within the Municipal Corporation limits

During test check of records in May 2008, we noticed that in an instrument of Sale deed, stamp duty of ₹ 12.15 lakh was levied on market value of ₹ 6.36 crore instead of ₹ 31.77 lakh leviable at the rate of five *per cent* as the property was situated at Sangamwadi which is within the Municipal Corporation limits of Pune. Incorrect application of rate of stamp duty resulted in short levy of stamp duty of ₹ 19.62 lakh.

After we pointed out the case, the Joint District Registrar, Pune City accepted the omission and referred the case to the Inspector General of Registration, Pune for reconsideration under Section 53 A of the BS Act, 1958. A report on recovery is awaited (November 2010).

The matter was reported to the Government in March 2010; their reply is awaited (November 2010).

### **3.3.5 Short levy of stamp duty due to incorrect application of rate**

#### **Sub Registrar, Haveli - II, Pune**

As per the provisions of the Bombay Stamp Act, 1958, stamp duty on development agreement is leviable at the rate of one *per cent* whereas transfer of development rights (TDR) is treated as movable property and stamp duty is leviable at the rate of three *per cent* on the consideration.

During test check of the records in October 2007, we noticed that an instrument of development agreement was executed and stamp duty of ₹ 7 lakh was levied on the consideration of ₹ 7 crore at the rate of one *per cent*. Further, scrutiny revealed that the development agreement also involved the TDR of 67,400 sq ft and consideration of ₹ 4.72 crore was paid on which stamp duty was levied at the rate of one *per cent* instead of leviable three *per cent* which resulted in short levy of stamp duty of ₹ 9.44 lakh.

After we pointed out the case (November 2007), the Inspector General of Registration (IGR), Pune accepted (April 2010) the omission. A report on recovery is awaited (November 2010).

The matter was reported to the Government in June 2010; their reply is awaited (November 2010).

### 3.3.6 Short levy of stamp duty due to misclassification of instrument

#### Sub Registrar–XII, Haveli, Pune

Under the provisions of the Bombay Stamp Act, 1958, 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 scrutiny of records in June 2008, we noticed that for an instrument of conveyance executed (March 2007) for a consideration of ₹ 1.48 crore, stamp duty of ₹ 7.41 lakh was leviable at the rate of five *per cent*. However, the Sub Registrar treated the instrument as a development agreement and accordingly levied stamp duty of ₹ 1.48 lakh at the rate of one *per cent*. Thus, misclassification of the instrument of conveyance as development agreement resulted in

short levy of stamp duty of ₹ 5.93 lakh.

After we pointed out the case, the Joint District Registrar, Pune (City) accepted (December 2008) the omission and directed the Sub Registrar to recover the deficit of stamp duty. A report on recovery is awaited (November 2010).

The matter was reported to the Government in April 2010; their reply is awaited (November 2010).