

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 9¹ Deputy Inspectors General of Registration (DIG), Superintendent of Stamps (SOS) at Mumbai, six Collectors of Stamps at Mumbai, 31 Joint District Registrars (JDRs) and 377 Sub-Registrars (SRs).

3.1.2 Trend of receipts

Actual receipts from Stamp Duty and Registration Fee, etc., during the years 2006-07 to 2010-11 along with the total tax receipts during the same period is exhibited in the following table.

(₹ 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
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
2010-11	10,478.86	13,515.99	(+) 3,037.13	(+) 28.98	75,027.10	18.01

As can be seen from the above table, the revenue collection of the State under Stamp duty and Registration Fee increased by 29.17 *per cent* in 2008-09 as compared to 2006-07 and further increased by 30 *per cent* in 2009-10 over 2008-09. In 2010-11, the revenue increased by 25.45 *per cent* over 2009-10.

3.1.3 Cost of collection

The gross collection in respect of Stamp duty and Registration Fee, the expenditure incurred on their collection and the percentage of such expenditure to the gross collection during the years 2008-09, 2009-10 and 2010-11 along with the relevant all India average percentage of expenditure on collection to gross collection for the year 2009-10 are given in the following table:

¹ Including one Dy.IGR, Headquarter at Pune.

(₹ in crore)

Sl. No.	Head of revenue	Year	Gross collection ²	Expenditure on collection	Percentage of expenditure to gross collection	All India average percentage of the preceding year
1.	Stamp duty and Registration Fee	2008-09	8,287.63	88	1.06	2.09
		2009-10	10,773.65	105	0.97	2.77
		2010-11	13,515.99	100	0.74	2.47

As seen from the above, the cost of collection in the State of Maharashtra, during the periods 2008-09 to 2010-11 is less as compared to the all India average for the year 2009-10.

3.1.4 Impact of audit reports

Revenue impact

During the last five years, 2005-06 to 2009-10, we had pointed out in our Audit Reports cases of under assessments/non/short levy/loss of revenue of stamp duty, etc., interest and other irregularities with revenue implication of ₹ 230 crore in 566 cases. Of these, the Department had accepted audit observations in 78 cases involving ₹ 13.11 crore and had recovered ₹ 0.14 crore in two cases. The details are shown in the following table:

(₹ in lakh)

Year	Amount objected		Amount accepted		Amount recovered	
	Number of cases	Amount	Number of cases	Amount	Number of cases	Amount
2005-06	301	6016.07	17	266.57	Nil	Nil
2006-07	212	13570.00	19	220.00	Nil	Nil
2007-08	9	2582.00	3	56.00	1	11.00
2008-09	16	335.00	11	272.00	Nil	Nil
2009-10	28	496.84	28	496.84	1	2.70
Total	566	22999.91	78	1311.41	2	13.70

As would be seen from the above the amount recovered is only one *per cent* of the amount of the accepted cases. The Department needs to take effective steps to recover the amount at least in those cases which have been accepted by the Department.

We recommend that the Government may consider issuing instructions to the Department for effecting recoveries at least in those cases which have been accepted by the Department.

² Figures as per Finance Accounts

3.1.5 Results of audit

We reported underassessment, short levy, non-levy of stamp duty, loss of revenue etc., amounting to ₹ 13.75crore in 379 cases as shown below, on the basis of test check of records of stamp duty and registration fees conducted during the year 2010-11:

(₹ in crore)			
Sr. No	Categories	No. of cases	Amount
1	Short levy due to under valuation of property	322	9.28
2	Short levy due to misclassification of documents	30	3.14
3	Incorrect grant of exemption of stamp duty and registration fees	19	1.18
4	Non-levy of stamp duty and registration fee.	7	0.12
5	Other irregularities	1	0.03
Total		379	13.75

In response to the observation made in the local audit through Inspection Reports during the year 2010-11 as well as during earlier years, the department accepted and recovered short levy and other deficiencies involving ₹ 84.10 lakh in 113 cases, of which 9 cases involving ₹ 1.78 lakh were pointed out during 2010-11 and rest during earlier years.

A few audit observations involving ₹ 5.18 crore are included in the succeeding paragraphs, against which ₹ 16.85 lakh has been recovered up to October 2011.

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 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-observance of provisions of Acts/Rules

The provisions of the Bombay Stamp Act, 1958 and Government notifications and instructions require:-

- i. Levy of stamp duty on market value of property;*
- ii. levy of stamp duty at prescribed rate; and*
- iii. levy of stamp duty as per the substance and 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 paragraphs 3.3.1 to 3.3.7. This resulted in short levy of stamp duty of ₹ 5.18 crore.

3.3.1 Short levy of stamp duty due to undervaluation of property

As per the provisions of Bombay Stamp Act (BS Act), 1958, stamp duty (SD) on conveyance deed is leviable on the true market value of the property. Further, under the provisions of BS Act, an agreement relating to giving authority or power to a promoter or a developer by whatever name called for construction on, development of or, sale or transfer of any immovable property, the stamp duty is chargeable at the rate of one *per cent* on the market value of property. BS Act further provides that where the lease including sub-lease is for a period exceeding twenty nine years, with a renewal clause contingent or otherwise, stamp duty is leviable as on conveyance, on 90 *per cent* of market value of the property. 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. In respect of members of co-operative society, stamp duty is chargeable at concessional rate.

During test check of the records, we found that undervaluation of the property resulted in short levy of stamp duty of ₹ 2.82 crore. The details are mentioned in the following table:

Sl. No	Name of the office	SD levied (₹ in lakh)	SD leviable (₹ in lakh)	SD short levied (₹ in lakh)	Irregularities in brief
1.	Joint Sub Registrar-II, Borivali, Mumbai and Joint Sub-Registrar -I, Andheri, Mumbai	61.99	187.21	125.22	On two instruments of conveyance, one assignment deed and one development agreement, the duty was levied considering market value of ₹ 17.88 crore whereas correct market value based on rates prescribed in ready reckoner applicable to the area in which the property is situated was ₹ 50.78 crore.
2.	Joint Sub Registrar, City-II, Mumbai	234.37	325.06	90.69	On an instrument of sub-lease for multiplex cinema situated in Phoenix Mills compound, Lower Parel Division, Mumbai for a period of nine hundred years, the duty was levied considering market value of property of ₹ 46.88 crore whereas correct market value based on rates prescribed in ready reckoner and the zone in which the property is situated was ₹ 72.23 crore.
3.	Sub Registrar-II, Thane	55.01	87.34	32.33	On two instruments of lease for a period of 25 years with renewal clause for a further period of 25 years, duty was levied on 90 per cent of market value of ₹ 11 crore whereas the correct market value based on rates prescribed in ready reckoner applicable to the area in which the property is situated was ₹ 19.41 crore.
4.	Joint Sub Registrar, Kurla-I, Chembur, Mumbai	67.79	91.74	23.95	On an instrument of conveyance, the duty was levied considering market value of ₹ 13.55 crore whereas correct market value based on rates prescribed in ready reckoner and the zone in which the property is situated was ₹ 18.35 crore.
5.	Joint Sub Registrar, Andheri -III, Mumbai	2.25	12.35	10.10	On an instrument of conveyance deed, the duty was levied considering market value of ₹ 45 lakh whereas correct market value based on rates prescribed in ready reckoner and the zone in which the property is situated was ₹ 2.47 crore.
Total		421.41	703.70	282.29	

After we pointed out these cases (between May 2005 and December 2009), the department accepted (between December 2009 and November 2010) the omissions and directed to recover the deficit SD. In one case (Sl. No. 2) the Department stated that after issue of notice the party has approached the High Court for relief. In one case (Sl. No. 5) amount was recovered at our instance. In remaining cases report on recovery has not been received (February 2012).

The matter was reported to the Government in May and June 2011; their reply has not been received (February 2012).

3.3.2 Short levy of stamp duty due to non-consideration of value of movable property

Sub Registrar Paithan, District Aurangabad

As per the provisions of Bombay Stamp Act, 1958, stamp duty on conveyance deed of movable and immovable property is leviable at the rate of three and four *per cent* respectively on the true market value of the property.

During test check of records in July 2008, we noticed that an instrument of conveyance was executed in

December 2007 and SD of ₹ 31.93 lakh was levied on consideration of ₹ 7.98 crore. However, an Agreement to transfer business at village Chitegaon, Taluka Paithan, District Aurangabad had been executed and notarised in October 2007 and SD of ₹ 4.41 lakh was paid. We noticed that the value of movable and immovable assets as per this agreement was ₹ 36.21 crore and ₹ 7.98 crore respectively on which SD of ₹ 1.09 crore and ₹ 31.93 lakh respectively was leviable. The adjudicating authority while valuing stamp duty completely ignored the value of the movable assets as per the Agreement. We saw that a letter from the Income Tax Department was available with the Agreement which showed the gross value of the assets. Failure to adopt the value of the movable assets resulted in undervaluation of property and consequent short levy of SD of ₹ 1.04 crore.

After we pointed out the case, the Deputy Inspector General of Registration and Deputy Controller of Stamps, Aurangabad accepted the omission in March 2010. He further stated (August 2011) that after issue of notice the party has approached the High Court for relief.

We reported the matter to the Government in May 2011; their reply has not been received (February 2012).

3.3.3 Short levy of stamp duty due to misclassification of instrument

Joint Sub Registrar, City-II, Mumbai

Under the provisions of Maharashtra Registration Manual, part-II, to classify an instrument as development agreement, the presence of inherent power to sell the units constructed by the developer is essential. Further, as per the provisions of Bombay Stamp Act, 1958, on instrument of exchange of property and development agreements, stamp duty is leviable at the rate of five and one *per cent* respectively on the market value of property. In exchange of property, stamp duty is leviable on market value of the property of the greatest value.

During the test check of records in April 2008 we noticed that, an agreement for development was executed in August 2007 for constructing additional upper floors on existing building by utilising additional floor space index. Stamp duty of ₹ 10.96 lakh was levied on market value of ₹ 10.96 crore treating the instrument as development

agreement though the inherent power to sell the units constructed by the developer was not present. The additional floors constructed by the developer were to be handed over to the owner and in exchange, the owner would sub-lease three floors of the existing building to the developer. Hence, the instrument should have been classified as exchange deed instead of development agreement and stamp duty of ₹ 79.13 lakh was leviable on the market value of the property of the greatest value amounting ₹ 15.83 crore. Thus, misclassification of instrument led to short levy of stamp duty of ₹ 68.16 lakh.

After we pointed out (June 2008), the Inspector General of Registration (IGR), Pune accepted the omission in August 2010 and directed the Collector of Stamps, Mumbai to recover the stamp duty. A demand notice for recovery of deficit stamp duty of ₹ 68.16 lakh was issued in September 2010. The report on realisation of deficit stamp duty has not been received (February 2012).

The matter was reported to the Government in May 2011; their reply has not been received (February 2012).

3.3.4 Irregular remission of stamp duty

Sub Registrar, Haveli XI, Pune

The Government of Maharashtra under notification dated 29th December 2003 remits 75 per cent stamp duty on instrument of lease executed by Information Technology (IT) units for starting new unit in private sector IT Park. For the purpose of this remission, an IT unit means units certified by the Development Commissioner (Industries) or any other officer authorised by him in this behalf.

During test check of records in March 2008 we noticed that the Joint District Registrar, Pune granted remission of 75 per cent of stamp duty on

three instruments of agreement treating them IT units. However, it was observed from the main objects of the company mentioned in the Memorandum of Association, attached with the documents, that the purchasing companies were not IT units. Hence, remission of 75 per cent stamp duty amounting to ₹ 29.78 lakh worked out on market value of ₹ 7.94 crore was irregular resulting in short levy of stamp duty of ₹ 29.78 lakh.

After we pointed out in March 2008, the Joint District Registrar and Collector of stamps, Pune (December, 2008) accepted the omission. A report of recovery had not been received (February 2012).

We reported to the Government in May 2011; their reply has not been received (February 2012).

3.3.5 Short levy due to non-follow of the Departmental instructions

Sub Registrar City-II, Mumbai

As per the provision of Bombay Stamp Act, 1958, if an agreement is executed relating to giving authority or power to a promoter or a developer by whatever name called, for construction on, development of or, sale or transfer of any immovable property, the stamp duty is chargeable at the rate of one *per cent* on the market value of property. Further, under the instruction of the Maharashtra Registration Manual, Part-II where the developer offer to allot residential/non-residential components to the owner in lieu of the development rights, the value of residential/non-residential components should be calculated according to the prevailing rates prescribed in the statistics on the day of the Agreement and the duty and fees should be levied on the greater of the two values viz. the value of the property or the components.

During test check of records in April 2008, we noticed that the adjudicating authority while valuing property situated at Mahim, Mumbai had not abided by the Departmental instructions mentioned herein. The adjudicating authority had not considered the greater value of residential/non-residential components of ₹ 19.80 crore given by the Developer to the owner in lieu of development rights, for purpose of valuation and levy of stamp duty.

Thus, omission to value according to the departmental instructions led to short levy of stamp duty of ₹ 13.92 lakh.

After we pointed out the case in May 2008, the Inspector General of Registration (IGR), Pune accepted (August 2010) the omission and directed the Collector of Stamp, Mumbai to recover the stamp duty. The report on recovery has not been received (February 2012).

We reported the matter to the Government in May 2011; their reply has not been received (February 2012).

3.3.6 Incorrect grant of exemption of stamp duty

Joint District Registrar, Parbhani.

By a notification dated 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 records in March 2008, we noticed that an instrument of transfer of lease by way of assignment was adjudicated and stamp duty was remitted by the Joint

District Registrar

treating the transaction of land and factory building separately as transfer of lease and conveyance respectively. The separation of transfer of land and

building was incorrect as the property assigned is of land together with the factory building and chargeable to stamp duty under the provisions of Bombay Stamp Act, 1958. This led to incorrect grant of exemption of stamp duty of ₹ 12.70 lakh.

After we pointed out the case, the Inspector General of Registration, Pune accepted the omission in October 2010. The report of recovery is awaited (February 2012).

We reported the matter to the Government in May 2011; their reply has not been received (February 2012).

3.3.7 Short levy of stamp duty due to incorrect classification of instrument

Sub Registrar XII, Haveli, Pune

As per the provisions of Bombay Stamp Act (BS Act), 1958, stamp duty on instrument of partnership deed is leviable at the rate of five *per cent* as on conveyance on the true market value of the property. As per the note below Article 47 of Schedule I of BS Act, 1958, three essential ingredients necessary to determine the existence of partnership are existence of agreement between the parties; agreement to share profit or loss and the business will be carried on by all or any one of them acting for all. All the three elements must be present to conclude that the persons are partners. Stamp duty on instrument of development agreement is leviable at the rate of one *per cent* on true market value of the property.

During test check of records in June 2008, we noticed that a joint venture agreement was executed in December 2006 and stamp duty of ₹ 1.69 lakh was levied at the rate of one *per cent* on the true market value of ₹ 1.69 crore treating the instrument as development agreement. However, as per recitals of document, all the ingredients determining existence of partnership are present in the instrument. The instrument

should have been classified as partnership deed and levied stamp duty of ₹ 8.44 lakh. Thus, incorrect classification of the instrument led to short levy of stamp duty of ₹ 6.75 lakh.

After we pointed out the case in June 2008, the Joint District Registrar and Collector of Stamps, Pune accepted the omission in December 2008. The amount was recovered (October 2010) at our instance.

We have reported the matter to the Government in June 2011.