

***CHAPTER IV***

***STAMP DUTY AND REGISTRATION FEES***

## Executive Summary

Increase in tax collection	In 2010-11 the collection of revenue from stamp duty and registration fees increased by <i>27 per cent</i> over the previous year which was attributed by the Department to increase in sale of non-judicial stamps and increase in registration of documents.
Arrears of revenue	Out of the arrears of ₹ 213.92 crore pending as on 31 March 2011, ₹ 210.11 crore, i.e. <i>98 per cent</i> were covered under the Revenue Recovery Act.
Cost of collection	In all the three years from 2008-09 to 2010-11, the expenditure incurred on collection was more than the all India average cost of collection in the previous years.
Internal audit	There was short fall in the conduct of internal audit in the past few years due to shortage of staff in the internal audit wing. This resultantly had its impact in terms of the weak internal controls in the Department. It also led to the omissions on the part of the registering officers till we conducted our audit.
Results of audit conducted by us in 2010-11	In 2010-11 we test checked the records of 199 units and found undervaluation of duty and other irregularities amounting to ₹ 120.01 crore in 735 cases. The Department accepted under assessments and other deficiencies amounting to ₹ 2.95 crore in 119 cases, out of which, ₹ 1.85 crore involved in seven cases were pointed out during 2010-11 and the rest in earlier years. Out of the above, an amount of ₹ 1.21 crore has been collected.
What we have highlighted in this Chapter	In this chapter we present illustrative audit observations of ₹ 3.48 crore selected from observations like misclassification of instruments, undervaluation of properties, etc. noticed during our test check of records in the registration offices, where we found that the provisions of the Act/Rules were not observed. It is pertinent to mention that though similar omissions have been pointed out by us in earlier years, the Department had not taken corrective action despite these mistakes were apparent from the records made available to us.
Our conclusion	The omissions/mistakes detected by us can be detected in the internal audit. Thus the Department may strengthen the internal audit. As of now the coverage in internal audit is not adequate. It also needs to initiate action to recover the non/short levies and under valuations pointed out by us. The cost of collection in the State is higher than the all India average cost of collection and thus the Department needs to take action to reduce the cost of collection.

## CHAPTER IV

### STAMP DUTY AND REGISTRATION FEES

#### 4.1 Tax administration

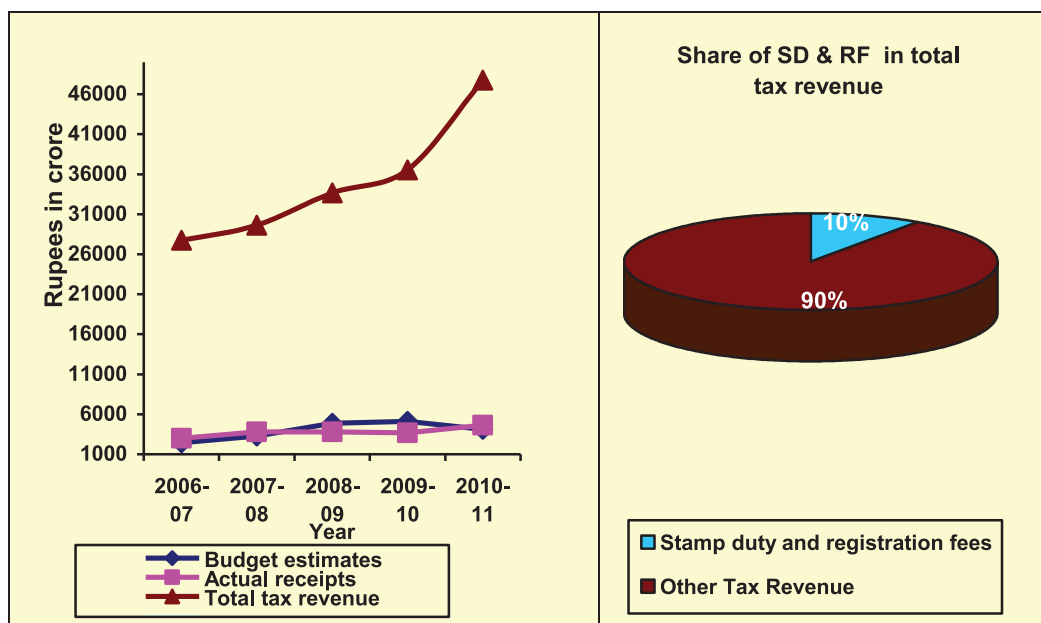
The Registration Department administers the Indian Stamp Act, 1899 and the Registration Act, 1908 and the Rules made thereunder. The administration of the Department is vested with the Inspector General of Registration. There are 50 registration districts comprising 568 registration offices in the State. The levy and collection of stamp duty and registration fees are done by the registering authorities. The monitoring and control at the Government level is done by the Secretary, Commercial Taxes and Registration Department.

#### 4.2 Trend of receipts

Actual receipts from stamp duty and registration fees during the last five years from 2006-07 to 2010-11 along with the total tax receipts during the same period are exhibited in the following table:

(₹ in crore)						
Year	Budget estimates	Actuals	Variation excess (+)/ short fall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts <i>vis-à-vis</i> total tax receipts
2006-07	2,451.65	2,997.46	(+) 545.81	(+) 22	27,771.15	11
2007-08	3,258.88	3,804.74	(+) 545.86	(+) 17	29,619.10	13
2008-09	4,888.90	3,793.68	(-) 1,095.22	(-) 22	33,684.37	11
2009-10	5,093.99	3,662.16	(-) 1,431.83	(-) 28	36,546.66	10
2010-11	4,096.18	4,650.59	(+) 554.41	(+) 14	47,782.17	10

A line graph of budget estimates, actual receipts and total receipts and a pie chart depicting the position of stamp duty and registration fees receipts in the total tax receipts are given in the following page:



In 2010-11 the collection of revenue from stamp duty and registration fees increased by 27 per cent over the previous year which was attributed by the Department to increase in sale of non-judicial stamps and increase in registration of documents.

#### 4.3 Analysis of arrears of revenue

The arrears of revenue as on 31 March 2011 along with the figures for the preceding four years as furnished by the Department are given in the following table:

(₹ in crore)

Year	Opening balance	Addition	Total	Amount collected during the year	Closing balance
2006-07	174.64	107.31	281.95	121.60	160.35
2007-08	160.35	17.99	178.34	29.53	148.81
2008-09	148.81	29.93	178.74	30.86	147.88
2009-10	147.88	65.37	213.25	15.75	197.50
2010-11	197.50	37.15	234.65	20.73	213.92

The arrears as on 31 March 2011 includes ₹ 160.35 crore outstanding for more than five years. Demands amounting to ₹ 210.11 crore were covered under the Revenue Recovery Act. Demands of ₹ 3.81 crore were stayed by the High Court and other judicial authorities.

The above details indicate that substantial amounts were covered under the Revenue Recovery Act and on account of stays granted by the judicial/apellate fora.

**We recommend that special efforts be made to vacate the stay orders and to speed up the cases involved in litigation. We further recommend that the Government may consider fixing targets for collection of old arrears**

in a time bound manner and closely monitor the performance of the Departmental officers *vis-à-vis* the set targets.

#### 4.4 Cost of collection

The gross collection in respect of stamp duty and registration fees, expenditure incurred on collection and percentage of such expenditure to 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 previous years are given in the following table:

(₹ in crore)

Year	Collection	Expenditure on collection of revenue	Percentage of expenditure on collection	All India average percentage for the previous years
2008-09	3,793.68	133.20	3.51	2.58
2009-10	3,662.16	162.10	4.43	2.77
2010-11	4,650.59	177.06	3.81	2.47

The above table indicates that the percentage of expenditure on collection was more than the all India average in all the years.

**The Government needs to take appropriate measures to bring down the cost of collection.**

#### 4.5 Impact of Audit Reports

##### 4.5.1 Revenue impact

During the last five years, we had pointed out through our Audit Reports under valuation of properties, misclassification of instruments and other irregularities, with revenue implication of ₹ 229.44 crore in 27 paragraphs. Of these, the Department/Government had accepted audit observations involving ₹ 33.71 crore and had since recovered ₹ 9.68 crore. The details are shown in the following table:

(₹ in crore)

Year of Audit Report	Paragraphs included		Accepted money value	Amount recovered
	Number	Money value		
2005-06	3	76.66	1.57	1.26
2006-07	3	8.58	8.58	1.00
2007-08	12	42.63	19.72	6.95
2008-09	8	10.73	3.38	0.01
2009-10*	1	90.84	0.46	0.46
<b>Total</b>	<b>27</b>	<b>229.44</b>	<b>33.71</b>	<b>9.68</b>

\* Stand alone report on Registration Department.

**The Government may institute a mechanism to monitor the position of recoveries pointed out in the Audit Reports and take necessary steps for early collection.**

#### **4.6 Working of internal audit wing**

The details of the number of offices due for internal audit and those completed, as furnished by the Department are given in the following table:

Year	Number of offices due	Number of offices completed	Balance	Percentage of col.3 to 2
1	2	3	4	5
2006-07	726	726	----	100
2007-08	832	832	----	100
2008-09	881	859	22	97.50
2009-10	1,005	879	126	87.46
2010-11	991	563	428	56.81

The Department attributed the reasons for shortfall in conducting internal audit to vacancy in staff strength and stated that special audit for cases handled by officials who were retiring and in respect of cases which would become time barred were only being conducted by engaging other registering officers. It was further stated that the vacancies have since been filled up and the arrears would be minimised in future.

#### **4.7 Results of Audit**

We test checked the records of 199 Departmental offices during the period from April 2010 to March 2011 and found undervaluation of properties, misclassification of instruments and other irregularities amounting to ₹ 120.01 crore in 735 cases, which broadly fall under the following categories.

Sl. No.	Category	No. of cases	(₹ in crore)
			Amount
1	Undervaluation of properties	199	48.06
2	Misclassification of instruments	428	67.02
3	Other observations	108	4.93
<b>Total</b>		<b>735</b>	<b>120.01</b>

During the course of the year 2010-11, the Department accepted under assessments and other deficiencies amounting to ₹ 2.95 crore in 119 cases, out of which ₹ 1.85 crore involved in seven cases were pointed out during the year and the rest in earlier years. Out of the above, an amount of ₹ 1.21 crore has been collected.

A few illustrative cases involving ₹ 3.48 crore are mentioned in the following paragraphs:

#### 4.8 Audit observations

*We test checked the records in the offices of the Registration Department relating to revenue received from stamp duty and registration fee and noticed several cases of non-observance of the provisions of the Acts/Rules resulting in non/short levy of duty, fees and other cases as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and based on test checks carried out by us. Although such omissions are pointed out every year, the irregularities persist and remain undetected till the next audit is conducted. There is need for the Government to consider directing the Department to improve the internal control systems including strengthening of internal audit so that such omissions can be avoided, detected and corrected.*

#### 4.9 Non-compliance of the provisions of the Acts/Rules

*The provisions of the Indian Stamp Act, 1899, Indian Registration Act, 1908 and Rules made thereunder require payment of stamp duty and registration fee at the time of executing and registering the documents viz., conveyance deed, lease deed, mortgage deed etc., as per the rates prescribed in the schedule to the Act.*

*We noticed non-compliance of the provisions of the Act/Rules in some cases as mentioned in paragraphs 4.9.1 to 4.9.5 which resulted in non/short realisation of ₹3.48 crore.*

##### 4.9.1 Misclassification of instruments

As per Article 17 of Schedule-I to the Indian Stamp Act, 1899 on an instrument of cancellation, if attested and not otherwise provided for, stamp duty is leviable at ₹ 50. As per Article 23, on an instrument of conveyance, stamp duty at eight *per cent*, is leviable on the market value of the property. In addition, registration fee at one *per cent* is also leviable.

It was judicially held<sup>38</sup> that there can be no such thing as cancellation of a conveyance under which right to a property has already been passed. Property can be retransferred only by a conveyance. Further, it was also held<sup>39</sup> by the Hon'ble Madras High Court that once the title to the property is vested in the transferee by sale of the property, it cannot be divested unto the transferor by execution and registration of a deed of cancellation even with the consent of the parties. The proper

course would be to reconvey the property by a deed of conveyance by the transferee in favour of the transferor.

<sup>38</sup> cf Emperor Vs Rameshardoss 32 All 171 SIC 697 Ref Page 514 of an Executive Commentary on the Indian Stamp Act, 1899 by K. Krishnamurthy – Seventh Edition 1997

<sup>39</sup> Latif Estate Line India Ltd., Vs.The Sub Registrar, Ambattur (WA No.592 of 2009)

We observed during test check of the documents in Sub Registry, Sriperumbudur (April 2009) and Joint-II Sub Registry, Coimbatore (July 2010) that six sale deeds executed and registered between October 2006 and November 2007 were cancelled between May 2007 and June 2009. Though conveyance was made by receiving full consideration and handing over the possession of the properties as per the original sale deeds, the cancellation deeds were executed stating that the possession of the properties was not handed over to the buyers in five cases and without any reason in one case. Further, the properties were conveyed subsequently to other buyers for a total consideration of ₹ 1.85 crore.

Since, through the cancellation deeds, the right and interest over the properties were re-acquired by the original vendors, the same were to be treated as conveyance deeds. Accordingly, stamp duty and registration fees to the tune of ₹ 16.60 lakh was leviable on the market value of the properties i.e., ₹ 1.85 crore, set forth in the subsequent sale deeds.

After we pointed this out to the Department (August 2010) and to the Government (May 2011), the Government replied (October 2011) that Article 17 provides for cancellation and also quoted a judicial decision that there can be no such thing as cancellation of a conveyance under which right of property has already been passed and property can be retransferred only by a reconveyance. There are no recitals in the instruments about retransfer of the properties.

The reply is not acceptable as cancellation of conveyance deed was not correct as the conveyance was completed by receipt of value of the property and handing over the possession as is evidenced from the documents registered. The route of cancellation deed was adopted to avoid the payment of stamp duty only and the concerned SR did not follow the court judgment and codal provisions at the time of registration of cancellation deeds. Further, retransfer was done as the properties were resold subsequent to the registration of the cancellation deeds. We are awaiting further report (December 2011).

We reported the matter to the Government in May 2011 and are awaiting their reply (December 2011).



#### 4.9.2 Incorrect exemption to societies

According to the second proviso of the notification dated 29 June, 1966, issued under the Co-Operative Societies Act, remission of stamp duty chargeable under the Indian Stamp Act is 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.

We observed during test check of the documents in the offices of the Joint-II Sub Registry, Chingleput and Sub Registry, Perianaickanpalayam (November/December 2010), that through 23 conveyance deeds registered between April 2009 and March 2010, 3.49 lakh sq.ft of developed house sites was conveyed in favour of two co-operative housing

societies by persons who became members of the societies in the years 2008 and 2009. These two societies were exempted from the payment of stamp duty of ₹ 1.49 crore leviable on the market value of ₹ 18.61 crore set forth in the documents. As the period of membership of the vendors was less than two years as on the date of execution of documents, the above sale deeds executed in favour of the co-operative societies were not eligible for remission of stamp duty. This resulted in non-realisation of stamp duty of ₹ 1.49 crore.

After we pointed this out to the Department in December 2010 and to the Government in February/March 2011, the Government replied (October 2011) that the period of two years was applicable only in the case of a co-operative house construction society. Since the society in the instant case was a co-operative housing society, the condition of two years would not be applicable. The reply of the Department is not tenable since the second proviso of the notification clearly indicates that exemption is admissible to those members who are in continuous membership of two years or more and is applicable to all the registered societies and not to the house construction societies alone. We await further report (December 2011).

### 4.9.3 Incorrect exemption from levy of stamp duty

According to Article 35(c) of the Indian Stamp Act, when the period of lease is thirty years and above and upto ninety nine years, stamp duty is leviable at four *per cent* of the amount of premium paid and the registration fees payable is ₹ 5,000.

The Government of Tamil Nadu in G.O. Ms.No.96 dated 20 May 2004 ordered that all industrial units and their expansions to be located in the Special Economic Zones (SEZ) are exempted from payment of stamp duty and registration fees towards land transactions.

We observed during test check of the documents in the office of the Joint-II Sub-Registry, Chingleput during November 2010 that 128.95 acres of land situated in two villages<sup>40</sup> was leased out by a developer to a software company for a period of 94 years in July 2009. The lease deed was registered (July 2009) on receiving a non-refundable premium of ₹ 16.12 crore. The deed was exempted from payment of stamp duty and registration fees considering that the entire land was situated in the SEZ notified by the Government of India.

However, on scrutiny of the lease deed and the relevant notifications of the Government of India, we noticed that land measuring 16.67 acres in various survey numbers out of 128.95 acres leased, was not declared as SEZ though they were situated in the aforementioned villages. Therefore, the exemption granted for the land not situated in the SEZ was not in order and stamp duty and registration fees had to be levied on ₹ 2.08 crore being the proportionate amount of non-refundable premium paid. The incorrect exemption resulted in non-levy of stamp duty and registration fees of ₹ 8.39 lakh.

After we pointed this out in December 2010, the Department stated that notice would be issued to the parties to collect the deficit amount and the result intimated to audit.

We reported the matter to the Government (March 2011) and are awaiting their reply (December 2011).

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<sup>40</sup> Thenmelpakkam and Veerapuram.

#### 4.9.4 Short levy of stamp duty on lease deeds

According to Article 35(a) of the Schedule-I to the Indian Stamp Act 1899, as applicable in the State of Tamil Nadu, the stamp duty payable on an instrument of lease where the period is below thirty years is one *per cent* on the amount of rent, fine, premium or advance, if any, payable.

We observed during test check of the documents in Sub Registry, Thiruthuraipoondy (March 2010), that through two lease deeds, lands measuring 33,136 sq.ft and 43,600 sq.ft with buildings were leased out on a monthly rent of ₹ 2 per sq.ft and ₹ 0.50 per sq.ft for 25 and 29 years respectively and the lease rent would be increased by 10 *per cent* each year. Our scrutiny of documents

indicated that stamp duty was levied on advance of ₹ 3 lakh and rent for the period of lease alone without considering the enhancement of rent at the rate of 10 *per cent* per year over the rent of the previous year. Thus, the correct stamp duty leviable, taking into account the enhancement of lease rent, works out to ₹ 11.74 lakh as against ₹ 2.79 lakh collected. This resulted in short levy of stamp duty of ₹ 8.95 lakh.

After we pointed this out (March 2010), the registering authority agreed (March 2010) to collect the amount. We await further reply (December 2011).

We reported the matter to the Government (May 2011) and are awaiting their reply (December 2011).

#### **4.9.5 Excess allocation of transfer duty surcharge**

According to Section 94 of the Tamil Nadu Urban Local Bodies Act, 1998 and Section 175 of the Tamil Nadu Panchayat Act, 1994, duty shall be levied on the following classes of transfer of immovable property in the form of surcharge on the duty imposed under the Indian Stamp Act, 1899 viz., sale, exchange, gift, mortgage with possession and lease in perpetuity. It shall be levied and collected at the rate of two *per cent* on the market value of the property transferred and subsequently allocated to the concerned local bodies.

We observed during test check of the surcharge register and monthly periodicals in District Registry (Madurai South) and five Sub Registries<sup>41</sup> between May 2010 and March 2011, that though a sum of ₹ 35.46 lakh only was collected towards transfer duty surcharge, ₹ 2.01 crore was allocated to local bodies either due to incorrect entries in the transfer duty surcharge register or because allocation was made in respect of ineligible documents<sup>42</sup>. This resulted in excess allocation of ₹ 1.65 crore to local bodies out of the revenue due to Government.

After we pointed this out (between May 2010 and March 2011), the registering authorities (Madurai-South and Arakandanallur) replied (March/April 2011) that a sum of ₹ 23.59 lakh has been adjusted. We await further report in respect of other cases (December 2011).

We reported the matter to the Government in February and March 2011 and are awaiting their reply (December 2011).

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<sup>41</sup> SR, Adyar, Alandur, Aragandanallur, Avarapakkam and Jt II SR Tiruppur.

<sup>42</sup> The documents namely “release, settlement, mortgage, and deposit of title deeds” are not eligible for transfer duty surcharge.