

CHAPTER V

EXECUTIVE SUMMARY

Substantial increase in tax collection	In 2010-11, the collections of stamp duty and registration fees increased by 43.40 <i>per cent</i> over the previous year which was attributed by the Department to inflation and steep rise in value of properties.
Internal audit not conducted	As per the information furnished by the Department, 758 Sub-Registrar offices were to be inspected for the period 2006 to 2010. Inspectors of Registration covered 260 inspections resulting in shortfall of 498 inspections. Pendency of units to be audited was very high and as such, the very purpose of internal audit was defeated.
Very low recovery by the Department of observations pointed out by us in earlier years	During the last five years, audit through its audit reports had pointed out non/short levy, non/short realisation, underassessment/loss of revenue, application of incorrect rate of stamp duty, incorrect computation etc., with revenue implication of ₹ 295.02 crore in 47 paragraphs. Of these, the Department/Government accepted audit observations in 13 paragraphs involving ₹ 11.55 crore and had recovered ₹ 1.37 crore. Recovery in accepted cases was very low (11.86 <i>per cent</i> of the accepted money value).
Results of audits conducted by us in 2010-11	Test check of records of offices of the Collectors of Stamp Duty (Valuation of Property) and Sub-Registrar Offices in the State during the year 2010-11 revealed short realisation of stamp duty and registration fees and other irregularities involving ₹ 627.56 crore in 480 cases. During the year 2010-11, the Department accepted underassessment and other irregularities of ₹ 17.78 crore in 20 cases. An amount of ₹ 30.87 lakh was realised in 16 cases during the year 2010-11.
What we have highlighted in this Chapter	<p>A Performance Audit on “Levy and Collection of Stamp Duty and Registration Fees” revealed the following:</p> <ul style="list-style-type: none"> • No time limit was prescribed by the Department for finalisation of valuation cases referred to Dy. Collectors (Stamp Duty Valuation Office) under Section 32A of Bombay Stamp Act, 1958. This resulted in pendency of 53,093 cases presented for registration during the period from 1-4-2000 to 31-3-2010 and blocking of revenue of ₹ 49.35 crore. • Non levy of stamp duty on the delivery orders of the imported goods at Inland Container Depot and Air Cargo valued at ₹ 1, 05,870.65 crore during the period from 2006-07 to 2009-10 deprived the State Government revenue of ₹ 105.87 crore. • Non inspection of records of public offices and not prescribing any periodical returns to obtain data regarding instruments chargeable with duty from the public offices resulted in incorrect classification of lease agreement as concession agreement which subsequently resulted in short levy of stamp duty of ₹ 42.21 crore and registration fees of ₹ 8.61 crore. • No mechanism has been devised by the Department to ascertain whether Companies incorporated in the State had paid stamp duty on issue and allotment of shares or not. The stamp duty of ₹ 73.43 crore was involved in issue and allotment of shares by 16230 companies during the period 2006-07 to 2009-10. In one case, non inclusion of premium in the value of shares resulted in short levy of stamp duty of ₹ 6.09 crore.

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- Incorrect application of rate of stamp duty on contract notes issued by two companies/brokers in connection with purchase and sale of shares and incorrect allowance of benefit of reduced rate of duty to four companies/brokers resulted in short levy of stamp duty aggregating ₹ 7.46 crore.
 - Non co-ordination with Income Tax Department to levy stamp duty on additional consideration disclosed by the assessee during the course of search/raid etc. conducted by the Income Tax Authorities resulted in short levy of stamp duty of ₹ 45.08 lakh.
 - Incorrect calculation of consolidated stamp duty on debentures resulted in short levy of stamp duty of ₹ 1.25 crore.
 - Non levy of stamp duty on transaction in Government securities.
 - Non-levy of stamp duty on instruments comprising several distinct matter in 66 Sub Registrar offices deprived Government revenue of ₹ 11.35 crore.
 - Misclassification of 28 instruments in three Sub Registrar offices and Additional Superintendent of Stamps office resulted in short levy of stamp duty of ₹ 7.15 crore.
 - Undervaluation of immovable properties in 368 cases in 37 Sub Registrar offices resulted in short levy of stamp duty and registration fees of ₹ 7.09 crore.

Recommendations

The Government may consider implementing the following recommendations to rectify the deficiencies and improve the system:

- Introducing a system of co-ordination with various authorities/departments so as to ensure levy of proper stamp duty on instruments falling under Schedule I of BS Act.
 - Insert Explanation under Article 24 of Schedule I of the Bombay Stamp Act in line with Maharashtra for charging stamp duty on delivery orders of goods imported through ICDs and Air Cargo.
 - The Government may consider publicising the importance of levy of proper stamp duty on instruments to the mass public for creating awareness, which would decrease non compliance and would further increase revenue.
 - The Government may consider amending the BS Act and GS Rules in order to levy interest on delayed payment of stamp duty in all cases.
 - Government may take necessary steps to improve the internal control mechanism in the Department.
 - The Government may consider setting up a system of co-ordination with ROC to collect data regarding incorporated companies raising fund and allotting and issuing shares so as to levy and collect proper stamp duty.
 - The Government may consider setting up a system of co-ordination with stock exchanges to collect segment-wise turnover data of brokers issuing notes or memorandum to the principals in the State so as to plug leakage of revenue.
 - The Government may devise a system for co-ordination with Income Tax Department to collect periodical data of cases of suppression of sale consideration wherein deficit stamp duty and registration fee is involved.
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CHAPTER-V STAMP DUTY AND REGISTRATION FEES

5.1 Tax administration

The overall control on the levy and collection of stamp duty and registration fees rests with the Revenue Department. The Inspector General of Registration (IGR) and Superintendent of Stamps, Gandhinagar is the head of the Department. The IGR is assisted by the Sub-Registrar (at the district and *taluka* level) whereas the Superintendent of Stamps is assisted by the Deputy Collector (Stamp Duty Valuation Office) [DC] at the district level.

5.2 Analysis of budget preparation

The budget estimates are furnished by the IGR and Superintendent of Stamps, Gandhinagar in the prescribed format to the Finance Department. While preparing the budget estimates, the Department considers normal growth of the State economy, revenue of the previous year, inflation/recession factor and number of documents likely to be registered.

5.3 Cost of collection

The gross collection in respect of receipt of stamp duty and registration fees, expenditure incurred on its collection and the percentage of such expenditure to gross collection during the years 2008-09 to 2010-11 along with the relevant all India average percentage of expenditure on collection to gross collection of the preceding years are mentioned below:

(₹ in crore)

Heads of revenue	Year	Collection	Expenditure on collection of revenue	Percentage of expenditure on collection	All India average percentage of cost of collection for the preceding year
Stamp duty and registration fees	2008-09	1,728.50	42.16	2.44	2.09
	2009-10	2,556.72	53.38	2.09	2.77
	2010-11	3,666.24	62.73	1.71	2.47

The cost of collection in respect of stamp duty and registration fees was lower than all India average except in the year 2008-09. The increase in aggregate expenditure on collection of revenue during the year 2009-10 and 2010-11 over previous years was mainly due to implementation of recommendations of Sixth Pay Commission and increase in expenditure on sale of stamps.

5.4 Impact of Audit Reports

5.4.1 Impact of Audit Reports - Revenue impact

During the last five years (excluding the current year's report), audit through its audit reports had pointed out non/short levy, non/short realisation, underassessment/loss of revenue, application of incorrect rate of stamp duty, incorrect computation etc., with revenue implication of ₹ 295.02 crore in 47 cases. Of these, the Department/Government accepted audit observations in 13 cases involving ₹ 11.55 crore and had recovered ₹ 1.37 crore. The details are shown in the following table:

(₹ in crore)

Year of Audit Report	Paragraphs included		Paragraph accepted		Amount recovered	
	Number	Amount	Number	Amount	Number	Amount
2005-06	6	52.04	1	0.01	1	0.43
2006-07	6	8.66	1	1.83	--	0.05
2007-08	15	148.91	7	9.63	3	0.83
2008-09	12	78.77	2	0.03	2	0.02
2009-10	8	6.64	2	0.05	1	0.04
Total	47	295.02	13	11.55	7	1.37

The above table has been prepared after taking into consideration of replies of the Department in which they accepted the audit observations. No replies were received in respect of remaining paragraphs. The above table indicates that recovery in accepted cases also was very low (11.86 per cent of the accepted money value). The administrative Department had not furnished detailed explanations to any of the above paragraphs though they were required to furnish within three months of presentation of the ARs to the Legislature (except 2009-10) as per the instructions issued by the Finance Department on 12 March 1992.

We recommend that the Government may consider issuing suitable instructions to the Department for taking effective/speedy steps in recovering the amounts, especially in those cases, which have been accepted by the Department.

5.4.2. Impact of Audit Reports – Amendments in the Act/Rules/notifications/orders issued by Government at the instance of audit

We had pointed out following issues to the Department several times through Audit Reports:

- Short levy of Stamp Duty and Registration Fees on deemed transactions of conveyance between mortgagor and bank/ financial institutions – (section 5 of BS Act, 1958);

- Short levy of Stamp Duty and Registration Fees on extended period of lease deeds by misuse of slabs decided under the Act-Article 30 (a) of BS Act, 1958;
- Classification of equitable mortgage deed/deposit of title deeds containing recitals of mortgage as instrument of legal mortgage deed-Article 6(i) of BS Act, 1958.

The Department in April 2011 accepted these audit observations and issued a circular to all Sub-Registrars to levy Stamp Duty and Registration Fees as pointed out by the audit.

5.5 Results of audit

Test check of records of offices of the Collectors of Stamp Duty (Valuation of Property) and Sub-Registrar Offices in the State during the year 2010-11 revealed short realisation of stamp duty and registration fees and other irregularities involving ₹ 627.56 crore in 480 cases, which fall under the following categories:

(₹ in crore)			
Sl. No.	Category	No. of cases	Amount
1	Levy and Collection of Stamp Duty and Registration Fees (A Performance Audit)	1	281.73
2	Misclassification of documents	99	245.71
3	Undervaluation of property	68	7.28
4	Incorrect grant of exemption	5	0.02
5	Underassessment of stamp duty on instruments of mortgage deeds	24	2.69
6	Other irregularities	99	13.40
7	Short levy of Stamp Duty and Registration Fees	184	76.73
	Total	480	627.56

The Department did not furnish even first reply in 360 cases out of the above cases. In remaining cases, during the course of the year, the Department accepted underassessment and other irregularities of ₹ 17.78 crore in 20 cases. An amount of ₹ 30.87 lakh was realised in 16 cases during the year 2010-11.

A Performance Audit on “**Levy and Collection of Stamp Duty and Registration Fees**” involving ₹ 281.73 crore is mentioned in the succeeding paragraphs.

5.6 Levy and Collection of Stamp Duty and Registration Fees

Highlights

No time limit has been prescribed by the Department for finalisation of valuation cases referred to Dy. Collectors (Stamp Duty Valuation Office) under Section 32A of Bombay Stamp Act, 1958. This resulted in pendency of 53093 cases presented for registration during the period from 1-4-2000 to 31-3-2010 and blocking of revenue of ₹ 49.35 crore.

(Paragraph 5.6.7)

Non-levy of stamp duty on the delivery orders of the imported goods at Inland Container Depot and Air Cargo valued at ₹ 1,05,870.65 crore during the period from 2006-07 to 2009-10 deprived the State Government revenue of ₹ 105.87 crore towards stamp duty.

(Paragraph 5.6.11)

Non-inspection of records of public offices and not prescribing any periodical returns to obtain data regarding instruments chargeable with duty from the public offices resulted in incorrect classification of lease agreement as concession agreement which subsequently resulted in short levy of stamp duty of ₹ 42.21 crore and registration fees of ₹ 8.61 crore.

(Paragraph 5.6.12.1 and 5.6.12.2)

No mechanism was devised by the Department to ascertain whether Companies incorporated in the State had paid stamp duty on issue and allotment of shares. The stamp duty of ₹ 73.43 crore was involved in issue and allotment of shares by 16230 companies during the period 2006-07 to 2009-10. In one case, non-inclusion of premium in the value of shares resulted in short levy of stamp duty of ₹ 6.09 crore.

(Paragraph 5.6.13)

Incorrect application of rate of stamp duty on contract notes issued by two companies/brokers in connection with purchase and sale of shares and incorrect allowance of benefit of reduced rate of duty to four companies/brokers resulted in short levy of stamp duty aggregating to ₹ 7.46 crore.

(Paragraph 5.6.14.1 and 5.6.14.2)

Non-co-ordination with Income Tax Department to levy stamp duty on additional consideration disclosed by the assesses during the course of search, raid etc., by the Income Tax Authorities resulted in short levy of stamp duty of ₹ 45.08 lakh.

(Paragraph 5.6.16)

Incorrect calculation of consolidated stamp duty on debentures resulted in short levy of stamp duty of ₹ 1.25 crore.

(Paragraph 5.6.18)

Incorrect classification of bonds as promissory notes resulted in short levy of stamp duty of ₹ 1.06 crore.

(Paragraph 5.6.19)

Misclassification of 28 instruments in three Sub Registrar offices and Additional Superintendent of Stamps office resulted in short levy of stamp duty of ₹ 7.15 crore.

(Paragraph 5.6.28)

Undervaluation of immovable properties in 368 cases in 37 Sub Registrar offices, DC, Anand, Additional Superintendent of Stamps, Gandhinagar and DDO, Anand resulted in short levy of stamp duty and registration fees of ₹ 7.09 crore.

(Paragraph 5.6.30)

5.6.1 Introduction

Receipts from stamp duty in the State are regulated under the Indian Stamp Act, 1899 (IS Act) and the Bombay Stamp Act, 1958 (BS Act) as adapted by the State of Gujarat and Rules made thereunder. The registration of documents and related matters are regulated under the provisions of the Registration Act, 1908.

Indian Stamp Act prescribes the rate of stamp duty in respect of bills of exchange, cheques, promissory notes, bill of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts specified in Entry no. 91 of List I in the Seventh Schedule to the Constitution (Union list). While the State Government is empowered under Entry 63 of List II of Seventh Schedule of the Constitution to prescribe rate of stamp duty for documents/instruments other than those specified in Entry 91 of Union list and the same are covered by the BS Act.

According to Section 3 and 3-A of the BS Act, documents falling under Schedule I of the Act are chargeable with duty and additional duty. Further, all documents which are compulsorily registrable⁵² in terms of Section 17 of the Registration Act shall be stamped before or at the time of execution or immediately thereafter on the next working day following the day of execution in the State. Section 33 of the BS Act empowers every person in charge of a public office to impound any instrument, produced before him in performance of his functions, if it appears that such instrument is not duly stamped. Vide Circular No.IGR/VHT/134-04/9130-9155 dated 09-05-2007, the Superintendent of Stamps and Inspector General of Registration with reference to the Rule 45 of the Gujarat Registration Rules, 1970, had

⁵² Conveyance, lease above one year, agreement to sale, power of attorney with possession and mortgage deeds.

instructed the registering officers not to accept any instrument presented for registration if stamp duty thereon is not paid according to the market value of the property and direct the party to present the said instrument to the DC for determination of market value of the property in question and proper amount of stamp duty payable thereon.

During the period covered under review, the rate of stamp duty along with additional duty on conveyance was reduced by the Government from 8.4 *per cent* to 5.95 *per cent* with effect from 1st April 2006. The rate was further reduced to 4.9 *per cent* with effect from 1st April 2007. Similarly, the rates of registration fee were also revised to one rupee for every rupees one hundred or part thereof on the amount or value of the consideration or of the property with effect from 1st April 2007. The *Jantri*⁵³ rates applicable since April 1999 were also revised by the Government from 9th February 2007 and 1st April 2007. The Government introduced the new *Jantri* rates again with effect from 1st April 2008.

5.6.2 Organisational set up

The overall control of the levy and collection of stamp duty and registration fees rests with the Revenue Department of Government of Gujarat which is headed by Principal Secretary, Revenue Office of the Inspector General of Registration (IGR), Office of the Superintendent of Stamps (SS) and the Office of the Chief Controlling Revenue Authority are three independent offices headed by a single officer. The IGR is assisted by one Deputy IGR and three Assistant IGRs in the Headquarters and 151 Sub Registrars (SRs) at the district and *taluka* level. The SS and the Additional SS is assisted by 28 Deputy Collectors, Stamp Duty Valuation Offices (DC) at the district level.

5.6.3 Audit objectives

The performance audit was conducted with a view to examine whether:

- the Department has set up effective mechanism to collect stamp duty and registration fees;
- the prescribed rules and procedures of Act are being implemented by the Department;
- there is any lacunae in the Acts/Rules having revenue implications;
- adequate internal control systems commensurate to the size of the Department and nature of work exists.

⁵³ Statement issued by the Government showing the rates for the purpose of determination of value of immovable properties and levy of stamp duty.

5.6.3.1 Audit criteria

Audit criteria considered were Indian Stamp Act, 1899, Bombay Stamp Act, 1958, Gujarat Stamp Rules, 1978, Bombay Stamp (Determination of Market Value of Property) Rules, 1984, Registration Act, 1908; notifications/circulars/orders issued under the said Acts/Rules and judicial pronouncements.

5.6.4 Scope and methodology of audit

The review was conducted by test check of records maintained in the office of the Additional Superintendent of Stamps, IGR, 77 SRs and 4 DCs. The review was conducted between May 2010 and March 2011. The documents registered in SR offices were selected for scrutiny by way of risk analysis and revenue implications. Information in respect of instruments of which registration was not compulsory was obtained from various agencies to cross verify the proper realisation of stamp duty. The review was conducted for the period from 2005-06 to 2009-10 by test check of records maintained in the office of the Additional Superintendent of Stamps, IGR, 77 SRs and four DC offices.

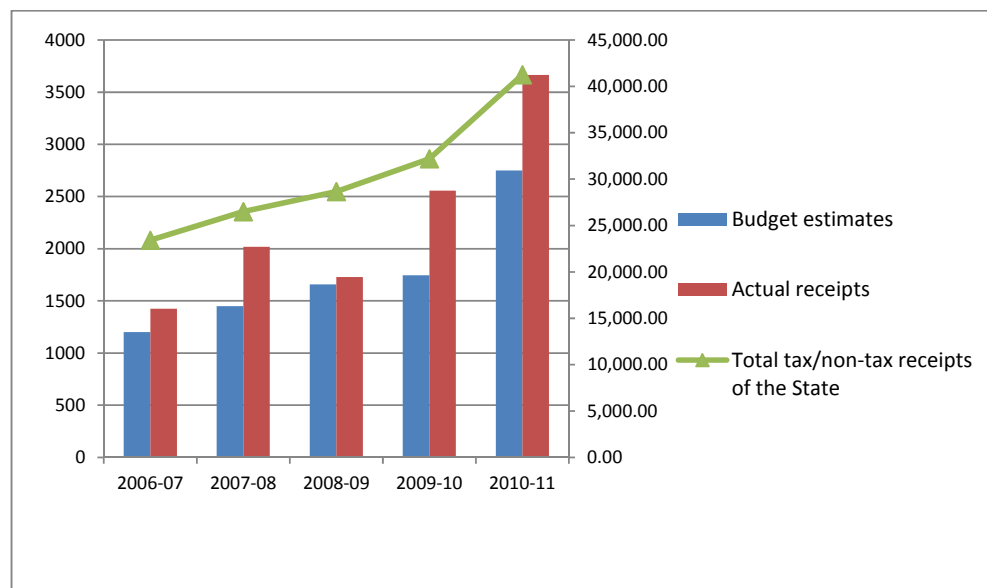
5.6.5 Acknowledgement

Indian Audit & Accounts Department acknowledges the co-operation of the SS and IGR and the subordinate offices in providing information and records for audit. The entry conference with the Department was held in July 2010 in which the scope and methodology of audit was discussed. The review report was sent to the Government in June 2011 for their response. The report was discussed with the Department in the exit conference held in August 2011. The replies furnished by the Department have been considered and appropriately incorporated in the review.

5.6.6 Financial Performance

The budget estimates and actual realisation of stamp duty and registration fees during the last five years 2006-07 to 2010-11 were as under:-

Year	Budget estimates	Actual receipts	Variation excess (+)/ shortfall (-)	Percentage of variation	Total tax/ non-tax receipts of the State	Percentage of actual receipts vis-a-vis total tax/non-tax receipts
2006-07	1200.00	1425.03	(+) 225.03	(+) 18.75	23,413.41	6.09
2007-08	1450.00	2018.44	(+) 568.44	(+) 39.20	26,494.88	7.62
2008-09	1658.00	1728.50	(+) 70.50	(+) 4.25	28,656.35	6.03
2009-10	1745.75	2556.72	(+) 890.97	(+) 46.45	32,191.94	7.94
2010-11	2750.00	3666.24	(+) 916.24	(+) 33.32	41,253.65	8.89



Stamp Duty collections constituted 6.03 to 8.89 *per cent* during 2006-07 to 2010-11 of the total receipts of the State.

From the above, it is seen that there was huge variation between the budget estimates and the actual revenue collection during 2006-07, 2007-08, 2009-10 and 2010-11. Thus, it is evident that the Department need to follow more realistic budgeting exercise.

After this was pointed out, the Department replied that the variation between the budget estimates and actual receipts is attributed to inflation and speedy rise in value of properties.

5.6.7 Blocking up of revenue

5.6.7.1 Delay in finalization of valuation cases

As per the information furnished by the office of Additional SS, 53093 documents were presented for registration during the period from 1st April 2000 to 31st March 2010. The said documents were referred for valuation purpose by SRs to DCs under Section 32A⁵⁴ of BS Act. These documents were pending for finalisation as on March 2010. No time limit has been prescribed by the Department for finalisation of valuation cases by DCs. Thus delay in finalisation of cases resulted in blocking up of revenue in the form of stamp duty to the extent of ₹ 49.35 crore based on the valuation made by the SRs.

We recommend that Government may consider inserting a provision in the Act/Rules to make the decision of the collector time bound.

⁵⁴ Section 32A of BS Act provides for determination of market value of property by the Dy. Collectors in the instruments referred to him by Sub Registrars.

5.6.7.2 Recovery of arrears of revenue

The SS office had prescribed a Management Information System (MIS) under which information was to be sent monthly by each DC to the Addl. SS for consolidation. However, we noticed that many DCs did not send monthly information regularly. This resulted in consolidation of incorrect and non-reliable data. This was evident from the information communicated by the SS to the Revenue Department in respect of documents referred to DC by SRs under Section 32A of the BS Act. Due to this, the closing balance of following years did not tally with the opening balance of the next year as mentioned in the table below:

Year	Opening balance of documents pending for finalisation	Number of documents received during the year	Number of documents finalised	Number of documents pending for finalisation
2005-06	67710	64256	46441	143561
2006-07	85525	20960	33424	13495
2007-08	73061	19777	35361	114604
2008-09	57477	30543	32280	107220
2009-10	55740	24200	43624	103783

Thus, the system of keeping information about arrears of revenue was not followed by the Department properly. Due to this, correct data about arrears of revenue were not available with the Department.

After this was pointed out, the Department replied (August 2011) that exercise is on to put the data in order.

5.6.8 Non-creation of charge on immovable properties

Out of 28 DC offices, in 19 DC offices, action was required to be initiated in 1,52,834 cases for recovery of arrears of Stamp Duty of ₹ 228.04 crore by creating charge on immovable properties in land revenue records. The Department did not furnish similar information for remaining 9 DC offices. Thus, the total amount of revenue pending collection in the State in respect of cases finalised under Section 32A of BS Act was not available with the Department as on March 2010. Age wise information of demand raised/not raised and reasons for delay in initiating action for recovery of dues as arrears of land revenue were also not intimated to audit.

The Hon'ble High Court of Gujarat in the case of *Prahladji Valaji Thakor vs State of Gujarat* set aside all orders of DCs issued on or before 15th May 2007, wherein there were no speaking orders about fixation of stamp duty and penalty. The court directed the Department to undertake requisite proceedings afresh in terms of the provisions of BS Act and assess the duty accordingly. Due to failure on the part of the Department to follow the system and

procedure stipulated in the Act for determination of market value of properties there was duplication of work and delay in collection of revenue.

The Department stated (August 2011) that monthly meetings with DCs would be convened to review the progress in this regard.

5.6.9 Disposal of appeal cases

Under Section 53 of the Bombay Stamp Act, 1958, any person aggrieved by an order of the DC can prefer an appeal before Chief Controlling Revenue Authority (CCRA) within a period of sixty/ninety days from the date of order of the DC. However, the BS Act does not specify any time limit for disposal of appeal cases.

As per the information made available by the office of the CCRA, 618 cases were pending for disposal as on 31st March 2010. The detail of deficit stamp duty involved in the pending cases was not provided to audit. Year wise analysis of the pending cases is given in the table below:

Year of appeal	Number of cases pending
1990 to 2005	368
2006	9
2007	15
2008	45
2009	71
2010	110
Total	618

Out of the 618 appeal cases, delay in disposal of 27, 110 and 231 cases was pertaining to more than 15, 10 and 5 years, respectively. In the absence of time limit for disposal of cases, the collection of revenue was adversely affected and further it also added hardship to appellants. There was no mechanism to monitor timely disposal of cases pending since long.

After this was pointed out, the SS replied (July 2011) that out of total 618 cases, the office had disposed 470 cases upto July 2011 and the remaining cases would also be disposed of on priority basis.

Audit findings

System deficiencies

5.6.10 Absence of a system of inspection of instruments in co-ordination with various organisations to ensure realisation of proper duty

As per Section 68 of the BS Act, 1958, the Collector may authorise any officer to enter any premises and inspect instruments specified in Schedule I of the Act which have not been charged at all or incorrectly charged with duty leviable under the Act. The Act also provides to seize and to impound such instruments under Section 33. Dy. Collector (SDVO)⁵⁵ has been empowered to exercise these powers.

We noticed that there was no co-ordination between Stamps and Registration Department and other Departments/organisations/local bodies, etc., before whom documents chargeable with stamp duty were presented. The Department did not prescribe any periodical returns to obtain data regarding instruments chargeable with duty and details of duty

realised thereon when presented before the officers-in-charge of public offices. The public offices/officers have not been defined in the Act. No rules prescribing the procedure for conducting the inspection were framed and therefore, the Department could not monitor the realisation of proper stamp duty. We obtained data from various sources including Government Organisations/Departments/Undertakings and local bodies which revealed non/short realisation of stamp duty of ₹ 245.50 crore and registration fee of ₹ 8.61 crore during 2005-06 to 2009-10 as mentioned in the succeeding paragraphs 5.6.11 to 5.6.17.

⁵⁵ Dy. Collector (SDVO) has been appointed in this behalf vide Government notification No.GHM-98/57/M/STP/1493/877/H. 1. dated 8th September 1998.

5.6.11 Non-levy of stamp duty on Delivery Orders at ICDs/Air Cargo

As per Article 24 of Schedule I of BS Act, stamp duty at the rate of 0.1 *per cent* is leviable with effect from 1st April 2006 on delivery order of any goods lying in any dock or port, in any warehouse in which goods are stored, or deposited on rent or hire, or upon any wharf, in case value of such goods exceed one hundred rupees. According to Section 2 (12) of the Customs Act, 1962, “custom port” means any port appointed under clause (a) of Section 7 to be a customs port and includes a place appointed under clause (aa) of that section to be an inland container depot.

During the test check of records of the office of DCs and Addl. SS, Gandhinagar for the period 2006-07 to 2009-10, it was noticed that the Department have been collecting stamp duty on the delivery orders/bill of entries filed by the importers who have imported goods through various sea ports in the State. However, we noticed that no stamp duty was levied and collected on the delivery orders of goods imported through ‘dry

ports’ such as Inland Container Depots (ICDs) located in various parts of the State and Air Cargo at Ahmedabad. As per the information collected from four ICDs⁵⁶ in the State and Air Cargo, Ahmedabad, we noticed that in 91,895 cases, the Departmental officials did not levy stamp duty on the delivery orders of the imported goods valued ₹ 1,05,870.65 crore during the period from 2006-07 to 2009-10. This deprived the State Government revenue on account of stamp duty of ₹ 105.87 crore.

After this was pointed out, the Department stated (September 2011) that no stamp duty was levied and collected as there is no enabling provision in the Act to charge stamp duty on delivery orders issued by shipping agents or airlines of ICD and Air Cargo.

Government may consider to insert Explanation under Article 24 of Schedule I of the Bombay Stamp Act in line with Maharashtra for charging stamp duty on delivery orders of goods imported through ICDs and Air Cargo.

⁵⁶ ICD Valvada-Vapi, ICD Sachin- Surat, ICD Sabarmati-Ahmedabad and ICD Ankleshwar

5.6.12 Short levy of stamp duty on lease agreements

As per Section 2 (n) (iii) of the BS Act, 'lease' means a lease of immovable property and includes any instrument by which tolls of any description are let. Accordingly, instrument of toll contracts are chargeable to stamp duty as an instrument of lease deed under Article 30 of Schedule I of the BS Act at the prescribed rates. Section 17 of the Registration Act stipulates that agreement of lease of immovable property for any term exceeding one year is compulsorily registrable. Stamp duty on lease deed is chargeable at the prescribed rates for a consideration equal to the amount or value of fine, premium or money advanced in addition to the amount of the average annual rent reserved on the basis of the period of lease.

5.6.12.1 As per the information made available by Gujarat State Road Development Corporation Ltd. (a Government Company), we noticed that six lease agreement styled as concession agreements were executed by the Company with private parties during the period 2005-06 to 2009-10 for the purpose of construction of toll ways under *Build, Operate and Transfer* contracts (BOT). The agreements were executed for a term ranging from 13 years to 22 years. We noticed from the recitals of the agreement that in consideration of the grant of project land on lease, the

private parties agreed to pay lease fee, concession fees, premium⁵⁷ in the form of additional concession fees and the development fees to the Company. The said agreements give the private parties sole and exclusive right to demand, collect and appropriate toll fees from the users of the toll way on and from the Commercial Operation Date till the Transfer Date.

According to the recital of the agreements, documents are classifiable as lease agreement and chargeable to stamp duty under Article 30 (c) of Schedule I of the BS Act, 1958. However, these agreements were executed on a non-judicial stamp paper of ₹ 100 each and were not registered as instruments of lease. This deprived the State Government revenue on account of stamp duty of ₹ 31.06 crore and registration fees of ₹ 6.34 crore aggregating ₹ 37.40 crore.

After this was pointed out, the Department stated (September 2011) that the GSRDC has furnished details of concession/lease agreements which are under scrutiny.

5.6.12.2 In terms of Section 19 of the BS Act, if any instrument relating to property located in the State is executed outside the State and subsequently received in the State, the differential duty would be leviable, if any, at the rates prevailing on the date of execution in the State. However, duty already paid in other state would be reduced from the amount payable under the Act.

⁵⁷ Stamp duty was calculated on premium, concession fee and lease fee treating it as rent as it was recurring in nature and development fee was treated as premium as it was one time payment.

We noticed that National Highway Authority of India, Gandhinagar (NHAI), executed an agreement with Larsen and Toubro Company Ltd. (L & T), at New Delhi on 17th March 2010. Though the agreement was executed out of the State and subsequently received in the State, the same was chargeable with the differential duty in Gujarat as per Section 19 of the Act *ibid*. The agreement was executed for a term of 24 years and lessor (NHAI) in consideration of the concession fee and premium in the form of additional concession fees had granted the right of way of the project highway to L & T as a licensee. The agreement granted sole and exclusive right to L & T to demand, collect and appropriate toll fees from the users on and from the Commercial Operation Date till the currency of the agreement.

In view of the recitals of the agreement, the document was required to be classified as lease agreement and stamp duty applicable under Article 30 (c) of Schedule I of the BS Act, 1958 should have been charged. However, the agreement was executed on a non-judicial stamp paper of ₹ 100 and was not registered as an instrument of lease. This deprived the State Government revenue on account of stamp duty of ₹ 11.15 crore and registration fees of ₹ 2.27 crore aggregating ₹ 13.42 crore.

After this was pointed out, the Department replied (September 2011) that the agreement had been called from NHAI for scrutiny and necessary action. The Department further stated that format of monthly returns have been prescribed to various public authorities for giving details of such type of agreements executed by them. Further reply is awaited (November 2011).

5.6.13 Non/short levy of stamp duty on allotment and issue of shares

As per Article 31 & 18 of Schedule I of BS Act, 1958, stamp duty is leviable at the rate of 0.1 *per cent* from 1st April 2006 on the value of shares allotted or share certificates issued to the general public, promoters, institutional buyers etc., by any company or a proposed company incorporated in the State of Gujarat. Section 9(b) of the Bombay Stamp Act, 1958, empowers the State Government to provide for the composition or consolidation of duties in the case of issues of bonds or marketable securities other than debentures by any incorporated company or other body corporate.

We noticed that the Department had not evolved any mechanism to ascertain the stamp duty liability of the Companies which venture into primary markets through Initial Public Offer (IPO) or otherwise and raise capital by means of allotment and issue of shares. Further, there was no co-ordination with the Registrar of Companies, Gujarat (ROC) to monitor and levy stamp duty on issue of shares by the

Companies incorporated in the State.

5.6.13.1 As per the information collected from the ROC and internet websites, it was noticed that 11 Companies registered in the State of Gujarat had raised capital by way of Initial Public Offer during 2006-07 to 2009-10. Out of the 11 Companies, three had voluntarily paid consolidated stamp duty at the office of the Additional SS, Gandhinagar and one at Mumbai. Remaining seven Companies either did not pay the requisite stamp duty on issue and allotment of shares or paid less stamp duty applicable in other States. The Department did not evolve a mechanism to ascertain the stamp duty liability of Companies which raised capital by way of IPO. This resulted in non/short levy of stamp duty of ₹ 3.88 crore.

After this was pointed out, the Department replied (September 2011) that two Companies have paid stamp duty at Hyderabad and notices have been issued to the remaining five Companies. The reply is not tenable as the stamp duty paid by two Companies at Hyderabad was at a lower rate and hence differential stamp duty should be recovered from them.

5.6.13.2 We noticed that during the period from 2006-07 to 2009-10, 11,924 Companies were incorporated in the State with total paid-up capital aggregating ₹ 5,843.61 crore, of which only seven Companies⁵⁸ had paid the consolidated stamp duty⁵⁹. The information regarding the payment of stamp duty of ₹ 5.60 crore by the remaining 11,917 Companies was not on record. Similarly, as per the information received from ROC, 4306 Companies were incorporated with a paid-up capital of ₹ 63,951.92 crore before 1st April 2006 but have issued shares during the period from 2006-07 to 2009-10. Accordingly, they were liable to pay stamp duty of ₹ 63.95 crore. The Department did not have any mechanism to ascertain whether these companies had paid the stamp duty on issue and allotment of shares or not. The stamp duty involved in both these cases amounts to ₹ 69.55 crore.

After this was pointed out, the Department replied (September 2011) that at the time of incorporation of companies, the Companies paid stamp duty on the shares allotted for nominal capital by way of physically affixing the stamps or by franking. The Department further replied that MCA system implemented in ROC from 30th October 2009 collected stamp duty on different type of instruments furnished by companies at the time of incorporation. The reply is not tenable as the stamp duty is required to be levied on the shares issued and allotted with relation to the paid-up capital and not on the nominal capital.

The Government may consider setting up a system of co-ordination with ROC to collect data regarding registered companies raising fund and allotting and issuing shares so as to levy and collect proper stamp duty.

⁵⁸ (1) Bhavnagar Energy Company Ltd., (2) Meghmani Finechem Ltd., (3) RJD Integrated Textile Park Ltd., (4) Safal Realty Pvt. Ltd., (5) Kunj Infrastructure Pvt. Ltd., (6) GSPC (JDPA) Ltd., (7) Baroda Textile Effects Pvt. Ltd.

⁵⁹ Seven companies raised capital of ₹ 247.56 crore on which stamp duty of ₹ 24.76 lakh was paid.

5.6.13.3 Under Article 17 of Bombay Stamp Act applicable in Maharashtra, the rate of stamp duty chargeable on share certificates or other documents is the same as in the case of Gujarat State. However, an explanation has been inserted under the Maharashtra Act so as to include the amount of premium in the value of shares, scrips or stock. There is no such explanation under Article 18 pertaining to Certificate or other documents of Schedule I of the BS Act applicable in Gujarat. We noticed that the Department charged stamp duty on the aggregate amount of face value and premium in all the cases except in one case mentioned below. Absence of the explanation in the BS Act had created a lacuna in the Act and resulted in short levy of stamp duty.

Test check of records in the office of the Additional SS revealed that Axis Bank Ltd., Ahmedabad (Bank) had allotted 7,14,28,570 nos. of preferential equity shares under Qualified Institutional Placements (QIP), Global Depository Receipts (GDR) and to the promoters of the Bank during 2009-10. The bank paid consolidated stamp duty of ₹ 7.14 lakh on the face value of the shares though the allotment was made at the rate of ₹ 906.70 per share (₹ 10 face value plus ₹ 896.70 premium), thereby raising a capital of ₹ 6164.22 crore. Accordingly, the bank was liable to pay stamp duty of ₹ 6.16 crore instead of ₹ 7.14 lakh. The Departmental officers did not ascertain the correct stamp duty liability of the Bank. Omission to include premium price in the value of shares for the purpose of calculation of duty resulted in short levy of stamp duty of ₹ 6.09 crore.

After this was pointed out, the Department replied (September 2011) that notices have been issued (January, March and July 2011) to the bank for recovery of deficit stamp duty.

The Department may consider inserting the explanation in the Act in line with Maharashtra to the effect that stamp duty may be charged on the aggregate value i.e., face value plus premium of shares.

5.6.14 Lack of system/mechanism to collect data of contract notes issued by brokers

As per Article 5(c), Article 39(f) and Article 48A (b) and (c) of Schedule I of Bombay Stamp Act, 1958, stamp duty is chargeable on each note of memorandum sent by a Broker or Agent to his principal intimating the purchase or sale of any share, scrip, stock bond, debenture stock or other marketable security of a like nature exceeding in value ₹ 20 except Government securities.

We observed that the Department neither has the machinery nor has effective co-ordination with Stock Exchanges to collect data relating to the volume of trading carried out and contract notes issued by each members/brokers/agents (firms) based in the State of Gujarat regularly to levy and collect proper stamp

duty from them. Accordingly, the Department did not have the data regarding total stamp duty chargeable, levied and outstanding on above type of

instruments executed in the State. The Department had collected stamp duty only from those firms who voluntarily paid duty. There was no mechanism in place in the Department to check the correctness of the segment wise turnover figures furnished by the firms in their return by way of verification of annual accounts of the respective firms or by way of cross check with the data collected from stock exchanges for the purpose of levy of stamp duty. Audit observed that the Department did not develop any system to collect such revenue. We further noticed from the records of most of the firms for the period upto 2009 that the challans or the detailed monthly statements of segment wise turnover in support of the payment of stamp duty were not available on record. In the absence of challans and detailed statements of turnover, we could not work out the amount of short levy of stamp duty.

Mention was also earlier made in paragraph 5.3 of the Report of the Comptroller and Auditor General of India (Revenue Receipt), Government of Gujarat for the year ended 31 March 2009 on the above subject and revenue implications thereof. It was also recommended that the Government might consider to take appropriate measures to prevent leakage of such revenue.

After this was pointed out, the Department replied (September 2011) that meeting was held with stock exchanges for collection of trade wise information of clients based in Gujarat. Further, the Department also replied that SEBI and ROC have been asked to issue necessary instructions and warning to the companies not paying stamp duty on the trades carried out by them on behalf of their clients based in Gujarat.

Few illustrative cases wherein non/short levy of stamp duty was noticed by audit during test check of records are mentioned below:

5.6.14.1 Test check of records relating to Article 5(c) and 39(f) of Schedule I of BS Act, 1958 in the office of the Addl. SS for the period from 2005-2010 revealed that the Departmental officials did not collect stamp duty at the correct rate on the notes or memorandum sent by brokers or agents intimating the purchase or sale of shares, scrips etc., on behalf of the principal.

Two Companies⁶⁰ had applied incorrect rate of stamp duty on the notes or memorandum issued by them to the principals in respect of purchase or sale of any share, scrip etc., i.e., 0.007 *per cent* instead of 0.01 *per cent* in the case of delivery trade and 0.001 *per cent* instead of 0.002 *per cent* in the case of non delivery and future & option trades. The Departmental officers did not ascertain the correct payment of duty. This resulted in short levy of stamp duty of ₹ 23.49 lakh.

After this was pointed out, the Department replied (September 2011) that in the case of Karvy Stock Broking Ltd., deficit stamp duty of ₹ 17.01 lakh has been recovered (May 2011) and in the case of Dani Share and Stock Pvt. Ltd., notice has been served for intimating details of turnover for further necessary action by the Department.

⁶⁰ Karvy Stock Broking Ltd. in r/o 5/2008 to 2/2010 & Dani Share and Stock Pvt. Ltd., in r/o 4/2004 to 4/2008 and 3/2009 to 10/2009.

5.6.14.2 The State Government reduced the rate of stamp duty in respect of non delivery as well as future and option trading of shares, scrips etc., from 0.01 *per cent* to 0.001 *per cent* for the period from 01.04.2004 to 29.08.2006 with a condition that the person liable to pay duty has to make full payment of outstanding deficit duty up to 31.05.2007.

We noticed in three cases that the Companies⁶¹ had not paid the stamp duty for the year 2003-04 and in one case⁶² the deficit duty was not paid within the prescribed time and as such they were not eligible for the benefit of reduced rate of stamp duty. Grant of benefit of reduced rate of duty to these four Companies resulted in short levy of stamp duty of ₹ 7.23 crore.

After this was pointed out, the Department replied (September 2011) in respect of Fortune Fiscal Ltd., and KIFS Securities Pvt. Ltd., that notices were issued for recovery of deficit stamp duty. The Department replied (January 2012) that in respect of other two cases, they have remitted the stamp duty at Maharashtra State for the period 2003-04 and hence were eligible to claim the benefit of reduced rate of stamp duty. The reply of the Department is not tenable. The stamp duty paid by the two firms pertaining to the period 2003-04 at Maharashtra State in the case of non delivery trade was at a lower rate i.e. 0.002 *per cent*, while the duty was required to be paid at the rate of 0.007 *per cent* in Gujarat. Hence, differential duty was required to be levied from them for the period 2003-04, which also disallows them from being availing the benefit of reduced rate benefit for the period 01-04-2004 to 29-08-2006.

The Government may consider setting up a system of co-ordination with stock exchanges to collect segment-wise turnover data of brokers issuing notes or memorandum to the principals in the State so as to plug leakage of revenue.

5.6.15 Non/short levy of stamp duty on brokers note on commodity trading

Under Article 5(d) to (g), Article 39(a) to (d) and Article 48A (d) of Schedule I of the BS Act, 1958, stamp duty @ 0.001% is chargeable w.e.f 7th June 2006 on agreement, note or memorandum sent by a broker or agent to his principal intimating the purchase or sale of various commodities.

Three Commodity Exchanges⁶³ were in operation in the State during the period from 2005-06 to 2009-10. As per the information furnished by the Department in respect of the trading done by the registered members of the three exchanges during the period from April 2007 to August 2009, it was noticed that total turnover was

⁶¹ Fortune Fiscal Ltd., Inventure Growth & Securities Ltd. and Marwadi Shares and Finance Ltd.

⁶² KIFS Securities Pvt Ltd.

⁶³ National Commodities and Derivatives Exchange, Multi Commodity Exchange and National Multi Commodity Exchange.

₹ 15,41,647.40 crore on which they were liable to pay stamp duty of ₹ 15.42 crore. However, the total stamp duty collected by the Department for the above period was only ₹ 5.55 crore. This resulted in short realisation of revenue of ₹ 9.87 crore. The records further revealed that notices for recovery of stamp duty were not issued to the members/brokers who either had not paid the stamp duty during the period or paid lesser amount of stamp duty. The Department could not produce the details of trading done by the members/brokers of the three commodity exchanges during the period from April 2005 to March 2007 and from September 2009 to March 2010. This shows absence of system for collection of the vital data from commodity exchanges for the purpose of levy of duty.

After this was pointed out, the Department replied (September 2011) that notices have been issued (November 2010, January and March 2011) to the brokers for payment of stamp duty on the segment wise turnover figures. Further, the Department also replied that information have been called from the exchanges for brokerwise turnover for the period from 2007 to 2011. Further reply is awaited (November 2011).

5.6.16 Leakage of stamp duty due to non co-ordination with Income Tax Department

Based on Income Tax Department's instructions, the Inspector General of Registration instructed in 2005⁶⁴ to all Sub Registrars to provide details of registered documents of conveyances after interval of every six months wherein the value of sale consideration is more than ₹ 30 lakh. No mechanism is set up by IGR to obtain required information from the IT Department.

As per the existing instructions of IGR, the Sub Registrars in the State were required to send information to the Income Tax Department about conveyance deeds of ₹ 30 lakh and above. However, there was no system to collect information regarding the search, seizures or raid conducted by Income Tax Department in cases wherein undisclosed income on account of sale or purchase of immovable

properties was involved and attracted higher stamp duty and registration fees.

During the course of audit of two Income Tax Offices⁶⁵ for the assessment year 2008-09, we noticed that during search/raid conducted by Income Tax authorities, assessee made disclosure of receipt of the additional consideration by them in cash for sale of land besides the consideration stated in the registered sale deeds. This additional amount of sale consideration received by the executants attracted stamp duty and registration fees as per the BS Act and the Registration Act. Since the assessee had undervalued their properties and shown less consideration in the registered documents, possibility of more such cases with the Income Tax Department cannot be

⁶⁴ IGR- 132/2005/8638-8669 dated 30th August 2005.

⁶⁵ Assistant Commissioner of Income Tax, Circle I, Ahmedabad and Dy. Commissioner of Income Tax, Central Circle 2(1).

ruled out. The Department had failed to set up any arrangement to collect information about cases of search and seizure from the Income Tax Department. This resulted in leakage of revenue of ₹ 45.08 lakh.

After this was pointed out, the Department replied (August 2011) that they would co-ordinate with Income Tax Department to collect the information regarding the search, seizures or raid conducted by Income Tax Department in cases wherein undisclosed income on sale or purchase of immovable properties is involved and attracted higher duty and registration fees as well. The Department further stated that after collection of the required information, necessary action will be taken to recover the deficit stamp duty and registration fees.

The Government may devise a system for co-ordination with Income Tax Department to collect periodical data of cases of suppression of sale consideration wherein deficit stamp duty and registration fee is involved.

5.6.17 Non/short levy of stamp duty on leave and license agreements

Article 30A of Schedule I of BS Act provides for levy of stamp duty on leave and license agreements relating to immovable property other than residential property at the rate of fifty paise for every hundred rupees or part thereof on the whole amount payable or deliverable plus the total amount of fine or premium or money advanced or to be advanced irrespective of the period for which such leave and license agreement is executed.

As per the information collected by us from two local bodies⁶⁶, we noticed that during the period 2006-07 to 2009-10, they had executed four agreements relating to erection of advertisement boards on electric poles falling under their jurisdiction. The said instruments were required to be classified as leave and license agreements and stamp duty was chargeable at prescribed rate thereon.

However, the executants had either not paid any stamp duty or executed the agreement on non-judicial stamp papers of ₹ 100, which resulted in non/short levy of stamp duty of ₹ 11.55 lakh.

After this was pointed out, the Department while accepting the audit observation stated (September 2011) that the records would be called for and proper stamp duty would be levied on the instruments. Besides, they have also stated that necessary instructions have been issued (September 2011) to the concerned authorities to send quarterly return to the SS office stating the nature of the agreement and stamp duty levied thereon.

⁶⁶ Ahmedabad Municipal Corporation and Vadodara Municipal Corporation.

5.6.18 Short levy of consolidated stamp duty on debentures

Article 27 of Indian Stamp Act, 1899 provides for levy of stamp duty on debentures. Ministry of Finance, Revenue Department, Government of India vide Order no. SO2189 (E) dated 12-09-2008 had revised the rate of stamp duty chargeable on debentures at 0.05 *per cent* per year of the face value of the debenture, subject to a maximum of 0.25 *per cent* or rupees twenty five lakh, whichever is lower.

Test check of records in the office of the Addl. SS revealed that permission was given by the Department to Axis Bank Ltd., (Bank) during 2008-09 for payment of consolidated stamp duty on the issue of 15,000 debentures. The face value of each debenture was ₹ 10,00,000 and the total value of debentures allotted was ₹ 1,500 crore. We noticed that the Department had levied and collected consolidated stamp

duty of ₹ 2.50 crore instead of ₹ 3.75 crore. This resulted in short levy of consolidated stamp duty of ₹ 1.25 crore.

After this was pointed out, the Department while accepting (August 2011) the audit observations stated that demand notices were issued (January and July 2011) to Axis Bank Ltd., for recovery of deficit stamp duty on debentures issued.

5.6.19 Short levy of stamp duty due to misclassification of instruments – Debentures treated as promissory notes

As per Section 2(22) of the Indian Stamp Act, Promissory note means a promissory note as defined by the Negotiable Instruments Act, 1888. According to Section 2(12) of Companies Act, 1956, "debenture" includes bonds. In instrument of Bond, an executant specifies period or date of repayment. It also provides for the payment of a specified principal and interest on the specified date.

Test check of files and cheque register in the office of the Addl. SS revealed that State Bank of Saurashtra, Bhavnagar had issued (09th March 2006) 'bonds in the nature of promissory notes' valued ₹ 200 crore during 2005-06 and ₹ 225 crore during 2006-07. The Bank paid ₹ 2.13 crore towards consolidated stamp duty considering the instruments as

promissory notes. The classification of the instrument as promissory note or bond/debenture has to be made in accordance with the terms and conditions mentioned therein. The copy of the instrument was not available on record and hence, audit could not ascertain the correct classification of the instrument. However, the SS office classified the instruments as debenture and accordingly notice was issued (January 2007 and July 2008) to the bank for the deficit duty chargeable thereon. Stamp duty chargeable on the instruments

as debentures worked out to ₹ 3.19 crore. However, the bank paid stamp duty of ₹ 2.13 crore only. The deficit duty of ₹ 1.06 crore has not been collected till date.

After this was pointed out, the Department stated (September 2011) that they have sought copies of bonds from the bank to decide the classification of instruments. Further reply is awaited (November 2011).

5.6.20 Violation of provisions of the Act under Amnesty Schemes - 2006 and Amnesty Scheme - 2007

Section 9 (a) of the BS Act empowers the State Government to reduce or remit the stamp duty chargeable under an instrument. While, Section 46 of the BS Act read with Rule 30A of Gujarat Stamp Rules, 1978 prescribes recovery of simple interest at the rate of 15 per cent per annum from persons, who do not pay the deficit duty, penalty or other sums payable under the Act within ninety days from the date of receipt of the order.

The Government of Gujarat in exercise of the powers conferred by clause (a) of Section 9 read with Section 46 of the BS Act, under the Amnesty Schemes 2006 and 2007 remitted/reduced stamp duty along with the interest payable on the instruments where the order under Section 32A or 32B of the BS Act had been passed by DC. We noticed that the provisions of the Act do not empower the State

Government to remit or reduce the interest payable on any instrument but only empowers the Government to remit or reduce the stamp duty chargeable on any given instrument. However, in violation of the provisions of the Act, the State Government issued orders to reduce the entire amount of interest payable on instruments under the two Amnesty Schemes introduced in the year 2006 and 2007.

After this was pointed out, the Department replied (August 2011) that the interest is chargeable on the amount of stamp duty and when Government remits the stamp duty, then question of recovering interest does not arise. The reply is not tenable because there is no specific provision in the Act which enables Government to remit or reduce interest.

The Government may consider inserting enabling provisions under Section 46 of BS Act in line with Section 119(2)(a) of Income Tax Act, 1961 wherein, powers have been delegated to Central Board of Direct Taxes (CBDT) to issue circulars for waiver of interest in peculiar circumstances of cases.

5.6.21 Short recovery of service charges

As per Section 46(2) of Bombay Stamp Act, 1958, all duties, penalties, interest and other sums required to be paid under the Act may be recovered by the Collector by distress sale of the movable or immovable property of the person from whom the same are due or as an arrears of land revenue. Under Rule 117-C of the Gujarat Land Revenue Rules, 1972, as amended by Notification No.GMM 83-M-96-LRR-2171-109334-L dated 13th May 1983, cases wherein recovery proceedings have to be adopted/under recovery of dues treated as arrears of land revenue, as a result of default in payment by the defaulters, five *per cent* of the dues recoverable as arrears of land revenue under any law for the time being in force shall be recovered as service charges from the defaulters.

5.6.21.1 During test check of records in three DC offices⁶⁷ for the period 2006-07, we noticed that in 1,965 cases, no service charge was levied on amount of ₹ 1.76 crore recovered as arrears of land revenue. This resulted in non-levy of service charges of ₹ 8.82 lakh.

5.6.21.2 Test check of records in the office of two DCs⁶⁸ revealed that the service charges were levied only on the portion of deficit stamp duty and penalty excluding the interest element. As per the provision in the BS Act, the interest element was also

required to be recovered as arrears of land revenue. Non-inclusion of interest element of ₹ 1.44 crore for the purpose of levy of service charges between April 2009 and March 2010 resulted in short recovery of service charges of ₹ 6.79 lakh. The information regarding service charges recoverable on interest element by remaining 24 DC offices was not furnished to audit.

After this was pointed out, the Department stated (August 2011) that recovery in 150 cases amounting to ₹ 26,821 have been effected by one DC. In all other cases, information has been called from DCs for further necessary action.

⁶⁷ Dy. Collector (SDVO), Bharuch, Patan and Rajkot-I.

⁶⁸ Dy. Collector (SDVO)-I, Vadodara & Dy. Collector (SDVO)-I, Ahmedabad.

5.6.22 Non-levy of stamp duty on transactions in Government securities

Stamp duty is chargeable on purchase and sale of Government securities covered under Article 5 (b), 18 A (1), 39 (g) and 48 A (a) of Schedule I of the BS Act. The rate of stamp duty applicable to instruments falling under 5(b) is rupee one for every ten thousand rupees or part there of the value of the security, while one hundred rupees is payable in the case of documents falling under 39(g) and 48(a) of Schedule I. As per Article 18A(1), stamp duty chargeable is the sum of duties payable under Article 5 (b) or 39 (g), as the case may be relating to the transaction for the purchase and sale of Government securities submitted to the clearing house of a stock exchange.

The Department did not evolve any mechanism or system to ascertain and levy the total amount of stamp duty chargeable on purchase and sale of Government securities. Under Section 3 of BS Act, first issue of Government securities is exempted from payment of duty. However, the Department did not have the data relating to the transactions carried out by banks/brokers/agents of the State through Stock exchanges relating to Government securities and

stamp duty leviable thereon. In the absence of data, we could not assess the amount of non/short levy of stamp duty on purchase and sale of Government securities.

After this was pointed out, the Department replied (August 2011) that information has been called for from BSE and NSE for levy of stamp duty on transactions of Government securities.

5.6.23 Non-levy of interest on delayed payment of stamp duty

Section 46 of the BS Act read with Rule 30A of Gujarat Stamp Rules, 1978 provide for recovery of simple interest at the rate of fifteen *per cent* per annum from persons, who do not pay the deficit duty, penalty or other sums payable under the Act within ninety days from the date of receipt of the order. Under the provisions of the Act (Section 32), only DCs are empowered to issue orders. Thus cases wherein orders/notices issued by Additional SS for payment of deficit duty are not covered by Section 32 and interest is not levied on delayed payment of duty.

Test check of records in the office of the Addl. SS revealed that many instruments falling under various articles of Schedule I of the BS Act were produced before the Addl. SS for assessment and payment of proper stamp duty. In such cases, either the party itself paid the duty directly, or the Addl. SS issued notice to party for payment of deficit stamp duty. Since these notices did not fall

under the provisions of Section 32, the Departmental officials could not levy interest under Rule 30A of Gujarat Stamp Rules for delay in payment of duty. Due to this lacuna in the Act and Rules, the Government lost substantial amount of interest on delayed payment of stamp duty. In five⁶⁹ cases, due to the lacuna in the Act and Rules, we noticed that potential loss of revenue on account of interest was of ₹ 1.51 crore.

After this was pointed out, the Department stated (August 2011) that since the final orders have not yet been passed in the five cases pointed out in Audit, question of levy of interest does not arise. The reply is not tenable because there are no enabling provisions in the Act/Rules to levy interest at the time of issue of final orders in the above five cases.

The Department may consider either to get the rules amended or the orders of Addl. SS may be issued through concerned DCs, in order to invoke the provisions of Section 32 of the Act.

5.6.24 Department's achievement

The Department implemented a new computer system "Registration of Documents System" designed by NIC initially in 25 SR Offices and later extended to all the other SR offices from April 2007. The Department has been regularly updating the system with various valuable functions to improve the efficiency of the registration activities and to safeguard public interest. During the year 2010-11, the Department had implemented E-governance through "Garvi" system in cases of conveyance of agricultural land wherein the validation of registered document is done simultaneously in the Village Forms under Bombay Land Revenue Code, 1879.

⁶⁹ (1) R.K.Global Shares & Securities Ltd. on brokers note issued - ₹ 1,27,849,
(2) & (3) Axis Bank on issue of equity shares and debentures - ₹ 70,16,026 and
(4) & (5) State Bank of Saurashtra on issue of bonds/debentures - ₹ 79,06,250.

5.6.25 Internal audit

Rule 77 of the Gujarat Registration Rules, 1970 provides for inspection of registering offices by designated Registrars and Inspectors. Every Registrar should inspect the offices of the Sub-Registrars (SRs) in the district at least once in every two years. Rule 78 prescribes that every Inspector of Registration (IR) should inspect the office of the SR once in a year. Further, the Revenue Department vide their circular no.TAPAS-102001-3357(1)-N.1 dated 22nd November 2001, have prescribed the number of surprise visits to be undertaken by the IGR, Dy. IGR, Asst. IGR and IR in the SR offices.

As per the information furnished by the Department, IRs were required to carry out 758 inspections of records of the SR offices during the period 2006 to 2010. IRs carried out only 260 inspections and thus there was shortfall of 498 inspections as mentioned in the table below:

Year	No. of offices to be inspected	No. of offices covered in inspection	Shortfall	% of shortfall
2006	148	61	87	58.78
2007	149	51	98	65.77
2008	150	53	97	64.67
2009	150	43	107	71.33
2010	161	52	109	67.70
Total	758	260	498	65.70

During the period from January 2005 to December 2009, 34,09,484 documents were registered by the SRs, out of which the IRs carried out internal audit of only 14,70,822 documents. This resulted in shortfall of audit of 19,38,662 documents i.e., 56.86 *per cent*. We further observed that no audit was conducted in 39 SR offices during the period 2005-09. The IRs checked 14,70,822 documents out of which objection was raised in 3480 documents. The Department complied objections in 2152 documents. Final compliance in 1328 documents has not been furnished so far.

Regarding the surprise visits by the IGR, Dy. IGR, Asst. IGR and IR based on Revenue Department's circular of 22nd November 2001, we noticed that there was shortfall of inspections by IGR ranging from 42 to 81 *per cent*, Dy.IGR from 42 to 92 *per cent*, Assistant IGR from 11 to 100 *per cent* and Inspector of Registration from 75 to 100 *per cent*.

After this was pointed out, the IGR stated (March 2011) that shortfall in inspection was due to shortage of manpower and increase in workload on existing staff. However, records did not indicate any action initiated by the Department to improve staff strength or outsource the work.

5.6.26 Working of E-Stamping in Gujarat

5.6.26.1 Introduction

E-stamping is a secured electronic way of paying for non-judicial stamps to the Government. Gujarat State was the first to introduce e-stamping in the country. Stock Holding Corporation of India (SHCIL), being the Central Record Keeping Agency, is responsible for overall application and maintenance of e-stamping in the State. SHCIL and the three Authorised Collection Centres (ACC) appointed by them having 49 branches at various places within the State issue e-stamp certificates to the clients. ACC acts as an intermediary between SHCIL and stamp duty payer. The e-stamp certificate is designed with advanced security features which includes Unique Identification Number (UIN), Optical watermark, 2D Barcode and Microprint. Other important features of the e-stamping include:

- a. The client can verify the authenticity of the e-stamp certificate online with the help of UIN printed on the e-stamp certificate.
- b. SRs can lock the e-stamp certificate online once it is used in a registrable document so that the certificate cannot be reused or cancelled for refund.

E-stamping, a web based application system was introduced with a view:

- (1) to prevent paper and process related fraudulent practices;
- (2) to provide secure and reliable collection mechanism;
- (3) to store information in electronic form; and
- (4) to build a central data repository to facilitate easy verification and generation of MIS reports.

The revenue collected by the Department on account of sale of e-stamps in Gujarat during 01.04.2007 to 31.03.2010 is given in the table below:

(₹ in crore)				
Period	Number of e-stamp certificates issued	Stamp duty collected through E-stamping	Total Stamp duty collection	% of e-stamping vis-à-vis total stamp duty collection
2007-08	57,069	48.57	2018.44	2.41
2008-09	66,380	66.91	1728.50	3.87
2009-10	2,24,216	249.00	2556.72	9.74

From the above, it can be seen that the revenue collected through e-stamping during 2009-10 increased by 272 per cent as compared to 2008-09. The increase in revenue is attributed to the public acceptability of the system.

5.6.26.2 Audit observations

During the audit of system of e-stamping, the following deficiencies were noticed:

5.6.26.2.1. Deficiency in security features

The salient features of e-stamping system is that the certificate can be printed only once and cannot be photocopied for reuse as the optical watermark in the back ground changes from 'Original' to 'COPY'. However, audit noticed that with the help of high resolution scanner and printer, the e-stamp certificate can be duplicated for multiple uses. The online system of e-stamping provides for locking of certificates by SRs once the e-stamp certificate along with the instrument is presented before him for registration. This facility is provided with an intention to avoid multiple use of the same e-stamp certificate in another document. Further, locking of certificates is required to be checked at the time of processing refund application in order to ensure that it has not been used earlier.

Audit noticed that the procedure of locking e-stamp certificate is not followed by most of the SRs. Moreover, the ReD system⁷⁰ used in the SR offices for registration of documents provides a field for entering Unique Identification Number (UIN). However, as the UIN field is not made mandatory, most of the SR offices have not entered UIN in the ReD system. Due to non-locking and non-entering of UIN in the ReD system, the possibility of fraud by using e-stamp more than once cannot be ruled out.

After this was pointed out, the Department replied (August 2011) that all SRs have been instructed to lock the E-Stamping Certificate to avoid multiple use of it. Further, Department also stated that a meeting was conducted with SHCIL to provide user IDs and passwords to all the SRs by the end of August 2011.

5.6.26.2.2. Non-reconciliation of remittances

The stamp duty collected by the ACC branches and counters on each day is being consolidated by the SHCIL and paid by a single cheque on the next day to the Stamp Office at Ahmedabad. The Stamp Office deposits the same into the Government account.

However, we noticed that the Stamp Office has not evolved any mechanism to cross verify the veracity of the amount of stamp duty collected and actually paid by the ACC branches and counters around the State. Further, no reconciliation of remittances made into the treasury was carried out by the Department till date (November 2011).

⁷⁰ Software designed by NIC for Registration of documents in the electronic form.

Compliance Deficiencies

5.6.27 Short levy of stamp duty and registration fees on instrument comprising several distinct matters

Under Section 5 of the BS Act, any instrument comprising or relating to several distinct matters is chargeable with the aggregate amount of duties for which such separate instrument would be chargeable under the Act. As per various judgements of courts, at the time of registration of document, regard should be given to the substance of the document and not to the description at the head of the document. We noticed many cases in which the documents contained more than one transaction. The SR failed to take cognizance of the recitals of the document and levy the stamp duty on the transaction which was not registered earlier. Such cases have been explained in detail in para 5.6.27.1 to 5.6.27.3.

5.6.27.1 Non-levy of stamp duty on release of property by co-owner

As per Explanation I under Section 2(g) of the BS Act, an instrument other than an instrument of partition, whereby a co-owner of any property, transfers his interest to another co-owner of the property, shall be deemed to be an instrument by which property is transferred *inter-vivos* and is chargeable to duty as conveyance.

During test check of documents of eleven SR Offices⁷¹ and DC, Bhuj, we noticed from recitals of 45 documents that there was mention of release of property by one co-owner in favour of another co-owner and sale of property to the purchaser. However, the SRs did not take cognizance of the recitals of the documents and verify the nature of transaction through the document. Stamp duty involved in these cases was

₹ 1.80 crore.

After this was pointed out to the Department between July 2010 and May 2011, the Department stated that the DCs have been instructed to take immediate action for recovery of dues.

⁷¹ Ahmedabad-I, II, III, IV, Himatnagar, Surat-I, II, III, IV & Vadodara II, IV

5.6.27.2 Non-levy of separate stamp duty on loans taken from different banks

As per circular issued by SS in 2007, documents falling under the category of distinct matters under Section 5 of the BS Act would also include different transactions from different institutions/ individuals/companies and if mortgage, conveyance etc., are executed in a single document then as per section 5 are chargeable to duty considering it as separate document.

During test check of documents registered with four SR offices⁷², it was noticed that loan of ₹ 635.62 crore was taken from different banks by loanees. The Registering authorities levied stamp duty only on the total amount of loan taken from different Banks instead of and levying separate stamp duty on loan taken from each bank treating this transaction under section 5. This resulted in short levy of stamp duty of ₹ 43 lakh in eight cases.

After this was pointed out to the Department in May 2011, the Department stated (August 2011) that they would refer to guidelines issued by RBI in cases where many banks form a consortium to fund a single loanee.

5.6.28 Short levy of stamp duty and registration fees due to misclassification of deeds

Under Section 3 of the BS Act, every instrument mentioned in Schedule-I shall be chargeable with duty at the prescribed rates. As per various judgements of courts, at the time of registration of document, regard should be had to the substance of the document and not to the description at the head of the document.

During test check of documents in the office of the Addl. SS and three SR offices, we noticed that 28 documents registered in 2009 were classified on the basis of their titles and the stamp duty and registration fees were levied accordingly. Scrutiny of the recitals of these documents revealed that the documents were misclassified. This resulted in short levy of stamp duty and registration fees of ₹ 7.15 crore as

mentioned in the following table:

⁷² Ahmedabad-V, Bharuch, Morbi & Valsad.

(₹ in crore)

Sl. No.	Location	No. of Documents	Consideration	Short Levy	Nature of objection
1	Gandhinagar-Additional Superintendent of Stamps	17	977.20	6.84	Recitals of the documents indicated that the Company agreed to create an additional security in favour of the Security Trustee and agent by way of mortgage and charge on its immovable properties and hence documents were classifiable as "Mortgage with additional security" instead of an agreement.
2	Ahmedabad-III, IV, Gandhinagar	11	6.81	0.31	Recitals of documents indicated that release of rights over properties was by one co-owner in favour of another co-owner. Stamp duty was chargeable as conveyance but stamp duty was levied at the rate applicable to partition deed.

After this was pointed out to the Department in May 2011, the Department accepted the audit observations and stated (August 2011) that out of total 28 cases, in 11 cases demand notices are being issued/had been issued. The Department had instructed all the DCs to take immediate action for recovery of dues in the remaining cases.

5.6.29 Stamp duty foregone due to non-execution of conveyance deeds between owners and developer of properties

Stamp duty chargeable on 'Development agreement' is covered under Article 5(ga) and 45(g) of Schedule I of Bombay Stamp Act, 1958. As per Article 5(ga) agreement given to a promoter or developer, by whatever name called for construction or development of or sale or transfer (in any manner whatsoever) of any immovable property stamp duty at the rate of 1 per cent is chargeable. This Article was inserted in the Act from 1st September, 2001.

In case of development agreement, the owner of the land hands over the land to the developer and the developed property along with the right in land is sold to the buyer. Since the ownership of land is not transferred by the owner to the developer, the developer does not get the right to transfer the

land to the buyer. It is necessary that after the development of property is completed, a proper conveyance deed is executed between the owner/s and the developer of property.

During test check of records of five SR offices⁷³, we noticed in eight documents registered between 2007 and 2009 that consideration was already paid/agreed to be paid by the developer to the land owner before the development of the property. The land owner also empowered the developer to sell the constructed/developed properties, along with the right in land and to receive its consideration. Since the power to sell the land cannot be transferred without the execution of conveyance deed for land; the parties in these development agreements should have executed separate conveyance deeds conveying the land to the developer. In one of these documents, it was clearly mentioned in the recitals of the agreement that a separate agreement would be entered into by the parties to convey the land. Despite this, the Sub Registrar did not insist on the execution of conveyance deed for land. The Sub Registrars also could not confirm whether separate conveyance deeds were executed by the parties for land or not, in absence of any system developed for watching registration of conveyance deeds.

Non-insistence of separate conveyance deed by the owners of land in favour of developers in such kind of transactions resulted in transfer of land without payment of proper stamp duty. The stamp duty foregone was to the tune of ₹ 2.26 crore in such cases.

After this was pointed out to the Department between August 2009 and May 2011, the Department accepted the audit observations and stated (August 2011) that demand notices are being issued/had been issued and instructions have been issued to all the DCs to take immediate action for recovery of dues.

Department may consider issuing instructions to SRs to insist for separate conveyance deeds in all cases where the development agreement contains recitals regarding transfer of right to sell the land to developer and of land value has been paid/agreed to be paid by the developer.

⁷³ Ahmedabad-III, IV, V, Gandhinagar & Vadodara I

5.6.30 Short levy of stamp duty due to undervaluation of properties

Section 32 A the Bombay Stamp Act, 1958 provides that if the officer registering the instrument has reasons to believe that the consideration set forth in the document presented for registration is not as per the market value of the property, he shall, before registering the document, refer the same to the DC for determination of the market value of the property. The market value of the property is to be determined in accordance with the Bombay Stamp (Determination of Market Value of the Property) Rules, 1984. IGR in his circular dated 26th November 2007, instructed to all SRs to include area of common plot, internal road etc in total area of land for arriving at the market value of property for the purpose of levy of stamp duty. As per the guidelines issued for implementation of revised *Jantri* rates effective from 1st April 2008, where agricultural land is purchased for non-agricultural purposes with the permission of competent authority and total area of such land is more than 10,000 sq m, duty at concessional rate i.e. 20 *per cent* less than the effective rate of the duty is chargeable, if order of competent authority is presented at the time of registration. Further, as per guidelines issued in the new *Jantri* developed land includes land which can be used for non-agriculture purpose, land wherein development can take place or which is capable of being developed e.g. land converted into non agriculture, land included in development scheme (*vikas yojana*)/Town Planning scheme, land purchased under Section 63 A and 63 AA of the Bombay Tenancy Act, 1948 and land included in SEZ and IT parks. However, when shop is included in Mall, Arcade or Multiplexes no rebate in floor or frontage should be given.

During test check of documents of 37 SR offices, DC, Anand, Addl.SS, Gandhinagar and DDO, Anand between 2004 and 2009, we noticed that the market value of the properties was determined incorrectly in 368 documents, which resulted in short levy of stamp duty and registration fee of ₹ 7.09 crore as mentioned in the following table:

(₹ in lakh)

Sl. No.	Location	No. of documents	Short levy	Nature of irregularity
1.	Ahmedabad-VI, Anjar, Dehgam, Kalol(Pms), Savli, Surat-II, III, IV, Vadadora-IV	9	64.88	Government has prescribed <i>jantri</i> for determination of market value of the land and properties respectively. Instead of adopting the <i>jantri</i> rates, lesser value of the properties as shown in the document was accepted.
2.	Ahmedabad-V, Anjar, Gandhinagar-Additional Superintendent of Stamps, Jamnagar-1, Navsari, Rajkot-IV, Surat-I, II, Vadodara-I, III.	17	194.77	<p>While calculating the market value, the registering authorities adopted incorrect rates. In four cases, land was included in TP. In two cases the land in question was non agricultural and in one case, agricultural land was given to non agriculturist. However, Revenue Authorities (RAs) valued the land at the rate applicable to agricultural land.</p> <p>In one case, the land could be used for commercial cum industrial use hence rate of developed land was to be applied. However, RA applied rate of industrial use. In one case, value of construction was not taken into consideration.</p> <p>In one case, incorrect rebate was given to shop in Mall. In three cases, rate of agreement to sell was taken into consideration instead of rate prevailing at the time of conveyance. In one case, rate of revenue survey number was taken into consideration though the land was included in TP and rate of TP was available in the <i>jantri</i>. In three cases, rate of another TP scheme was adopted though the particular survey No. fell in another TP where the rates were higher.</p>
3.	Ahmedabad-V, Anjar, Bardoli, Jamjodhpur, Jamnagar-I, Jhagadia, Mangrol, Mehsana, Morbi, Olpad, Padra, Sanand, Vadodara-IV, Valsad	41	181.28	While calculating market value of land, Sub Registrars considered rate of agricultural land instead of developed land, although the land was purchased by non agriculturists.

4.	Anjar, Mandvi	277	156.52	Reduction of 20 per cent in rate was given in respect of land purchased for non agricultural use where the area of land was more than 10,000 sq. mtrs. although copy of permission by competent authority was not presented with the document.
5.	Ahmedabad-V, Anand-DDO, Borsad, Kadi, Sanand, Vadodara-II.	14	58.68	While calculating the market value, the Sub Registrars adopted the rate of agricultural land instead of developed land, although permission had already been given under the Bombay Tenancy Act.
6.	Ahmedabad-I, Vadodara-III	3	9.26	While calculating the market value the Sub Registrars excluded the area of common plot and road.
7	Anand-DC(SDVO), Anjar, Ahmedabad-III, VII, Bhuj-., Gandhidham	7	43.97	Government of Gujarat revised the <i>jantri</i> rates from February and April 2007 and new <i>jantri</i> rates came into effect from 1 st April 2008. While calculating the market value, the Sub Registrar applied the market value of the land at pre revised/old <i>jantri</i> rate.

After this was pointed out to the Department between July 2010 and May 2011, the Department accepted the audit observations and stated (August 2011) that out of total 368 cases, in three cases of DC, Anand, the Department accepted undervaluation amounting to ₹ 65,464. In 364 cases, demand notices are being issued/had been issued. No reply has been received in remaining one case.

5.6.31 Non-realisation of stamp duty due to non-registration of documents

Section 33 of the Bombay Stamp Act (as applicable to Gujarat) empowers every person in charge of a public office to impound any instrument, produced before him in performance of his functions, if it appears that such instrument is not duly stamped.

During test check of the documents of 20⁷⁴ SR offices and DC, Gandhinagar, it was noticed that recitals of the documents registered between 2006 and 2009 indicated need for execution of another document. The executants of those documents did not register their documents with the registering authorities. Of these, in 76 cases, development agreements were not registered, and in 10 cases the agreements to sale with possession were not registered. The Sub-Registrars did not detect

⁷⁴ Ahmedabad-I, II, IV, VI, Dehgam, Deesa, Gandhinagar, Nadiad, Palanpur, Pardi, Patan, Rajkot-I, Sanand, Surat-I, II, III, Vadodara-I, II, IV, Visnagar

the cases where execution of another document was necessary and failed to initiate action to get the earlier document for scrutiny for the purpose of levy of proper stamp duty. Stamp duty involved in these cases was ₹ 3.26 crore.

After this was pointed out to the Department between July 2010 and May 2011, the Department accepted the audit observations and stated (August 2011) that out of total 86 cases, in 84 cases, demand notices are being issued/had been issued. No reply has been received in the remaining two cases.

5.6.32 Short levy of Registration fees

The Government revised rate of registration fees from 10th August, 1988. As per revised fee table, registration fees on partnership deed, partition etc. is leviable on ad valorem scale at the rate of 1 per cent on the amount or value of property. As per Section 23 of the Indian Registration Act, documents have to be presented within four months from the date of execution. The Gujarat Registration Rules, 1970 provides for levy of fine of 2.5 times the proper amount of registration fees for every month.

During test check of the documents of eight⁷⁵ SR offices, between 2008 and 2009, we noticed in 15 documents that registration fees was not levied correctly. Registration fees was short levied due to (i) non consideration of market value, (ii) unpaid wages and salary payable transferred to the purchaser were not considered, (iii) cash brought in by partner was not considered etc. and (iv) in one

case document was presented for registration after lapse of six months from the date of execution. This resulted in short levy of registration fees of ₹ 1.24 crore.

After this was pointed out to the Department between 2008 and 2009, the Department accepted the audit observation and stated (August 2011) that out of total 15 cases, in 2 cases, the Department had recovered an amount of ₹ 4.59 lakh. In one case, certificate had been issued under Section 80-C-1 of Registration Act. In remaining 12 cases, demand notices are being issued/have been issued.

⁷⁵ Ahmedabad-II, V, VII, Gandhinagar, Rajkot-I, Surat-I, III, IV.

5.6.33 Non/short levy of stamp duty and registration fees on dissolution of partnership

As per Article 44(3) (a) of the BS Act where any immovable property is taken as share on dissolution of partnership by a partner other than a partner who brought that property as a share or contribution to partnership, stamp duty is chargeable at the rate applicable on a conveyance.

During test check of records of five⁷⁶ SR offices, we noticed between 2008 and 2009 that in nine documents, although at the time of dissolution of partnership the partners distributed among themselves immovable property purchased by their respective firms, the Departmental officials did not levy stamp duty at the rate applicable to conveyance. This

resulted in non/short levy of stamp duty and registration fees of ₹ 67.34 lakh.

After this was pointed out to the Department between January and May 2011, the Department stated (August 2011) that out of total 9 cases, in 3 cases, demand notices are being issued/have been issued. The Department instructed all the Dy. Collectors to take immediate action for recovery of dues in the remaining cases.

5.6.34 Short levy of stamp duty and registration fees due to incorrect computation of consideration

As per Section 2(g) of the BS Act (as applicable to the State of Gujarat), conveyance on sale includes every instrument by which movable/immovable property is transferred *inter vivos*. Thus, when movable property is sold or transferred, the total value of such property is to be taken for the purpose of levy of the stamp duty and registration fees.

During test check of the records of four⁷⁷ SR offices between 2005 and 2009, we noticed in four cases that properties (movable and immovable) of defaulters were sold through auction by financial institutions to recover their outstanding dues. Recitals of document revealed that consideration of movable properties (i.e. plant, machinery etc..) valued at

₹ 12.17 crore was not included in total sale consideration of properties for the purpose of levy of stamp duty and registration fees. This resulted in short levy of stamp duty and registration fees of ₹ 50.23 lakh.

After this was pointed out to the Department between September 2009 and May 2011, the Department accepted the audit observation and stated (August 2011) that in all cases, demand notices are being issued/have been issued. The Department instructed all the DCs to take immediate action for recovery of dues in these cases.

⁷⁶ Jamnagar-1, Kamraj, Surat-I, II, III.

⁷⁷ Dholka, Kalol(PMS), Morbi, Vadodara-III.

5.6.35 Short levy of stamp duty and registration fees on lease deeds due to incorrect computation

The Bombay Stamp Act (as applicable to the State of Gujarat) provides for levy of stamp duty on lease at the rate applicable to conveyance deed. For calculation of consideration for the purpose of levy of stamp duty on lease deeds, average annual rent reserved depending on the period of lease is to be considered. Further premium paid or money advanced is also to be added in the consideration.

During test check of the documents of three⁷⁸ SR offices between 2008 and 2009, we noticed in two documents that escalation in maintenance and property tax were not taken into consideration for the purpose of levy of duty. In one case, lease was for a period of 20 years with escalation in rent at the rate of 15 per cent after every 3 years and hence stamp

duty and registration fee was chargeable on twice the amount of annual average rent reserved, and in another case the lease was for a period of 50 years with escalation in rent at the rate of 15 per cent after every 3 years and hence stamp duty and registration fees was chargeable on thrice the amount of annual average rent reserved. However, in both the cases there was a mistake in working out the annual average rent reserved. This resulted in short levy of stamp duty and registration fees of ₹ 16.46 lakh.

After this was pointed out to the Department between September 2010 and March 2011, the Department accepted the audit observation and stated (August 2011) that in all cases, demand notices are being issued/ have been issued. The Department also instructed all the DCs to take immediate action for recovery of dues in these cases.

5.6.36 Instrument not duly stamped

Section 17 of the Bombay Stamp Act (as applicable to the State of Gujarat), prescribes that all instruments chargeable with duty and executed by any person in the state shall be stamped before or at the time of execution or immediately thereafter on the next working day following the date of execution.

During test check of documents of two⁷⁹ SR offices in 2009, we noticed in seven documents that the stamps were used after the execution of the documents. This resulted in short levy of stamp duty of ₹ 14.39 lakh due to use of invalid stamps.

After this was pointed out to the Department in May 2011, the Department accepted the audit observations and stated (August 2011) that in all cases demand notices have been issued. The Department had instructed DCs to take immediate action for recovery of dues in these cases.

⁷⁸ Rajkot-III, Vadodara-I, IV

⁷⁹ Ahmedabad-IV, Gandhinagar

5.6.37 Conclusion

The review revealed a number of system and compliance deficiencies. Management information system prevailing in the Department is very weak. There was no system to maintain proper database to monitor timely realisation of arrears of duty. There was leakage of revenue due to absence of system of co-ordination with various government organisations executing instruments liable for payment of stamp duty. Internal control system of the Department was weak due to shortage of manpower. There is a lacuna in the BS Act and Gujarat Stamp Rules 1978 which results in non-levy of interest on delayed payment of stamp duty.

5.6.38 Summary of recommendations

The Government may consider implementing the following recommendations to rectify the deficiencies and improve the system:

- The Government may consider introducing a system of co-ordination with various authorities/Departments so as to ensure levy of proper stamp duty on instruments falling under Schedule I of BS Act.
- Government may consider to insert Explanation under Article 24 of Schedule I of the Bombay Stamp Act in line with Maharashtra for charging stamp duty on delivery orders of goods imported through ICDs and Air Cargo.
- The Government may consider publicising the importance of levy of stamp duty on instruments to the mass public for creating awareness, which would decrease non compliance and would further increase revenue.
- The Government may consider amending the BS Act and GS Rules in order to levy interest on delayed payment of stamp duty.
- The Government may consider setting up a system of co-ordination with ROC to collect data regarding registered companies raising fund and allotting shares so as to levy and collect proper stamp duty.
- The Government may consider setting up a system of co-ordination with stock exchanges to collect segment-wise turnover data of brokers issuing notes or memorandum to the principals in the State so as to plug leakage of revenue.
- The Government may devise a system for co-ordination with Income Tax Department to collect periodical data of cases of suppression of sale consideration wherein deficit stamp duty and registration fee is involved.
- Inserting enabling provisions under Section 46 of BS Act in line with Section 119(2)(a) of Income Tax Act, 1961 wherein, powers have been delegated to Central Board of Direct Taxes (CBDT) to issue circulars for waiver of interest in peculiar circumstances of cases.

