



CHAPTER – IV : Stamp Duty and Registration Fee

4.1 Results of audit

Test check of records in 11 unit offices dealing with Stamp Duty and Registration Fee under the Registration Department during 2012-13 revealed non/short levy and realisation of stamp duty and registration fees amounting to ₹ 0.05 lakh in 21 cases. Also, an audit on the topic titled “Evasion of Stamp Duty and Registration Fee on immovable properties with special emphasis on Development Agreement” was also conducted during the year. These are shown in Table 1.

Table 1
Results of audit

(₹ in lakh)			
Sl. No.	Category	Number of cases	Amount
1.	“Evasion of Stamp Duty and Registration Fee on immovable properties with special emphasis on Development Agreement”	01	1, 041.00
2.	Short realisation of Stamp Duty.	04	0.05
3.	Non-maintenance of stock register and records.	04	-
4.	Huge number of deeds lying pending for copying and delivery.	06	-
5.	Delay in deposit of Revenue collection.	05	-
6.	Retention of heavy cash balance.	02	-
Total		22	1, 041.05

During the course of the year, the Department accepted 13 paragraphs involving procedural irregularities which did not involve monetary implications.

Results of the Audit on the topic titled “Evasion of Stamp Duty and Registration Fee on immovable properties with special emphasis on Development Agreement” involving revenue implication of ₹ 10.41 crore are mentioned in the following paragraphs.

4.2 Evasion of Stamp Duty and Registration Fee on immovable properties with special emphasis on Development Agreements.

Highlights

Non-execution of conveyance deeds between landowners and developers resulted in foregoing of revenue of ₹ 7.30 crore.

(Paragraph 4.2.7.1)

Non-realisation of Registration Fee on fishery and ferry leases of ₹ 2.80 crore.

(Paragraph 4.2.7.2)

Non-registration of deeds of allotment of Government lands resulted in non-realisation of Registration Fee of ₹ 30.76 lakh.

(Paragraph 4.2.7.3)

4.2.1 Introduction

Receipts from Stamp Duty and Registration Fee in the State are regulated under the Indian Stamp Act (IS Act), 1899; Indian Registration Act (IR Act), 1908, as applicable in Assam and the rules made there under. The IS Act and the State Acts impose duty on various instruments specified in the schedules appended thereto at the rates specified therein. Such duties are paid by executors of instruments by either using impressed stamp paper of proper denominations or by affixing stamps of proper denominations on them. The State Governments have made rules for the purpose of the IS Act by virtue of powers vested in them. These rules lay down the detailed procedure for determination and collection of Stamp Duty.

The IR Act and Rules made there under, by the State Governments broadly outline the system of assessment and collection of revenue as Registration Fees. Section 78 to 80 of the IR Act requires that fees should be paid at rates determined and notified by the State Government for registration of documents which are in the nature of services rendered by the Registration Department.

“**Development Agreement**” is a case where the owner of the land entrusts the land to the developer only for the purpose of managing the construction of structures/houses and sell the constructed properties to the willing buyers for a consideration. Development Agreement facilitates the process of addressing

the issue of construction of houses by bringing together such people, one of whom has a land but does not have the resources to develop it and at the same time does not like to give the ownership of the land whereas the person who has the resources does not have the land. Development Agreement is the mechanism developed by the Government to bring the resources together at minimum cost of ₹ 100. Some of the States charge ₹ 100 on the Development Agreement and other States are charging the Stamp Duty at lower rates on percentage basis. The agreement contains the mutual terms and conditions between the owner of the land and the developer of the land.

4.2.2 Organisational set up

In the State of Assam, the determination of policy, monitoring and control at the Government level is done by the Secretary, Finance (Revenue) Department. The Inspector General of Registration (IGR) is the head of the Department. He is assisted by one Assistant Inspector General of Registration (AIGR) and five Deputy Registrars (DR), eight Senior Sub-Registrars (Sr. SR), 66 Sub-Registrars (SR) and two SRs (Attached).

4.2.3 Audit scope and Methodology

Audit was conducted during May and June 2013 in the office of the IGR, and the selected registration offices of the Sr. SR, Kamrup (Metro) and the SR, Kamrup (Rural), under whose jurisdiction major developmental activities in the form of construction of multipurpose complexes/apartments took place. Relevant information on immovable property was also collected from different Government agencies¹ for the period from 2007-08 to 2011-12.

4.2.4 Acknowledgment

Indian Audit and Accounts Department acknowledges the co-operation of the IGR in providing necessary information and records for audit. The draft Report was sent to the Government/Department in July 2013. Replies of the Department had been received in September 2013 which has been appropriately incorporated in respective paragraphs.

¹ Source from which information collected: Regarding approval of new apartments complexes from Office of the Chief Executive Officer (CEO) - Guwahati Metropolitan Development Authority (GMDA), Commissioner-Guwahati Municipal Corporation (GMC).

Regarding Ferry and Fishery leases which are classified as immovable properties, from the Director - Inland Water Transport (IWT), General Manager (GM) - Assam Fishery Development Corporation (AFDC), Secretary, Government of Assam, Fishery Department and the Deputy Commissioner (DC), Kamrup (Metro) and Kamrup (Rural) furnished information on allotment of land by the GOA to different parties (both private and Government).

4.2.5 Audit objectives

Audit was conducted with a view to ascertaining:

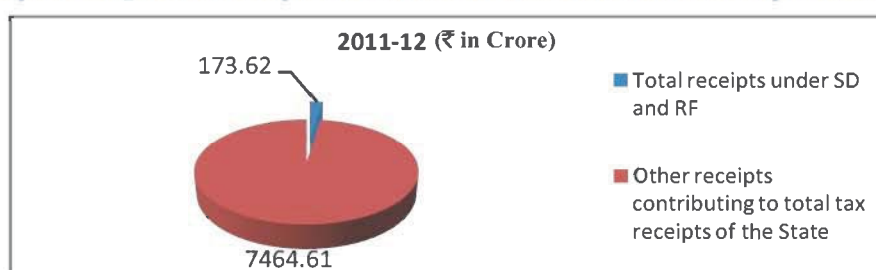
- whether the Government had clearly defined Development Agreement and prescribed Stamp Duty and Registration Fee on such agreements;
- whether Registration offices discharged their functions in regard to levy of Stamp Duty and Registration Fee in accordance with the prescribed rules and procedures;
- whether any lacunae in the Acts/Rules impacted revenue; and
- the extent of compliance with prescribed rules and procedures with regard to lease of immovable properties.

4.2.6 Trend of revenue receipts

The following table brings out a comparison of the budget estimates, actual receipts of Stamp Duty (SD) and Registration Fee (RF) and the total tax receipts of the State during the period from 2007-08 and 2011-12:

Year	Budget estimates		Actual Receipts		Total receipts under SD and RF	Total Tax revenue of the State	Percentage of total receipts under SD and RF vis-a-vis total tax revenue of the State
	SD	RF	SD	RF			
2007-08		37.78	77.52	30.22	107.74	3,359.50	3.20
2008-09		45.05	77.12	42.40	119.52	4,150.21	2.87
2009-10	Not fixed	Not fixed	62.31	43.18	105.49	4,986.72	2.12
2010-11		Not fixed	78.43	50.57	129.00	5,929.84	2.18
2011-12		94.73	96.86	76.76	173.62	7,638.23	2.27

Graph showing the total receipts under SD and RF vis-a-vis the total tax receipts of the State



Pie chart showing the total receipts under SD and RF vis-a-vis total tax receipts of the State during 2011-12

As could be seen, the growth of revenue under SD and RF during 2011-12 over previous year was at 34.59 per cent against 22.29 per cent in the year 2010-11. Also, the Department has not framed any target in respect of SD in any of the years while target for RF was not fixed during 2009-10 and 2010-11. The percentage of SD and RF to total tax revenue of the State ranged from 2.12 to 3.20 per cent over the five year period. The overall position

of revenue from SD and RF has been registering an increasing trend; yet, when compared to the total tax receipts of the State, it showed a decreasing trend till 2009-10. The position improved during subsequent years and stood at 2.27 per cent in 2011-12 which was far below the percentage achieved in 2007-08 which the Department needs to look into.

4.2.7 Audit findings

4.2.7.1 Non-execution of conveyance deeds between land owners and developers.

Under the provisions of Article 48 (f) of the Schedule-1 to the IS Act, (as applicable in Assam), any instrument when executed, authorising the attorney to sell any immovable property for consideration, are chargeable to Stamp Duty as a conveyance for the amount of the market value of the property. For the purpose of levy of Stamp Duty, an instrument is required to be classified on the basis of its recital given in the document and not on the basis of its title.

During test check of the records of two SR offices of Kamrup (Metro) and Kamrup (Rural), it was noticed that 50 documents (Development Agreements) were registered between 2007-08 and 2011-12. Scrutiny of the documents revealed that the recitals of the documents clearly mentioned that consideration was paid/agreed to be paid by the developers to the land owners and the land owners also empowered the developers 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, separate conveyance deeds were required to be executed between the land owners and the developers on payment of proper Stamp Duty. The concerned SRs also did not notice the same resulting in foregoing of revenue to the tune of ₹ 7.30 crore (@ six per cent Stamp Duty) in 50 cases.

The Department in their reply stated (September 2013) that the details of Power of Attorney and such instruments were required for examination. The Department further stated that the Assam Apartment Act, 2009 was duly passed by the Assembly, but is yet to be implemented. The Assam Apartments (Construction and Transfer of Ownership) Rules, 2010 was subsequently notified where 'the Development Agreement' was found defined. Further

developments in the cases pointed out by Audit in respect of which Department sought time had not been reported (September 2013).

Recommendation No. 1:

Department may consider issuing instructions to Sub Registrars to insist for separate conveyance deeds in all cases where the developer is authorised through power of attorney by the land owner to sell the property constructed on his land against consideration. Moreover, the Government may consider inserting an article regarding 'Development Agreement' in the Stamp Act of Assam as it had already been defined in the Assam Apartments (Construction and Transfer of Ownership) Rules, 2010.

4.2.7.2 Non-realisation of Registration Fee on Ferry and Fishery leases.

Under section 2(6) of the IR Act, "immovable property" includes land, buildings, lights, ferries, fisheries etc. Further, the Supreme Court in its decision {(1995) 6-SCC 520} declared that fishing from a tank is a profitable profession, which comes in the class of immovable property.

Moreover, as per section 17(d) of IR Act, lease of immovable property from year to year, or for any term exceeding one year or reserving a yearly rent shall be compulsorily registered.

Information collected from the Director, Inland Water Transport, Assam and Managing Director, Assam Fisheries Development Corporation Ltd. / the Secretary, Government of Assam, Fishery Department revealed that the departments had awarded 139 leases of ferries at a cost of ₹ 16.45 crore and 1,103 leases of fishery at a cost of ₹ 25.39 crore respectively (each

exceeding ₹100) during the period from 2007-08 to 2011-12. It was, however, noticed that these leases were not registered under the IR Act which resulted in non-realisation of Registration Fee of ₹ 1.40 crore (@ 8.5 per cent) on Ferry leases and ₹ 1.40 crore (@ 5.5 per cent) on Fishery leases.

The Department in their reply confirmed that no registration of deed was done in cases of settlement of ferry and fishery. Further development in these cases had not been reported (September 2013).

4.2.7.3 Non-registration of deeds of allotment of Government land.

Section 17b of the IR Act provides that other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest whether vested or contingent, of the value of ₹ 100 and above, to or in immovable property, are required to be compulsorily registered.

Registration Fee of the documents where value exceeds ₹ 5 lakh was fixed at ₹ 85 per thousand vide notification No. REGN 43/86/68 dated 7 December 1989.

Scrutiny of the information collected from two Deputy Commissioners (Kamrup-Metro & Rural) revealed that the Government had allotted 22 plots of land to Government and private parties in Kamrup (Metro) and Kamrup (Rural) districts during the period from 2007-08 to 2011-12, the total value of which were ₹ 3.62 crore (two cases of Government

agencies with a land value of ₹ 1.35 crore & 20 private parties including individuals where the land value involved was ₹ 2.27 crore). The allotment of aforementioned land was required to be registered by a levy of ₹ 30.76 lakh as Registration Fee (@ 8.5 per cent) which was not done, resulting in non-realisation of the same amount.

The Department in their reply stated that Government land is allotted to Government Departments/private individuals on receipt of application from them after following prescribed procedures and in such cases no sale deed is registered. The individual allottees of land can, however, apply for conversion of their land allotment into short lease and periodic lease. Such conversion may be allowed by competent authorities on realisation of government dues called premium payable through treasury *challans*. In such allotment cases, thus, no sale deed registration is done. However, they called for the details of the cases commented upon by Audit for further examination.

Response of Audit: The required information has been forwarded to the Department. Further development in these cases had not been reported (September 2013).

4.2.8 Other issues impacting revenue

Against an audit query, the Department replied that:

- To check under valuation of the properties in transaction, although the Government of Assam through Revenue Registration Department has taken some steps like institution of zonal valuation Committee/Cell under the control of respective Deputy Commissioner of the districts, the final outcome in the form of gazette notification fixing valuation in uniform manner throughout the

State by the Government has to be made at the earliest. This would ensure that a permanent check can be instituted on under valuation of properties.

- The Assam Apartment Act, 2009 which was duly passed by the Assembly is yet to be implemented by making Rules and notification thereon to check the under valuation of the buildings, flats and apartments by the concerned authorities leading to evasion of huge revenue, especially in urban areas.

The above indicates that there is still scope of generating revenue by making specific rules, issuing notifications which need to be looked into by the Government. Till such time, the Government would continue to loose revenue.

Recommendation No. 2:

The Department may initiate action to take up the matter at appropriate level to address the above issues in the best interest of revenue of the State.

4.2.9 Weak internal controls

Inspection by senior level officers is an important internal control for administration to ascertain and ensure that machinery at the execution level is adhering to the rules and procedures prescribed and are sufficient to safeguard proper collection of revenue. In the Registration Department, it is ascertained that the AIGR is required to conduct inspection of SR offices, but there was no prescribed norm for inspection of the SR offices by the superiors. Audit observed that during the period of five years, out of the total 81 number of units, only one inspection was carried out in 2009-10 and three inspections in 2010-11.

Adequate and proper inspection of the SR offices by the AIGR or authorised officers could have assured the department that rules and procedures were being complied with by the departmental officers.

4.2.10 Conclusion

Stamp Duty and Registration Fee is an important tax revenue of the State. Evasion of Stamp Duty and Registration Fee is common due to undervaluation of properties, non-execution of conveyance deeds in cases of Development Agreements, non-realisation of Stamp Duty and Registration Fee in ferry/fishery leases etc. The internal controls of the Department were found to be weak as evidenced by the short fall in the number of inspections required to be conducted and audit findings which revealed non/short levy/realisation of Stamp Duty and Registration Fees on a number of transactions.