

Executive Summary

Appreciable increase in tax collection	In 2011-12 the collection of revenue from stamp duty and registration fees increased appreciably by 42 <i>per cent</i> over the previous year which was attributed by the Department to increase in sale of non-judicial stamps and fees for registering documents and increase in monetary value with effect from 12 July 2011 under Articles 6(1) (a), 35 and 48 of Schedule I of the Indian Stamp Act, 1899.
Arrears of revenue	Out of the arrears of ₹ 246.19 crore pending as on 31 March 2012, ₹ 245.16 crore, i.e. 99 <i>per cent</i> were covered under the Revenue Recovery Act.
Cost of collection	In all the three years from 2009-10 to 2011-12, the expenditure incurred on collection was more than the all India average cost of collection in the preceding years.
Internal audit	There was short fall in the conduct of internal audit in the past few years due to shortage of staff in the internal audit wing. This resultantly had its impact in terms of the weak internal controls in the Department. It also led to the omissions on the part of the registering officers till the conduct of our audit.
Results of audit conducted by us in 2011-12	<p>In 2011-12 we test checked the records of 237 units and found undervaluation of duty and other irregularities amounting to ₹ 128.92 crore in 717 cases.</p> <p>The Department accepted underassessments and other deficiencies amounting to ₹ 5.70 crore in 87 cases, out of which, ₹ 3.34 crore involved in 14 cases were pointed out during the year and the rest in earlier years. Out of the above, an amount of ₹ 3.51 crore has been collected.</p>
What we have highlighted in this Chapter	<p>In this chapter we present illustrative audit observations of ₹ 76.58 crore selected from the observations relating to misclassification of instruments, undervaluation of properties, etc. noticed during our test check of records in the registration offices, where we found that the provisions of the Acts/Rules were not observed.</p> <p>It is pertinent to mention that though similar omissions have been pointed out by us in earlier years, the Department had not taken corrective action despite the fact that such mistakes were apparent from the records made available to us.</p>
Our conclusion	The Department needs to improve the internal control system including strengthening of internal audit so that the weaknesses in the system are addressed and omission of the nature pointed by Audit are avoided in future. It also needs to initiate action to recover non/short levies and under valuations pointed out by us. The cost of collection in the State is higher than the all India average cost of collection and thus the Department needs to take action to reduce the cost of collection.

CHAPTER IV

STAMP DUTY AND REGISTRATION FEES

4.1 Tax administration

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

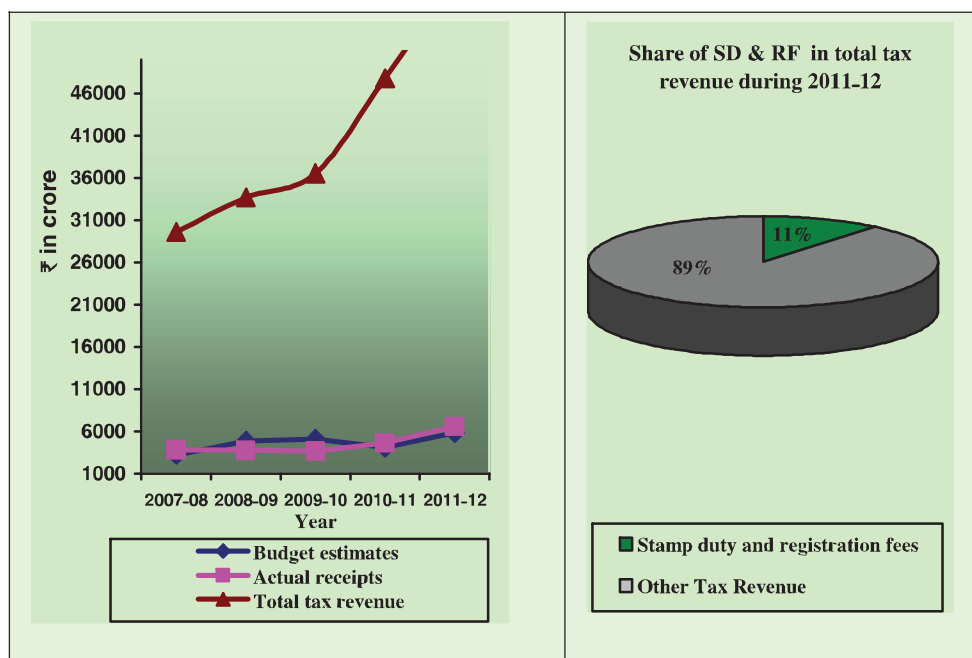
4.2 Trend of revenue

Actual receipts from stamp duty and registration fees during the last five years from 2007-08 to 2011-12 along with the total tax revenue during the same period are exhibited in the following table:

(₹ in crore)

Year	Budget estimates	Actuals	Variation excess (+)/ short fall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts <i>vis-à-vis</i> total tax receipts
2007-08	3,258.88	3,804.74	(+) 545.86	(+) 17	29,619.10	13
2008-09	4,888.90	3,793.68	(-) 1,095.22	(-) 22	33,684.37	11
2009-10	5,093.99	3,662.16	(-) 1,431.83	(-) 28	36,546.66	10
2010-11	4,096.18	4,650.59	(+) 554.41	(+) 14	47,782.17	10
2011-12	5,856.07	6,580.78	(+) 724.71	(+) 12	59,517.66	11

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



In 2011-12 the collection of revenue from stamp duty and registration fees increased by 42 per cent over the previous year which was attributed by the Department to increase in sale of non-judicial stamps and fees for registering documents and also includes the increase in monetary value with effect from 12 July 2011 under Articles 6(1) (a), 35 and 48 of Schedule I of the Indian Stamp Act, 1899.

4.3 Analysis of arrears of revenue

Arrears of revenue as on 31 March 2012 along with the figures for the preceding four years as furnished by the Department are given in the following table:

(₹ in crore)					
Year	Opening balance	Addition	Total	Amount collected during the year	Closing balance
2007-08	160.35	17.99	178.34	29.53	148.81
2008-09	148.81	29.93	178.74	30.86	147.88
2009-10	147.88	65.37	213.25	15.75	197.50
2010-11	197.50	37.15	234.65	20.73	213.92
2011-12	213.92	72.91	286.83	40.64	246.19

Arrears as on 31 March 2012 includes ₹ 148.81 crore outstanding for more than five years. Demands amounting to ₹ 245.16 crore were covered under the

Revenue Recovery Act. Demands of ₹ 1.03 crore were stayed by the High Court and other judicial authorities.

The above details indicate that substantial amounts were covered under the Revenue Recovery Act.

We recommend that the Government may consider fixing targets for collection of old arrears in a time bound manner and closely monitor the performance of the Departmental officers *vis-à-vis* the set targets.

4.4 Cost of collection

The gross collection in respect of stamp duty and registration fees, expenditure incurred on collection and percentage of such expenditure to gross collection during the years 2009-10, 2010-11 and 2011-12 along with the relevant all India average percentage of expenditure on collection to gross collection for the preceding years are given in the following table:

(₹ in crore)

Year	Collection	Expenditure on collection of revenue	Percentage of expenditure on collection	All India average percentage for the preceding years
2009-10	3,662.16	162.10	4.43	2.77
2010-11	4,650.59	177.06	3.81	2.47
2011-12	6,580.78	186.47	2.83	1.60

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

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

4.5 Impact of Audit Reports

4.5.1 Revenue impact

During the last five years, we had pointed out through our Audit Reports under valuation of properties, misclassification of instruments and other irregularities, with revenue implication of ₹ 156.26 crore in 29 paragraphs. Of these, the Department/Government had accepted audit observations involving ₹ 33.88 crore and had since recovered ₹ 9.33 crore. The details are shown in the following table:

(₹ in crore)

Year of Audit Report	Paragraphs included		Accepted money value	Amount recovered
	Number	Money value		
2006-07	3	8.58	8.58	1.00
2007-08	12	42.63	19.72	6.95
2008-09	8	10.73	3.38	0.68
2009-10*	1	90.84	0.46	0.46
2010-11	5	3.48	1.74	0.24
Total	29	156.26	33.88	9.33
* Stand alone report on Registration Department.				

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

4.6 Working of internal audit wing

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

Year	Number of offices due	Number of offices completed	Balance	Percentage of col.3 to 2
1	2	3	4	5
2007-08	832	832	----	100
2008-09	881	859	22	97.50
2009-10	1,005	879	126	87.46
2010-11	991	563	428	56.81
2011-12	935	624	311	66.74

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

4.7 Results of Audit

We test checked the records of 237 Departmental offices during the period from April 2011 to March 2012 which revealed under valuation of tax and other irregularities amounting to ₹ 128.92 crore in 717 cases, which broadly fall under the following categories:

(₹ in crore)

Sl. No.	Category	No. of cases	Amount
1	Under valuation of properties	147	57.09
2	Misclassification of instruments	344	58.66
3	Other observations	226	13.17
	Total	717	128.92

During the course of the year 2011-12, the Department accepted under assessments and other deficiencies amounting to ₹ 5.70 crore in 87 cases, out of which, ₹ 3.34 crore involved in 14 cases were pointed out during the year and the rest in earlier years. Out of the above, an amount of ₹ 3.51 crore has been collected.

After the issue of draft paragraph, the Department recovered an amount of ₹16.17 lakh.

A few illustrative cases involving ₹ 76.42 crore are mentioned in the following paragraphs:

4.8 Audit observations

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

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

The provisions of the Indian Stamp Act, 1899, the Registration Act, 1908 and the Rules made thereunder require payment of stamp duty and registration fees at the time of executing and registering the documents viz., Conveyance Deed, Power of Attorney for consideration, Sale Agreements, etc., as per the rates prescribed in the schedule to the Act.

We noticed non-compliance of the provisions of the Acts/Rules in some cases as mentioned in paragraphs 4.9.1 to 4.9.11 which resulted in non/short realisation of revenue of ₹ 76.42 crore.

4.9.1 Misclassification of instrument of Power of Attorney for consideration as General Power of Attorney

As per Article 48(e) of Schedule I of the Indian Stamp Act, 1899 (IS Act), when a Power of Attorney was given for consideration and authorising the attorney to sell any immovable property, stamp duty is to be levied at the rate of four *per cent* on the market value equal to the amount of consideration.

As per Section 27 of the IS Act, the consideration, the market value and all other facts and circumstances affecting the chargeability of any instrument with duty or the amount of the duty with which it is chargeable shall be fully and truly set forth therein.

As per Section 33A of the Act *ibid*, if, after the registration of any instrument, it is found that proper stamp duty payable under this Act in respect of such instrument has not been paid or has been insufficiently paid, such duty or the deficit, as the case may be, be recovered from the person liable to pay the duty, as an arrear of land revenue.

As per the second proviso under Section 33A, no inquiry for recovery of deficit stamp duty shall be commenced after the expiry of three years from the date of registration of the instrument.

4.9.1.1 We observed during test check (August 2011) of the documents in Sub Registry, Dhamal that through a deed of exchange executed in February 2008 and registered in April 2008 a Trust exchanged land measuring 187 cents with its Power of Attorney agent 'A' for a consideration of a non refundable deposit of ₹ 12.92 crore paid in August/September 2006 and land measuring 10.43 acres comprised in various survey numbers in Uzhakolpattu Village, Kancheepuram District.

We further observed during scrutiny of documents in the Sub-Registry, Mylapore that an instrument of Power of Attorney was executed and registered in September 2006. The recitals of the instrument revealed that the Trust had appointed its Power of Attorney agent 'A' to execute and register

necessary deeds of gift or other conveyance of open space reservation to take up integrated and greater development of the land measuring 187 cents in Tirumangalam village. In the document it was stated that no consideration was received. The document was classified as General Power of Attorney and stamp duty and registration fees aggregating ₹ 150 was collected. However, as per the deed of exchange, the non refundable deposit of ₹ 12.92 crore was paid by the power holder to the Trust prior to the execution of the deed of Power of Attorney. Though, it was evident from the above fact that the Trust had executed the instrument of Power of Attorney in September 2006 in favour of

the power holder only after obtaining the consideration, the deed was misclassified as General Power of Attorney instead of Power of Attorney for consideration. This resulted in loss of revenue by way of stamp duty and registration fees of ₹ 64.60 lakh.

We pointed this out to the Department (August 2011) and to the Government in (June 2012). The Government in July 2012 replied that in order to treat the document as Power of Attorney for consideration, there must be a specific mention in the deed of Power of Attorney that the amount of consideration has been received. Further, the time factor has to be proved by the Department if compliant is to be filed under Section 27 and the onus is not on the part of the registrants.

The reply is not tenable since, as per Section 27, factors affecting the chargeability of the instrument should be fully and truly disclosed by the registrants. Further, from the exchange deed, it could have been ascertained by the registering authority that the non-refundable deposit has been received as consideration for the Power of Attorney. The Registering officer failed to notice the above facts and take action as provided under Section 33A for recovery of the deficit stamp duty. We are awaiting further report (December 2012).

4.9.1.2 We observed during test check (July 2011) of the documents in the office of the Sub Registry, Gandhipuram that through an instrument of Power of Attorney executed on 27 April 2007 and registered on 03 May 2007 in the Sub Registry, Peelamedu, two persons 'A' and 'B' appointed the representatives of a company 'C', as their Power of Attorney Agent (POA) to transfer their land. The document was classified as General Power of Attorney and stamp duty and registration fees of ₹ 150 was collected.

We also observed on a scrutiny of the sale deed executed and registered in 27 April 2010 by 'A' and 'B' (vendors) in favour of a company 'D' with 'C' as confirming party, that the vendors have entered into a sale agreement with the confirming party on 27 April 2007 i.e., the date on which they were appointed as POA and had also received a sum of ₹ 7.00 crore as sales consideration. As the date of instrument of Power of Attorney and the date on which the sale agreement was entered into by the same parties are one and the same, the power should have been treated as power for consideration, instead of General Power of Attorney. The misclassification resulted in short realisation of stamp duty and registration fees of ₹ 35 lakh.

After we pointed this out to the Department in September 2011 and to the Government in May 2012, the Government replied in September 2012 that as both the documents have been executed on the same day, the registrants can always say that the deed of Power of Attorney was executed first and after registration of the same they had received the consideration and hence the document is General Power of Attorney only.

The reply is not tenable since as per Section 27, factors affecting the chargeability of the instrument should be fully and truly disclosed by the registrants. As both the documents have been executed on the same date, the Power of Attorney should have been treated as power for consideration based on the facts available with the Department which was suppressed by the parties initially. The Registering officer failed to notice the above facts and take action as provided under Section 33A for recovery of deficit stamp duty. We are awaiting further report (December 2012).

4.9.1.3 We observed during test check of the records (October 2008) in the office of the Sub Registry, Thiruporur that two Development Agreements were executed and registered in February 2008. The agreements were entered into between (i) 11 persons with a company 'A' for development of 18.50 acres and (ii) eight persons with two individuals ('B' and 'C') for development of 8.70 acres. The agreements were for development of the land as residential/multi storey commercial complex. As per the recitals in both the agreements, it was agreed that the owners shall have right, title and interest in 32.5 *per cent* of the schedule property and the superstructure to be constructed thereon and the right, title and interest in the balance 67.5 *per cent* of the schedule property and the superstructure shall belong to the developers. The developers had also deposited a sum of ₹ 19.00 lakh with the owners as interest free security deposit.

Further, the owners had simultaneously, as agreed in the Development Agreement, executed two instruments of Power of Attorney appointing the developers, 'A' and 'B' respectively as their Power of Attorney and registered them in February 2008, to sell, convey, assign, alienate transfer and deal with or dispose of the 67.5 *per cent* of the super built up area and the proportionate undivided share in the property. As the owners had given power to the developers to deal with the property including sale, transfer etc, to an extent of 67.5 *per cent* of the undivided share of land with the super structure thereon (Developer's share) in consideration of development of 32.5 *per cent* of the undivided share of the land held by the owners, the instruments of Power of Attorney should have been classified as instruments of Power of Attorney for consideration under Article 48(e) and stamp duty and registration fees was required to be levied at five per cent on the value of 67.5 *per cent* of undivided share of land. The misclassification resulted in short levy of stamp duty and registration fees of ₹ 27.55 lakh³⁴.

After we pointed this out to the Department (October 2008) and to the Government (June 2012), the Government replied in September 2012 that when a question arises, whether a document is chargeable to duty, the first thing to be looked into is the recital in the document in order to determine the character thereof and in the document, as it has been explicitly recited that no consideration was paid, the instrument has to be treated as General Power of Attorney. Further, the deposit is a refundable deposit.

³⁴ Total extent = 18.50 + 9.20 = 27.20 acres
67.5 *per cent* of 27.20 acres = 18.36 acres
Value of the property = 18.36 X ₹ 30,00,000 per acre = ₹ Rs.5.51 crore
Stamp duty and Registration Fee at 5 *per cent* = ₹ 27.55 lakh.

The reply is not tenable since it is clear from the development agreements that in consideration of the superstructure to be built on the 32.5 *per cent* of the land, Power of Attorney was given for the remaining 67.5 *per cent* of the land. Hence the document is to be treated as Power of Attorney for consideration. The Registering officer failed to notice the above facts and also to classify the deeds of Power of Attorney under Article 48(e) and recover the deficit stamp duty as provided for in Section 33A of the Act. We are awaiting further report (December 2012).

4.9.1.4 We observed during test check (February 2012) of documents in the office of the Sub Registry, Thiruporur, that principal 'A' had executed and registered a General Power of Attorney in February 2011 appointing 'B' as his lawful Power of Attorney agent to deal with the land measuring 2.17 acres, including sale of the said land. It was also stated that no consideration was received and the deed was irrevocable.

We further observed that the above parties had entered into an agreement for sale in respect of the said property and registered it on the same day of registration of the power document in February 2011. An amount of ₹ 2.65 crore was received as advance, on various dates, prior to the execution of the agreement for sale/power document, against the total consideration of ₹ 2.84 crore by principal 'A' from Power of Attorney agent 'B'. This fact was suppressed in the deed of Power of Attorney and registered as General Power of Attorney. The Registering officer also failed to notice the above fact which resulted in misclassification of Power of Attorney for consideration as General Power of Attorney and consequent short levy of stamp duty and registration fees of ₹ 13.23 lakh.

After we pointed this out (March 2012), the Department replied that as per the instrument of Power of Attorney, no consideration was received. Further, the two instruments viz, the power deed and sale agreement were separate instruments and the registering authority could not link the different deeds for the purpose of chargeability of the instruments.

The reply is not tenable since as per the registered agreement for sale between the above parties, the Principal had already received a consideration of ₹ 2.65 crore from the Agent. This fact was suppressed by the parties in the instrument of Power of Attorney, thereby violating the provisions of Section 27 of the IS Act. Further, as both the instruments were registered on the same date, the argument that the sub registrar could not link the two documents is also not acceptable. The instrument of Power of Attorney should have been classified as power for consideration under Article 48(e). We are awaiting further report (December 2012).

4.9.1.5 We observed during (January 2012) test check of records in the office of the Sub Registry, Thiruvottiyur that through three instruments of General Power of Attorney executed and registered in August and September 2010, Power of Attorney Agents were appointed by the vendors to deal with the property including sale, in respect of land measuring 5.08 acres and 1.24 acres comprised in various survey numbers at Vallur village and Thiruvottiyur village respectively. It was also stated that no consideration was received.

We further observed that they had entered into agreements for sale of the same properties with the power agent/one of the power agents and the agreements were registered in August and September 2010. The vendors had received a sum of ₹ 1.25 crore as advance (24 August 2010 and 2 September 2010), out of the total consideration of ₹ 3 crore. From the above it was evident that the instruments of Power of Attorney were executed on receiving the consideration of ₹ 1.25 crore and were classifiable under Article 48(e) as power for consideration. This fact was suppressed by the parties in the instruments of Power of Attorney by stating that “no consideration was received” which resulted in short levy of stamp duty and registration fees of ₹ 6.25 lakh.

After we pointed this out to the Department in February 2012 and to the Government (between November 2011 and March 2012), the Government replied in September 2012 that as the documents were executed on the same day, the opinion of the Government Pleader was sought and it was opined that the registrants can always say that the power was executed first and after registration of power, they had received the consideration and hence the document is a General Power of Attorney only.

The reply is not tenable since both the documents have been executed on the same date and the Power of Attorney should have been treated as power for consideration based on the facts available with the Department which was suppressed by the parties initially. The Registering Officer also failed to notice the above fact and initiate action for recovery of deficit stamp duty as provided for in Section 33A of the Act. We are awaiting further report (December 2012).

4.9.2 Misclassification of instruments of Conveyance as Cancellation Deeds

According to Section 2(10) of the IS Act conveyance includes a conveyance on sale and every instrument by which property whether movable or immovable, is transferred *inter vivos* and which is not otherwise specifically provided for by Schedule I.

As per Article 23, in the case of conveyance of an immovable property, stamp duty is leviable at the rate of eight *per cent* including transfer duty surcharge on the market value of the property. As per Article 17 of the Schedule I of the IS Act, for Instrument of Cancellation, if attested and not otherwise provided for, stamp duty of ₹ 50 is to be levied on the same.

It was judicially held (cf Emperor Vs Rameshardoss 32 All 171 SIC 697) that there can be no such thing as cancellation of a conveyance under which right of property has already been passed. Property can be retransferred only by re-conveyance. Further, it was held (W.A.Nos.592 & 938 of 2009, in Latif Estate Line India Ltd., Vs. Registration Department) by the Madras High Court that cancellation of a Sale Deed by a Deed of Cancellation can be effected only when a condition that title will pass on payment of consideration, was included in the original Sale Deed.

We observed during test check of records in 30³⁵ Sub Registries (between December 2009 and February 2012) that conveyance of properties effected through 192 Sale Deeds were cancelled by executing and registering Cancellation Deeds subsequently, on the ground that consideration was not received and possession not handed over or the properties were not in absolute ownership of the original vendor. The cancellation was effected:

- i) within one year in 45 cases,
- ii) between one year and five years in 140 cases and
- iii) more than five years in seven cases.

³⁵

Anna Nagar, Aruppukottai, Avinashi, Cheyyur, Joint-II Dindigul, Guduvancherry, Kamniakumari, Joint-II Karur, Kodambakkam, Konnur, Kottaram, Madhukkarai, Mannachanallur, Manavalanagar, Neelankarai, Pallipalayam, Ponneri, Red Hills, Jt-II Saidapet, Sathyamangalam, Sooramangalam, Surampatti, Tambaram, Teppakulam, Thirupporur, Thiruvallore, Vadavalli, Vepur, Virugambakkam and Woraiyur

The reasons for cancellations are given in the following table:

Sl. No.	Reasons for cancellation	As per the original sale deed	No.of cases involved
1	Consideration not received/ possession not given	Consideration received and possession given	119
2	Both parties agreed mutually to cancel the sale		34
3	Cancelled due to various mistakes like mentioning of wrong plot no., wrong address, wrong ownership	-----	14
4	Miscellaneous cases like i) change of circumstances, ii) parties not acted as per the sale deed, etc.	-----	25
Total			192

Since the vendors had re-acquired the right and interest over the properties from the original purchasers through Cancellation Deeds, these deeds were to be treated as Conveyance Deeds. Accordingly, stamp duty and registration fees amounting ₹1.96 crore was required to be levied on the market value of the properties of ₹ 21.79 crore against which ₹ 0.29 lakh was collected by the Department. Thus, even considering the value of property as on the date of original Sale Deed, there was a short collection of stamp duty and registration fees of ₹ 1.96 crore due to misclassification of Conveyance Deeds as Cancellation Deeds.

After we pointed this out (between January 2010 and March 2012), the Department replied that as the relevant Sale Deeds registered previously were cancelled, it has to be treated as 'Cancellation Deeds' only and would fall under Article 17 of the IS Act. Hence there was no loss of revenue.

The reply is not tenable since as per the judicial decision cited there cannot be cancellation of conveyance under which right of property has already been passed. Property can be transferred only by a re-conveyance. Further, the cancellation of a Sale Deed can be effected only when there was a specific condition in the original deed for cancellation for non-receipt of consideration. There was no such condition in any of the original Sale Deeds. Therefore, these Sale Deeds cannot be cancelled by executing Cancellation Deeds under Article 17.

We reported the matter to the Government (between October 2011 and March 2012) and are awaiting their reply (December 2012).

4.9.3 Misclassification of instruments dual in nature as a single instrument

As per Section 5 of the IS Act, any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under this Act.

As per Article 23 of the Schedule I of the IS Act, in the case of conveyance of immovable property, stamp duty shall be levied at the rate of eight *per cent*, including surcharge, on the market value of the property which is the subject matter of conveyance.

As per Article 55A of the Schedule I of the IS Act, when a person renounces a claim against any specified property, stamp duty at one per cent of the market value of the property subject to a maximum of ₹ 10,000 and registration fees at one per cent as per the Registration Act, 1908, is leviable.

We observed during test check of records (February 2011 and March 2012) in four Sub Registries³⁶ that through ten instruments, the confirming parties involved in the execution of sale deeds received consideration for releasing their contractual and litigation rights in favour of the purchasers. As such, the instruments should have been classified as dual in nature viz., conveyance and release (among non family members) and stamp duty and registration fees were to be levied on both the documents. However, stamp duty and registration fees were collected under Article 23 of Schedule I, for conveyance only and not for release under Article 55A of Schedule I. This resulted in short levy of stamp duty and registration fees of ₹ 13.95 lakh.

After we pointed this out (between October 2011 and March 2012), the Department replied

(February 2012) that the Registering officer could not go beyond the recitals of the instrument. The party who is having an agreement to sell with the vendor can act as confirming party. The confirming party was included by way of abundant caution. The sale was confirmed by the confirming party by signing in the instrument and this cannot be termed as release of rights. The release of rights over the properties by the parties are incidental for which no additional duty can be levied since higher duty for sale was levied and collected.

The reply requires reconsideration for the reason that it is clear from the recitals of the documents that the confirming parties had entered into sale agreement with the vendors in respect of the schedule properties and thereby having purchasing right over the properties. Subsequently, the properties were sold to the ultimate purchasers and the vendors executed the sale deeds and the sale agreement holders also sign the sale deeds in their capacity as confirming

³⁶

SR Thiruporur, SR Thiruvottiyur, Joint-II SR Thousand Lights and SR Walajabad.

parties in order to release their purchasing rights, so that the purchasers would get a clear and complete title to the properties conveyed and the amount was also paid to confirming parties. Thus, it is clearly evident that the confirming parties have relinquished their contractual rights and hence the instruments have to be classified as dual in nature.

We reported the matter to the Government (March 2012) and are awaiting their reply (December 2012).

4.9.4 Misclassification of instrument of Conveyance as Certificate of Sale

As per sections 3 and 17 of the IS Act, every instrument mentioned in Schedule I is liable for stamp duty. As per Article 23 of the Schedule I of the IS Act, in the case of conveyance of an immovable property, stamp duty is leviable at the rate of eight *per cent* including transfer duty surcharge (TDS) on the market value of the property.

As per Article 18 of Schedule I of the IS Act, on sale of any property through public auction by a Civil Court or Revenue Court or Collector or other revenue officer in respect of which a certificate of sale is issued to the purchasers, stamp duty at the rate of six *per cent* is leviable on the market value equal to the consideration. However, their registration is optional as per section 18 of the Registration Act.

We observed during test check (March 2011) of the documents in the Sub Registry, Thiruvottiyur that in two cases, Certificates of Sale were issued (October 2007 and September 2009), by persons (Banks under SARFAESI³⁷ Act) not empowered to issue Certificate of Sale. Even though the instruments were not registered, intimation regarding one case was sent by the bank to the Registering Officer and in another case, we, through cross verification of subsequently registered Sale Deed, were able to establish that the Certificate of Sale was issued by bank

previously in respect of that property. The Registering Officer failed to notice the above information available with him and take appropriate action. The instruments were to be classified as Conveyance Deeds and stamp duty was leviable on the market value of ₹ 4.84 crore. The misclassification of the instruments resulted in short levy of stamp duty and registration fees of ₹ 43.56 lakh.

After we pointed this out (April 2011), the Department replied (March/July 2011) that the certificate of sale issued under the SARFAESI Act, by commercial banks are classifiable under Article 18 and are not compulsorily registrable. The Department further replied that the Hon'ble Supreme Court of India in its judgement had held that there was no need to read the term "Revenue Officer" in any restricted sense and it was wide and comprehensive

³⁷ Securitization and Reconstruction of Financial Asset and Enforcement of Security Interest Act, 2002.

enough to include the Tax Recovery Officer who effects a compulsory sale for the recovery of income tax demand. Hence, the Certificate of Sale issued by the authorised officer of a bank shall also be deemed to be issued by the revenue officer.

The reply is not tenable since the judgement quoted in the reply relates to recovery of income tax due to the Government. The same is not applicable in the instant case. Further, under the SARFAESI Act, even though banks are allowed to recover the dues from debtors through public auction by the authorised officer, he is not specifically termed as “Revenue Officer” for the purpose of Stamp Act and Registration Act. It has been judicially held³⁸ that as far as the certificate issued by the authorised officer is concerned, it cannot be equated with the certificate issued by the revenue or civil court. In view of this, the certificate of sale issued by the banks do not come under the purview of Article 18 of the IS Act.

We reported the matter to the Government (February 2012) and are awaiting their reply (December 2012).

4.9.5 Short levy due to undervaluation of properties

As per Article 23 of Schedule I of the IS Act, in the case of conveyance of immovable property, stamp duty shall be levied at the rate of eight *per cent*, including surcharge, on the market value of the property which is the subject matter of conveyance.

According to Section 27 of the IS Act, the consideration, the market value and all other facts and circumstances affecting the chargeability of the instrument with duty or the amount of duty with which it is chargeable shall be fully and truly set forth therein.

4.9.5.1 It has been judicially held³⁹ that the guideline value will only afford a prima facie basis to ascertain the true or correct market value. The guideline value is not sacrosanct, but only a factor to be taken note of in respect of an area in which the property transferred lies. Therefore, for the purpose of Stamp Act, guideline value alone is not a factor to determine the value of a property.

(i) We observed (February 2012) during test check of the documents in Sub Registry, Thiruporur that through three sale deeds executed and registered in July 2010, land measuring 686 cents was conveyed for a total consideration of ₹ 6.17 crore stating that the nature of land was agricultural land.

We, however, observed from the subsequent sale deed executed and registered in August 2010 by the vendor (purchaser in the earlier document) alongwith another vendor (second vendor) that vacant house sites measuring 2.25 lakh sq.ft were conveyed for a consideration of ₹ 17.71 crore in favour of a society

³⁸ WP No.12934 of 2009 in the High Court of Madras dated 9.6.2010.
³⁹ Sai Bharathi v/s J.Jayalalitha – 2003 – AIR SCW 6249

at the rate of ₹ 787 per sq.ft. As per the recitals of the document, the vendor had entered into a sale agreement with the purchaser society to develop and convey the approved land measuring 24.70 acres including the above mentioned land. Accordingly, layout sanction plan, vide DTP No.68/2009 was obtained from the Director of Town and Country Planning Authority and the entire land was developed as house site and was named as IT Highway Co-operative Nagar. From the above, it is evident that on the date of execution of the said three sale deeds in July 2010, the land measuring 634 cents (52 cents comprised in S.No.722/1B has not been included in the entire extent of 24.70 acres) was fully developed as house site.

Thus, the parties suppressed the nature of land and undervalued the property conveyed in July 2010 to avoid payment of higher stamp duty. The Registering authority also failed to notice the suppression of facts regarding the nature of land. This resulted in undervaluation of land measuring 634 cents by ₹ 16.04 crore involving stamp duty and registration fees of ₹ 1.44 crore.

After we pointed this out, the registering authority replied (February 2012) that stamp duty was payable on the instrument presented for registration and not on any other previous instrument. The higher price fetched in a later transaction could not be applied to the earlier transactions.

The reply requires reconsideration since as seen from the recitals of the documents through which the vendor had purchased the lands and the instrument through which he conveyed a part of it, brings to light suppression of facts regarding the nature of land and the market value of the property. It is also evident that the land was developed as house site on the date of execution of these sale instruments. We are awaiting further reply (December 2012).

(ii) We observed during the test check (June 2011) of the documents in the office of the Sub Registry, Kottaram, that through a sale document executed and presented in December 2007 and registered in August 2009, a land property was conveyed for a consideration of ₹ 10.37 lakh. We further observed that through four documents registered earlier in May 2006, the same property along with building and coconut trees etc. was conveyed for a consideration of ₹ 94.37 lakh. The said documents were cancelled in September 2007. The same property was conveyed again, however, for a lesser value as stated above. Thus, there was undervaluation of the property by ₹ 84.00 lakh and consequent short levy of stamp duty and registration fees of ₹ 7.56 lakh.

We pointed this out to the Department (June 2011 and February 2012) and are awaiting their reply (December 2012).

Guidelines are supplied to the Registering Officers to arrive at the market value of the land.

The Central Valuation Committee for Guide Line Value decided in September, 2007 that if any document has been registered for a particular survey number/street/nagar with a higher value before 01 August 2007, the same should be taken into account for registering a document on or after 01 August 2007 in respect of that survey number/street/nagar.

4.9.5.2(i) We observed during test check of documents (February & December 2011) in the office of the Sub Registry, Konnur that through a document registered in May 2006, vacant land in Mugappair village was conveyed adopting the value of the land at ₹ 1,877 per sq.ft. However, in respect of seven instruments of sale executed and registered between September 2009 and March 2011 the value of the land was adopted at the rate ranging between ₹ 1,000 and ₹ 1,500 in respect of the same survey

numbers. The Department did not take into cognizance the decision of the Central Valuation Committee and adopt the rate of ₹ 1,877 per sq.ft adopted in May 2006 itself. The non adoption of correct rate resulted in undervaluation of land by ₹ 5.85 crore and consequent short levy of stamp duty and registration fees of ₹ 52.63 lakh.

After we pointed this out (February 2011), the Department in August 2011 replied that the two instruments registered in December 2009 were referred to the District Revenue Officer (Stamps), Chennai for determination of market value of the property. We are awaiting further report in respect of the two cases and reply in respect of the other cases (December 2012).

(ii) We observed during test check of documents in the office of the Sub Registry, Anna Nagar (December 2009) that through a document registered in June 2007, a property in Jawaharlal Nehru Road in Koyambedu village was conveyed adopting the value of the house site at ₹ 6,346 per sq.ft. However, in respect of 10 instruments executed between April 2008 and March 2009 the value of the land was adopted at the rate ranging between ₹ 4,156 and ₹ 4,750 per sq.ft. The Department did not take into cognizance the decision of the Central Valuation Committee and adopt the rate of ₹ 6,346 per sq.ft adopted in June 2007 itself in respect of the same survey number. This resulted in under valuation of land by ₹ 2.94 crore and consequent short levy of stamp duty and registration fees of ₹ 26.47 lakh.

After we pointed this out (January 2010), the Department replied (June 2010) that the value adopted in the document registered before 01 August 2007 was a fancy value and that cannot be adopted for all the properties lying in Jawaharlal Nehru Road. The Department further replied that as per the orders of the Government, higher rate need not be adopted till the next Guideline value revision.

The reply is not tenable as the higher rate adopted in June 2007 may be a fancy value for that period and not for subsequent period wherein revision has

come into effect (01 August 2007) and the orders of the committee are binding on the Department. Further, the order of the Government mentioned in the reply has not been produced to audit. We are awaiting further report (December 2012).

(iii) We observed during test check (October 2008) of the documents in the office of the Sub Registry, Thiruporur that through two sale deeds executed and registered on the same date i.e., 13 March 2008, land measuring one acre and 1.26 acre respectively were conveyed, adopting the value of ₹ 2.72 lakh per Cent and ₹ 2.15 lakh per Cent respectively. Though, the properties were situated in the same survey number, two different rates were adopted. This resulted in undervaluation of the property by ₹ 71.82 lakh in the second document and consequent short levy of stamp duty and registration fees of ₹ 6.46 lakh.

After we pointed this out (December 2008), the Department replied that as per the resolution dated 11 September 2007 of the Central Valuation Committee, the higher value recorded after 01 August 2007 (the date of revision of guideline value) need not be taken into account and the document was registered adopting a value higher than the guideline value and hence there was no undervaluation.

The reply is not tenable since the properties are situated in the same survey number and therefore the higher rate at which the first property was conveyed should have been adopted for the conveyance of the second property also. It is further reiterated that stamp duty is leviable on the market value of the property and if the guideline value is less than the market value, the same should not be considered. We are awaiting further report (December 2012).

We reported the matter to the Government (between November 2011 and March 2012) and are awaiting their reply (December 2012).

According to Section 47A(1) of the IS Act, if the registering officer has reason to believe that the market value of the property which is the subject matter of conveyance, has not been truly set forth in the instrument, he may, after registering such instrument, refer the same to the Collector for determination of the market value of the property and the proper duty payable thereon.

4.9.5.3(i) We observed during test check (June 2011) of the documents in the office of the District Registry, Vellore that in four instruments of sale registered between November 2010 and March 2011, properties were conveyed for ₹ 1.03 crore. Though all the four instruments were marked for reference under Section 47A(1), as there was undervaluation of properties, they

were not referred to the Special Deputy Collector (Stamps), Vellore for determination of the market value of the properties and also the duty payable thereon. The market value of the property as per guideline value worked out to ₹ 2.61 crore as against ₹ 1.03 crore set forth in the documents. The deficit stamp duty and registration fees payable on ₹ 1.58 crore would be ₹ 14.27 lakh.

After we pointed this out (July 2011) the Department replied (April 2012) that the instruments were referred to Special Deputy Collector (Stamps), Vellore in August 2011. Out of the four documents, two documents registered in the year 2010 were cleared under Samadhan Scheme 2011, after collecting the deficit stamp duty and registration fees aggregating ₹ 8.27 lakh as against the collectable amount of ₹ 12.34 lakh. We are awaiting the collection details of ₹ 1.93 lakh in respect of the remaining two documents (December 2012).

(ii) We observed during test check of records (January 2010) in the office of the Sub Registry, Guduvancherry, that through an instrument of conveyance executed and registered in April 2008, land admeasuring 3.01 acres was conveyed for a consideration of ₹ 15.07 lakh. The same property was again sold within 10 days in May 2008 for a consideration of ₹ 96.32 lakh. It is evident that the parties suppressed the actual market value of the property in the sale deed registered in April 2008 to avoid payment of higher stamp duty and registration fees. This resulted in under valuation of property by ₹ 81.25 lakh involving stamp duty and registration fees of ₹ 7.31 lakh.

After we pointed this out in February 2010, the Department replied (March 2010) that the market value differs from person to person and day to day and the discretionary power vested with the Registering Officer u/s 47A shall be exercised only in bonafide cases and no instrument shall be construed as undervalued based on the enhanced market value found in the subsequent instrument and hence no loss of revenue to the Government.

The reply requires reconsideration for the reason that though the property was again conveyed within 10 days for a value which was more than six times of the value set forth in the earlier document, the Registering Officer failed to notice the undervaluation in the document registered earlier and to take necessary action to determine the correct market value of the property and to collect the deficit stamp duty.

After we reported the matter to the Government in June 2012, the Government replied (September 2012) that the District Registrar has been directed to refer the document under Section 47(A)(3) in order to determine the correct market value. We are awaiting further report (December 2012).

4.9.6 Short levy due to insufficient stamping of Certificates of Sale issued by Debt Recovery Tribunal

As per Article 18 of Schedule I of the IS Act, on sale of any property through public auction by a Civil Court or Revenue Court or Collector or other revenue officer in respect of which a Certificate of Sale is issued to the purchasers, stamp duty at the rate of six *per cent* is leviable on the market value equal to the consideration. However, their registration is optional as per section 18 of the Registration Act.

As per Section 2(12) read with Section 3 of the IS Act, execution used with reference to instruments means “signed” and “signature” and shall be chargeable to duty when it is executed in India on or after the first day of July, 1899.

As per Section 29(f) of the IS Act, in the case of certificate of sale, duty is to be paid by the purchaser of the property to which such certificate relates.

As per Section 89(4) of the Registration Act, every Revenue Officer granting a certificate of sale to the purchaser of immovable property sold by public auction shall send a copy of the certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the property comprised in the certificate is situate, and such officer shall file the copy in his book No.1 or get it scanned (also provided for in Section 55(2) of the Registration Act).

As the registration of these documents is optional, the sufferance of stamp duty which is mandatory could not be verified, if the parties chose not to get these types of documents registered.

Mention was made in Para 2.5.1 of Audit Report 2009-10 (on Registration Department) regarding short realisation of stamp duty on acquisition of property through Certificate of Sale. We recommended to amend the Registration Act to make registration of Certificate of Sale compulsory. Subsequent to our observation, the Inspector General of Registration instructed the DRTs to issue the Certificates of Sales only on stamp papers.

We observed from all the five Debt Recovery Tribunals (DRT) of Tamil Nadu (between July 2011 and January 2012) that 759 Certificates of Sale were issued during the period from 2006-07 to 2010-11 for transferring properties for a bid value of ₹ 294.81 crore.

The details of the certificates were referred by us (between October 2011 and January 2012) to the nine⁴⁰ registration zones functioning under the control of the Deputy Inspectors General (DIG) to ensure sufficiency of stamp duty. We also visited 32⁴¹ registering offices during the said period.

We ascertained from verification of the records that 109 Certificates of Sale, involving a bid value of ₹ 34.85 crore, were not registered. A stamp duty of ₹ 8,180 only was realised at the time of issue of Certificate of Sale as against ₹ 2.09 crore realisable. This resulted in non-realisation of revenue of ₹ 2.09 crore.

We reported the matter to the Department and to the Government (March 2012) and are awaiting their replies (December 2012).

4.9.7 Incorrect exemption to societies

According to the notification dated 29 June 1966, issued under the Co-operative Societies Act, remission of stamp duty chargeable under the IS Act is admissible in respect of instruments executed by a member of a registered co-operative society in favour of the society, provided the executant was a member of such society continuously for a period of not less than two years immediately before the date of execution of the sale deed.

We observed during test check of the documents in 13 registering offices that in respect of 260 documents registered in favour of co-operative societies between June 2005 and November 2010, exemption from payment of stamp duty was granted on the ground that the executants were members of the societies. We, however, observed that the executants were either not members of the concerned society or members for a period less than two years. In view of

this, the documents were not eligible for exemption and as such, stamp duty was leviable. This resulted in non-realisation of stamp duty of ₹ 14.07 crore. The details are given in the following table:

⁴⁰ Chennai, Coimbatore, Cuddalore, Madurai, Salem, Thanjavur, Tirunelveli, Trichy and Vellore.
⁴¹ SR Ambattur, SR Ambur, SR Arni (at Periyapalayam), DR Arakkonam, SR Avadi, DR Chennai (Central, North & South), SR Chetput, JT II SR Cuddalore, SR Gummidipoondi, SR Kadampuliyur, JT _V Kancheepuram, SR Konnur, SR K.Sathanur, JT II SR Namakkal, SR Pallavaram, SR Pammal, SR Ponneri, SR Poonamallee, SR Redhills, SR Royapuram, SR Sembium, SR Sowcarpet, SR Tambaram, JT I SR Thanjavur, SR T. Nagar, JT III SR Trichy, JT II SR Tiruvannamalai, SR Vanniyambadi, SR Villivakkam and SR Virugambakkam.

			(₹ in crore)
Sl. No.	Name of the Sub-Registry	Nature of irregularity	Amount involved
1	Five⁴²	Through 15 instruments of sale registered between April 2008 and November 2010, 3.09 lakh sq.ft. of land was conveyed in favour of five societies ⁴³ for ₹ 14.89 crore. Remission of stamp duty was allowed treating the transactions as that of between members of the societies and the said societies. We however observed that the vendors were not members of the societies and therefore are not eligible for exemption. This resulted in incorrect remission of stamp duty of ₹ 1.19 crore	1.19
<p>After we pointed this out (between November 2008 and February 2012), the Department replied during audit and at other times (between March 2009 and August 2011) that in respect of the case pertaining to Thiruporur, the membership number of the second vendor might have been omitted to be mentioned in the instrument and this would be verified and detailed reply furnished shortly. Reply of the Registering officer requires reconsideration for the reason that it was ascertained by audit from the society that the second vendor was not a member of the society. We are awaiting further report (December 2012).</p> <p>We reported the matter to the Government between November 2011 and June 2012. We are awaiting their reply (December 2012).</p>			
2	Eleven⁴⁴	Through 173 deeds of conveyance executed and registered between 2007 and August 2011, lands comprised in various survey numbers were conveyed in favour of Co-operative Housing/Building Societies, by persons who were members of the society for a period less than two years or by persons who were non members. The market value of the properties as set forth in the documents was ₹ 140.40 crore. The societies were given exemption from payment of stamp duty. Since the period of membership of the vendors was less than two years or the vendors were not members of the society/ies, the sale deeds executed by the vendors in favour of the Co-operative societies were not eligible for exemption from payment of stamp duty. This resulted in incorrect allowance of remission of stamp duty of ₹ 10.88 crore.	10.88
<p>After we pointed this out (between November 2008 and February 2012), the Department replied during audit and at other times (between March 2009 and August 2011) that as per the Government Order and the instructions of Inspector General of Registration, the period of two years membership is applicable only in the case of Co-operative House Construction Societies. Since, these societies are Co-operative Housing Societies, the condition of two years is not applicable. The reply is not tenable as the second proviso of the notification clearly indicates that exemption is admissible only to those members who are in continuous membership of two years or more and is applicable to all the Registered Societies and not to the House Construction Society alone.</p> <p>We reported the matter to the Government between November 2011 and June 2012. We are awaiting their reply (December 2012).</p>			

⁴² Ambattur, Joint II Chengleput, Redhills, Sriperumbudur and Thiruporur

⁴³ Commercial Employees Co-operative Building Society, Rangarajapuram Co-operative Building Society Ltd., The Adyar Co-operative Building Society Ltd, The Mambalam Co-operative Housing Society Ltd. and Theyagaraya Nagar Co-operative Building Society Ltd.,

⁴⁴ Ambattur, Arcot, Joint II Chengleput, Dhamal, Guduvancherry, Kancheepuram, Katpadi, Kundrathur, Madurantagam, Sriperumbudur and Walajabad

5	One (Chingleput)	<p>As per the records of the a Co-operative House Building Society in Chingleput, the society had purchased agricultural land measuring 71.39 acres situated at Panangattur village, Chingleput taluk from its members represented by their power holders through 78 instruments registered between June and September 2005 for a total consideration of ₹ 8.57 crore. The market value of the property was ₹ 11.73 crore. Stamp duty was exempted and registration fees of ₹ 11.73 lakh was collected on the market value of the property.</p> <p>We, however, observed from the instruments that one of the power holders had entered into an agreement with the purchaser society in May 2005 to act as a promoter and developer of the project. Accordingly, the promoter had developed (vide DTCP approval No.86/2005) the lands into house sites in June 2005 and collected development charges of ₹ 11.80 crore from the society.</p> <p>As the lands were converted into house sites before the execution of sale deeds in favour of the co-operative society, the development charges paid to the developer have also to be considered for arriving at the market value of the land. This fact was suppressed by the society at the time of execution of the instruments. If the development charges paid to the developer are included, the actual market value of the property would be ₹ 23.53 crore as against ₹ 11.73 crore set forth in the sale deeds. Further, the vendors had become members of the society in June 2005 only. Since the period of membership of the vendors was less than two years, the sale deeds executed by the vendors in favour of the co-operative society were not eligible for exemption from payment of stamp duty. This resulted in non collection of stamp duty of ₹ 1.88 crore and short collection of registration fees of ₹ 11.80 lakh.</p>	2.00
We reported the matter to the Department in November 2011 and to the Government in December 2011. We are awaiting their replies (December 2012).			

4.9.8 Non/short collection of registration fees

According to the proviso under clause '1' of Item 1 of the Table of Fees prescribed under Section 78 of the Registration Act, 1908, the registration fees of one *per cent* is leviable on the intended sale consideration in the case of an agreement to sell, where possession is handed over or is to be handed over.

4.9.8.1 We observed during test check (March 2010) of the documents in District Registry, Tirupur that through a sale agreement executed in March, 2008 and registered in July, 2008, two companies 'A' and 'B' entered into an

agreement to sell the land measuring an extent of 19.36 acres situated in Tirupur town for a total consideration of ₹ 50 crore.

An advance of ₹ 18.50 crore was given on executing the agreement. In pursuance and part performance of the sale agreement the first party

(prospective seller) has transferred possession of part of the land for the purpose of joint development, to the second party (prospective purchaser) on the date of execution of the sale agreement. Therefore, registration fees of ₹ 50 lakh was required to be collected on the total consideration of ₹ 50 crore. However, only an amount of ₹ 18.50 lakh was collected on the advance amount of ₹ 18.50 crore by the Registering Authority. This resulted in short collection of registration fees of ₹ 31.50 lakh.

According to the proviso under clause 'o' of Item 1 of the Table of Fees prescribed under Section 78 of the Registration Act, 1908, in the case of cancellation of an agreement to sell, the registration fees of one *per cent* is also leviable on the intended sale consideration as expressed in the original deed of agreement to sell, where possession is handed over.

As per Section 5 of the IS Act, any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments each comprising or relating to one of such matters would be chargeable under the Act.

4.9.8.2 We noticed in the District Registry, Tirupur that a mortgage deed was executed by the companies 'A' and 'B' (as mentioned in para 4.9.8.1) and registered in February 2009 in which land measuring 4.865 acres (being a part of the land stated in the earlier document viz., agreement to sell) situated in Tirupur was mortgaged, for an advance of ₹ 18 crore paid by the mortgagee to the mortgagor. It was also agreed by the parties in the mortgage deed that this deed of mortgage superseded the terms and conditions of agreement to sell executed and registered in July 2008 through which a portion of land was handed over and the agreed sale

consideration for a total extent of 19.36 acres was ₹ 50 crore. Therefore, this instrument was to be treated as dual in nature as mortgage deed and cancellation of sale agreement involving handing over possession of land. Accordingly, registration fees of ₹ 50 lakh on the agreed sale consideration of ₹ 50 crore (as stated in the original agreement to sell vide document No.7297/2008) was required to be collected. The Registering Officer failed to notice the nature of the documents as dual and collected only ₹ 5,000 treating the instrument as mortgage deed only. This resulted in non collection of registration fees of ₹ 50 lakh.

After we pointed this out (April 2010), the Department accepted the audit observation (June 2011) and stated that instructions have been issued to initiate action under section 80A of the Registration Act to collect registration fees in respect of both the documents.

We reported the matter to the Government (January, 2012) and are awaiting their reply (December 2012).

4.9.9 Short levy/collection of stamp duty and registration fees due to suppression of facts in the registered documents

As per Article 23 of the Schedule 1 to the IS Act, in the case of conveyance of immovable property, stamp duty including transfer duty surcharge is leviable at the rate of eight per cent on the market value of the property which is the subject matter of conveyance.

According to Section 27 of the Act, the consideration, market value and all other facts and circumstances affecting the chargeability of any instrument with duty or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein.

As per the Registration Act, 1908, immovable property, *inter-alia*, includes land, buildings and things attached to the earth or permanently fastened to anything which is attached to the earth. Any transfer of rights having money value of ₹ 100 and above in immovable property is compulsorily registerable.

4.9.9.1 We observed during test check of records (March 2011) relating to transfer of lands by conveyance and lease in 17 Sub-Registries⁴⁵ and name transfer records maintained by Tamil Nadu Electricity Board, in connection with the transfer of commissioned windmills, that the conveyance of 297 windmills valued at ₹ 464.23 crore which were commissioned on the lands conveyed/leased out was not disclosed in the registered documents. The consequential non-levy of stamp duty and registration fees on the value of these windmills worked out to ₹ 41.78 crore.

When we pointed this out, the Department replied that stamp duty and registration fees were collected for the value declared in the documents and hence there was no short

collection. The Department also stated that the Government had clarified that the wind mills are movable properties and no stamp duty and registration fee were leviable if they were not included in the schedule of property. The Madurai Bench of The Honourable Madras High Court also accepted the above views of the Government and decided that windmills are movable properties and no stamp duty and registration fee were leviable, and also directed to refund the stamp duty and registration fees already collected in this regard.

⁴⁵ Dharapuram, _daikal, Kaniyur, Kayathar, Keeranur, Negamam, Palladam, Panangudi, Ponpozhil, Radhapuram, Suler, Surandai, Tenkasi, Thovalai, Udumalpet, Uthumalai and Veerasigamani,

The reply requires reconsideration for the following reasons:

- The audit objection was raised specifically to point out non-collection of stamp duty and registration fee due to suppression of facts in the registered documents.
- Secondly, in the judicial case cited, the petitioner had contended that there was no sale of windmills and it was stated by the Department that stamp duty was demanded as per directions received from the Inspector General of Registration (IGR), which was subsequently withdrawn since it was decided by the Government that the windmills were movable properties. Considering all these facts, the Court directed to refund the additional stamp duty and registration fees paid under protest, after quashing the proceedings of the respondent Sub-Registrars as it was ultra vires to the stand taken by the Government/IGR.
- Thirdly, for determination of what is immovable property, the object of purchase should also be looked into. In the instant case, the land was purchased with the prime reason of generating electricity from the windmills embedded in the said lands.
- Further in some of the invoices, the mode of transfer is “as it where it stands” basis which clearly indicates the nature of the property and the intention of the purchaser.
- Further it has been judicially held⁴⁶ that “when a land is conveyed alongwith plant and machinery in ‘as is where is basis’ the drafting of the document to convey the land alone is an attempt to reduce the market value of the property”. In the instant cases it has been established by audit that the land was purchased for the purpose of continued generation of electricity from windmill that are erected and functioning in the said lands, from the records furnished by the Tamil Nadu Electricity Board such as invoices, name transfer orders, etc.

The decision of the Government to treat windmills as movable properties is contrary to the definition of immovable property given in the Registration Act 1908. The erected and installed windmills are immovable properties according to the definition and hence compulsorily registrable.

We reported the matter to the Government in April 2011 and are awaiting their reply (December 2012).

⁴⁶ Duncans Industries Ltd., vs. State of U.P. and others – Supreme Court of India.

As per clause '1' of Item 1 of the Table of Fees prescribed under Section 78 of the Registration Act, 1908, the registration fees is leviable on the advance amount in the case of an agreement to sell.

As per Article 23 of the Schedule 1 of the IS Act, in the case of conveyance of immovable property, stamp duty including transfer duty surcharge is leviable at the rate of eight per cent on the market value of the property which is the subject matter of conveyance.

According to Section 27 of the Act, the consideration, market value and all other facts and circumstances affecting the chargeability of any instrument with duty or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein.

4.9.9.2 We observed during test check (August 2011) of the documents in the office of the Joint II Sub Registry, Thousand Lights that through an instrument of sale agreement executed and registered in September 2009, an agreement for sale of 9,100 sq.ft. of undivided share of land for ₹ 4.28 crore was entered into and an advance of ₹ 25 lakh was paid through a cheque in June 2009.

We further observed from the sale deed subsequently executed and registered in May 2010 that a total extent of 12,231 sq.ft of undivided share of land including the land measuring

9,100 sq.ft mentioned in the sale agreement was conveyed by the vendors to the purchaser for a total consideration of ₹ 5.75 crore. As per the recital of the sale deed, the entire sale consideration was paid through three cheques in July and August 2009⁴⁷. From the above it was evident that the vendors had received the entire sale consideration, including the consideration for additional extent of land, before execution of the sale agreement in September 2009 but suppressed these facts in the sale agreement. The registration fees collectable in respect of the sale agreement registered in September 2009 would be ₹ 4.28 lakh since the entire sale consideration of ₹ 4.28 crore was received, instead of ₹ 25,000 collected. This resulted in short collection of registration fees of ₹ 4.03 lakh.

Further, the advance of ₹ 25 lakh paid by the intended purchaser to the vendor as per the sale agreement registered in September 2009 had not been taken into account in the sale deed registered in May 2010. If this was considered, the total consideration received would be ₹ 6.00 crore instead of ₹ 5.75 crore set forth in the sale deed. This resulted in short collection of stamp duty and registration fees of ₹ 2.25 lakh.

⁴⁷ ₹ 200.00 lakh on 18.07.2009
 ₹ 300.00 lakh on 24.07.2009
 ₹ 74.86 lakh on 18.08.2009

Total ₹ 574.86 lakh

The overall short collection of stamp duty and registration fees amounted to ₹ 6.28 lakh.

After we pointed this out (September 2011), the Department stated during audit that the reply would be sent after verifying the facts.

We reported the matter to the Government (February 2012) and are awaiting their reply (December 2012).

4.9.10 Excess allocation of transfer duty surcharge

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

We observed during test check of the surcharge register and monthly periodicals in 10 Sub-Registries⁴⁸ between February and November 2011 that though a sum of ₹ 0.29 crore was actually collected towards transfer duty surcharge, ₹ 2.62 crore was allocated to the local bodies due to clerical error. This resulted in excess allocation of ₹ 2.33 crore to local bodies, out of the revenue due to the Government.

After we pointed this out to the Department between February 2011 and December 2011 and to the Government between October 2011 and March 2012, the Department/Government replied between July 2011 and September 2012 that in respect of seven⁴⁹ Sub Registries, the excess allocation of TDS of ₹ 1.51 crore was adjusted subsequently. In respect of the remaining cases we are awaiting further reply (December 2012).

⁴⁸ Aruppukottai, Gandhipuram, Guduvancherry, Katpadi, Kodambakkam, Madhukkarai, Joint-II Saidapet, Tambaram, Joint-II Thousand Lights and Ambattur

⁴⁹ Ambattur, Gandhipuram, Katpadi, Kodambakkam, Madukkarai, Tambaram and Thousand lights

4.9.11 Irregular execution of lease deeds in contravention of the provisions of the SEZ Act/Rules

The Special Economic Zone Act, 2005 (Central Act 28 of 2005) provides for establishment, development and management of the Special Economic Zones (SEZ) for generation of additional economic activity, promotion of exports, promotion of investment, creation of employment opportunities, development of infrastructure facilities, etc and for matters connected therewith or incidental thereto. Section 7 read with section 26 (1) (a) of the Act provides for exemption from payment of taxes, duties or cess under all enactments specified in the first schedule (Central taxes and levies such as customs duty, excise duty, service tax, security transaction tax, etc.).

Part III of the Act provides for exemption from stamp duty to the developers and the units located in the SEZ.

Section 12(1)(a) of the Tamil Nadu Special Economic Zone Act, 2005 provides for exemption to every developer from payment of State levies. viz., sales tax, additional sales tax, electricity tax, entertainments tax, luxury tax, entry tax, etc.

As per Rule 11(10) of the SEZ Rules, 2006 as amended from time to time, no vacant land in the non-processing area shall be leased for business and social purposes such as residential complexes to any person except to a co-developer approved by the Board.

Infrastructure facility has been defined in the SEZ Act to include social infrastructure necessary for the development of a SEZ. The zones are demarcated into processing and non processing zones. Manufacturing and trading activities are carried out in the processing zone and social infrastructure including housing for the management, staff and workers of the SEZ are created in the non processing zone.

The Government of India, Ministry of Commerce and Industries in its instructions issued in July 2009 (instruction no.18) have stated that sale of lands in SEZ to units or other persons or entities are not allowed. Similarly, conveyance of land, buildings, premises, etc., by lease or otherwise (but not by sale) in the SEZ can be made only to the units in the SEZ or entities permitted to carry out operations within the SEZ areas. In such cases, the concession of stamp duty exemption will be allowed.

The conventional practice of owning the housing accommodation either on freehold or leasehold by the employer and allotting the accommodation to the employees on license conditions is to ensure that the accommodation is occupied by the employee as long as he was in the services of the employer.

We noticed (between May and July 2012) during audit that instruments pertaining to transfer (lease) of the land and buildings situated in SEZ developed by two developers were executed and registered at Sub Registries, Chinglepet (Joint II) and Cheyyur during the period from October 2009 to March 2012. The instruments though violated the letter and spirit of the law relating to the SEZ in the manner discussed in the following paragraphs, exemption from payment of stamp duty was allowed.

4.9.11.1 The Ministry of Commerce and Industry, Government of India granted permission for development and operation of SEZ to the New Chennai Township Private Limited (developer) at Cheyyur Taluk through two notifications dated 28 September 2007 and 23 November 2007.

We noticed that the developer through 612 lease deeds, leased the lands in SEZ in favour of individuals, transferring residential units along with undivided share of land in the non-processing area. In respect of the above documents, stamp duty exemption of ₹ 7.71 crore was allowed.

Our scrutiny of the documents registered with the Sub-Registrar's Office, Cheyyur revealed the following:

- i) The 'lease' was in the name of individuals in 610 cases and two in the name of companies which are not connected with the SEZ
- ii) In all the cases the lease was for a period of 99 years and one time lease amount was collected.
- iii) In cases registered after 4 June 2010 the documents provide for automatic renewal for a further period of 99 years on similar or identical terms.
- iv) In all the cases the leases entitle the lessees to mortgage the properties with financial institutions for availing loans. We found 314 cases of such mortgage. The financial institutions, in the event of default by the lessees, can auction the property to any persons or entities not authorised for operation within the SEZ.

If the residential units were intended to be used as support infrastructure for the processing zone, the 'leases' would not be in the names of individuals but rather, in the names of the companies set up in the SEZ. Also, leases for residential units need to be co-terminus with the lease for the units in the processing zone. However, the terms of the registered documents clearly indicate that the housing units have been 'sold' to individuals in the guise of 'lease'.

4.9.11.2 M/s. Mahindra World City Developers Limited (formerly M/s. Mahindra Industrial Park Limited) was granted approval to set up an SEZ in Chinglepet Taluk on 8 September 2004 vide three notifications all dated 26 October 2004.

We noticed that the developer transferred on lease an extent of 21.15 acres of land to one of its co-developers, viz., M/s. Mahindra Lifespace Developers Limited (formerly M/s. Mahindra Gesco Developers Limited).

We further noticed that the co-developer transferred the SEZ land to 10 individuals with the completed residential unit infrastructure during the period from January 2010 to November 2011 and stamp duty exemption was allowed for these cases on the ground that housing is one of the permitted activities within the SEZ. The exemption of stamp duty on these cases was ₹ 96.84 lakh.

Our scrutiny of 104 documents registered with Sub-Registrar's Office, Chingleput revealed that

- i) all the leases were on 'perpetual' basis and one time lease amount was collected;
 - ii) of these, 90 lease documents pertained to transfer of vacant land in the form of undivided share to individuals in contravention of provisions of the rules;
 - iii) in 10 cases, land with constructed residential units (Villa and Semi bungalow) was 'leased' to individuals;
 - iv) in none of the cases there was restriction on further sub-leasing or transfer of lease, if agreed to by the lessor. If the permission was not accorded within seven working days, the permission shall be deemed to have been given;
 - v) all the lease deeds provide for mortgage of lease hold rights with various financial institutions covered by the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) by the lessees. In the case of default, the financial institution can auction the property. We found three such cases of mortgage.
- The lessees enjoyed succession rights. In one case, on the demise of the lessee, two of the legal heirs of the lessee relinquished their rights over the property in favour of another legal heir of the lessee which would not have been admissible had it been license.
- vi) in 13 cases, the lessees 'sold' the residential building constructed over the land in SEZ to other individuals for consideration, with the co-developer joining the execution as a confirming party stating that they do not have any substantive right over the scheduled mentioned property.

Thus by leasing the land in SEZ ‘perpetually’ on collection of one time lease amount without specifying the terms and conditions for termination of lease period and permitting the lessee to transfer the land unilaterally, the right over the land was virtually relinquished. This is in violation of the SEZ Rules, 2006.

Thus, in both the SEZs, vacant land or land with constructed residential unit was ‘sold’ to private individuals in the guise of ‘lease’. The concessions enjoyed by the SEZ developers in the form of exemption of stamp duty and registration fees alone amounted to ₹ 8.68 crore. In addition, benefits in the form of exemption of VAT, CENVAT, Service Tax, Customs duty and Income Tax are also enjoyed by the developers.

We reported the matter to the Department and to the Government (between July and September 2012) and are awaiting their reply (December 2012).

We recommend that the Government may take required steps to set right the irregularities which resulted in violation of SEZ Rules and to recover the undue benefits that have been availed by the developers/co-developers of SEZs.