

CHAPTER-IV STAMP DUTY AND REGISTRATION FEES

4.1 Tax Administration

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

4.2 Results of Audit

There are 320 auditable units¹ in the Registration and Stamps Department under the Revenue Department. Out of these, 27 units were selected for test check. During 2017-18; 5,70,592 documents were registered/ adjudicated and 35,629 valuation cases were finalised by these units. Out of these, 23,643 documents (4.14 *per cent* of total cases) and 2,012 valuation cases (5.65 *per cent* of the total cases) were test checked. Scrutiny of these documents/ valuation cases revealed short realisation of stamp duty and registration fees and other irregularities involving ₹ 11.67 crore in 270 documents (1.14 *per cent* of test checked cases) and 45 valuation cases (2.24 *per cent* of test checked cases) aggregating to 315 cases. These cases are illustrative only as these are based on test check of records. Audit pointed out some of the similar omissions in earlier years, not only these irregularities persist but also remain undetected till next audit is conducted. There is a need for the Government to improve the internal control system including strengthening of internal audit so that recurrence of such cases can be avoided. Irregularities noticed broadly fall under the following categories:

Table 01: Results of Audit

Sl. No.	Category	No. of cases	Amount (₹ in crore)
1	Misclassification of documents	21	3.18
2	Undervaluation of property	71	3.46
3	Under assessment of stamp duty and instruments of mortgage deeds	01	0.03
4	Short levy of stamp duty and registration fees	70	2.33
5	Other irregularities	152	2.67
	Total	315	11.67

¹ Inspector General of Registration (IGR) and Superintendent of Stamps (SS): 01, Sub-Registrars: 284, Deputy Collectors (Stamp Duty Valuation Organisation): 35.

During the course of the year, the Department accepted under-assessment and other irregularities of ₹ 9.65 crore in 39 cases and recovered ₹ 59.90 lakh in 26 cases, which were pointed out in audit during 2017-18 and earlier years.

A few illustrative audit observations involving ₹ 9.48 crore are mentioned in the succeeding paragraphs.

4.3 Short levy of stamp duty on documents comprising several distinct matters

Under Section 5 of the Gujarat Stamp Act, 1958, any instrument comprising of several distinct matters or distinct transactions shall be chargeable with aggregate amount of duties with which separate instruments would be chargeable under the Act.

During test check of the records of two Sub Registrar offices² for the year 2014 to 2016, audit noticed³ from the recitals of two documents⁴ that they contained more than one distinct matter or transaction which attracted levy of aggregate amount of stamp duty on each separate transaction. However, the Sub Registrars (SRs) did not take cognizance of the recitals of the documents and did not levy the aggregate stamp duty on each such distinct matter. This resulted in short levy of stamp duty of ₹ 65.17 lakh as explained below:

4.3.1 Article 49 of Schedule-I to the Gujarat Stamp Act, 1958, prescribes Stamp duty of ₹ 100 in case of the release of ancestral property by parents to their son(s). However, the property other than ancestral property is liable to stamp duty at the rates applicable to conveyance. Further, as per Article 28, 'Gift' is also leviable to stamp duty at the rates applicable to conveyance.

In Sub-Registrar office, Ahmedabad-IX (Bopal), audit observed in case of a registered (February 2016) conveyance deed that sellers had sold land measuring 5,241 sqm with construction thereon to purchasers and confirming parties had also signed the document. Recitals of the document revealed that as per revenue records the land had been initially purchased (May 2010) by confirming party (husband and wife). The confirming party made the sellers (i.e. sons of confirming party) the absolute owners of property by virtue of unregistered gift (April 2013) and release (June 2013) deeds. Based on these unregistered gift and release deeds, names of the sellers had also been entered in the village records. Thus, the document comprises two distinct matters i.e. (1) Conveyance between the confirming party and sellers and (2) Conveyance between the sellers and purchasers. The SR was required to levy aggregate stamp duty on both the transactions. But, the SR had not levied stamp duty on deemed conveyance executed between confirming party and sellers. This resulted in short levy of stamp duty of ₹ 59.06 lakh.

4.3.2 In Sub-Registrar office, Surat-II (Udhna), audit observed in case of one document registered as partnership deed (in favour of Developers) that three

² SR- Ahmedabad-IX (Bopal) and Surat- II (Udhna).

³ In April and October 2017.

⁴ Registered in July 2015 and February 2016.

co-owners (i.e. Sellers) of land measuring 1,949 sqm had brought the land into the partnership firm as capital contribution. Recitals of the document revealed that a consideration for 40 *per cent* of area of the land amounting to ₹ 1.25 crore had also been paid by the Developers to the Sellers so that respective shares of Developers and Sellers in the land became 40 and 60 *per cent* respectively. Thus, the document comprises two distinct matters i.e. (1) Deemed conveyance of 40 *per cent* of area of land between Sellers and Developers and (2) Present partnership deed. The SR was required to levy aggregate stamp duty on both the transactions. But, the SR had not levied stamp duty on deemed conveyance of 40 *per cent* of area of land between Sellers and Developers. This resulted in short levy of stamp duty and registration fees of ₹ 6.11 lakh. Audit pointed out these cases to the Department in April and October 2017.

The Department stated (September 2018) that notices had been issued to the parties. Further reply is awaited (January 2019).

4.4 Short levy of stamp duty and registration fees on partnership deeds

As per Article 44 of Schedule I to the Gujarat Stamp Act, 1958, in case of partnership deed, stamp duty is leviable at the rate of one *per cent* on the amount of capital of partnership subject to maximum of ten thousand rupees (up to 31 July 2014). From 1 August 2014, in case of partnership deed where share of capital is brought in by way of immovable property, the stamp duty is leviable at the rate of 3.5 *per cent* for the market value of such immovable property.

As per Registration Act, 1908, registration fees on partnership deed shall be levied at *ad valorem* scale (at the rate of one *per cent*) on the amount or value of the property.

During test check of the records of two Sub Registrar offices⁵ for the year 2012 to 2016, audit noticed⁶ from the recitals of four documents registered as partnership deeds that there was short levy of stamp duty/ registration fees of ₹ 18.71 lakh as explained below:

- In case of one document styled and presented for registration as ‘Partnership deed’ on 27 November 2014, stamp duty was required to be levied at the rate of 3.5 *per cent* of the market value of immovable property valued at ₹ 2.69 crore brought as share of capital. But, stamp duty of ₹ 10,000 only had been levied by the Sub Registrar (SR). Registration fees was also required to be levied at the rate of one *per cent* on the market value of property, but had been levied at fixed rate of ₹ 30 only. This resulted in short levy of stamp duty and registration fees of ₹ 11.98 lakh.
- In case of three documents styled and registered⁷ as ‘Partnership deed’ while working out the market value of the property arithmetical mistakes

⁵ SR- Bhavnagar IV (Tarasmiya) and Surat III (Navagam).

⁶ In May 2015 and May 2017.

⁷ Registered between October 2013 and March 2014 i.e. prior to 01 August 2014.

were made. The market value was calculated incorrectly as ₹ 4.02 crore instead of ₹ 10.75 crore. This resulted in short levy of registration fees of ₹ 6.73 lakh.

Audit pointed out these cases to the Department in May 2015 and May 2017. The Department stated (September 2018) that notices had been issued to the parties. Further reply is awaited (January 2019).

4.5 Blockage/ short levy of revenue on documents comprising distinct transactions

Under Section 5 of the Gujarat Stamp Act, 1958, any instrument comprising of several distinct matters or distinct transactions shall be chargeable with aggregate amount of duties with which separate instruments would be chargeable under the Act. As per Article 6 (1)(a), in case of an agreement relating to deposit of title deeds, stamp duty is leviable at prescribed rates. Supreme Court (SC) in its judgement⁸ of 11 August 2015 in an appeal made against Gujarat High Court (GHC) decision observed that in case a borrower avails loan from a consortium of banks against the security of property mortgaged by way of deposit of title deed, aggregate stamp duty is leviable on distinct transactions of distinct loans availed from different banks. In the light of this judgement of Supreme Court, the Superintendent of Stamp, Gujarat State had issued a circular and instructed (August 2015) that documents registered in the past in view of Gujarat High Court judgement shall be sent to the competent authority *viz.* Deputy Collector (Stamp Duty Valuation Organisation) for recovery of deficit duty.

During test check of the records of eight Sub Registrar offices⁹ for the year 2010 to 2016, audit noticed¹⁰ from the recitals of 21 documents that the borrowers had availed loans from consortium of banks and mortgaged their immovable properties by way of deposit of title deeds.

Further scrutiny of these documents revealed that 20 documents were registered before 11 August 2015 (after the judgement of GHC on 03 December 2012 but before SC judgement) and the Sub-Registrars had levied stamp duty as if the loans had been availed from a single bank. The SRs however did not refer these 20 documents to Deputy Collector (SDVO) for recovery of deficit stamp duty on each such distinct transaction. In one document registered in September 2015, the SR, Udhana, Surat did not levy stamp duty on the loans (₹ 53.88 crore plus US \$ 40.00 lakh-external commercial borrowing loan) availed on the basis of properties mortgaged by the borrower with six different banks instead levied the stamp duty considering loan availed from single bank.

⁸ The Gujarat High Court had given judgement against Government on 03 December 2012 against which appeal was made by Government in the Supreme Court vide CA No. 6054 of 2015 in case of CCRA vs Coastal Gujarat Power Ltd. and others.

⁹ SR- Ahmedabad-11 (Aslali), Bavla, Palanpur, Sanand, Surat-1 (Athwa), 2 (Udhna), Vadodara-3 (Akota) and 4 (Gorva).

¹⁰ Between November 2015 and June 2017.

These documents contained more than one distinct transaction which require levy of aggregate stamp duty. This had resulted in blockage/short levy of stamp duty of ₹ 7.35 crore.

On this being pointed out, the Department stated (September 2018) that recovery had been effected in one case in July 2018 though challan was not produced to audit while notices had been issued in remaining 20 cases. Further reply is awaited (January 2019).

The Department needs to ensure that documents registered after Gujarat High Court judgement up to August 2015 are reviewed and sent by SRs to competent authority for effecting recovery.

4.6 Short levy of stamp duty due to misclassification of documents

Under Section 3 of the Gujarat Stamp Act, 1958 every instrument mentioned in Schedule-I shall be chargeable with duty at the prescribed rates. As per various court judgments, at the time of registration of document, regard should be given to the substance of the document and not to the description at the head of the document.

During test check of the records of two Sub Registrar offices¹¹ for the years 2013 and 2016, audit noticed¹² from the recitals of three documents that these documents were classified on the basis of their titles and the stamp duty and registration fees were levied accordingly. Further scrutiny of the recitals of these documents revealed that these documents were misclassified. This resulted in short levy of stamp duty of ₹ 1.29 crore as explained below:

4.6.1 Release deed misclassified as partition deed

Under Explanation-I below Section 2 (g) (v) of the GS Act, 1958, an instrument whereby a co-owner of any property transfers his interest to another co-owner of the property and which is not an instrument of partition shall be deemed to be an instrument by which property is transferred *inter-vivos*. Further, Section 2 (m) of the GS Act defines an instrument of partition as any instrument whereby co-owners of any property divide or agree to divide such property in severalty.

As per Article 20 of the Schedule-I of the GS Act, 1958 stamp duty on instrument of conveyance is leviable on the market value of the property or the consideration for such conveyance, whichever is greater. The registration fees is leviable on the amount of consideration mentioned in the document.

In Sub-Registrar office, Ahmedabad-VIII (Sola), audit observed in case of one document registered as partition deed that co-owners of immovable and movable properties had appropriated among them non-agricultural lands and other movable properties such as shares, ornaments, etc. Recitals of the

¹¹ SR- Ahmedabad VIII (Sola) and Sanand.

¹² In February 2015 and November 2017.

document revealed that previously, the land at different places had been purchased (April and June 1992) by one co-owner (Karta and Manager) and other family members were also made co-owners of the lands because they were members of HUF (Hindu Undivided Family). Names of all the co-owners were also entered in the revenue records. By virtue of the instrument executed, the remaining eight co-owners had relinquished their respective shares in the land valued at ₹ 23.21 crore, ornaments, investments, bank balances, in favour of one co-owner (Karta and Manager). Therefore, the instrument of transfer of land to Karta was required to be classified as release deed and stamp duty was required to be levied accordingly. But, the Sub Registrar had levied stamp duty treating the instrument as partition deed. This resulted in short levy of stamp duty of ₹ 87.73 lakh.

4.6.2 Misclassification of conveyance as partnership deed

As per Section 2(g) of the GS Act, 1958, conveyance on sale includes every instrument by which movable or immovable property is transferred *inter vivos*. Under Article 20(a) of Schedule I to the Act, in case of conveyance deed, stamp duty is leviable at the rate of 4.9 *per cent* of the amount of consideration of such conveyance or the market value of the property, whichever is greater.

In Sub-Registrar office, Sanand, audit observed in case of two documents registered as partnership deeds that some partners had brought immovable properties as capital contributions in the partnerships firms. There had been recitals to the effect that henceforth, rights and title in the lands would vest with the partnership firms. Later, based on these partnership deeds, the name of the partnership firms had been also entered in revenue records as owners of these lands. Therefore, the instruments valued at ₹ 8.50 crore were required to be classified as conveyance deeds and stamp duty was required to be levied accordingly. But, the Sub Registrar had levied stamp duty of ₹ 0.20 lakh treating the instruments as partnership deeds. This resulted in short levy of stamp duty of ₹ 41.47 lakh.

On this being pointed out, the Department stated (September 2018) that notices had been issued to the parties. Further reply is awaited (January 2019).