

## CHAPTER V

### STAMP DUTY AND REGISTRATION FEES

#### 5.1 Results of audit

Test check of the records of district registrars and sub registrars conducted during the year 2005-06 revealed non/short levy of stamp duty and registration fees amounting to Rs.68.85 crore in 419 cases which broadly fall under the following categories:

(Rupees in crore)

Sl. No.	Nature of irregularity	No. of cases	Amount
1	Misclassification of documents	32	0.31
2	Adoption of incorrect rate of stamp duty	149	48.02
3	Undervaluation of properties	38	12.68
4	Incorrect exemption of duties	37	0.94
5	Short levy of stamp duty and registration fees	90	3.39
6	Loss of revenue due to incorrect adjustment of stamp duty	30	3.17
7	Deficit stamp duty and registration fees on lease of tolls/BOTs	3	0.13
8	Other irregularities	40	0.21
	<b>Total</b>	<b>419</b>	<b>68.85</b>

During the year 2005-06, the department accepted under assessments etc., of Rs.0.67 crore in 76 cases, of which 53 cases involving Rs.0.37 crore was pointed out during the year 2005-06 and the rest in earlier years. Out of 94 cases, an amount of Rs.0.11 crore in 40 cases was realised during the year.

A few illustrative cases involving Rs.54.95 crore are mentioned in the following paragraphs.

## 5.2 Short levy of stamp duty due to adoption of incorrect rate

According to Section 5 of Indian Stamp (IS) Act 1899, any instrument comprising of or relating to several distinct matters shall be chargeable with the aggregate amount of stamp duties with which separate instruments, each comprising or relating to one of such matters would be chargeable under the Act.

Under Article 42(g) of Schedule I-A to the Act, when power of attorney is given for construction on development or sale or transfer of any immovable property, stamp duty is leviable at five *per cent* on the market value of the property for which the attorney is given power to sell.

**5.2.1** During the course of audit of 17<sup>©</sup> district registries (DRs) and 95<sup>♠</sup> sub registries (SRs) it was noticed between January 2004 and February 2006, that 19,540 documents valued at Rs.905.46 crore styled as “agreement of sale cum general power of attorney” registered during the years 2003-04 and 2004-05 contained two distinct matters namely one relating to agreement of sale and another appointing the agreement holder as attorney on behalf of vendor to carry out all acts and deeds including sale of property. These were liable to be stamped for Rs.45.27 crore. However, registering authorities incorrectly levied stamp duty of Rs.9.78 lakh only. This resulted in short realisation of revenue of Rs.45.17 crore.

**5.2.2** During the course of audit of three DRs<sup>≡</sup> and 12<sup>©</sup> SRs, conducted between February and November 2005 it was noticed that 162 documents styled as “development agreement cum general power of attorney (GPA)” valued at Rs.62.55 crore for construction of independent houses and multi storied complexes registered during 2003-04 and 2004-05 contained several distinct matters viz., agreement for development, power of attorney given by land owner to the developer in respect of the share of the land allotted to the developer and security deposits paid by developer to the land owner. The

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<sup>©</sup> Adilabad, Bhimavaram, Eluru, Hyderabad, Kakinada, Karimnagar, Khammam, Kurnool, Mahaboobnagar, Medak, Nalgonda, Nellore, Nizamabad, Ongole, Rangareddy, Rajahmundry, Vijayawada

<sup>♠</sup> Addanki, Amadalavalasa, Amalapuram, Armoor, Azampura, Banjara Hills, Bhainsa, Bhimadole, Bhongir, Bodhan, Bowenpally, Buchireddypalem, Champapet, Chikkadpally, Charminar, Chevella, Chirala, Chodavaram, Choutuppal, Devarakonda, Doodhbowli, Gajapathinagaram, Gajwel, Gajuwaka, Gannavaram, Golconda, Gopalapatnam, Gudivada, Gudur, Gunadala, Hayathnagar, Huzurabad, Ibrahimpatnam, Jadcherla, Jagtial, Janagaon, Kadiyam, Kalwakurty, Kamareddy, Kandukuru, Kanigiri, Kavali, Kodad, Kotauratla, K.Kotapadu, Kothavalasa, Kovur, Kusumanchi, Kukatpally, Madanapalli, Madhurawada, Mancherla, Mahbubabad, Maheswaram, Malkajgiri, Marredpally, Medchal, Miryalaguda, Movva, Mylavaram, Mummidivaram, Narsapur, Nidadavolu, Prathipadu, Peddapally, Piler, Pithapuram, Ponduru, I.Polavaram, Rajam, Rajanagaram, Rajendranagar, Ramachandrapuram, Razole, Renigunta, Sabbavaram, Samalkot, Sanjeevareddynagar, Saroornagar, Secunderabad, Shadnagar, Shamshabad, Siddipet, Siricilla, Sompeta, Suryapet, Tanuku, Tallarevu, Tuni, Uppal, Vallabhnagar, Wanaparty, Warangal, Yellamanchili, Zaheerabad

<sup>≡</sup> Hyderabad, Khammam and Rangareddy

<sup>©</sup> Azampura, Banjara Hills, Charminar, Chikkadapally, Golconda, Kukatpally, Malkajgiri, Marredpally, Rajendranagar, Saroornagar, Secunderabad and Uppal

instruments were liable to stamp duty of Rs.10.55 crore against which Rs.7.42 crore was levied. This resulted in short levy of stamp duty of Rs.3.13 crore.

After this was pointed out, Government stated in August 2006 that agreement and GPA are not distinct matters and in case instrument is properly stamped in respect of its leading characteristic, other matters are merely auxiliary and not chargeable with any further duty. Reply was not tenable as agreement of sale/development agreement and GPA etc., are distinct matters. As such, stamp duty should have been charged separately. Besides, department has also treated these as separate matters for the purpose of levy of registration fee.

**5.2.3** During the course of audit of DR, Hyderabad conducted in August 2005, it was noticed that a document styled as “development agreement” was executed by B in favour of C in October 2004. The deed comprised another distinct matter of conveyance of property valued at Rs.88.73 lakh from A to B for which stamp duty of Rs.11.98 lakh was leviable. However, no stamp duty was charged for this matter resulting in short levy to that extent.

After this was pointed out, Government stated in August 2006 that above distinct matter was a release of disputed right between A and B for a consideration of Rs.15 lakh and no rights were transferred. The reply was not tenable as B had obtained rights in the property from A through the document and as such the matter was classifiable as “conveyance on sale” and was liable to stamp duty as such.

**5.2.4** Under Section 2 (10) of the IS Act, security or earnest money deposits paid by the agreement holders to land owners are to be treated as amounts paid as advance for transfer of property and are chargeable to duty at five *per cent*.

During the course of audit of DR, Rangareddy in February 2005, it was noticed that three documents of “agreements of sale” were registered between June and November 2003 after levy of stamp duty at five *per cent* on the cost of land excluding earnest money deposit of Rs.1.37 crore paid by the vendee to the Andhra Pradesh Industrial Infrastructure Corporation (vendor) at the time of filing application for allotment of land. This resulted in short levy of stamp duty of Rs.6.87 lakh.

After this was pointed out, the Inspector General of Registration and Stamps (IGR) while accepting the objection in November 2006 stated that the deficit amount was already collected in one document and efforts had been taken to collect the deficit amounts in the remaining two documents.

The above matter was referred to department between January and April 2006 and Government in June 2006; reply has not been received (October 2006).

### **5.3 Loss of revenue due to incorrect adjustment of stamp duty**

When a sale deed is executed in pursuance of an agreement falling under explanation I to Article 47-A or Article 6(B) of Schedule 1A to the IS Act, as the case may be, stamp duty already paid on such agreement shall be adjustable towards the final duty payable on that sale deed. As per section 16 of the IS Act, where duty leviable on a document depends upon the duty actually paid on another document, payment of such last mentioned duty is required to be adjusted on that first document, if an application is made in writing. Further, according to Section 28(4) of the IS Act, when a person contracts for the purchase of a property but has not obtained conveyance of the same in his favour, contracts to sell the same property in whole or in parts, to any other person (third parties), then the original seller has to convey the property in favour of such third parties.

During the course of audit of three DRs<sup>⊗</sup> and 20<sup>#</sup> SRs it was noticed between February 2004 and November 2005 in 1,534 documents that stamp duty paid on the part of agreement included in the documents styled as ‘agreement of sale cum GPA’, was adjusted on subsequent sale deeds even though the claimant was a third party i.e., neither the agreement holder nor the agent. Therefore, adjustment of stamp duty already paid on earlier documents was incorrect and resulted in loss of revenue of Rs.2.97 crore.

After this was pointed out, Government stated in August 2006 that the adjustments were made under the provisions of Section 28 and Article 47-A of Schedule 1-A to the Act. Reply was not tenable as the documents were not executed by persons who had paid duty to claim adjustment of stamp duty under the above provisions.

### **5.4 Short levy of stamp duty on a document of general power of attorney**

Under Article 42(g) of Schedule I-A to the IS Act, ‘power of attorney’ when given for construction on, development of or sale or transfer (in any manner whatsoever) of any immovable property is chargeable to stamp duty at five *per cent* on the market value of the property. The term “development” was not defined in the IS Act. However, Sections 2(e) and 7(d) of the Andhra Pradesh Urban Areas (Development) Act, 1975 define “development” inter alia, as the division of any site into plots for erection of buildings, the amenities to be provided in relation to any site or buildings and the maintenance of wall, fences etc.

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<sup>⊗</sup> Khammam, Nalgonda and Nizamabad

<sup>#</sup> Charminar, Chikkadapally, Doodhbowli, Gajwel, Gopalapatnam, Gunadala, Hayathnagar, Ibrahimpatnam, Kadiyam, Kusumanchi, Marredpally, Medchal, Miryalaguda, Narsapur, Rajendranagar, Saroornagar, Shadnagar, Shamshabad, Siddipet and Warangal (Rural)

During the course of audit of DR, Rangareddy conducted in February 2005, it was noticed that a document styled as GPA was registered in April 2003 in SR, Kukatpally after levy of Rs.100 as stamp duty. The recitals of the document authorised the agent to apply for and obtain land usage conversion, apply for and get approved a lay out plan and divide the property of 54 acres of land into plots as per the approved lay out plan. Further, it was noticed that the subsequent sale deeds registered in DR, Vijayawada were executed by the agent which envisaged that agent was solely responsible for development of the property and for providing amenities. Consequently the deed was classifiable as “GPA for development” and was liable to be charged with stamp duty under Article 42(g) whereas stamp duty of Rs.100 was only levied. This resulted in short levy of stamp duty of Rs.2.35 crore.

After this was pointed out, DR, Rangareddy stated in December 2005 that the agent was authorised to undertake any act on behalf of the principal and to divide the property into plots, which would be considered as demarcation of plots only and hence the question of GPA for development does not arise. Reply was not tenable, as recitals of the deed specified that the agent was responsible for development of property and the activities carried out; as such, deed should have been classified as GPA for development.

The above matter was referred to department in October 2005 and Government in June 2006, response has not been received (October 2006).

## **5.5 Under valuation of properties**

Under Section 27 of the IS Act, consideration, market value and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of duty with which it is chargeable shall be fully and truly set forth therein. As per the departmental instructions<sup>#</sup>, registering officers should adopt the highest rate applicable to neighbouring house number in the case of missing house number. As per existing instruction dated 2 November 2001<sup>♦</sup>, 70 per cent of the site value has to be adopted for the area of open terrace conveyed. Further, sale deeds relating to semi finished flats have to be admitted for registration provided the agreement for construction of remaining portion is produced.

**5.5.1** During the course of audit of two<sup>¶</sup> SRs conducted between October 2004 and May 2005, it was noticed in one case that four documents were registered by adopting agricultural/acreage rate of Rs.40,000 per acre for the properties involved instead of house site/square yard rate of Rs.100 per sq.yard. This resulted in undervaluation of properties of Rs.55.85 lakh and short levy of duty of Rs.6.54 lakh.

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<sup>#</sup> Item (iv) of I.G’s Procs. No.MV1/20363-A/90 dated 10 August 1990

<sup>♦</sup> MV1/30324/2000 dated 02 November 2001

<sup>¶</sup> Choutuppal and Hayathnagar

**5.5.2** In another sale deed registered in April 2003, site having a southern boundary of NH9 was shown as “road”. Its market value was adopted as Rs.750 per square yard as against correct market value of Rs.2,100 per square yard shown in market value guidelines. This resulted in undervaluation of properties by Rs.1.14 crore and consequential short levy of duties of Rs.14.21 lakh.

After this was pointed out between October 2004 and May 2005, the sub registrar, Hayathnagar stated that action would be initiated for recovery of duties. The sub registrar, Choutuppal stated that the properties were agricultural lands as seen from the documents. The reply was not tenable as the properties in Choutuppal were already converted as house sites/plots and shown as such in the documents registered earlier.

**5.5.3** During the course of audit of five DRs<sup>o</sup> and one SR<sup>≠</sup> conducted between February and November 2005, it was noticed that properties involved in 36 documents were undervalued resulting in short levy of duties of Rs.46.98 lakh as under.

(Rupees in lakh)

Sl. No.	No of Documents	Nature of objection	Amount short levied
1.	4	Highest market value applicable to the neighbouring house number was not adopted as the actual house/door number was missing in the market value guidelines. This resulted in undervaluation of properties by Rs.82.33 lakh.	10.89
2.	7	Market value applicable to the respective door number was not correctly adopted/sale consideration was incorrectly adopted for the purpose of levy of duty. This resulted in undervaluation of properties by Rs.1.5 crore	16.19
3.	3	Terrace rights valued at Rs.1.06 crore were not included in sale deed.	14.64
4.	22	Market value applicable to the respective door number was not adopted, structures rates were not properly adopted and construction agreement for the balance portion of semi finished structures was not insisted upon.	5.26
	<b>36</b>	<b>Total</b>	<b>46.98</b>

After this was pointed out, Government in August 2006 stated that in one case an amount of Rs.25,163 was collected and action is being initiated by issuing notices in remaining cases to collect the deficit amount.

<sup>o</sup> Ananthapur, Hyderabad, Karimnagar, Ongole and Rangareddy  
<sup>≠</sup> Golconda

### 5.6 Misclassification of ‘conveyances on sale’ as ‘releases’

A document by which one of the co-owners of a property purports to abandon or relinquish his claim in consideration of a certain sum of money would be in the nature of a release. A release should necessarily be in favour of someone who had already some title to the estate and the effect of the release is only to enlarge that right. If any person having right/title/interest in the property is left out of the transaction of release, the instrument evidencing such release should be classified as a conveyance on sale and charged with stamp duty accordingly.

During the course of audit, it was noticed between February and October 2005 in three DRs<sup>α</sup> and two SRs<sup>β</sup>, that eight deeds titled as ‘release deeds’ valued at Rs.2.72 crore were executed between May 2003 and November 2004. Of these, in seven release deeds persons having right/ title/interest in the property were left out of the transactions of release and in another document land owners released 20 *per cent* share of their property to a developer who had no pre existing right/title over the released property. These release deeds are required to be classified as ‘conveyances on sale’. Misclassification of ‘conveyances on sale’ as ‘releases’ resulted in short levy of duty of Rs.26.32 lakh.

After this was pointed out, the IGR accepted in November 2006 that the documents were misclassified as releases. However, IGR classified these as conveyances instead of conveyances on sale. The reply is not tenable as the documents involved element of consideration in each case and are as such classifiable as “conveyances on sale”.

After this was referred to Government in June 2006, it replied in August 2006 that the matter would be examined.

### 5.7 Deficit stamp duty and registration fee on a lease deed

As per Article 31(a) of Schedule 1A to IS Act, lease is chargeable with stamp duty on the value of average annual rent reserved at the prescribed rate. However, a lease granted for fine or premium without reserving any rent is chargeable at five *per cent* on the value of such fine or premium under Article 31(b) *ibid*.

During the course of audit of two<sup>©</sup> DRs and SR, Shamirpet conducted between June and December 2005 it was noticed that two lease deeds for collection of tolls and 10 lease deeds for quarrying sand were concluded by the lessees with the Roads and Buildings/Panchayat Raj departments between March 2004 and February 2005. Stamp duty and registration fee of

<sup>α</sup> Ananthapur , Hyderabad and Tirupati

<sup>β</sup> Azampura and Golconda

<sup>©</sup> Nellore and Tirupati

Rs.16.91 lakh was levied under Article 31(a) as against stamp duty and registration fee of Rs.37.78 lakh leviable under Article 31(b). This resulted in short levy of stamp duty and registration fee of Rs.20.87 lakh.

After this was pointed out, Government accepted the objection pertaining to Shamirpet in August 2006 and stated that necessary steps were taken to collect the deficit amount. The DR, Tirupati stated in June 2005 that demand notices would be issued to the concerned parties for collection of deficit duties. Reply in respect of DR, Nellore is awaited.