

CHAPTER - V

STAMP DUTY AND REGISTRATION FEES & OTHER TAX RECEIPTS

5.1 Results of audit

Test check of the records in the field offices of the Inspector General of Registration in the State and other various departmental offices during 2006-07 disclosed short realisation of stamp duty and registration fees amounting to Rs. 55.45 crore in 327 cases which broadly fall under the following categories:

(Rupees in crore)			
Sl. No.	Category	No. of cases	Amount
A. STAMP DUTY & REGISTRATION FEES			
1.	Misclassification of documents	79	40.11
2.	Irregular acceptance of time barred cases resulting in postponement of realisation of duty	11	0.74
3.	Incorrect grant of exemption	6	0.45
4.	Underassessment of stamp duty on instrument of mortgage deeds	13	0.43
5.	Undervaluation of property	13	0.16
6.	Other irregularities	107	8.34
	Total	229	50.23
B. OTHER TAX RECEIPTS			
1.	Electricity duty	15	4.59
2.	Entertainments tax	69	0.53
3.	Luxury tax	14	0.10
	Total	98	5.22
	Grand total	327	55.45

During the year 2006-07, the concerned department accepted and recovered Rs. 2.83 lakh in five cases.

A few illustrative cases involving Rs. 8.66 crore are mentioned in the following paragraphs:

5.2 Short recovery of stamp duty due to acceptance of appeal applications barred by limitation of time

Under section 32-B of the Bombay Stamp Act (BS Act), 1958, as applicable to Gujarat, any person aggrieved by an order passed under Section 31 or 32-A, determining the market value, may file an appeal application with the Chief Controlling Revenue Authority (CCRA) through the Collector within the period prescribed from the date of the order. Section 53 (1)(a) of the BS Act further provides that CCRA shall not entertain an appeal application presented after the period of 60 days (upto 10 June 2004) or 90 days (from 11 June 2004) from the date of order of the Collector.

Test check of the records of 11³⁹ Deputy Collectors (VOP^s) between November 2005 and August 2006 revealed that the aggrieved parties had filed 220 appeals between October 2001 and March 2006 against the market value determined by the Collectors. Appeal applications were submitted after the expiry of the prescribed period. Deputy Collectors accepted the time barred applications and referred these to the CCRA during April 2004 to March 2006. All the cases are yet (August 2007) to be finally decided by the CCRA. Acceptance of time barred applications by the Deputy Collectors (VOP) contrary to the provisions of the Act resulted in short recovery of stamp duty of Rs. 3.07 crore.

After the cases were pointed out by audit, the Deputy Collectors in 169 cases stated that the CCRA had the powers to condone delay, and hence the applications were accepted. The reply is not tenable as the BS Act does not authorise the CCRA to condone delay for any reason.

The matter was reported to the Government (May 2007); their reply has not been received.

5.3 Non-levy of stamp duty and registration fees on allotment of unoccupied Government land

Section 3aa of the BS Act, provides for levy of stamp duty on transfer of Government land to its allottees with effect from 1 April 2002. It further stipulated that the collectors of the districts would ensure the recovery of the stamp duty from the allottees before handing over the possession of the land.

Test check of the records in four districts⁴⁰ revealed that Government land was transferred to 78 allottees during 2004-05 and 2005-06. Neither did the allottees make any payment on account of stamp duty nor did the collectors ask for the same. This resulted in non-realisation of stamp duty of Rs. 1.83 crore.

After the cases were pointed in January 2007, the Collectors of Rajkot and Jamnagar accepted the audit observation in 35 cases and stated that they would recover the dues. The replies in the remaining 43 cases from Bhuj and Surat have not been received (October 2007).

³⁹ Ahmedabad I and II, Bharuch, Gandhinagar, Himatnagar, Nadiad, Navsari, Palanpur, Rajkot-I and II and Vadodara II

^s Valuation of property

⁴⁰ Bhuj, Jamnagar, Rajkot and Surat

The matter was reported to the Government (June 2007); their reply has not been received (October 2007).

5.4 Short levy of stamp duty and registration fees on documents comprising distinct matters

Under Section 5 of the BS Act, any instrument comprising or relating to several distinct matters is chargeable with the aggregate amount of the duties for each such separate instrument chargeable under the Act.

Test check of the records of eight⁴¹ sub registrars (SRs) revealed that 18 documents comprising several distinct matters of immovable properties valued as Rs. 25.85 crore were charged stamp duty and registration fees for only one matter/transaction. This resulted in short levy of stamp duty and registration fees of Rs. 1.79 crore. A few cases are mentioned below:

- Recitals of two documents registered in Kadi for immovable properties valued as Rs. 4.51 crore revealed that the properties were sold by the official liquidators to the purchaser. The money received was credited to the bank to whom the seller owed money. As such the documents contained two distinct matters, one relating to the sale and the other relating to composition⁴². Though stamp duty and registration fees were paid on composition, stamp duty and registration fees on conveyance were not levied. This resulted in short levy of stamp duty and registration fees of Rs. 57.28 lakh.
- Recitals of two documents registered in Ahmedabad for Rs. 5.21 crore revealed that the properties sold by the vendors to the vendees were already transferred by the vendors to third parties (confirming parties) on payment of full consideration to the vendors and acquired full rights over the properties. Though stamp duty and registration fees were paid on the conveyance between vendors and vendees, stamp duty and registration fees between vendors and confirming parties were not levied which resulted in short levy of Rs. 51.61 lakh.
- Recitals of four documents registered in Ahmedabad for Rs. 5.01 crore revealed that the documents styled as agreements to sell without possession also contained transfer of properties to the developers which are deemed to be conveyance. As such, the documents contained two distinct matters, one relating to the agreement to sell and the other relating to conveyance. However, stamp duty and registration fees were levied on the agreement to sell but was not levied on conveyance. This resulted in short levy of stamp duty and registration fees of Rs. 49.64 lakh.
- Recitals of eight documents registered in Ahmedabad, Rajkot and Vadodara for Rs. 10.10 crore revealed that the properties sold by the vendees had already been handed over to the developers by the vendors for development of properties through development agreements. As such, these documents contained two distinct matters, one relating to the development agreement between vendors and the developers and other relating to conveyance between vendors and vendees. Though stamp duty

⁴¹ Ahmedabad III, IV, V & VI, Kadi, Rajkot-I, Surat-I and Vadodara II

⁴² Composition occurred as a result of execution of documents by the debtor to the creditor

and registration fees on conveyance between vendors and vendees were levied, stamp duty and registration fees on development agreement between vendors and developers were not levied. This resulted in short levy of stamp duty and registration fees of Rs. 10.10 lakh.

- Recitals of a document registered in Rajkot for Rs. 69.78 lakh revealed that a local body (vendor) sold shops to the purchaser and stamp duty and registration fees were levied. It was, however, noticed from the recitals that the local body had already handed over the piece of land to a third party and had given power to construct and to sell shops on land owned by the vendor and received consideration thereof. As such, the document contained two distinct matters, one relating to conveyance between the vendor and the purchaser and the other relating to conveyance between the vendor and the third party. Though stamp duty and registration fees were paid on conveyance between vendor and purchaser, stamp duty and registration fees on conveyance between vendor and the third party were not levied. That resulted in short levy of stamp duty and registration fees of Rs. 6.91 lakh.

The above facts were brought to the notice of the department between January and August 2006 and the Government in May 2007; their reply has not been received (October 2007).

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

Under Section 3 of the BS Act, every instrument mentioned in the Schedule I shall be chargeable with duty at the prescribed rates. For the purpose of levy of stamp duty, an instrument is required to be classified on the basis of its recitals given in the document and not on the basis of its title.

Test check of the records of nine⁴³ SR offices revealed that 54 documents registered between 2004 and 2005 were classified on the basis of their titles and stamp duty and registration fees were levied accordingly. Scrutiny of the recitals of these documents revealed that these were misclassified. This resulted in short levy of stamp duty and registration fees of Rs. 1.71 crore as mentioned below:

(Rupees in lakh)

No. of offices	Nature of observation	Period of registration	Consideration/ amount of loan	Duty <u>leviable</u> levied	Short levy
5 ⁴⁴	Six documents titled as "development agreement" contained the recital of transfer of interest in the properties i.e. conveyance. The duty was paid at the rate of one <i>per cent</i> applicable to the development agreement instead of 8.4 <i>per cent</i> chargeable on conveyance.	2005	1,443.20	<u>142.67</u> 14.62	128.05

⁴³ Ahmedabad I, II, III, IV & VI, Anand, Bhavnagar I, Rajkot I and Vadodara II

⁴⁴ Ahmedabad II, III, IV & VI and Vadodara II

3 ⁴⁵	Nine documents titled as "agreement to sell" contained the recitals of conveyance. The duty was levied at the rate of Rs. 50 per document instead of 8.4/11.2 <i>per cent</i> on the consideration or market value whichever was higher.	2004 and 2005	268.24	<u>26.83</u> 0.01	26.82
5 ⁴⁶	Recitals of 39 documents titled as equitable mortgage contained the terms of simple mortgage. This resulted in short levy of duty.	2004 and 2005	1,588.80	<u>23.63</u> 7.47	16.16
Total					171.03

The above facts were brought to the notice of the department between January and August 2006 and Government in May 2007; their replies have not been received (October 2007).

5.6 Non-levy of service charges

Rule 117C of the Gujarat Land Revenue Rules, 1972, provides for the levy of service charges at the rate of five *per cent* on the recovery made as arrears of land revenue.

Test check of the records of eight⁴⁷ Dy. Collectors (VOP) revealed that Rs. 30.62 crore in 27,849 cases was recovered during the period 2001-02 to 2005-06 as arrears of land revenue from the defaulters. However, service charges of Rs. 15.31 lakh were not collected from them. This resulted in short realisation of the Government dues.

This was brought to notice of the department between June and October 2006 and Government in March 2007; their replies have not been received (October 2007).

ENTERTAINMENTS TAX

5.7 Non-recovery of entertainments tax from cable operators

The Gujarat Entertainments Tax Act, 1977 and rules made thereunder provide for levy of tax on exhibition of programme with the aid of antenna or cable television. The rules also provide for registration of each operator and to pay tax in advance on quarterly basis. In case of delay in payment of tax, interest at the rate of 24 *per cent* per annum is leviable.

Test check of the records of three⁴⁸ Collectors and two⁴⁹ Mamlatdar offices revealed that during 2004-05 and 2005-06, 31 cable operators did not pay tax

⁴⁵ Ahmedabad-VI, Bhavnagar-I and Rajkot-I

⁴⁶ Ahmedabad I, II, IV & VI and Anand

⁴⁷ Bharuch, Gandhinagar, Himatnagar, Junagadh, Nadiad, Navsari, Surat and Palanpur

⁴⁸ Jamnagar, Palanpur and Rajkot

⁴⁹ Dholka, and Choryasi

with returns and 35 cable operators paid tax short aggregating Rs. 9.44 lakh on which interest⁵⁰ of Rs. 1.32 lakh was leviable. The officers concerned did not initiate action to recover the tax.

After the cases were pointed out, the department accepted the audit observation in 15 cases involving Rs. 1.63 lakh. Reply in the remaining cases have not been received (October 2007).

This was brought to notice of the Government (January 2007); their reply has not been received (October 2007).

⁵⁰ Interest has been calculated upto 31 March of the audit period