

CHAPTER V

STAMP DUTY AND REGISTRATION FEES

5.1 Results of Audit

Test check of assessment records in the registration offices and offices of the Collectors of Stamp duty (valuation of properties) in the State, conducted in audit during the year 2001-02, disclosed short realisation of stamp duty and registration fees amounting to Rs.590.12 crore in 291 cases, which broadly fall under the following categories:

(Rupees in crore)

Sr. No	Category	No. of cases	Amount
1	Misclassification of documents	101	208.45
2	Under valuation of properties	17	4.35
3	Incorrect grant of exemption	28	1.63
4	Under assessment of stamp duty on instruments of mortgage deeds	18	11.23
5	Non-reconciliation /manipulation of Treasury remittance	02	0.18
6	Other irregularities	125	364.28
	Total	291	590.12

During the year 2001-02, the department accepted under assessment of Rs.9.39 lakh in 31 cases and recovered Rs.8.73 lakh in 25 cases pertaining to earlier years. A few illustrative cases highlighting important audit observations involving Rs.289.52 crore are given in the following paragraphs.

5.2 Misappropriation of Government money

Rule 98 of the Bombay Treasury Rules, 1960 and the departmental instructions issued by the Superintendent of Stamps in August 1992 provide that the head of the office is to reconcile the remittances into treasury with that of cash book and other records to ensure that the money shown in the cash book as having been paid into the treasury has actually been credited to Government account.

During test check in audit of records of the Dy. Collector (Valuation of Properties) Surendranagar along with the treasury records, it was noticed (August 2001) that in respect of 167 items, the figures of remittances shown in the cash book in the months from July 1998 to December 2000 did not agree with figures shown in the treasury records due to manipulation made in the related records such as challans and reconciliation statements. This resulted in misappropriation of Government money to the extent of Rs.17.82 lakh. The misappropriation was facilitated due to the failure on the part of the departmental officials at various levels to exercise the checks prescribed under the Rules and in departmental instructions.

The above misappropriation was brought to the notice of the department (December 2001) and of Government (March 2002). The department accepted the audit observation and stated that the concerned official has been suspended and charge sheet also has been issued. Particulars of recovery, if any, have not been received (July 2002).

5.3 Short levy of stamp duty and registration fees due to incorrect application of concessional rate.

By a notification issued in April 1992 under the Bombay Stamp Act, 1958, (Act) as applicable to Gujarat, Government reduced the rate of stamp duty to one per cent for loans upto Rs.15 lakh and two per cent for loans exceeding Rs.15 lakh, on mortgage deeds executed by the industrial undertakings in favour of any financial institutions for borrowing loans from such institutions. From November 1994, the maximum duty was restricted to Rs.two lakh per deed. This reduced rate is applicable only to those industrial undertakings which are engaged in any of the activities specified in the Act like manufacture, preservation or of processing of goods, mining or development of mines, hotel industry, setting up/development of industrial estates etc.

(i) During test check of records of the Additional Superintendent of Stamps Gandhinagar and Sub-Registrar, Narol, it was noticed (between May and July 2001) in 3 documents registered during 2000 that two industrial undertakings engaged in sale of company's vehicles on deferred basis including lease and hire purchase, and deriving channels, private wires, leased lines, etc., had obtained loans aggregating Rs.350 crore by mortgaging their properties in favour of financial institutions by paying stamp duty at reduced rates. As these activities were not covered by activities listed in the above notification, the benefit of reduced rate of stamp duty was not admissible. This resulted in short levy of stamp duty and registration fees of Rs.19.49 crore.

(ii) By a notification issued in July 2000, the above concession was extended to mortgage deed executed by any industrial undertaking in favour of a financial institution or financial institution acting as a trustee also.

During test check of records of Additional Superintendent of Stamps, Gandhinagar and 3[@] Sub-Registrar Offices, it was noticed (between July and August 2001) in 38 documents registered from January to June 2000 that 38 industrial undertakings obtained loans of Rs.6,189.17 crore by executing Bond/Debenture Trust cum mortgage deeds between industrial undertakings and financial institutions acting as trustees. Since the benefit of reduced rate of stamp duty was extended to documents executed by financial institutions acting as trustees from 27 July 2000 onward, the benefit of reduced rate of stamp duty was not admissible in respect of documents executed prior to this date. This resulted in short levy of stamp duty and registration fees of Rs.235.95 crore.

The above facts were brought to the notice of the department (between June and September 2001) and of Government(March 2002); their replies have not been received (July 2002).

(iii) Under the Act, concessional rate of stamp duty at the rate of 6 percent was leviable on deeds of conveyance executed for transfer of premises by a registered Co-Operative Housing Society, a Corporation formed and registered under the Bombay Non-Trading Corporation Act, 1959, or a Board constituted under Gujarat Housing Board Act, 1961/The Gujarat Rural Housing Board Act, 1972, in favour of its member or by such member in favour of another member. According to the bye-laws of Co-operative Housing Societies, only individual can be admitted as its member. Further, a lease deed executed by the Gujarat Industrial Development Corporation allotting industrial plots and sheds to industrialists are eligible for the benefit of concessional rate of duty.

During test check of 8* Sub-Registrar Offices, it was noticed (between March and November 2001) that in the case of 90 documents of conveyance/lease deeds registered during 1999 and 2000 the stamp duty was incorrectly levied at concessional rate. This resulted in short levy of stamp duty of Rs.21.35 lakh, as detailed below:

(Rupees in lakh)				
Sr. No.	Location	No. of documents	Amount short levied	Nature of irregularity
1	Ahmedabad	11	0.64	Benefit of concessional rate was given on subsequent sale of the properties of GHB [#] though only initial sale of the properties was eligible for concession.
2	Ahmedabad	8	10.19	Though as per the bye-laws of the Co-operative housing societies, only individuals can be enrolled as a member of the Society, concessional duty was levied on the documents of conveyance deeds of properties

@ 1 each of Ahmedabad, Mehsana and Vadodara
 * 2 of Ahmedabad, 1 of Sabarkantha and 5 of Rajkot
 # Gujarat Housing Board

				belonging to co-operative housing societies and sold to non-trading corporation etc.
3	Himatnagar	1	2.22	Concessional rate of stamp duty was allowed to a trust without proof of registration under the Public Trust Act.
4	Rajkot	24	4.75	Concessional rate of stamp duty was levied on the documents of conveyance deed of properties for commercial purpose viz. shops etc.
5	Rajkot	46	3.55	Though concessional duty was leviable only on the documents of conveyance executed by members of flats constructed with minimum 11 members for residential purpose under Gujarat Ownership Flats Act, 1973, concessional rate of stamp duty was charged on the documents of conveyance of multistoreyed buildings constructed for commercial use and in respect of flats having less than 11 members.
	Total	90	21.35	

The above facts were brought to the notice of the department (between August 2000 and January 2002) and of Government (March 2002). Particulars of recovery, if any, and replies in remaining cases have not been received (July 2002).

5.4 Short levy of stamp duty and registration fees due to misclassification of documents

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

During test check of records of 93 * Sub-Registrar Offices, it was noticed (between August 1999 and December 2001) that 856 documents registered between 1998 and 2000 were classified on the basis of recital of their titles and stamp duty was levied accordingly. Scrutiny of the recitals of these documents, however, revealed that these documents were misclassified. This resulted in short levy of stamp duty and registration fees of Rs.20.33 crore as detailed below:

* 23 of Ahmedabad, 10 each of Mehsana and Vadodara, 8 of Surat, 6 of Kheda, 5 of Sabarkantha, 4 each of Anand, Gandhinagar, Patan, Rajkot, 3 of Jamnagar, 2 each of Bharuch, Navsari, Surendranagar, Valsad, 1 each of Bhavnagar, Banaskantha, Godhra and Narmada.

(Rupees in crore)				
Sr. No.	No. of offices	No. of documents	Amount short levied	Nature of irregularity
1	28	263	8.30	The documents were misclassified as deposit of title deeds though as per the recitals right or interest in the property was created in favour of the mortgagees by executing separate loan agreements, handing over demand promissory notes etc. These documents were, therefore, classifiable as mortgage deeds.
2	32	316	5.90	These documents were misclassified as deposit of title deeds. However, recitals of these documents revealed that guarantors deposited the title deeds of their properties in the bank on behalf of the borrowers. These documents were, therefore, classifiable as bonds.
3	21	162	4.98	These documents were misclassified as "agreement" though as per the recitals of the documents possession of the property was handed over/full rights to develop and to market the properties, right and interest were transferred to the purchasers. These documents were, therefore, required to be classified as conveyance deeds.
4	7	99	0.82	In these documents, the share of co-owner was released to another co-owner without consideration hence they were classifiable as conveyance instead of release deed.
5	5	16	0.33	Transfer of lease by way of assignment were misclassified as correction deed, agreement, confirmation deed etc.
Total	93	856	20.33	

The above facts were brought to the notice of the department (between October 1999 and January 2002) and of Government (March 2002). The department accepted the audit observations involving an amount of Rs.1.14 lakh in 5 cases. Particulars of recovery, if any, and reply in the remaining cases have not been received (July 2002).

5.5 Short levy of stamp duty and registration fees on instruments comprising several distinct matters.

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

During test check of records of Dy. Collector (Valuation) Nadiad and 8 Sub Registrar offices of 5* districts, it was noticed (between July 2000 and December 2001) that 28 documents comprising or relating to several distinct matters of immovable properties valued at Rs.70.60 crore were charged to stamp duty and registration fees for only one matter/transaction. This resulted in short levy of stamp duty and registration fees of Rs.10.99 crore as detailed below:

(Rupees in crore)					
Sr. No	Location	No. of documents	Value of property	Amount short levied	Nature of irregularity
1.	Surat	3	62.70	9.82	As per recitals, two transactions of sale were involved, but duty was levied only on one transaction.
2	Nadiad, Padra and Waghodia	8	1.19	0.25	Though instruments contained matters of sale and power of attorney with consideration, duty was levied only on sale.
3.	Ahmedabad and Nadiad	12	0.69	0.07	Though instruments contained elements of agreement to sale and gift, duty was levied only on agreement to sell.
4.	Palanpur	1	0.09	0.003	Though instrument contained recitals of mortgage and lease, duty was levied only on lease.

*3 of Ahmedabad, 1 each of Banaskantha, Kheda, Surat and 2 of Vadodara.

5.	Ahmedabad	4	5.93	0.85	Though the recitals of the documents contained two transactions of sales, stamp duty was levied on only one transaction of conveyance/ agreement to sell.
	Total	28	70.60	10.99	

The above facts were brought to the notice of the department (between July 2001 and January 2002) and of Government (April 2002). The department accepted the audit observations involving an amount of Rs.3.45 lakh in 2 cases. Particulars of recovery, if any, and replies in remaining cases have not been received (July 2002).

5.6 Short levy of stamp duty due to undervaluation of properties

Under the Act, if the officer registering the instrument has reasons to believe that the consideration set forth in the document presented for registration does not approximate to the market value of the property, he may, either before or after registering the document, refer the same to the Collector for determining the true market value of the property. The market value of the property is to be determined in accordance with the principles laid down under the provisions of the Bombay Stamp (Determination of Market Value of the Property) Rules, 1984, and instructions issued by the Government from time to time.

During test check of records of Deputy Collectors (Valuation) Bharuch and Nadiad and 5** Sub-Registrar Offices, it was noticed (between July 2000 and November 2001) that in 79 documents the market value of the property was determined less than the actual market value. This resulted in short levy of stamp duty of Rs.99.50 lakh as detailed below:

** 2 each of Ahmedabad and Vadodara, and one of Mehsana

(Rupees in lakh)

Sr. No	Location	No. of documents	Amount short levied	Nature of irregularity
1.	Ahmedabad & Bharuch	5	46.01	Cost of construction was not taken into account for valuation of non-agricultural land.
2.	Nadiad	61	20.13	The rates of jantri were revised from November 1999 but documents registered upto 31 October 1999 were finalised by the Dy. Collector on the basis of new jantri, the rates of which was lower than the old jantri.
3.	Kalol and Waghodia	3	17.67	Cost of plant & machinery was not taken into consideration for determining the value of the property auctioned by GSFC*
4.	Kalol	5	13.38	Premium chargeable on new & restricted tenure land converted into old tenure, was not considered for the purpose of valuation of the land.
5.	Padra	4	1.32	Agricultural land was sold to an industry for non agricultural purposes, but duty was levied at the rate as applicable to agricultural land.
6.	Ahmedabad	1	0.99	In addition to sale price, additional amount paid to the seller towards undivided share, right of title & interest in the land proportionate to super built up area of construction were not considered for the purpose of valuation for levy of duty.
	Total	79	99.50	

The above facts were brought to the notice of the department (between September 2000 and January 2002) and of Government (April 2002); their replies have not been received (July 2002).

* Gujarat State Finance Corporation.

5.7 Short levy of additional duty

Under Section 3(B) of the Act, additional duty at the rate of 50 *percent* of the basic duty is leviable on instruments of conveyance, exchange, gift, lease etc. of vacant land situated in urban areas (other than vacant land of less than 100 sq. metres intended for residential purpose). For this purpose, land with buildings constructed upto lintel level is also treated as vacant land.

During test check in audit of records of 5 Sub-Registrar offices of Ahmedabad, it was noticed (between March and August 2001) in case of 18 deeds of conveyance of vacant land situated in urban areas registered during 1999 and 2000, that additional duty leviable at the rate of 50 per cent was not levied. This resulted in short levy of stamp duty of Rs.92.03 lakh.

The above facts were brought to the notice of the department (between April and October 2001) and of Government (March 2002); their replies have not been received (July 2002).

5.8 Short levy of stamp duty due to non-adoption of market value

Under the Act, the rate of stamp duty leviable on a deed of transfer of lease by way of assignment is the same as applicable to a conveyance deed for the amount of consideration for the transfer or the market value of the property whichever is greater.

During test check of records of Sub-Registrar VI, Naroda and Sub-Registrar III, Surat, it was noticed (between June and August 2001) while registering 18 documents of assignment of lease registered during 1999 and 2000 that while assigning the lease rights, market value of the immovable property transferred on lease was not taken into account for stamp duty. This resulted in short levy of stamp duty of Rs.45.02 lakh.

The above facts were brought to the notice of the department (between July and October 2001) and of Government (March 2002). The department stated that necessary action would be taken in the above cases.

The above matters were followed up with reminders to the Principal Secretary in May 2002 and Chief Secretary in July 2002. However, inspite of such efforts, no reply was received from the Government (July 2002).