

## 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 2002-03 disclosed short realisation of stamp duty and registration fees amounting to Rs.121.04 crore in 253 cases which fall under the following categories:-

(Rupees in crore)			
Sr. No.	Category	No. of cases	Amount
1	Misclassification of documents	130	43.41
2	Under valuation of properties	12	0.48
3	Incorrect grant of exemption	14	1.21
4	Underassessment of stamp duty on instruments of mortgage deeds	33	51.92
5	Other irregularities	64	24.02
	<b>Total</b>	<b>253</b>	<b>121.04</b>

During the year 2002-03, the department accepted and recovered under-assessments of Rs.7.46 lakh in 41 cases pertaining to earlier years. A few illustrative cases highlighting important audit observations involving Rs.215.51 crore are discussed in the following paragraphs.

#### 5.2 Short levy of stamp duty and registration fees due to incorrect application of concessional rate

**5.2.1** 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 when the possession of the property or part thereof in such deed is not given or not agreed to be given. From November 1994, the maximum stamp duty was restricted to Rs. 2 lakh per deed.

During test check records of 5<sup>#</sup> Sub-Registrar Offices, it was noticed in 8 documents registered between 2000 and 2001 that industrial undertakings obtained loans aggregating Rs.726.20 crore by executing mortgage deeds/debenture trust deeds in favour of banks. The mortgagors had handed over/ agreed to give possession of the mortgaged properties. Since the mortgagors handed over/agreed to give possession of the mortgaged properties, concessional rate of stamp duty levied was incorrect. This resulted in short levy of stamp duty of Rs.89.51 crore.

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

During test check of records of 6<sup>&</sup> Sub-Registrar Offices, it was noticed that in 33 documents registered during 2000-01, 33 industrial undertakings obtained loans aggregating Rs.1759.19 crore by executing bond/debenture trust cum mortgage deeds with financial institutions acting as trustees prior to 27 July 2000. Since the benefit of reduced rate of stamp duty was extended to documents executed by the financial institutions acting as trustees from 27 July 2000 only, 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.67.17 crore.

The above facts were brought to the notice of the Department between June 2001 and September 2002 and of Government in April 2003; reply had not been received (August 2003).

**5.2.3** Under the Act, concessional rate of stamp duty at the rate of 6 *per cent* of consideration was leviable on deeds of conveyance executed for transfer of its premises by a registered Co-operative Housing Society, a Corporation formed and registered under the Bombay Non-Trading Corporation Act, 1959, a Board constituted under the 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. The Gujarat Co-operative Societies Act, 1961, provides that minimum eleven members are required to form a co-operative housing society. According to the bye-laws of Co-operative Housing Societies, only individual can be admitted as its member. In case of Gujarat Housing Board (GHB), if value of the property is upto Rs.75,000 stamp duty at the rate of one *per cent* is leviable.

During test check of records of 7<sup>@</sup> Sub-Registrar Offices, it was noticed that in the case of 82 documents of conveyance deeds registered during 1999 and 2000, stamp duty was incorrectly levied at concessional rate. This resulted in short levy of stamp duty of Rs.15.61 lakh as detailed below:

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<sup>#</sup> Bharuch, Kadi, Mandvi, Narol, and Olpad.

<sup>&</sup> 2 each of Mehsana and Bharuch, 1 each of Ahmedabad and Surat.

<sup>@</sup> 4 of Rajkot, 2 of Ahmedabad and 1 of Navsari.

(Rupees in lakh)				
Sr.No.	Location	No. of documents	Short levy	Nature of irregularity
1	Ahmedabad and Gandevi	20	9.64	Though as per the by-laws of co-operative housing societies, only individual can be enrolled as a member of the society, concessional rate of duty was charged on the documents of conveyance deeds of properties sold to non-trading corporation etc. by co-operative housing societies.
2	Ahmedabad and Rajkot	53	5.23	Though concessional duty was leviable only on the documents of conveyance executed by members of co-op. housing societies with minimum 11 members for residential purpose, concessional rate of stamp duty was charged on the documents of conveyance for commercial use and in respect of co-op. housing societies having less than 11 members.
3	Ahmedabad	9	0.74	Benefit of concessional rate of stamp duty at the rate of 1 <i>per cent</i> allowed in respect of properties of GHB where value of each property was more than Rs.75,000.
	<b>Total</b>	<b>82</b>	<b>15.61</b>	

The above facts were brought to the notice of the Department between September 2000 and February 2002 and of Government in April 2003; reply had not been received (August 2003).

### 5.3 Short levy of Stamp duty and registration fees due to misclassification of documents

Under Section 3 of the Bombay Stamp Act, 1958, every instrument mentioned in Schedule-I shall be chargeable with duty at the 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 its recitals given in the document and not on the basis of its title.

During test check of records of 113<sup>@</sup> Sub-Registrar Offices, it was noticed that 1159 documents registered between 1999 and 2001 were classified on the basis of their titles and stamp duty was levied accordingly. Scrutiny of the

<sup>@</sup> 25 of Ahmedabad, 15 of Vadodara, 10 of Mehsana, 9 of Surat, 6 each of Kheda & Anand, 5 of Bharuch, 4 each of Bhavnagar, Patan, Banaskantha & Rajkot, 3 each of Junagadh, Surendranagar, Navsari, Sabarkantha & Bhuj, 2 each of Narmada & Porbandar, 1 each of Valsad & Gandhinagar.

recitals of these documents, however, revealed that these documents were misclassified. This resulted in short levy of stamp duty and registration fees of Rs.49.04 crore as detailed below:

(Rupees in crore)

Sr. No.	No. of offices	No. of documents	Short levy	Nature of irregularity
1	37	456	39.32	These documents were mis-classified as "agreement" though as per the recitals of the documents, possession of the property had been handed over/full rights to develop and market the properties, right and interest were transferred to the purchasers. These documents were, therefore, required to be classified as conveyance deeds.
2	30	312	5.71	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	27	331	3.24	The documents were misclassified as deposit of title deeds though as per the recitals right/interest in the property was created in favour of the mortgagees by executing separate loan agreements, handing over demand promissory notes/giving Powers of attorney etc. These documents were, therefore, classifiable as mortgage deeds.
4	6	20	0.29	These documents were misclassified as 'correction deed' though as per recitals of the documents, changes were made in the name of purchasers, area of property, description of property etc. The documents, therefore were required to be classified as conveyance deeds.
5	2	4	0.26	Transfer of ownership by way of assignment (conveyance) was misclassified as deed of rectification.
6	7	25	0.11	In these documents, the share of co-owners was released to another co-owner without consideration hence, they were classifiable as conveyance instead of release deed.

7	4	11	0.11	Rights of property were reconveyed to original vendors through cancellation deed, instead of conveyance deed.
<b>Total</b>	<b>113</b>	<b>1159</b>	<b>49.04</b>	

The above facts were brought to the notice of the Department between June 2000 and December 2002 and of the Government in April 2003. The Department accepted audit observations involving an amount of Rs.5.40 lakh in 7 cases. Particulars of recovery, if any, and reply in the remaining cases had not been received (August 2003).

#### 5.4 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 18 Sub-Registrar Offices of 8<sup>s</sup> districts, it was noticed that 79 documents comprising or relating to several distinct matters of immovable properties valued at Rs.16.27 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.4.24 crore as detailed below:

(Rupees in lakh)

Sr. No.	Location	No.of documents	Value of property	Short levy	Nature of irregularity
1	Kalol, Vadodara, Padra, Dabhoi, Ahmedabad, Bharuch, and Surat	20	730.45	269.56	As per recitals, two distinct transactions of sale of property were involved, but duty was levied only on one transaction.
2	Ahmedabad, Bhavnagar, Kadi and Mangrol	21	318.93	66.50	As per recitals, instruments contained elements of conveyance / reconveyance and mortgage but duty was levied only either on conveyance or on mortgage.
3	Ahmedabad	1	243.28	37.71	Though instrument contained elements of sale

<sup>s</sup> 5 of Ahmedabad, 4 of Vadodara, 3 of Surat, 2 of Mehsana and 1 each of Bhavnagar, Bharuch, Valsad and Jamnagar.

					and agreement to sell, duty was levied only on agreement.
4	Ahmedabad, Valsad and Surat	17	90.51	23.19	Though instruments contained elements of sale and gift, duty was levied only on sale.
5	Ahmedabad and Surat	8	94.80	10.35	Though instruments contained elements of conveyance and partition, duty was levied only on conveyance.
6	Ahmedabad	6	87.40	10.04	Though instruments contained elements of sale, gift and release, duty was levied only on one transaction of sale.
7	Ahmedabad, Vadodara and Valsad	5	54.60	6.75	Though instruments contained elements of sale and power of attorney with consideration, duty was levied only on sale.
8	Ahmedabad	1	7.18	0.30	Though instrument contained elements of partition and gift, duty was levied only on partition.
	<b>Total</b>	<b>79</b>	<b>1627.15</b>	<b>424.40</b>	<b>(Say 4.24 crore)</b>

The above facts were brought to the notice of the Department between March 2001 and November 2002 and of Government in April 2003; reply has not been received (August 2003).

### 5.5 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 Offices, Odhav, Naroda and Navgam (Surat), it was noticed in 10 documents of assignment of lease registered during 2000 and 2001 that while assigning the lease rights, market value of the immovable property transferred on lease was not taken into account for levying stamp duty. This resulted in short levy of stamp duty of Rs.3.28 crore.

The above facts were brought to the notice of the Department between February and June 2002 and of Government in April 2003; replies had not been received (August 2003).

### **5.6 Short levy of stamp duty and registration fees on document of further charge**

An instrument imposing a further charge on mortgaged property is classifiable under Article 27 of Schedule-I of Bombay Stamp Act, 1958 and shall be chargeable with stamp duty at the rates as indicated in the Schedule.

During test check of records of Sub Registrar Offices, Kadi and Thasra, it was noticed that 2 documents registered during 1998-99 and 2001-02 styled as 'further charge', were executed by 2 industrial undertakings in favour of a bank and LIC of India, against various immovable properties already mortgaged to the above financial institutions for obtaining loan of Rs.27.87 crore. Stamp duty was charged at reduced rate applicable to equitable mortgage instead of charging duty at the rate applicable to deeds of further charge. Incorrect application of rate of duty resulted in short levy of stamp duty Rs.1.53 crore.

The above facts were brought to the notice of the department between August and November 2002 and of Government in April 2003; reply had not been received (August 2003).

### **5.7 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 is not as per 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 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 Dy. Collector (Valuation) Ahmedabad, Junagadh, Rajkot and Sub-Registrar Narol, it was noticed that in 56 documents, the market value of the property was determined less than the actual market value. This resulted in short levy of stamp duty and registration fees of Rs.40.00 lakh as detailed below:

(Rupees in lakh)

Sr. No.	Location	No. of documents	Short levy	Nature of irregularity
1	Ahmedabad, Junagadh and Rajkot	53	24.19	Value of the properties recommended by the Sub Registrar and Town Planner in the valuation report was determined less by the Dy. Collector on the basis of representations of the executors.
2	Ahmedabad	1	9.40	Market value as per jantry was not adopted. This was against the principles of valuation (Determination of market value of the property) Rules, 1984.
3	Ahmedabad	2	6.41	Though the value of the property as per registered documents between September 1999 and October 1999 was only Rs.23,675 in each case, the owners obtained loan of Rs.19 lakh each by depositing the title deeds in August 2001. Since loan granted by the banks would have been based on the market value, the documents registered earlier were undervalued as the market value prevailing as per jantry at the time of registration of above documents was Rs.27.14 lakh each.
	<b>Total</b>	<b>56</b>	<b>40.00</b>	

The above facts were brought to the notice of the Department between May and November 2002 and of the Government in April 2003; reply had not been received (August 2003)

### 5.8 Non/short levy of additional duty

Under Section 3(B) of the Act, additional duty at the rate of fifty *per cent* 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.mtrs. intended for residential purpose). For this purpose, land with building constructed upto lintel level is also treated as vacant land.

During test check of records of Dy.Collector (Valuation), Bhavnagar and 5<sup>@</sup> Sub-Registrar offices, it was noticed in case of 23 deeds of conveyance of vacant land situated in urban areas registered during 2000 and 2001 that additional duty at the prescribed rate was not levied. This resulted in short levy of stamp duty of Rs.17.99 lakh.

<sup>@</sup> 3 of Ahmedabad, 1 each of Surendranagar and Rajkot.



The above facts were brought to the notice of the Department between November 2001 and November 2002 and of the Government in April 2003. No reply was received (August 2003).

The above matters were followed up with reminders to the Principal Secretary in June 2003 and Chief Secretary in July 2003. However, inspite of such efforts, no reply was received from the Government (August 2003).