

## 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 2003-04 disclosed short realisation of stamp duty and registration fees amounting to Rs.596.56 crore in 235 cases, which fall under the following categories:

(Rupees in crore)

Sl. No.	Category	No. of cases	Amount
1	Misclassification of documents	85	8.58
2	Under valuation of properties	24	4.88
3	Incorrect grant of exemption	07	27.39
4	Under assessment of Stamp Duty on instruments of mortgage deeds	25	2.52
5	Non levy of interest on belated payment of stamp duty	04	0.04
6	Incorrect acceptance of time-barred cases and resultant postponement of realisation of Stamp Duty	09	3.62
7	Other irregularities	79	63.98
8	Review on Stamp duty	01	483.18
9	Amnesty Scheme for Stamp Duty	01	2.37
	<b>Total</b>	<b>235</b>	<b>596.56</b>

During the year 2003-04 the Department accepted and recovered under assessment of Rs.1.03 lakh in 20 cases pertaining to earlier years. A few illustrative cases involving important audit observations and results of review on **Stamp duty** involving Rs.563.65 crore are given in the following paragraphs.

## 5.2 Review on Stamp Duty

### Highlights

**There was discrepancy in quantity and value of stamps supplied by Nasik Press and that accounted for by the State Sale Depot.**

*(Para 5.2.6)*

**The stamp duty involved in documents presented for registration was more than that supplied by the treasuries during the years 1999-2000.**

*(Para 5.2.7)*

**Prescribed inspections by the licensing authority were not carried out in five Prant Offices. Irregularities in the authentication of records of stamp vendors were noticed.**

*(Para 5.2.8)*

### Introduction

**5.2.1** The levy and collection of Stamp Duty is regulated under the provisions of the Bombay Stamp Act, 1958 and Rules made there under. The procedure for issue of licences to vendors are regulated under the Rules of the Gujarat Stamp Supply and Sales Rules, 1987. The supply, custody, distribution and sale of stamps/stamp papers are regulated under the provisions of the Gujarat Stamp Manual and Rules made there under. The registration of documents and related matters are regulated under the provisions of the Indian Registration Act, 1908.

Prior to 1 April 1999, the Central Stamp Depot (CSD), Nasik supplied the stamps/stamp papers to various district treasuries directly. From 1 April 1999, these were supplied to the Additional Superintendent of Stamps (Depot) at Ahmedabad who worked as the "Nodal Agency". On the basis of the indent sent by Additional Superintendent of Stamps, the CSD, Nasik sends stamps/stamp papers to the Nodal Agency, who in turn arranges to distribute the stamps/stamp papers to the District Treasuries and also to the general public through the ex-officio vendors working under him.

The stamps/stamp papers are sold by the respective treasuries to the licensed vendors and to the general public by the official vendors working under them. The licensed vendors sell stamps to general public for using in the documents to be registered with the Sub-Registrar.

As per the procedure laid down in the Gujarat Stamp Manual 1987, the power to appoint ex-officio vendors and official vendors rest with the Government. The power to issue and renew licences to vendors at Ahmedabad city rests with the Superintendent of Stamps. In other districts, the power rests with the concerned District Collector and annual renewal thereof rests with the concerned Deputy Collectors.

The power to sell the impressed stamps including labels affixed lies with the Superintendent of Stamps and District/Sub-Treasury Officer, whereas power to sell other stamps (non-judicial and court fee stamps) rests with both, official/ex-officio vendors and licensed vendors.

The licensed vendors are required to maintain a register known as vendors' sales register wherein he has to record full particulars indicating the name, address and obtain the signature of each purchaser including denomination wise stamps sold to him, render the accounts to the licence issuing authority for the purchase and sale of stamps as per the provisions of the Gujarat Stamps Supply and Sales Rules, 1987(Rules).

Further, the Bombay Stamp Act, 1958, provide that the Chief Controlling Revenue Authority (CCRA) may authorise subject to condition as it may deem fit, the use of franking machines for making impression on the instruments chargeable with the duties to indicate payment of duties on such instruments.

A flow chart showing the entire process of indent, receipt and sale of stamps and stamped papers and collection of stamp duty in registering offices is given in the Appendix.

### **Organisational set up**

**5.2.2** 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) where as the Superintendent of Stamps is assisted by the Deputy Collector (Valuation of Property) at district level.

### **Audit objectives**

**5.2.3** An analysis of the receipt, issue and accounting of the stamps/stamp papers was conducted in audit to:

- examine flaws in the system of assessment of requirement, indenting, accounting of stock, sale, accountal of sale proceeds etc. which could enable the fraud.
- ascertain how demand for supply of stamps was projected and budget estimates in respect of revenues from stamp duty prepared.
- ascertain whether action was taken to ensure adequate supply of stamp papers to /from various treasuries.
- ascertain leakage of revenue under stamp duty.

### Scope of audit

**5.2.4** With a view to ensure the achievement of the objectives of the review, the records of the Revenue Department, IGR and Superintendent of Stamps and offices at district and taluka level were test checked between February and June 2004.

Seventy six sub-registrar offices falling within selected nine<sup>^</sup> out of 25 district treasuries were covered in audit for period 1998-99 to 2002-03. The sale figures of stamps/stamp papers received from district treasuries were compared with district wise revenue figures received from IGR office. Seventy six Sub-Registrar offices were covered in audit to verify the serial numbers and date of sale of stamp papers mentioned in the stamp papers used in execution of documents with the serial number and date of sale of stamp paper in the vendors' sale registers kept in the custody of the Superintendent of Stamps and respective Prant Offices (sub-division level) for one month of each year for the period of review to ascertain whether there are any discrepancies in two sets of records maintained. Result of the review are given in the succeeding paragraphs.

### Variation between budget estimates and actuals

**5.2.5** The variation between budget estimates and actuals under the head – Stamp Duty and Registration Fees for the period 1998-99 to 2002-03 is given below:

(Rupees in crore)

Year	Budget estimates	Actuals	Variation (+) increase (-) decrease	Percentage of variation
1998-1999	700	506.23	(-) 193.77	(-) 28.00
1999-2000	520	522.38	(+) 2.38	(+) 0.45
2000-2001	600	537.42	(-) 62.58	(-) 10.00
2001-2002	660	539.41	(-) 120.59	(-) 18.00
2002-2003	550	649.88	(+) 99.88	(+) 18.00

From the above figures it is revealed that there was less realisation in the year 1998-99, 2000-01 and 2001-02 whereas more realisation in the year 1999-2000 and 2002-03 than the budget estimates. Thus, budget estimates are not prepared considering realistic aspects.

<sup>^</sup> Ahmedabad, Vadodara, Bharuch, Himatnagar, Kheda (Nadiad), Mehsana, Patan, Rajkot and Surat,

### **Comparison of supply of stamps by the Nasik Press with receipt at State Stamp Depot**

**5.2.6** During comparison of the supply for various categories of stamps by the Nasik Press, with the statement of receipt of stamps at the State Stamps Depot for the period 1999-2000 to 2002-03, it was revealed that:

- The receipt of stamps shown by the State depot was in excess than the supply made by the Nasik press in various categories of stamps to the extent of Rs.94.75 crore.
- Similarly in some cases, receipt by the State Stamp Depot was less than the supply made by the Nasik press to the extent of Rs.332.71 crore.

Category wise and denomination wise details of excess/short receipt at State depot is given in Annexure-2.

### **Comparison of sale figures with revenue realised**

**5.2.7** The comparison of figures of sale of stamp papers by treasuries with that of stamp duty realised as furnished by the Superintendent of Stamps is given in the Annexure-3.

Figures of sale of stamps were supplied by district treasuries and figures of stamp duty realised from documents registered were provided by the IGR and Superintendent of Stamps. Comparison of sale of stamps figures of all the 25 treasuries for the period 1999 to 2002 with stamp duty realised figures supplied by the Inspector General of Registration and Superintendent of Stamps show that former was less than latter to the extent of Rs.54.68 crore in 1999 whereas, former was more than latter to the extent of Rs.74.55 crore, Rs.66.81 crore and Rs.4.79 crore respectively during 2000, 2001 and 2002.

The Annexure-3 shows that there was no mechanism or legal provision to ensure that the stamps sold by a particular district treasury were used in that district.

### **Lack of internal control/Irregularities in maintenance of records by the licensed stamp vendors**

**5.2.8** According to the Rules read with the instructions issued by the Superintendent of Stamps, Gandhinagar in November 1998, the inspection of stamp vendors' records are to be carried out by the license issuing authority i.e. District Collector/Superintendent of Stamps once in a month and surprise check once in every three months to ensure that stamps/stamp papers purchased by them from the treasury and denomination-wise sale thereof are recorded properly by the vendor and record a certificate on such checks.

During the scrutiny of the records of seven<sup>⊗</sup> Deputy Collectors and Sub-Divisional Magistrates (Prant Offices), it was noticed that the prescribed inspections were not carried out by five<sup>\*\*</sup> out of seven offices. Proof for purchase of stamp papers from treasuries (i.e. challans) were not kept by the vendors on record. Thus, the genuineness of the purchases from treasuries could not be verified with reference to the entries made in the stamp vendors' registers. In two<sup>∞</sup> Prant Offices, discrepancies regarding account of the sales and purchase of the stamp papers to the extent of Rs.32,305 were noticed as detailed below :

Sl. No.	No. of stamp vendor	Prant office	Amount involved (Rs.)	Nature of irregularity
1	01	Dholka	10,750  6,550	The stamp vendor had taken more stock as opening balance than was shown as closing stock in June and October 2000.  Further, the stamp vendor was having a closing stock of stamps worth Rs.6,550 of different denominations when his licence was cancelled i.e. on 31 May 2001. In absence of any further details recorded in the stamp vendor's sales register, it is not known how these stamps were disposed of.
2	02	Dholka	14,000  5	In one case the closing stock as on 22 April 1990 was of five stamps of Rs.1,000 each, it was taken as 19, thus there was an excess of 14 stamps.  In another case of a stamp vendor though he had no stock of Rs.5 stamp paper, he sold one stamp paper of same denomination on 20 October 2002.

<sup>⊗</sup> Vadodara, Chhotaudepur, Choryasi, Dabhoi, Dholka, Olpad and Viramgam

<sup>\*\*</sup> Chhotaudepur, Choryasi, Dholka, Olpad and Viramgam.

<sup>∞</sup> Vadodara city and Dholka.

3	01	Vadodara	1,000	In spite of inspection carried out by the licence issuing authority, it was noticed that the actual balance of stamps worth Rs.1,000 was shown in excess of the closing balance against the actual balance he had in June 2002.
		<b>Total</b>	<b>32,305</b>	

During test check of the xeroxed copies of 1,15,840 stamp papers used in 26,227 documents registered between 1998 and 2003 for one month in each year in 76 sub registrar offices with reference to cross verification of stamp papers used in these documents with that of the same entered in sales registers of stamp vendors kept at the Superintendent of Stamps/Prant Offices/Mamlatdar Offices, irregularities of Rs.2,08,120 were noticed as detailed below:

Sl. No.	No. of stamp vendor	Prant office	Amount involved (Rs.)	Nature of irregularity
1	03	Olpad Paddhari Himatnagar	70,000	Though the value of the individual stamp papers was equal to/exceeded Rs.10,000, no printed serial number was given on these stamp papers which were used in the documents executed during 1999 and 2002 in the respective Sub-Registrar Offices and were entered in the sales registers of the stamp vendors as well.  The C.S.D., Nasik confirmed (June 2004) that no supply of non-judicial stamps of Rs.10,000 denomination and above without printed serial number was made to Gujarat State at any time in the past.
2	04	Choryasi Vyara	68,120	The value of stamp papers, name and address of purchasers etc. do not tally with the similar details given in the stamp papers used in the documents executed with the respective Sub-Registrar Offices during 2000, 2001 and 2002.

3	02	Choryasi	70,000	One stamp vendor sold stamp paper of Rs.10,000 and another stamp vendor sold three stamp papers of Rs.20,000 each having the same printed serial numbers of the same denomination to two different purchasers recording at different serial numbers of the sales register on different dates.
		<b>Total</b>	<b>2,08,120</b>	

The above facts were brought to the notice of the Department in June 2004. Further reply is awaited (August 2004).

- The cross verifications of 17,134 stamp papers valuing Rs.4.30 crore used in the 3,954 documents could not be carried out due to non availability of the respective sales registers of the licensed stamp vendors from the concerned Prant Offices/Mamlatdar Offices. Lack of internal control resulted in above irregularities which remained unnoticed by the department. The issue requires further investigation by the Department as involvement of fake stamp papers could not be ruled out.
- No system of verification of the receipt on account of stamp duty on the documents registered in the districts with reference to the revenue realised by the District treasuries on sale of stamp paper was in existence at any level.
- A test check involving cross verification of credit of stamp papers taken in the sales registers by vendors with the stamp papers sold by the treasuries to these vendors was carried out in three<sup>#</sup> districts.

Vendors in Surat District were keeping two separate registers, one for recording the sale of stamp papers and another known as “daily stock register” instead of keeping one “Stamp Vendors’ Sales Register” as required under the Rules. Prior to 2002-03, the Prant Office was not keeping any record of annual purchase of stamps from the treasury and commission earned by the vendors. Moreover, the stock registers were also not made available to audit for these years. The comparison between two sets of figures was done for the year 2002-03 in the offices of the Superintendent of Stamps, Gandhinagar and Dy.Collectors (Prant officers). The irregularities noticed in case of 19 vendors involving money value of Rs.1.02 crore are given below:

<sup>#</sup> Ahmedabad, Kheda and Surat.



Sl. No.	No. of stamp vendor	Prant office	Amount involved (Rs. In lakh)	Nature of irregularity
1	04	S.S. Gandhinagar and Prant Office, Nadiad	4.13	The vendors had taken excess credit of 4850 stamp papers of various denominations valuing Rs.4.13 lakh than that of the stamp papers sold by the treasuries to these vendors as per its records for the period 1998-99 to 2002-03.
2	05	S.S. Gandhinagar and Prant Office, Kheda	11.12	The vendors had taken less credit of 8750 stamp papers of various denominations valuing Rs.11.12 lakh than that of the stamp papers sold by the treasuries to these vendors as per its records for the period 1998-99 to 2002-03. Thus, the purchase of these stamp papers remained unaccounted for.
3	07	Prant office, Surat	65.21	The vendors had taken excess credit of stamp papers of various denominations valuing Rs.65.21 lakh than that of value of stamps sold by the Surat treasury to these vendors during 2002-03 and 2003-04 (Rs.52.72 lakh for 2002-03 and Rs.12.49 lakh for 2003-04).
4	02	--do--	18.20	The vendors had taken less credit of stamp papers of various denominations valuing Rs.18.20 lakh than that of value of stamps sold by the Surat treasury to these vendors during 2002-03 and 2003-04 (Rs.9.89 lakh for 2002-03 and Rs.8.31 lakh for 2003-04). Thus, the purchase of these stamps remained unaccounted for.
5	01	--do--	2.90	Though the license was cancelled from 1 April 2003, stamps worth Rs.2.90 lakh were purchased during 2003-04. From this it appears that there is no coordination between Prant Office and Treasury Office.
		<b>Total</b>	<b>101.56</b>	

## Refund of stamp duty

**5.2.9** According to the provisions of the Bombay Stamp Act, 1958 read with the Rules, refund of stamps could be granted for used/unused/spoiled stamps which were purchased/obtained through an authority authorised on this behalf. The power to authorise the refund rests with the various revenue authorities according to the amount of refund per case. The Chief Controlling Revenue Authority has to exercise overall checks on the refund granted. As per the amendment made in the Bombay Stamp Act, 1958 with effect from 1 September 2001, refund of stamps could be granted if an application for refund is made within 6 months from the date of purchase of stamps. The refund granting authority has to verify the genuineness of stamps with cross linking of entry made in the stamp vendors sales register from whom the stamps were purchased. The Treasury Officer has to send the spoiled stamps for destruction to the Superintendent of Stamps after payment of refund, who has to arrange for destruction of stamps.

During test check of records of Superintendent of Stamps, seven\* Deputy Collectors and Sub-Divisional Magistrate offices and two♦ Collector offices, it was noticed that:

- Not a single case had been reviewed by the Chief Controlling Revenue Authority as prescribed under the Act, though refund of Rs.18.57 crore was granted during the period 1993-94 to 2001-02 for judicial and non-judicial stamp papers.
- Neither Treasury Officers sent spoiled stamps for destruction nor any action was taken by the Superintendent of Stamps to obtain these stamps from the Treasury Officer.
- No provision exists in the Act/Rules which enabled that after issuing refund orders the authorities have to make any reconciliation with the treasury records so as to ascertain that the exact amount mentioned in the refund order was paid by the Treasury Officer and that agreed with that of refund granted by the authority at the end of each month.
- It was also observed that the correct head of account was not mentioned in the refund order by the refund granting authorities which could lead to misclassification.
- During test check of refunds granted by the Deputy Collector and Sub Divisional Magistrate, Choryasi at Surat, it was noticed in three cases that though applicants had applied for refund after expiry of time limit of six months from the date of purchase, refund of Rs.6,865 was granted in these cases. This resulted in incorrect grant of refund of Rs.6,865.

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\* Vadodara, Chhotaudepur, Choryasi, Dabhoi, Dholka, Olpad and Viramgam.

♦ Vadodara and Surat.

After this was pointed out, Prant Officer replied that these instructions came to his notice three months ago only and assured that applications for refund after time limit of six months would not be considered in future.

### Recommendations

**5.2.10** To avoid flaws in the system Government may consider to take the following steps:

- Optimum utilisation of franking machines should be ensured so that involvement of vendors comes down to that extent and also short supply of stamps/stamp papers can be tackled.
- There should be a provision to cross check stamps used in the registration of the documents with those shown in the sales registers of treasuries/stamp vendors in the district to obviate usage of fake stamps.
- Regular inspection of stamp vendor by the Prant Officer/ Superintendent of Stamps should be ensured to check the receipt and sale of stamps.

The review was discussed with the Government of Gujarat in December 2004. The Government stated that the difference mentioned in para 5.2.6 could be due to non reconciliation of figures between dispatches by Nasik press and acknowledgements by State Sales Depot. In case of para 5.2.7 the possible reasons for the difference were attributed to recovery in cash of the differential duty on account of undervaluation of properties and to the fact that all documents are not compulsorily registerable and presentation of documents and its registration may fall in two financial years. In respect of other paras the Government agreed with the findings and accepted the recommendations in principle.

### 5.3 Amnesty Scheme for Stamp Duty

**5.3.1.** According to Section 32A of the Bombay Stamp Act, 1958, where any instrument of transfer of immovable property is presented for registration and the registering authority has reason to believe that the consideration set forth therein does not approximate to the market value of the property, he may, either before or after registering the instrument, refer the document to the Collector for determining the true market value of such property.

According to Section 32B of the Act, any person aggrieved by an order of the Collector determining the market value under Section 32A, may after depositing with the Collector twenty five per cent of differential duty payable, prefer application within sixty days from the date of such order. The Collector will refer it to the Chief Controlling Revenue Authority who acts as second appellate authority within 60 days from the receipt of such application.

The Government of Gujarat introduced a scheme known as 'Amnesty Scheme' in July 1998. The scheme was based on estimation of 5 lakh pending cases (approximately) involving stamp duty of Rs.100 crore. However, no norms for number of cases to be finalised by each Dy. Collector (Valuation of Property) entrusted with the work were prescribed. This scheme was in operation for a period of four months effective from 1 August 1998 to 30 November 1998.

The salient features of the scheme were as under:-

- the documents registered on or prior to 15 June 1998 and pending under Section 32A would be covered under this scheme.
- for speedy disposal and regulation of pending disputed cases, the executants had to pay an additional amount equal to the stamp duty earlier paid alongwith a prescribed penalty of Rs.250 under the Act and receive back his instrument duly certified as per the provision of the Bombay Stamp Act.
- under the scheme the Superintendent of Stamps was required to issue a public notice instead of an individual notice.

### **5.3.2 Disposal of cases under the scheme**

As per information collected from the IGR and SS, out of 5,55,116 cases/documents pending under Section 32A as on 31 July 1998, 1,12,924 cases/documents involving additional stamp duty of Rs.49.49 crore including penalty of Rs.2.76 crore were disposed of under the scheme as given in Annexure-4.

The Department could dispose of only 1,12,924 cases (20 *per cent*) with recovery of additional stamp duty of Rs.49.49 crore against the estimated five lakh pending cases involving Rs.100 crore.

### **5.3.3 Short levy of stamp duty and loss of notional interest due to irregular allowance of benefit to remand cases**

Under the scheme the instruments registered on or before 15 June 1998, the cases remanded by the Honourable Gujarat High Court and the cases remanded by the Chief Controlling Revenue Authority (CCRA) of Gujarat State and all such cases pending under Section 32 A of the Bombay Stamp Act as on 31 July 1998 were included within the ambit of the scheme.

According to sub-section (1) of Section 46 of Bombay Stamp Act where a person required to pay any amounts of duty, penalty or other sums under the Act does not pay the same within the time prescribed (90 days) for its payment, he shall be liable to pay simple interest at the rate of 24 *per cent* per annum for the period for which such amounts remained unpaid.

During test check of records of the offices of 12\* Dy.Collectors (VOP), it was noticed that 574 cases remanded by the CCRA during the currency of the scheme were incorrectly covered under the scheme and the executants were allowed to get finalised their cases with payment of requisite stamp duty which worked out to Rs.0.65 crore under the scheme.

Had these cases been settled by the CCRA, the stamp duty as determined by the Dy.Collectors and interest thereon would have worked out to Rs.2.09 crore and Rs.0.54 crore respectively. Incorrect finalisation of these cases under the scheme resulted in short realisation of stamp duty of Rs.1.44 crore and non realisation of interest of Rs.0.54 crore.

Moreover, with the finalisation of these cases under the scheme, 233 executants succeeded in getting refund of Rs.0.21 crore being the difference in 25 per cent duty paid for filing of appeal before higher authorities and duty paid under the Amnesty Scheme.

After this was pointed out in April 2004, the Department did not agree with the objection and replied in August 2004 that the documents mentioned in audit para were disposed of as per the Government Resolution of 28 July 1998 and as such there was no question of short levy of stamp duty or grant of refund. Reply of the Department is not tenable as the cases remanded by the CCRA during the currency of the scheme were incorrectly covered under the scheme and thus undue benefit of duty to the extent of Rs.1.44 crore was allowed to the executants.

#### **5.3.4 Short levy of stamp duty due to incorrect disposal of documents**

Under the scheme, only those documents which were registered with the respective registering authorities on or prior to 15 June 1998 and all cases pending as on 31 July 1998, with the respective Dy. Collectors (VOP) for determination of value of property, were required to be covered.

Further, the Government vide their circular of July 1998 clarified that all such instruments registered on or before 15 June 1998 and referred to the concerned Dy.Collector under Section 32A of the Bombay Stamp Act, wherein statutory notice under Rule 4 (2) of the Bombay Stamp (Determination of Market Value of Property) Rules, 1984 had been issued but final decision was not taken were included within the ambit of the scheme.

During test check of records of the offices of five\* Dy. Collectors(VOP), it was noticed in 16 cases that though these documents were registered with the respective registering authorities after 15 June 1998 and referred to the Dy. Collectors (VOP) for determination of market value of the property, they

\* Vadodara I and II, Bharuch, Gandhinagar, Himatnagar, Jamnagar, Mehsana, Nadiad, Rajkot I and II, Surat I and II.

\* Ahmedabad I and II, Vadodara I, Nadiad and Rajkot I.

were disposed off under the scheme. Thus, incorrect disposal of documents under the scheme resulted in short levy of stamp duty of Rs.0.18 crore.

After this was pointed out in April 2004, the Department accepted the objection and replied in August 2004 that the action under Section 53 A would be taken to recover the differential stamp duty in respect of cases incorrectly finalised under the scheme. Details of recovery are awaited (August 2004).

#### **5.4 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, as applicable to Gujarat, Government reduced the rate of stamp duty to one *per cent* for loans upto of 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 stamp duty was restricted to Rs.2 lakh per deed. By another notification issued in July 2000, the above concession was also extended to mortgage deeds executed by industrial undertakings in favour of financial institutions or financial institution acting as a trustee.

During test check of records of three\* Sub-Registrar Offices, it was noticed between April and July 2003 that in 17 documents registered between 2001 and 2002, 17 industrial undertakings had obtained loans aggregating Rs.1,013.01 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.53.69 crore.

The above facts were brought to the notice of the Department between May and September 2003 and of the Government in April 2004. The Department replied in May 2004 that copies of all the documents have been sent to the Dy.Collectors (VOP) for taking action for recovery. Particulars of recovery, if any, and reply from the Government are awaited (August 2004).

#### **5.5 Short levy of stamp duty and registration fees due to misclassification of documents**

Under Section 3 of Bombay Stamp Act, 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

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\* Two of Vadodara and one of Mehsana.

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 Additional Superintendent of Stamps, Gandhinagar, Dy. Collector (VOP)-I, Rajkot and 96<sup>s</sup> Sub-Registrar Offices, it was noticed between July 2000 and December 2003 that 819 documents registered between 1999 and 2002 were classified on the basis 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.12.70 crore as detailed below:

(Rupees in crore)

Sl. No.	No. of offices	No. of documents	Short levy	Nature of irregularity
1	37	407	6.42	These documents were misclassified 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	39	257	4.04	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	08	34	1.52	These documents were misclassified as partition deed, release deed, acceptance without consideration, assignment of lease, correction deed, composition deed, memorandum of undertaking, confirmation deed etc. However, recitals of these documents revealed that these documents were classifiable as conveyance deed.
4	13	117	0.46	These 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/giving power of attorney etc. These documents, were, therefore, classifiable as mortgage deeds.
5	01	04	0.26	Stamp duty leviable on transfer of lease by way of assignment is higher than that on surrender of lease/agreement to sell. These documents were misclassified as surrender of lease/agreement to sell instead of transfer of lease.
<b>Total</b>	<b>98</b>	<b>819</b>	<b>12.70</b>	

<sup>s</sup> 20 of Ahmedabad, 14 of Vadodara, 13 of Rajkot, seven of Surat, five of Mehsana, four each of Bhavnagar, Jamnagar and Anand, three each of Gandhinagar, Panchmahal and Banaskantha, two each of Kheda, Patan, Sabarkantha and Dahod, one each of Bharuch, Navsari, Amreli, Junagadh, Narmada, Valsad, Surendranagar and Porbandar.

The above facts were brought to the notice of the Department between September 2000 and December 2003 and of the Government in April 2004. The Department replied in May 2004 that copies of all the documents have been forwarded to the Dy.Collectors (VOP) for taking action for recovery. Particulars of recovery; if any, and reply from the Government are awaited (August 2004).

### **5.6 Non levy of stamp duty due to acceptance of appeal applications in time barred cases**

Under Section 32-B of Bombay Stamp Act, any person aggrieved by an order passed by the Collector(VOP) under Section 31 or 32-A determining the market value, may represent his case to the Chief Controlling Revenue Authority (CCRA) through the Collector (VOP), within 60 days from the date of order passed by the Collector(VOP). However, Section 53(1) (a) of the Act further provides that the CCRA shall not entertain an application made by a person unless such an application is presented within a period of 60 days from the date of order of the Collector.

During test check of the records of six<sup>s</sup> Dy.Collectors (VOP) it was noticed between January 2001 and October 2003 that the Dy.Collectors had determined the market value in 254 documents between April 1992 and October 2002. The aggrieved parties filed appeals between December 1995 and May 2003 (i.e. after expiry of the prescribed period of 60 days). The Dy. Collectors had referred these documents to the CCRA between October 1999 and March 2003; all these cases were pending final decision. Incorrect reference of time barred cases by the Dy.Collectors and acceptance of such cases by the CCRA resulted in non levy/postponement of recovery of stamp duty of Rs.5.41 crore.

The above facts were brought to the notice of the Department between May 2001 and December 2003 and of the Government in April 2004. The Inspector General of Registration replied in August 2004 that concerned persons had represented that they had not received the order of the Collector when it was served earlier and therefore their appeals were admitted on payment of 25 per cent of the deficient amount of duty payable by them. The reply is not tenable in view of the fact that there was no provision in the Act to admit time barred cases by the CCRA.

### **5.7 Short levy of stamp duty and registration fees on instruments comprising several distinct matters**

Under Section 5 of Bombay Stamp 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.

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<sup>s</sup> Ahmedabad-II, Bharuch, Gandhinagar, Himatnagar, Nadiad and Rajkot-I.



During test check of records of 16<sup>#</sup> Sub-Registrar Offices of seven districts, it was noticed between May 2002 and December 2003 that 50 documents comprising or relating to several distinct matters of immovable properties valued at Rs.13.58 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.2.12 crore as detailed below:

(Rupees in crore)

Sl. No.	Location	No. of documents	Value of property	Short levy	Nature of irregularity
1	Bharuch, Nadiad, Naroda, Rajkot, Sanand, Udhna and Vadodara.	28	10.17	1.74	As per recitals, two distinct transactions of sale of property were involved, but duty was levied only on one transaction.
2	Gondal, Mandvi, Mangrol, Pardi and Valsad.	12	1.63	0.19	Though the instruments contained recitals of conveyance and mortgage, duty was levied only on conveyance.
3	Rajkot and Vadodara	5	0.66	0.08	Though instruments contained elements of sale and power of attorney with consideration, duty was levied only on sale.
4	Vadodara	01	0.70	0.05	Though the instrument contained elements of memorandum of entry and guarantee, duty was levied only on memorandum of entry.
5	Narol and Vadodara	02	0.13	0.02	Though the instruments contained elements of sale and gift, duty was levied only on sale.
6	Vadodara	01	0.09	0.02	Though the instrument contained elements of conveyance and partition, duty was levied only on conveyance.
7	Vadodara	01	0.20	0.02	Though the instrument contained elements of conveyance and release, duty was levied only on conveyance.
	<b>Total</b>	<b>50</b>	<b>13.58</b>	<b>2.12</b>	

<sup>#</sup> Five of Vadodara, three each of Ahmedabad and Surat, two of Rajkot, one each of Bharuch, Kheda and Valsad.

The above facts were brought to the notice of the Department between June 2002 and December 2003 and of the Government in April 2004. The Department replied in May 2004 that copies of all the documents have been forwarded to the Dy.Collectors (VOP) for taking action for recovery. Particulars of recovery; if any, and reply from the Government are awaited (August 2004).

## 5.8 Short levy of stamp duty due to undervaluation/incorrect computation of consideration of properties

**5.8.1** Under the amended provisions of the Bombay Stamp 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 shall, before registering the document, refer the same to the Collector for determining the market value of the property. On receipt of the document, the Dy.Collector (VOP) is required to give reasonable opportunity to the party concerned and determine the market value. 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 the records of 12<sup>&</sup> Sub-Registrar Offices and six\* Dy.Collectors (VOP), it was noticed between August 2001 and November 2003 that in 146 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.2.13 crore as detailed below:

(Rupees in lakh)

Sl. No.	Location	No. of documents	Short levy	Nature of irregularity
1	Waghodia, Dehgam, Rajkot, Olpad, Ahmedabad and Kalol	10	26.76	The Sub Registrars registered the documents even though the value shown in the documents was less than the market value as per Jantri <sup>#</sup> .
2	Gandhinagar, Bhavnagar, Nadiad, Vadodara and Rajkot	82	74.51	Value of the properties recommended by the Sub Registrars was determined less by the Dy.Collectors based on representations of the executors.

<sup>&</sup> Four of Ahmedabad, two of Surat, one each of Vadodara, Rajkot, Mehsana, Junagadh, Anand and Bharuch.

<sup>\*</sup> Two of Vadodara, one each of Gandhinagar, Bhavnagar, Nadiad and Rajkot.

<sup>#</sup> Jantri means statement showing approved rates for the purpose of determination of value of land and levy of stamp duty.

3	Kamrej, Naroda and Vadaj	07	74.76	Recitals of the documents revealed that the land sold was non-agricultural land, but the value considered was that of agricultural land.
4	Junagadh	01	2.64	Value of the property was undervalued due to incorrect computation of area of land.
5	Ankleshwar	02	1.09	Cost of plant and machinery was not taken into consideration for determining the value of the property auctioned by GSFC <sup>\$</sup> .
6	Ankleshwar	03	27.11	In one case the sale value shown in conveyance deed executed in January 2002 was not adopted and in another case value of land as per jantri was not adopted.
7	Anand	01	0.50	In the agreement to sell, the value of the property was shown as Rs.4.91 lakh of which an advance of Rs.2.11 lakh was paid in cash. However, in the sale deed the value was shown as Rs.60,000 only and stamp duty was paid accordingly.
8	Vadodara	40	5.69	Though the value of the properties exceeded the prescribed limit of Rs.15,106 the Dy. Collector (VOP) returned the documents without determining the market value.
	<b>Total</b>	<b>146</b>	<b>213.06</b>	<b>Say Rs.2.13 crore</b>

The above facts were brought to the notice of the Department between August 2001 and November 2003 and of the Government in April 2004. The Department replied in May 2004 that copies of all the documents have been forwarded to the Dy.Collectors (VOP) for taking action for recovery. Particulars of recovery; if any, and reply from the Government are awaited (August 2004).

**5.8.2** The Bombay Stamp Act provides that “Conveyance” includes a conveyance on sale and every instrument by which property movable or immovable is transferred. Therefore, when property is sold or transferred, the total value of such property is to be taken as consideration for the purpose of levy of stamp duty and registration fees. In case of lease, the premium or money advanced in addition to annual lease rent is also to be considered for arriving at the consideration for levy of stamp duty.

During test check of records of 12\* Sub-Registrar Offices, it was noticed between May 2000 and August 2003 that in 38 documents registered between 1999 and 2002, Stamp duty and Registration fee of Rs.29.80 lakh was short levied due to incorrect computation of consideration as under:

<sup>\$</sup> Gujarat State Financial Corporation.

<sup>\*</sup> Three each of Vadodara and Rajkot, Two each of Ahmedabad and Surat, one each of Bharuch and Kheda

(Rupees in lakh)

Sl.No.	Location	No. of documents	Short levy	Nature of irregularity
1	Surat	11	3.26	The value of undivided share of land was considered for levy of stamp duty though residential flats were also transferred to the purchasers. The stamp duty leviable on these flats worked out to Rs.3.26 lakh at Jantri rates.
2	Vadodara and Gondal	3	3.08	Full amount of consideration paid to the seller was not considered for levying stamp duty.
3	Ahmedabad, Morbi, Vadodara, Nadiad, Waghra, Surat and Rajkot	24	23.46	Duty was short levied due to incorrect computation of lease period/non-consideration of premium, rent etc., paid in advance.
	<b>Total</b>	<b>38</b>	<b>29.80</b>	

The above facts were brought to the notice of the Department between May 2000 and September 2003 and of the Government in April 2004. The Department replied in May 2004 that copies of all the documents have been forwarded to the Dy.Collectors (VOP) for taking action for recovery. Particulars of recovery; if any, and reply from the Government are awaited (August 2004).

### 5.9 Incorrect remission of stamp duty

According to Section 9 of the Bombay Stamp Act, the Government is empowered to reduce or remit the duty leviable on any instruments or any class of instruments or on documents executed in favour of any class of persons or in favour of any member of such class in the whole or any part of the State.

During test check of the records of Sub-Registrar, Bhavnagar, it was noticed in February 2002 that a document for transfer of 2.52 lakh sq.mtrs. of land purchased by Gujarat Industrial Development Corporation (GIDC) from Gujarat State Machine Tools Corporation Ltd., at a cost of Rs.9.05 crore was registered in 2000. No stamp duty was recovered on this document based on an order issued by the Government, exempting this sale from the levy of stamp duty, though Government is not competent to invoke the power vested in them to cover an individual executant. This incorrect remission resulted in loss of stamp duty of Rs.1.12 crore.

The above facts were brought to the notice of the Department in April 2002 and of the Government in April 2004. The Department replied in May 2004 that copy of the document has been forwarded to the Dy. Collector (VOP) for taking action for recovery. Particulars of recovery, if any, and reply from the Government are awaited (August 2004).

### **5.10 Non levy of stamp duty**

Under the Registration Act, 1908 any instrument, which creates, whether in present or in future any right, title or interest in immovable property, is compulsorily registerable.

During test check of records of four<sup>§</sup> Sub-Registrar Offices, it was noticed between September 2000 and November 2003 that in 26 documents registered between 1999 and 2002, in the recitals of each document there was mention of earlier transaction of the properties for which no registration was made. The purchasers who earlier received rights over these properties without executing a registered document were now selling these to other persons through registered documents. Due to non-registration of instruments of transfer of immovable properties on earlier occasions, the Government was deprived of revenue in form of stamp duty to the extent of Rs.31.00 lakh.

The above facts were brought to the notice of the Department between October 2000 and December 2003 and of the Government in April 2004. The Department replied in May 2004 that copies of all the documents have been forwarded to the Dy. Collectors (VOP) for taking action for recovery. Particulars of recovery; if any, and reply from the Government are awaited (August 2004).

### **5.11 Short levy of stamp duty and registration fees on instruments falling within several descriptions**

The Bombay Stamp Act provides that an instrument falling within two or more of the descriptions of Schedule-I shall, where duties chargeable thereunder are different, be charged only with the highest of such duties. Accordingly if an instrument is so framed that it contains descriptions relating to deposit of title deed and also of a bond, it is to be charged as bond as rate of stamp duty on bond is higher than that on deposit of title deeds.

During test check of records of five<sup>@</sup> Sub-Registrar Offices, it was noticed between February and September 2003 that in 30 documents registered between 2001 and 2002 the mortgagors were obliged to pay money to Banks for loan granted to other persons. Though these documents were of deposit of title deeds, they also fulfilled the criteria of a bond as these were attested by a witness and not payable to order or bearer. The stamp duty and registration

<sup>§</sup> Odhav, Narol, Himatnagar and Kalol.

<sup>@</sup> Two of Rajkot, one each of Ahmedabad, Jamnagar and Junagadh.

fees were levied at lower rate applicable to deposit of title deeds instead of at higher rate applicable to bonds. This resulted in short levy of stamp duty and registration fees of Rs.26.68 lakh.

The above facts were brought to the notice of the Department between February and November 2003 and of the Government in March 2004. The Department replied in May 2004 that copies of all the documents have been forwarded to the Dy.Collectors (VOP) for taking action for recovery. Particulars of recovery; if any, and reply from the Government are awaited (August 2004).

### **5.12 Non/short levy of additional duty**

Under Bombay Stamp Act, additional duty at the rate of 50 *per cent* of the basic stamp 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 purposes). Additional duty at the rate of 25 *per cent* is also leviable on non-agricultural land exceeding 100 sq.metres situated in rural areas. Further, an additional duty, at rates varying from 10 to 35 *per cent* of the basic stamp duty known as District Panchayat and Taluka Panchayat duty, is leviable in case of properties situated in rural areas falling within the jurisdiction of district/taluka panchayats.

During test check of the records of the Dy. Collector (VOP)-I, Rajkot and four<sup>s</sup> Sub-Registrar Offices, it was noticed between April 2002 and October 2003 that in nine documents of vacant land situated in urban/rural areas registered in 2002, additional duty leviable was not levied. In other three documents of mortgage deeds registered between 2001 and 2002, the District Panchayat/Taluka Panchayat duty though leviable at 35 *per cent* on basic stamp duty was not levied. This resulted in short levy of stamp duty of Rs.5.47 lakh.

The above facts were brought to the notice of the Department between May 2002 and November 2003 and of the Government in April 2004. The Department replied in May 2004 that copies of all the documents have been forwarded to the Dy.Collectors (VOP) for taking action for recovery. Particulars of recovery; if any, and reply from the Government are awaited (August 2004).

The above matters were followed up with reminders to the Principal Secretary in June and Chief Secretary in July 2004. However, inspite of such efforts, no reply was received from the Government (August 2004).

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<sup>s</sup> Padra, SR-II and III Vadodara and SR-II Rajkot.