

CHAPTER-V: STAMP DUTY AND REGISTRATION FEE

5.1 Results of audit

Test check of the records of the Department of Registration and Stamps conducted during the year 2007-08 revealed short realisation of stamp duty and registration fee amounting to Rs. 9.69 crore in 2,615 cases which fall under the following categories:

(Rupees in crore)

Sl. No.	Category	Number of cases	Amount
1.	Undervaluation of properties	2,065	7.68
2.	Misclassification of documents	05	0.01
3.	Other irregularities	545	2.00
Total		2,615	9.69

During the year 2007-08, the department accepted underassessments of Rs. 4.02 crore pertaining to 1,332 cases, out of which 386 cases involving Rs. 1.20 crore were pointed out during 2007-08 and the rest in the earlier years. The department recovered Rs. 1.47 crore in 936 cases, out of which 134 cases involving Rs. 10.45 lakh were pointed out during 2007-08 and the rest in the earlier years.

A few illustrative cases involving Rs. 58.36 crore highlighting important audit findings are mentioned in the succeeding paragraphs.

5.2 Non/short levy of stamp duty and registration fee by public offices

Stamp duty is leviable on different types of instruments under the provisions of the Rajasthan Stamp Act, 1998 (RS Act), which came into force with effect from 27 May 2004. Prior to this, stamp duty was levied in accordance with the provisions of the Indian Stamps Act, 1899 as adapted by the Rajasthan Stamp Law (Adaptation) Act, 1952. With a view to ensure that proper stamp duty has been levied correctly on instruments produced before all the Government offices, public companies and corporations besides local bodies and autonomous bodies etc., the State Government declared (December 1997) all such offices, as public offices. These offices were required to bring cases of unstamped or under stamped documents to the notice of the concerned Collector (Stamps). The Inspector General (Registration and Stamps), vide his letter dated 9 January 1998 authorised the Deputy Inspectors General/ Additional Collector (AC) (Stamps) to inspect the records of public offices to see whether stamp duty was being charged correctly.

5.2.1 Short levy of stamp duty on increase in authorised share capital of companies

Under Article 11 (i) of the schedule to the RS Act, stamp duty on increase in authorised share capital is chargeable at 0.5 *per cent*. Prior to this, stamp duty on this item was chargeable at the rate of 0.2 *per cent* subject to a maximum of Rs. 2 lakh vide notification dated 14 January 2004 issued under the Rajasthan Stamp Law (Adaptation) Act, 1952.

Information obtained from the Registrar of Companies (ROC) Rajasthan, Jaipur revealed that share capital was increased by Rs. 11,406.12 crore in 1,684 cases. The ROC incorrectly accepted the instruments stamped at Rs. 2.81 crore at the lower rates¹ instead of Rs. 57.03 crore at the rate of 0.5 *per cent* leviable under the RS Act. This resulted in short realisation of Rs. 54.22 crore.

The inspection of the ROC office was also not found conducted by the AC Jaipur during this period as required. Failure of ROC in discharge of his duty as a public office coupled with lack of required inspections resulted in these irregularities not being detected.

After the case was pointed out in March and April 2008 the Government stated in July 2008 that the duty was levied in accordance with the notification dated 14 January 2004 which was still in force in the light of section 91(2) of the RS Act. The reply of the department is not tenable as section 91(2) stipulates that only such notifications which are not inconsistent with the provisions of this Act would be treated as saved. In this case the rate of duty has been prescribed at 0.5 *per cent*, as such the notification of January 2004, being inconsistent with the provisions, was not applicable.

¹ 0.2 *per cent* subject to maximum of Rs. 2 lakh

5.2.2 Non-receipt of stamp duty and registration fee due to non-registration of documents relating to amalgamation of companies

As per section 17(b) of the Registration Act, 1908, immovable property valued at Rs. 100 and above is required to be got registered under the Act. Stamp duty on the conveyance deed relating to amalgamation of companies by the order of the High Court under Section 394 of the Companies Act chargeable under clause (iii) of article 21 of the schedule to RS Act was reduced from 10 per cent to 4 per cent on the market value vide notification dated 24 March 2005.

Information obtained from the ROC Rajasthan, Jaipur between January and March 2008, revealed that 10 companies (transferor companies) were amalgamated under the orders of the High Court with other five companies (transferee companies) between 20 May 2005 and 13 November 2007. The transferee companies did not submit the deeds for registration which resulted in evasion of stamp duty and registration fee. The cost of transferor companies as per the records made available to audit worked out to Rs. 38.87 crore on which stamp duty of Rs. 1.55 crore and registration fee of Rs. 1.25 lakh was leviable.

The ROC thus failed in discharge of duty as a public office in ensuring that the instruments presented were adequately stamped and to bring the default to the notice of the Collector (Stamps). The inspection of the ROC office was also not found conducted by the Additional Collector (Stamps), Jaipur. Failure of the ROC in discharge of his duty as a public office coupled with lack of required inspections resulted in these irregularities not being detected.

After the matter was pointed out, the Government accepted the facts in June 2008 and issued instructions to the concerned circle officers for recovery of the amount. A report on recovery has not been received (October 2008).

5.2.3 Short levy of stamp duty on customs bonds

Under Article 25 of the schedule to the RS Act, stamp duty on customs bond is chargeable at the rate of one per cent of the amount as stated in the bond, subject to a minimum of Rs. 100.

Information obtained from the Inland Container Depots Bhiwadi and Kanakpura (Jaipur) revealed that 150 bonds involving Rs. 136.43 crore were accepted by the concerned customs divisions during July 2004 to March 2008. As against stamp duty of Rs. 1.36 crore chargeable thereon, stamp duty of Rs. 71,700 only was charged on these bonds. This resulted in short levy of stamp duty of Rs. 1.36 crore.

The customs divisions thus failed to discharge their duty as a public office in ensuring whether the bonds presented were adequately stamped and to bring the default to the notice of the Collector (Stamps). Inspection of these divisions was also not conducted by DIG (Registration and Stamps). Failure of these divisions to discharge their duty as public offices coupled with lack of inspections resulted in such irregularities not being detected.

After the cases were pointed out, the Government stated in July 2008 that instructions had been issued to the concerned circle officers to recover the amount.

5.3 Short levy of stamp duty and registration fee due to undervaluation of property

As per the provisions of the RS Act, stamp duty on an instrument of conveyance of immovable property shall be chargeable on the market value of the property. Further, as per rule 58 of the Rajasthan Stamp Rules, 2004 (RS Rules), the market value of immovable property shall be determined on the basis of the rates recommended by the district level committee (DLC) or the rates approved by the Inspector General of Stamps, whichever is higher. Registration fee is also to be charged at the rate of one *per cent* of the value or consideration subject to a maximum of Rs. 25,000 under the Registration Act, 1908.

Scrutiny of the records of four sub-registrar offices (SROs) between June 2007 and March 2008 revealed that the properties were undervalued by Rs. 7.92 crore in 38 cases. The value of the properties were determined at rates lower than those approved by the DLC. This resulted in short levy of stamp duty and registration fee aggregating Rs. 54.70 lakh as mentioned below:

(Rupees in lakh)

Name of SROs	No. of cases	Nature of property	Market value of property as per the DLC rates	Value adopted	SD and RF ²	Short levy of SD and RF
					leviable levied	
Pushkar (Ajmer)	1	Commercial	210.09	5.95	<u>17.06</u> 0.54	16.52
Luni (Jodhpur)	32	Commercial/ Residential	344.71	148.48	<u>25.85</u> 11.14	14.71
Jaipur-III	1	Commercial	386.10	97.40	<u>19.55</u> 5.12	14.43
Suratgarh (Sriganganagar)	4	Commercial	110.46	7.56	<u>9.72</u> 0.68	9.04
Total	38		1,051.36	259.39	<u>72.18</u> 17.48	54.70

After these irregularities were pointed out between July 2007 and April 2008, the Government stated in June and July 2008 that cases pertaining to SROs Luni, Jaipur-III and Suratgarh had been registered for adjudication while notice for recovery had been issued in the case of SRO Pushkar (Ajmer).

5.4 Short levy of stamp duty and registration fee on registration of lease deeds

The RS Act further provides that where the lease purports to be for a term in excess of 20 years, stamp duty is chargeable as on a conveyance on the market value of the property.

² Stamp duty and registration fee.

Scrutiny of the records of six SROs³ between March 2007 and January 2008 revealed that 12 lease deeds were executed between March 2004 and November 2006 for a period of more than 20 years. The stamp duty and registration fee of Rs. 53.76 lakh was leviable against which Rs. 17,000 was levied on average rent of one/two years. This resulted in short levy of stamp duty and registration fee aggregating Rs. 53.59 lakh.

After the cases were pointed out, the Government stated in June 2008 that all cases had been registered in the court of Collector (Stamps) for adjudication, of which two cases of Rs. 5.35 lakh in respect of sub-registrar, Sumerpur (Pali) had been decided in favour of the Government and warrants for attachment had been issued by the department for recovery of the amount.

5.5 Non-registration of developer agreements

Under the provisions of Article 5 (bbbb) of the schedule to the RS Act, agreements or memorandum of agreements, if relating to giving authority or power to a promoter or a developer, by whatever name called, for construction on or development of any immovable property are chargeable to stamp duty at the rate of one *per cent* of the market value of the property and registration fee at the prescribed rates.

Scrutiny of the records of three SROs (Jaipur-IV, Jaipur-VII and Jaipur-VIII) between January and March 2008 for the years 2005 and 2006 revealed that nine instruments were executed between vendors and vendees for the purchase of built flats between September 2005 and August 2006. The recital of the deeds revealed that multistoried flats were constructed by developers and sale proceeds of these were to be shared by the developers and owners of the land. However, neither was any separate agreement registered in this regard nor was duty levied by the sub-registrars on this distinct item. This resulted in non-realisation of revenue of Rs. 13.49 lakh.

After the cases were pointed out, the Government stated in July 2008 that all cases had been registered in the court of Collector (Stamps) for adjudication.

³ Badnor (Bhilwara), Bansur (Alwar), Bhadra (Hanumangarh), Gangrar (Chittorgarh), Shahpura (Jaipur) and Sumerpur (Pali).