

CHAPTER IV

STAMP DUTY AND REGISTRATION FEES

4.1 Results of audit

Test check of the records of the departmental offices during the period from April 2007 to March 2008 revealed undervaluation, misclassification and other observations amounting to Rs. 45.20 crore in 531 cases which broadly fall under the following categories:

(Rupees in crore)			
Sl.No.	Categories	No. of cases	Amount
1.	Computerisation of the Registration Department – (A review)	1	---
2.	Undervaluation of properties	57	9.45
3.	Misclassification of documents	78	7.29
4.	Other irregularities	395	28.46
Total		531	45.20

During the course of the year 2007-08, the department accepted and recovered underassessment etc., amounting to Rs. 3.65 crore in 285 cases, of which, Rs. 1.46 crore involved in 95 cases were pointed out during 2007-08 and the rest in the earlier years.

A review of “**Computerisation of the Registration Department**” and few illustrative cases involving Rs. 42.63 crore are discussed in the following paragraphs:

4.2 Computerisation of the Registration Department

Highlights

Computerisation of the Registration Department is yet to be fully completed, though started in 2001.

(Paragraph 4.2.4.1)

Digital/web cameras and bio-metric devices purchased for a sum of Rs.85.61 lakh could not be put to use for want of necessary software.

(Paragraph 4.2.4.2)

Lack of interconnectivity of the sub-registrar offices with the concerned taluk offices resulted in continued registration of the government lands in the name of private individuals.

(Paragraph 4.2.4.3)

Absence of provisions in the system resulted in manual intervention in collection of stamp duty in case of partition and excess allocation of surcharge to local bodies etc.

(Paragraph 4.2.5)

Absence of input controls and validation checks led to less assurance regarding completeness and validity of data.

(Paragraph 4.2.7)

Inadequate security controls resulted in modification of the registration details without authorisation by superior officers.

(Paragraph 4.2.8)

4.2.1 Introduction

The Registration Department planned to computerise its activities with the objectives of streamlining the works such as document recording, storage and retrieval of the documents, making its operation more transparent and providing the public with better and efficient services. Some of the activities identified for computerisation were generation of cash receipts, indexing of database of properties, generation of MIS reports, generation of encumbrance certificates and establishment work such as leave records, generation of pay roll etc., through three modules viz., Accounts, Indexing and Scanning.

Based on a system study conducted in 1996, the department started computerisation of the department through a project called STAR (Simplified and Transparent Administration of Registration) with the assistance of National Informatics Centre (NIC). The computerisation was taken up in a phased manner to cover 558 sub-registrar offices (SROs) (after reorganisation of the original 600 SROs) and 50 district registrar offices (DROs) and it was planned to be completed by 2003-04. The project is yet to be completed (June 2008) and implemented in full scale even after spending an amount of Rs. 99 crore.

4.2.2 Scope of audit

Computerisation of this department is one of the services envisaged under e-governance of the State Government. The review was carried out in 13 registration offices¹ between August 2007 and May 2008 covering the records relating to the period from April 2004 to March 2008.

4.2.3 Audit objectives

The objective of audit was to check whether

- the computerisation was in line with the objectives of the department;
- the system covered all the intended functions;
- the information in the database was reliable; and
- adequate security controls were in place.

Audit findings

It was observed that the system design was deficient and input controls, validation checks, access controls and security were insufficient, which led to ineffective management of the system and rendered the data incomplete, inaccurate and unreliable. The audit findings are discussed in the succeeding paragraphs.

4.2.4 Planning and implementation

4.2.4.1 Delay in implementation

It was noticed that 50 district registrar offices and 300 sub-registrar offices were computerised in three phases namely Phase-I, II(a) and II(b) by February 2000, January 2002 and September 2002 respectively. However, computerisation of the remaining offices scheduled to be covered in Phase-III and planned to be completed by 2003-04 was kept in abeyance on the grounds of re-organisation of the registration offices. The main objective of re-organisation of the registration offices was to have one sub-registrar office for every taluk office (206 taluk offices in the state) and to establish connectivity between them. The process of re-organisation started in 2003 was partially completed in 2005 by merging only 42 sub-registrar offices with the others. After this partial re-organisation, the department implemented the Phase-III computerisation in 150 offices (March 2006) after a delay of two years.

As per the Government policy, the plan was to complete the computerisation of the remaining 108 offices under Phase-IV during 2006-07. The department decided to go in for web based system using open source technology (Linux)

¹ Joint I Chenglepet, SRO-Joint II Coimbatore, Joint I Kanchipuram, Joint II & III Kanchipuram, Gandhipuram, Ganapathy, Pallavaram, Perambalur, Saidepet, Sriperumbudur, Triplicane, Valigandapuram and Vepanthattai.

based on an offer made by M/s.Electronic Corporation of Tamil Nadu (ELCOT) for Phase-IV. For this purpose Rs. 15 lakh was paid to M/s. ELCOT. The department did not approach NIC for switching over of the system even though the existing STAR project was developed by NIC and that NIC was not charging any cost for any software development from the Government departments. The department is yet to complete the computerisation in the remaining 108 offices (September 2008).

The department (September 2008) accepted the delay and stated that the initiatives were under way.

This indicated lack of clarity and definite strategy of the department which resulted in delay in implementation of the project.

4.2.4.2 Bio-metric devices

It was noticed that digital/web camera and bio-metric devices² were purchased utilising Rs. 18.90 lakh diverted from the amount sanctioned for Phase-III and Rs. 66.71 lakh further sanctioned by the Government in August 2005 and November 2007. However, it was observed that these devices were kept idle till date.

The department stated (September 2008) that the devices could not be put to use independently for want of software and NIC had been addressed by the department in this regard. This indicated adhoc purchases without any planned requirement.

4.2.4.3 Non-linking of the taluk offices with the registration offices

The Government had sanctioned an amount of Rs. 60 lakh for the purpose of establishing computer connectivity between 300 sub-registrar offices and the taluk offices so as to verify the *adangal*³, *chitta*⁴ and other records of the taluk offices with the registration records and transmit the details of registration to the taluk offices so as to facilitate comparison of land records. However, it was noticed that the amount was diverted for the purpose of establishing connectivity between the sub-registrar offices and the Reginet centre at Chennai for the Reginet project mentioned in paragraph 4.2.9.

The department stated that initially interconnectivity between the taluk and SR offices located within 100 meters from each other were made functional, but due to non-updation of data in the taluk offices, the interconnectivity could not be carried out. Audit test checked two taluk offices and it was found that the data available in the taluk offices were up-to-date and could be used by the Registration Department.

² A device to capture the bio-metric information like “thumb impression” in an electronic form.

³ Village account No.2 containing the details of survey number, extent, assessment and classification of land.

⁴ Account containing Land Ownership details.

Non-linking of the taluk offices with the registration offices led to the registration of documents involving the government lands that were prohibited as per G.O.Ms.No.150 (CT) dated 22 September 2000. A comparison of the data available in the SROs Joint I Chengalpattu and Thiruvottiyur with the records in the concerned taluk offices revealed that 2.49 lakh square feet of land valued at Rs. 65.82 lakh which were classified as the government lands in the revenue records were registered by the SROs in the name of private individuals in 19 cases. Though similar issue was reported in Para 3.2.9 of the Audit Report 2002-03 in respect of 827 cases, more transactions were entertained in two SRs (Alandur and Velachery) due to non-sharing of information between the two departments.

Thus, it is evident that the failure of the Government to monitor implementation of the scheme of connecting the taluk offices with the SROs resulted in irregular registration of the government lands.

4.2.4.4 Accounts module

Though NIC developed the accounts module alongwith the other modules in 2000 for the purpose of generation of cash receipts, challans, etc., the accounts module was never put to use. The department was using another accounts module developed free of cost by M/s.Broadline since 2004. It was noticed that the accounts module developed by M/s.Broadline had many deficiencies (as commented in paragraph 4.2.5 below).

The department replied (January 2008) that the accounts module running in the SROs since 2004 was in testing stage only and due to non-availability of the source code, corrections could not be carried out. The department further stated (September 2008) that since the module developed by NIC contained more discrepancies and for timely implementation of the project, the free accounts module developed by M/s Broadline was adopted. However, it was noticed that the software developed by M/s Broadline also contained many deficiencies and was stated to be continued in testing stage only even after four years. Continued use of a software without any source code or design document and without documenting any other reasons for its adoption, despite availability of the NIC module free of cost, reflected the adhocism in computerisation.

4.2.5 System design deficiencies

Deficiencies in the system warranted manual interventions and bypassing of the system as noticed in the following paragraphs.

4.2.5.1 The system has provision to collect the fees for the different kinds of documents like sale, mortgage, lease, partition etc. In the case of partition deed, normally a document contains more than one schedule. As per the Indian Stamp Act, the stamp duty for the partition deeds is to be levied at one *per cent* of the market value of the property separated subject to a maximum of Rs. 10,000 per share and the registration fees is to be collected at one *per cent* of the market value of the property subject to a maximum of Rs. 2,000.

It was noticed that the system calculated the stamp duty and registration fee for single schedule only irrespective of the number of schedules contained in the document. In such cases, the department collected the short computed amount by manual intervention.

4.2.5.2 The stamp duty and transfer duty surcharge on the value of the instrument were collected and the portion of the transfer duty surcharge were allocated to the local bodies. As per the Inspector General of Registration order No.59985/C1/81 dated 8 March 1982, no surcharge shall be imposed on the sale amount covered by transfer of movable property. The system though provided for collection of the stamp duty including transfer duty surcharge, it did not have provision to capture the value of immovable property and movable property separately and levy surcharge accordingly. The business rule of exempting the surcharge for movable property was not mapped in the system.

Absence of such provision in the system led to allocation of surcharge to the local bodies in respect of transfer of movable properties also. No action has been taken to rectify the deficiency in the system though such excess allocations of transfer duty surcharge amounting to Rs. 9.29 crore in 2,627 cases were pointed out repeatedly in the Audit Reports for the year 2004-05, 2005-06 and 2006-07.

4.2.5.3 Though provision was made in the system to capture the collection of deficit stamp duty paid in cash to the sub-registrar at the time of registration in the SROs, the provision to record the collection of deficit stamp duty paid by the registrant to the bank through cheque or demand draft was not made in the system. It resulted in the system showing non-collection of deficit stamp duty in 1,902 cases in 13 offices. Manual interventions were resorted to correct these differences.

4.2.5.4 The department had plan to have an integrated system of various modules such as Accounting, Indexing and Scanning. However, these modules were not integrated and resulted in repeated capture of the information like value of the property, stamp value, date of registration etc. in the different modules giving room for inconsistencies and duplication of work. It was found that the value of the properties (67,203 cases) and the stamp value (858 cases) were indicated differently in the Accounts module and Indexing module and in 3,367 cases, the registration dates in the Accounts, Indexing and Scanning modules were not same. Thus, duplication of data entry led to lack of integrity of data and increase of work load.

4.2.6 Mapping of business rules

All the relevant business rules and procedures were required to be identified and suitably incorporated in the system. As per the G.O. dated 21 February 1989, a fine has to be levied where there is a delay of more than four months in presentation of the document for registration after the date of its execution. In the absence of such provision in the system, collection of fine was done manually.

4.2.7 Input controls and validation checks

Absence of input controls and validation checks led to incomplete and invalid data as cited below:

- Boundary details⁵ in 99,119 out of 10.48 lakh cases of the properties, addresses in 20.87 lakh out of 32.20 lakh cases, permanent account number in 2,785 out of 2,785 cases and parent name of the claimants and executants in 18.51 lakh out of 32.20 lakh cases were not captured in the system.
- The dates of registration in 2,730 cases and dates of presentation and execution in 5,885 cases were captured incorrectly.

Registration manual provided for test check and certification of the entries in the Index Registers by the registering officer either annually or whenever there is a change in the incumbent. This secondary level checking is vital for ensuring correctness of the data for issue of encumbrance certificate and archival of the document. However, it was noticed that the prescribed test check was not done by the registering officers in 13 offices.

4.2.8 Security controls

Inadequate security controls built in the system resulted in unauthorised modification of the data and missing receipt numbers as detailed below:

- The system did not have a provision to capture the details of modification of data in between the first creation and the last modification indicating deficient audit trails.
- The system permitted modification of the details of registration by the data entry operator without proper authorisation from the superior officers. It was found that in 78,781 cases the relevant details were modified in the system without proper authorisation.
- Though the department has a password policy, the system did not force change of passwords at regular intervals.
- In the registration offices, receipts are issued for collection of various fees like registration fees, stamp duty, fees for encumbrance certificates etc. An analysis of the database in 13 offices revealed that 24,008 receipt numbers were found missing and the reasons thereon was not available in the system. This indicated that there was no control mechanism to prevent deletion of the receipts or to record the reasons for deletion.

4.2.9 REGiNET Services

The REGiNET service centre was setup in 2002 with the purpose of

- issuing of encumbrance certificate (EC) of any land property and

⁵ Information about the properties surrounding in all four sides of the property registered

- making available the statewide information on guideline values to the public

Under the scheme, the data available in all the computerised registration offices were required to be uploaded daily to the Reginet Centre at Chennai and information about EC of any property could be accessed from this centre. This enabled the citizen to get the EC of any property located anywhere in the State. As on 30 April 2008, the Reginet Centre provided the above mentioned service in respect of documents registered in 5 DR offices covering 50 SR offices.

It was observed from the MIS report generated from the Reginet database on 30 April 2008 that uploads were pending from 36 offices due to technical problems and the latest data was not available in the system. In 2,083 cases, the ECs were found to be issued based on the data which was not updated. Further, it was noticed that for 79,867 documents, certain entries were missing in five offices⁶ which had uploaded the data up-to-date.

The Reginet Centre accepted the problems in uploading the data and put the onus of responsibility of uploading the data on the concerned SR offices. This indicated deficient coordination and control of the Reginet Centre posing the risk of incorrect issue of ECs.

4.2.10 Conclusion

Though the e-services rendered by the Registration Department with regard to storage, retrieval of documents and furnishing of on-line guideline value were achieved to a large extent, the computerised system had deficiencies with respect to system design, input controls, and security controls, which resulted in ineffective management of the system and rendered the information generated unreliable. The Government's failure to monitor implementation of the scheme of interconnecting the registration offices with the taluk offices resulted in non-achievement of the intended objective of transparency and public service. The computerisation programme started a decade ago has not yet been completed, which reflected adhoc planning and implementation of the project.

4.2.11 Summary of recommendations

The Government may take necessary action to

- correct the system deficiencies pointed out by Audit and also ensure correctness of the data entry by enforcing strict input controls and validation checks;
- have inbuilt adequate security controls to prevent unauthorised access to the system; and
- ensure timely uploading of data from all the registration offices to the Reginet centre.

⁶ SRO-Pallavaram, Joint-I Chengelpattu, Sriperumbudur, Triplicane and Joint-I Chennai South.

4.3 Non-realisation of stamp duty due to incorrect exemption

According to the notification dated 29 June 1966, issued under the Co-operative Societies Act, remission of stamp duty chargeable under the Indian Stamp Act is admissible in respect of the instruments executed by a member of a registered co-operative society provided that the executant is a member of such society continuously for a period of not less than two years.

Test check of the records in three sub-registrar (SR) offices between January 2006 and January 2008 revealed that 100 members of four housing societies sold their lands measuring 16.61 lakh sq.ft. to their respective society for a consideration of Rs. 39.14 crore. These instruments were exempted from payment of stamp duty, despite the fact that the executants were not members of the society concerned for a continuous period of not less than two years. This incorrect grant of exemption resulted in non-realisation of stamp duty of Rs. 3.13 crore as mentioned below:

(Rupees in crore)

Sl. No.	Name of the registry	Number of vendors/ Total extent of land conveyed	Month of execution of the documents	Month in which the vendors became the members of the society	Value of the property conveyed	Stamp duty involved
1.	Ambattur	72/2.72 lakh square feet	April and June 2004	June 2003 and March/April 2004	2.64	0.21
2.	Gudu-vancherry	19/10.72 lakh square feet	October 2005 and January 2006	September 2005	16.06	1.28
3.	Kundrathur	9/3.17 lakh square feet	February 2007	November 2006	20.44	1.64
Total		100/16.61 lakh sq.ft.			39.14	3.13

After the cases were pointed out between April 2006 and February 2008, the SRs Ambattur and Kundrathur stated between June 2006 and November 2007 that as the purchaser society was not involved in any construction activity, the minimum period of two years membership in the society specified in the Government order was not applicable and the remission of stamp duty was in order. The reply is not tenable as the second proviso of the notification stipulates that the minimum period of two years is applicable to all the registered societies. The SR Guduvancherry stated in January 2008 that the society concerned would be addressed in this regard. Further report has not been received (November 2008).

The matter was reported to the Government in November 2007 and February 2008; their reply has not been received (November 2008).

4.4 Short levy due to undervaluation of property

According to Article 23 of Schedule I of the Indian Stamp Act, 1899, stamp duty is payable on the market value of the property. According to Section 27 of the Indian Stamp Act, the consideration, market value and all other facts and circumstances affecting chargeability of the instrument with duty shall be fully and truly set forth in the instrument. As per Rule 3 (4) of the Tamil Nadu Stamp (Prevention of undervaluation of instruments) Rules, 1968, the registering officer may also consider the value of the property as per guide lines register for the purpose of verifying the market value.

Test check of the records in three registering offices revealed that there was undervaluation of property and consequent short levy of stamp duty and registration fees of Rs. 6.93 crore as mentioned below:

(Rupees in crore)

Sl. No.	Name of the registering office	No. of sale deeds/ Extent of land conveyed	Month of registration	Nature of audit observation	Amount short levied
1.	Tambaram	5/ 20.65 lakh sq.ft.	March 2006	Five documents were executed for a piece of land measuring 20.65 lakh sq.ft. in March 2006. Out of this, in two documents, 6.42 lakh sq.ft. was valued at the rate of Rs. 285 per sq.ft. while in the remaining three documents, instead of adopting a uniform rate, the land was valued at the rate of Rs. 111 per sq.ft. This resulted in undervaluation of property by Rs. 11.14 crore.	1.00
Remarks: The District Registrar, Chennai South accepted the audit observation in October 2007. However, action taken to recover the amount has not been stated (November 2008).					
2.	Tiruporur	10/ 30.75 acres	Between April 2006 and February 2007	It was noticed that while registering 30.75 acres of land between April 2006 and February 2007 purchased by a company, the SR adopted the rate between Rs. 11 and Rs. 46 per sq.ft. as applicable to the agricultural land for determination of the market value of the land and stamped it accordingly. However, scrutiny of the records revealed that the said land was approved for residential purposes in March 2006 and the market value of the land at the residential rate was Rs. 500 per sq. ft. The application of incorrect rates resulted in undervaluation of property by Rs. 64.16 crore having tax effect of Rs. 5.77 crore.	5.77
Remarks: The Sub Registrar, Tiruporur replied that there was no loss of revenue as the market value of the land had to be valued on the date of deed of conveyance and it did not depend on the future or intended use of the land by the purchaser. The reply of the department is not tenable as the land was approved for residential purposes in March 2006, before registration of the documents in April 2006 and as such the residential rates should have been applied for determination of the market value. Besides, the department had itself valued another piece of land falling within the vicinity of the land at residential rates and hence application of agriculture rate was incorrect.					

3.	Ambattur	1/ 81,457 sq.ft.	May 2005	A piece of land measuring 81,457 sq. ft. located in Survey Number 84, Ayanambakkam Village was conveyed through a sale deed registered in May 2005. The registering officer adopted the value of the land at Rs. 194.40 per sq.ft. as set forth in the document instead of Rs. 400 per sq.ft. fixed earlier by the department in respect of lands in the same area. This resulted in undervaluation of the property by Rs. 1.67 crore and consequent short levy of duty.	0.16
Remarks: After the case was pointed out, the department accepted the audit observation and recovered Rs. 10 lakh instead of Rs. 16 lakh. The department stated that the balance amount had been remitted under the samadhan scheme, though it was not admissible as there was no dispute in paying stamp duty in this case.					
Total					6.93

The matter was reported to the Government in February and March 2008; their reply has not been received (November 2008).

4.5 Short levy due to misclassification

According to Article 45(b) of Schedule I to the Indian Stamp Act, 1899, on an instrument of partition among persons other than family members, stamp duty shall be levied at the rate of four *per cent* of the amount of the value of the separated share or shares of the property.

Test check of the records in the office of the SR, Neelankarai in August 2006 revealed that through a partition deed of an asset of a partnership firm, six plots of land each measuring one acre was partitioned among three partners of the firm. The total value of the six acre plots was Rs. 8.49 crore, out of which, four acres valued at Rs. 5.67 crore were separated through the deed. As the partition was not among the family members, stamp duty of Rs. 28.31 lakh should have been collected. However, only Rs. 36,000 was collected as stamp duty treating the transaction as partition among the family members. This incorrect classification resulted in short levy of stamp duty and registration fees of Rs. 27.95 lakh.

After this was pointed out to the department in November 2006 and to the Government in January 2007, the Government in May 2007 accepted the audit observation and stated that action had been initiated under Section 33A to recover the amount. Further report regarding recovery of the amount has not been received (November 2008).

4.6 Short levy of stamp duty in respect of lease deed

According to Article 35(a)(vii) of Schedule I to the Indian Stamp Act, 1899, with effect from 6 March 2000 to 15 December 2004, in respect of a lease where the rent is fixed and the lease is for a term exceeding 50 years but not exceeding 100 years, stamp duty was leviable on 75 *per cent* of the market value of the concerned property. The rate of stamp duty was seven *per cent*.

Prior to 6 March 2000, for a lease exceeding 30 years but not exceeding 100 years, the stamp duty leviable was on a value equal to four times of the value of the average annual rent.

Test check of the records in the office of the SR, Eraniel in December 2007 revealed that as per the lease deed registered in February 2003, land measuring 10.90 lakh square feet valued at Rs. 2.72 crore was leased for 99 years. Accordingly, stamp duty leviable on the 75 per cent of the market value of the property was Rs. 14.31 lakh. However, only a sum of Rs. 280 was levied and collected as stamp duty, adopting the pre-revised rate which resulted in short levy of stamp duty of Rs. 14.30 lakh.

The Government accepted the audit observation in September 2008. However, it stated that since more than five years had elapsed, the collection had become time barred. It further stated that disciplinary action had been initiated.

4.7 Short collection of registration fees

4.7.1 As per Schedule I to the Indian Stamp Act, 1899, mortgage deed executed by a surety to secure the due performance of a contract is classifiable under Article 57. The registration fee of one per cent is to be levied on the amount secured. Further as per Article 40 of the Act, stamp duty of one per cent subject to a maximum of Rs. 20,000 is leviable in those cases that do not fall under Article 57 of the Act.

Test check of the records in five sub-registries⁷ between September 2007 and February 2008 revealed that nine mortgage deeds and two instruments of agreement were registered between April 2006 and March 2007, for securing repayment of loan of Rs. 384 crore granted by the mortgagees to the borrowers. The recitals of the documents revealed that in the event of default of the borrowers to repay the loan, the mortgagors shall be liable to pay to the mortgagees the loan amount. Therefore, the instruments were required to be treated as security mortgage deeds classifiable under Article 57 and accordingly registration fees of Rs. 3.84 crore should have been collected. However, the concerned registering officers incorrectly classified the instruments under Article 40 and charged registration fees of only Rs. 55,000 (Rs. 5000 each). The misclassification had resulted in short collection of registration fees of Rs. 3.83 crore.

After this was pointed out between September 2007 and February 2008, the department stated that these were mortgage deeds falling under Article 40. The reply is not tenable as the deeds were executed by person(s) other than the borrower for the due performance of the contract and as such they fell under Article 57.

The matter was reported to the Government in February and March 2008; their reply has not been received (November 2008).

⁷ Konnur, Mylapore, Nilankarai, Pallavaram and Tiruporur.

4.7.2 As per proviso to clause “1” of the Table of Fees given under Section 78 of the Registration Act 1908, in cases of agreements to sell property, where possession is handed over or is to be handed over, the fee leviable shall be on the intended sale consideration.

Test check of the records in the office of the SR, Tiruporur in September 2007 revealed that an agreement was executed in October 2006, between the land owner and a developer for transfer and development of land measuring 16.03 acres, as integrated residential-cum-commercial complex. The recitals of the deed stipulated that the developer shall pay an interest free loan of Rs. 10 crore to the owner of the land and paid a stamp duty of Rs. 100 and registration fees of Rs. 10 lakh being one *per cent* of the loan amount. The recital of the deed further revealed that every gross realisation received from disposal of the property shall be distributed in the ratio of 36:64 between the owner and the developer. Thereafter 15 *per cent* of each payment made to the owner shall be transferred to the developer’s account until the loan amount of Rs. 10 crore advanced by the developer is adjusted. Thus, the consideration payable to the owner till repayment of the advance was Rs. 66.67 crore⁸. As such, registration fees of Rs. 66.67 lakh was to be collected as against Rs. 10 lakh collected by the department. The incorrect determination of the intended consideration had resulted in short collection of registration fees of Rs. 56.67 lakh.

The matter was reported to the Government in February 2008; their reply has not been received (November 2008).

4.8 Loss of revenue due to incorrect withdrawal of the documents

As per Section 47A (1) of the Indian Stamp Act, 1899, if the registering officer has reason to believe that the market value of the property conveyed has not been truly set forth in the instrument, he may after registering such instrument refer it to the Collector for determination of the correct market value of the property and the duty payable thereon. There is no provision in the Act for the registering officer to withdraw the reference made under Section 47A (1).

Test check of the records of the office of the SR, Guduvancherry in January 2008 revealed that the registering officer referred two sale documents under Section 47A (1) to the District Revenue Officer (Stamps) in November 2005 for determination of the market value of lands measuring 2.56 lakh square feet on the ground that the value of Rs. 11.76 lakh set forth in the documents was lower than the market value of Rs. 5.89 crore determined by him. However, after 16 months (March 2007) the references were withdrawn by the registering officer, before determination of value of the property by the District Revenue Officer (Stamps) and he returned the documents to the buyer of the property in April 2007 accepting the value originally set forth in the documents. This resulted in loss of revenue of Rs. 51.93 lakh.

⁸ 15 per cent of Owner’s share is equal to Rs.10 crore. Therefore the owners’ share is $100/15 \times \text{Rs.}10 \text{ crore}$ is equal to Rs.66.67 crore.

After this was pointed out by audit in February 2008, the SR, Guduvancherry replied that the documents were withdrawn as per the direction of the Inspector General of Registration. However, no evidence for such direction was produced to audit. Besides, the department's reply was silent about deviation from the provisions of the Act. Further report has not been received (November 2008).

The matter was reported to the Government in April 2008; their reply has not been received (November 2008).

4.9 Delay in referring the document to the Special Deputy Collector (Stamps)

Under the Indian Stamp Act, 1899, if the registering officer has reason to believe that the market value of the property has not been truly set forth in the instrument, he may after registering such instrument, refer it to the Special Deputy Collector (Stamps) for determination of the correct market value of the property and duty payable thereon. In accordance with the instruction issued by the Inspector General of Registration, Chennai from time to time, the undervalued documents were required to be sent to the Special Deputy Collector (Stamps) under Section 47 A (1) within 21 days from the date of registration.

Test check of the records of the office of the SR, Tambaram in January 2008 revealed that lands measuring five acres in Tambaram Village was found undervalued by Rs. 6.63 crore at the time of registration i.e, in February 2007. The deed was required to be referred to the Special Deputy Collector (Stamps) for determination of the true market value of the land within 21 days from the date of registration but, it was not referred. This resulted in short levy of stamp duty and registration fees of Rs. 54.31 lakh

After this was pointed out, the department referred the case to the Special Deputy Collector (Stamps) for determination of the true market value on 24 January 2008. Further action taken has not been intimated (November 2008).

The matter was reported to the Government (May 2008) and the reply has not been received (November 2008).

4.10 Excess allocation of transfer duty surcharge to local bodies

Under the provisions of Tamil Nadu Panchayat Act, 1994, a duty on transfer of property shall be levied in the form of surcharge (transfer duty surcharge) along with stamp duty imposed under the Indian Stamp Act, 1899, on instruments of sale, exchange, gift, etc. of immovable property. The rate of surcharge is two *per cent* of the market value of the property transferred. The surcharge so collected is required to be allocated to the local bodies.

4.10.1 Test check of the records in five registering offices⁹ during the period between August 2007 and February 2008 revealed that for the quarters ending December 2006, March 2007 and June 2007, there was excess allocation of transfer duty surcharge of Rs. 10.95 crore to the local bodies due to clerical error.

After this was pointed out in audit between September 2007 and March 2008, the SRs concerned stated that the excess allocation would be adjusted in the subsequent quarter. Further report has not been received (November 2008).

4.10.2 Similarly, test check of the records in 34 registering offices¹⁰ between December 2006 and February 2008 revealed that in respect of 427 documents, transfer duty surcharge was erroneously calculated or allowed in excess to the local bodies. This resulted in incorrect allocation of Rs. 1.54 crore.

After this was pointed out in audit between January 2007 and March 2008, it was replied by the department that an amount of Rs. 62.78 lakh pertaining to 17 registering offices had been recovered by way of adjustment between March and December 2007 from the subsequent allocation made to the local bodies concerned. Report on recovery/adjustment of the balance amount has not been received (November 2008).

The matter was reported to the Government between November 2007 and April 2008; their reply has not been received (November 2008).

4.11 Short levy of stamp duty and registration fees due to suppression of facts

As per Article 23 of the Schedule I to the Indian Stamp Act, 1899, in the case of conveyance of immovable property, stamp duty is leviable on the market value of the property, which is the subject matter of conveyance. According to Section 27 of the Act, all facts and circumstances affecting chargeability of any instrument with duty shall be fully and truly set forth in the instrument.

As per the Registration Act, 1908, immovable property, *inter-alia*, includes land, buildings and things attached to the earth or permanently fastened to anything which is attached to the earth. Any transfer of rights having money value of Rs. 100 and above in immovable property is compulsorily registerable.

⁹ Marakkanam, Neelangarai, Sular, Thiruvallur and Tiruchirappalli.

¹⁰ Ambattur, Annanagar, DR Arakkonam, Chengleput, DR Chengleput, Cheyyur, Chokkikulam, Coimbatore, DR Coimbatore, Gummidipoondi, Hosur, Katpadi, DR Madurai (S), Manapparai, Padappai, Palayamkottai, Pallavaram, Periamet, Ponneri, Poonamallee, DR Pudukkottai, Sathanur, Salem West, Sembium, Sular, Saidapet, Tambaram, Thirupporur, Thiruthani, Thiruvallur, Thiruvottiyur, DR Trichy, Velur and Woraiyur,

4.11.1 Test check of the records of 12 SR offices¹¹ with the records maintained in the Tamil Nadu Electricity Board between December 2007 and March 2008 revealed that lands on which 75 wind mills were erected were registered between 2005 and 2007 through 23 sale deeds and four lease deeds. The Registering officers while registering the deeds levied duty only on the land and omitted to levy the stamp duty on the wind mills valued at Rs. 144 crore. This resulted in short levy of stamp duty of Rs. 12.96 crore.

After the cases were pointed out in March 2008, it was replied by the concerned sub-registrars that in the sale deeds there was no mention about the wind mills and further stated that the matter would be taken up with the higher authorities for taking further action. Further report has not been received (November 2008).

The matter was reported to the Government in March and April 2008; their reply has not been received (November 2008).

4.11.2 Test check of the records in the office of the Joint III Sub Registry, Town Hall, Trichy in March 2005 revealed that seven persons purchased property from a firm through execution of four sale deeds. The recitals of the deeds revealed that only a piece of land measuring 5,276 sq.ft. was purchased. However, a cross check of the deeds with the deeds executed earlier for the same piece of land revealed that buildings had existed on this piece of land. The parties while executing the deeds had omitted to include the value of the building of Rs. 1.33 crore in the consideration shown in their respective sale deeds. This had resulted in short levy of stamp duty and registration fees of Rs. 18.25 lakh.

After this was pointed out to the department in May 2005 and to the Government in February 2007, the Government accepted (May 2007) the observation and stated that a demand of Rs. 13.45 lakh had been raised towards the deficit stamp duty and registration fees after ascertaining the actual area of building. It was further informed in June 2007 that, since the persons failed to pay the deficit stamp duty and registration fees within the time allowed, action was initiated to collect the amount through legal proceedings under Section 27 and 64 of the Indian Stamp Act. Further report, and reasons for raising lesser demand than pointed out by audit has not been received (November 2008).

¹¹ Alangulam, Dharapuram, Gangaikondan, Kaniyur, Kayathar, Keeranur, Panangudi, Radhapuram, Tenkasi, Thovalai, Udumalpet and Uthumalai

4.12 Incorrect remission of stamp duty

As per Article 63 of Schedule I to the Indian Stamp Act, 1899, in the case of ‘transfer of lease’, by way of assignment, stamp duty is leviable at the rate of six *per cent* on the market value equal to the amount of consideration for the transfer. In the Government order dated September 2003, remission of 50 *per cent* of duty was given in respect of the instruments executed by SIPCOT¹² for sale, lease or lease-cum-sale of the developed industrial plots and sheds.

Test check of 14 lease deeds in the office of the SR, Gummidipoondi in April 2006 revealed that SIPCOT had leased out lands to 14 lessees and stamp duty was levied at concessional rate. The lessees again transferred the lease rights in favour of other persons, firms etc. and requested the SIPCOT to modify the lease deed. The registering officer while registering these modified lease deeds either levied the stamp duty at incorrect rate or allowed remission of stamp duty, which was not admissible. This resulted in short levy of stamp duty of Rs. 90.63 lakh.

After this was pointed out in audit in June 2006, the sub-registrar, Gummidipoondi replied (October 2007 and July 2008) that a sum of Rs. 49.58 lakh had been collected. He further stated that demand had been raised for Rs. 15.07 lakh in respect of three documents. Report on the recovery and reply in respect of the balance cases has not been received (November 2008).

This was reported to the Government in February 2008; their reply has not been received (November 2008).

4.13 Short levy of stamp duty in respect of mining lease deeds

As per the provisions of the Tamil Nadu Minor Mineral Concession Rules, 1959, mining leases are required to be compulsorily registered. As per Article 35 of Schedule I to the Indian Stamp Act, 1899, as amended by Act 31 of 2004, with effect from 16 December 2004, where the period of lease is below 30 years, stamp duty is leviable on the rent, fine, premium or advance, if any, payable for the entire term of lease and the rate of stamp duty is one *per cent*.

4.13.1 Test check of the records in the office of the Assistant Director of Geology and Mining, Perambalur in October 2007 revealed that a mining lease deed for quarrying limestone for 20 years was executed in October 2006 and registered in November 2007. Stamp duty of Rs. 39.48 lakh was leviable on royalty payable on the total planned production of limestone of 81.10 lakh MT, annual compensation, lease rent and surface rent for 20 years. However, only Rs. 31.13 lakh was levied on 68.84 lakh MT for 20 years, taking into account the average production of the first five years. The annual

¹² Small Industries Promotion Corporation of Tamil Nadu.

compensation, lease rent and surface rent payable for only one year was adopted instead of the value for 20 years, which resulted in short levy of stamp duty of Rs. 8.35 lakh.

4.13.2 Test check of the records in the office of the Assistant Director of Geology and Mining, Madurai in November 2007 revealed that a mining lease deed for quarrying granite for 20 years was executed and registered in March 2007. Stamp duty of Rs. 7.56 lakh was leviable on the estimated seigniorage fee of Rs. 7.56 crore for 20 years. However, only Rs. 40,000 was levied taking into account one year's seigniorage fees of Rs. 37.80 lakh, which resulted in short levy of stamp duty of Rs. 7.16 lakh.

The matter was reported to the department in November and December 2007 and to the Government in January 2008; their replies have not been received (November 2008).