

CHAPTER IV

STAMP DUTY AND REGISTRATION FEES

4.1 Results of Audit

Test check of records of departmental offices conducted during the period April 2002 to March 2003 revealed under valuation of property, misclassification of documents etc., amounting to Rs.24.27 crore in 551 cases which broadly fall under the following categories.

(In crore of rupees)

Sl. No.	Categories	No. of Cases	Amount
1	Under valuation of property	110	11.61
2	Misclassification of documents	59	0.90
3	Others	382	11.76
	Total	551	24.27

During the year 2002-2003, the Department accepted under assessments of Rs.86.70 lakh in 58 cases out of which Rs.34.26 lakh involved in 14 cases, were pointed out during the year and the rest in earlier years. An amount of Rs.30.74 lakh has been collected (June 2003).

A few illustrative cases involving a financial effect of Rs.5.49 crore are mentioned below.

4.2 Incorrect exemption of stamp duty

4.2.1 Under the Indian Stamp Act, 1899, Government have remitted in April 1964 levy of stamp duty on instruments evidencing transfer of property between companies limited by shares (as defined in Companies Act, 1956), in cases where the transfer takes place between a parent company and a subsidiary company, one of which is the beneficial owner of not less than 90 per cent of the issued share capital of the other.

In Anaimalai Registry, in a case, where transfer of property valued at Rs.11 crore and Rs.8.5 crore took place between a parent and two of its subsidiary companies, through two documents registered in November and December 2001, no stamp duty was charged on the instruments, even though none of the three companies had beneficial ownership of 90 per cent of the issued share capital of the other. The incorrect grant of exemption resulted in stamp duty amounting to Rs.2.34 crore not being realised.

The Government to whom the case was reported in March 2003, accepted the audit observation in September 2003. Further reply was awaited (October 2003).

4.2.2 Government of Tamil Nadu, by an order issued in June 1966 remitted the stamp duty leviable for all registered co-operative societies in respect of instruments executed by (or) on behalf of any such society (or) by an officer (or) member thereof, having membership of that society for a period of over two years before the date of execution of the instrument.

According to Indian Stamp Act, 1899, for properties conveyed in places other than urban agglomeration of Coimbatore, stamp duty is leviable at 12 per cent.

In 11 sale deeds, registered in Sub-Registry, Sular during the year 2001, an extent of 2,71,532 sq.ft. land in Kannampalayam Village of Coimbatore district, having market value of Rs.96.77 lakh, was conveyed to Singanallur Industrial Co-operative House Construction Society, by a member of the same society and exemption on stamp duty was allowed. However, the by-laws of the society interalia include a condition that a person who is a land owner with a house in his name, is not eligible to become a member of the society. Since the executant owned two houses in Coimbatore city at the time of admission as member into the society, he was not eligible to become a member of the society. Therefore, the exemption of stamp duty allowed to the ineligible member was not in order. This resulted in non-realisation of stamp duty amounting to Rs.11.60 lakh.

On this being pointed out in audit, the Department accepted the point in September 2003 and stated that action would be initiated to collect the amount from the concerned society.

The matter was also reported to the Registrar of Co-operative Societies in October 2002 and to the Government in April 2003 respectively. The Government had accepted the audit observation in September 2003. Further reply was awaited (October 2003).

4.3 Short-levy due to under-valuation of property

4.3.1 Under the provisions of Indian Stamp Act, 1899, the consideration, market value and all other facts and circumstances affecting the chargeability of any instrument with duty, (or) the amount of the duty with which it is chargeable shall be fully and truly set forth therein. If any person, with an intent to defraud the Government, executes any instrument in which all the facts are not fully and truly set forth, he shall be punishable with fine which may extend to five thousand rupees, besides levy and collection of deficit stamp duty. If the Registering Officer has reason to believe that the market value has not been truly set forth, he may refer the document to Special Deputy Collector (SDC) (Stamps) for determination of market value.

In District Registry, Chennai (Central), an extent of 25,710 sq.ft. of undivided share of a site in Anna Salai and V.V.Koil Street, Chennai was conveyed in March 2002 by M/s.Arihant Foundations and Housing Limited to M/s.Sterling Infotech Limited, Chennai, for a consideration of Rs.11 crore. However, it was noticed from the relevant records that the fact of the existence of a multi-storeyed building complex having 90,500 sq.ft. built up area on fourteen floors valued at Rs.15.01 crore in the said lands was suppressed. It was also verified from the balance sheet of M/s. Sterling Infotech Limited, for the year 2000-2001 by audit, that the said building had been included in the fixed assets. Further, the same building was assessed to property tax in the name of M/s. Sterling Infotech Limited in January 2000-2001.

Failure of the Department to follow the provision as envisaged in the Act/Rules and guidelines, resulted in under-valuation of property and short-collection of stamp duty and registration fees of Rs.2.10 crore.

The matter was brought to the notice of the Department in October 2002 and to the Government in May 2003. They accepted the audit observation in September 2003. Further reply was awaited (October 2003).

4.3.2 As per the provisions of Indian Stamp Act, 1899 and Indian Registration Act, 1908, stamp duty and registration fees are leviable on the market value of the property conveyed. Guidelines have been issued by the Department, to enable the Registering Officers to determine the market value of the properties conveyed. If the market value is not truly set forth in the instruments, the Registering Officer, after registering such instruments may refer to the Collector for determination of market value. If the order of the Collector is prejudicial to the interest of revenue, the Inspector General of Registration, as Chief Controlling Revenue Authority (CCRA) may revise, modify or set aside the order and may pass such order thereon as he thinks fit.

In Sub Registry, Villivakkam, an extent of 2,02,740 sq.ft. land in Korattur Village which falls in industrial area, was conveyed in 2001 at Rs.15 per sq.ft as against the guideline rate of Rs.279 per sq.ft. As the market value of the property was not truly set forth, the documents were referred to the SDC (Stamps), Chennai for determination of same. The SDC (Stamps), Chennai had adopted only Rs.41.66 per sq.ft. to the lands conveyed.

On this being pointed out in audit, the Department referred in June 2001 the matter to CCRA for suo motu review. He re-fixed in September 2002 the market value of the property at Rs.100 per sq.ft and directed the Sub-Registrar to collect the deficit stamp duty and registration fees of Rs.16.56 lakh. Report on recovery has not been received (January 2003).

The Government to whom the matter was reported in June 2003, accepted the audit observation and also informed that the party had gone in appeal to the High Court.

In Sub-Registry, Neelangarai, an extent of 50,094 sq.ft. of land was conveyed during the year 2001 through 4 sale deeds. Stamp duty and registration fee were not levied on the market value as per guidelines. Instead, the Registering Officer adopted the value, as set forth in the instrument. This incorrect valuation resulted in short levy of stamp duty and registration fees of Rs.16.25 lakh.

On this being pointed out, the Department accepted the audit observation and stated in July 2002 that action would be initiated by referring the documents to SDC (Stamps). Further report was not received (October 2003).

The matter reported to the Government in May 2003, was accepted in September 2003. Further reply was awaited (October 2003).

In Sub-Registry, Thiruvottiyur, through a lease deed registered in November 2001, 45 acres of land were leased out to M/s.Videocon Power Limited, New Delhi, by Tamil Nadu Electricity Board for 35 years, for generation of electricity. However, for the purpose of levying stamp duty, market value of the property was determined in November 2001, adopting the rate applicable to agricultural land, instead of that applicable to land used for other than agricultural activities. This resulted in undervaluation of property by Rs.1.11 crore and consequent short levy of stamp duty to the tune of Rs.12.28 lakh.

On this being pointed out the Department accepted the objection in September 2002 and stated that action had been initiated to collect deficit stamp duty. Report on recovery was awaited (June 2003).

The matter was reported to the Government in March 2003 and followed up with reminder in August 2003; reply was not received (October 2003).

4.4 Loss of revenue due to incorrect fixation of market value

As per the provisions of Section 47A (as existed prior to 6 March 2000) of the Indian Stamp Act, the orders of SDC (Stamps) in respect of his determination of the market value of a property, may be revised only on an appeal preferred by the concerned party to the Appellate Authority. According to Section 47 A (3) of the Act *ibid*, the SDC(Stamps) may suo-motu determine the market value of the properties conveyed through the documents, which are not already referred to him, within five years from the date of registration of the document.

In the office of the SDC (Stamps), Tuticorin, it was noticed that an extent of 1,128.44 acres of land in four villages of Srivaikundam Taluk was conveyed through 22 documents to M/s Riverway Agro Products (P) Limited, Chennai. These were registered in the office of the District Registrar (Central), Chennai during 1994-95. As the value adopted in these documents was lower than the guideline value, the documents were referred to SDC (Stamps), Tuticorin. The SDC (Stamps), after determining the market value issued demand notices in December 1997 to the party to remit the deficit stamp duty of Rs.39.14 lakh. Since the party did not respond to the demand notices, the demand was stated to have been referred to the revenue authorities for collection under Revenue Recovery Act (February 1998). However, on cross verification of records in Taluk Office, Srivaikundam, it was noticed that no such reference had been made by SDC (Stamps).

Further, the SDC (Stamps), after expiry of five years from the date of registration, made suo-motu revision in November 2001 of the market value of the properties already fixed by him in December 1997. The refixed value was very much lower than the value initially fixed by him, as seen from the fact that the actual deficit stamp duty collected on the basis of the re-fixation, was Rs.4.61 lakh as against the earlier demand of Rs.39.14 lakh.

The incorrect procedure followed by the SDC (Stamps) for suo-motu revision after expiry of five years from the date of registration, that too in respect of the documents already referred to him resulted in loss of revenue by way of stamp duty of Rs.34.53 lakh.

On this being pointed out, the Department stated in September 2003 that the matter was under examination.

The matter was reported to the Government in June 2003 and followed up with reminder in August 2003; their reply was awaited (October 2003).

4.5 Short levy of stamp duty and registration fees

4.5.1 Under the provisions of the Hindu Succession Act, 1956, any property possessed by a female Hindu shall be held by her as a full owner thereof and not as a limited owner. According to Indian Stamp Act, 1899, instrument of partition means any instrument whereby co-owners of any property divide or agree to divide such property in severalty. Thus, the property under the absolute ownership of a female member cannot be divided but could only be settled to other persons.

In Sub-Registry, Mylapore (Chennai), a partition deed in which several properties worth Rs.2.25 crore were divided in August 1999, included two properties valued at Rs.70.03 lakh, which were fully owned by a female member. The said properties were transferred to the sons of the elder brother of her deceased husband, who had no right over the properties. Hence, the said properties could only be settled and could not be partitioned. Misclassification of partition-cum-settlement as partition deed, resulted in short levy of stamp duty and registration fees of Rs.8.55 lakh.

On this being pointed out, the Department directed the District Registrar, Chennai, in June 2002, to recover the deficit stamp duty and registration fees. Report on recovery had not been received (May 2003).

The Government to whom the matter was reported in January 2003 accepted the audit observation in September 2003. Further reply was awaited (October 2003).

4.5.2 In terms of the provisions of Article 55(C) of Indian Stamp Act, 1899, a co-owner may release his right in favour of another co-owner and for such release of immovable property situated within Chennai Metropolitan area, stamp duty is leviable at 13 per cent on the market value of the property.

In 4³² Sub-Registry Offices, during the year 2001-2002, it was noticed that in eight release deeds involving Rs.54.44 lakh, besides adopting incorrect value, stamp duty was charged at 4 per cent, instead of at 13 per cent. This resulted in short levy of stamp duty and registration fees of Rs.5.48 lakh.

On this being pointed, the Department accepted all the cases in September 2003 and stated that an amount of Rs.0.90 lakh had been collected. Report on recovery of balance amount was awaited (October 2003).

The Government to whom the matter was reported between February 2003 and May 2003, and followed up with reminder in August 2003, accepted the audit observation (September 2003).

³² Adayar, Purasawakkam, Sowcarpet and Villivakkam.