

CHAPTER-V: STAMPS AND REGISTRATION FEES

5.1 Results of audit

Test check of the documents registered in the offices of the sub-registrars, conducted during the year 2008-09, disclosed underassessments of stamp duty and registration fees amounting to Rs. 326.53 crore in 44 cases, under the following categories:

(Rupees in crore)			
Sl. No.	Category	Number of cases	Amount
1.	Levy and collection of stamp duty and registration fees (A review)	01	260.76
2.	Loss of stamp duty and registration fee due to suppression of facts	02	63.91
3.	Short levy of stamp duty and registration fee	22	1.57
4.	Short levy due to undervaluation of properties	10	0.13
5.	Other irregularities	09	0.16
Total		44	326.53

During the course of the year 2008-09, the department accepted underassessments of Rs. 22.47 lakh and recovered the entire amount in nine cases including seven cases which were pointed out in the earlier years.

After the issue of a draft paragraph, the department recovered the entire amount of Rs. 9.37 lakh in one case.

A review on **Levy and collection of stamp duty and registration fees** (Rs. 260.76 crore) and few illustrative audit observations involving Rs. 325.83 crore are mentioned in the succeeding paragraphs.

5.2 Review on Levy and collection of Stamp Duty and Registration Fee

Highlights

No rules prescribing the procedures for conducting inspection of public offices were framed. As such, the department was unaware of any leakage/evasion of revenue on instruments presented before the officers in-charge of public offices.

(Paragraph 5.2.8.2)

Absence of a system of co-ordination with various agencies to ensure realisation of proper duty led to non-realisation of revenue of Rs. 215.44 crore.

(Paragraph 5.2.9)

Leakage of revenue due to non-execution of lease deeds subsequent to revision of mining plans in nine cases amounted to Rs. 2.49 crore.

(Paragraph 5.2.10)

Incorrect classification of bonds led to short levy of stamp duty of Rs. 42.65 crore.

(Paragraph 5.2.13.1)

5.2.1 Introduction

Receipts from stamp duty and registration fees in the State are regulated under The Indian Stamp Act (IS Act) 1899, The Registration Act 1908, The Karnataka Stamp Act (KS Act) 1957 and the rules made thereunder¹. Every instrument chargeable with duty shall be stamped before or at the time of execution. Under the KS Act, every person having by law authority to receive evidence and every person in-charge of a public office, before whom any instrument chargeable with duty is produced, in the performance of his functions, shall impound the same if it appears to him that such instrument is not duly stamped. The instrument so impounded shall be sent in original to the District Registrar. The KS Act empowers authorised officers² to enter and inspect any premises (not being a residential premises) and seize documents if they are not duly stamped. If upon such inspection, the officer is of the opinion that the instrument chargeable with duty is not duly stamped, he shall require the person to pay the duty or the amount required to make up the same and also penalty not exceeding five times the amount of deficient duty thereof.

¹ Rates of stamp duty prescribed under IS Act are applicable in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, debentures, proxies and receipts (Items listed under entry 91 of Union list). Rates of stamp duty prescribed under KS Act are applicable in respect of documents other than those specified in entry 91 of Union list (lease, licence, conveyance etc.).

² Deputy Commissioner or an Assistant Commissioner or any officer not below the rank of a Sub-Registrar authorised by the Deputy Commissioner or Chief Controlling Revenue Authority.

5.2.2 Organisational set up

The levy of stamp duty, registration fees, penalty and other dues under the KS Act and Registration Act is administered by Stamps and Registration Department headed by the Inspector General of Registration and Commissioner of Stamps (IGRCS). The Department functions under the administrative control of the Principal Secretary to Government, Revenue Department.

The IGRCS is assisted by three Deputy Inspectors General of Registration (DIGR), three Assistant Inspectors General of Registration, 33 District Registrars (DRs) and 233 Sub-Registrars (SRs). The levy and collection of stamp duty and registration fees on instruments is done by DRs and SRs. Four Regional Commissioners (RC) under the administrative control of the Revenue Department are the appellate authority in respect of orders passed by DR in respect of undervaluation cases referred to DR or suo motu review taken up by DR.

5.2.3 Audit objectives

The review was conducted with a view to examine the:

- efficiency and effectiveness of the system and procedures relating to collection of stamp duty and registration fees;
- extent of compliance with the prescribed rules and procedures; and
- adequacy of internal audit system for timely detection of errors for initiating suitable remedial measures.

5.2.4 Scope and Methodology of audit

The review was conducted by test check of records in IGRCS office, two RC offices³, 13 DR offices⁴ and 26 SR offices⁵ for the period from 2003-04 to 2007-08 covering 36.91 *per cent* of the total revenue realised under the Head of Account '0030 Stamps and Registration Fee'. Selection of the units was based on the revenue realised, volume of transactions, arrears of revenue and potential risks. The review was conducted between October 2008 and May 2009. The documents registered in SR offices and cases of undervaluation and suo motu review in DR offices were selected for scrutiny by adopting systematic random sampling method. Information in respect of instruments which are not compulsorily registerable was obtained from various agencies to verify the proper realisation of stamp duty.

5.2.5 Acknowledgement

Indian Audit and Accounts Department acknowledges the co-operation of the Revenue Department and IGRCS in providing necessary information and

³ Bangalore, Mysore.

⁴ Bangalore (Rural), Basavanagudi, Belgaum, Dharwad, Gandhinagar, Jayanagar, Kolar, Mandya, Mangalore, Mysore, Rajajinagar, Shivajinagar, Tumkur.

⁵ Anekal, Basavanagudi, Belgaum, Devanahalli, Dharwad, Gandhinagar, Gokak, Hubli, Jayanagar, Kengeri, Kolar, Krishnarajapuram, Kunigal, Malur, Mandya, Mangalore City, Mangalore Taluk, Mysore (North), Mysore (South), Nelamangala, Peenya, Rajajinagar, Shivajinagar, Srirangapatna, Tumkur, Yelahanka.

records for audit. An entry conference was held with IGRCS in October 2008 wherein the scope of audit, methodology and audit objectives including sampling were explained to the Department. The draft review report was forwarded to the Government and the Department in May 2009 and was discussed in the exit conference held in July 2009 with the Principal Secretary to Government, Revenue Department and the IGRCS. The replies of the Government received during the exit conference and at other points of time have been appropriately included in the respective paragraphs.

5.2.6 Trend of revenue

The Karnataka Budget Manual stipulates that in the preparation of the budget, the aim is to achieve as close an approximation to the actuals as possible. It is therefore, essential that not merely should all items of revenue and receipts that can be foreseen be provided but also only so much and no more should be provided as is expected to be realised, including past arrears, in the budget year.

The Budget Estimates (BE), actual realisation of revenue, variation in receipts over BE, percentage of variation and percentage of growth over previous years in respect of stamp duty and registration fee for the years 2003-04 to 2007-08 were as under:

(Rupees in crore)				
Year	Budget Estimates (BE)	Actuals	Percentage of variation of actuals over BE	Percentage of growth over previous year
1	2	3	4	5
2003-04	1,354.00	1,355.69	(+) 0.12	(+) 21.55 ⁶
2004-05	1,600.00	1,759.84	(+) 9.99	(+) 29.81
2005-06	2,180.00	2,212.20	(+) 1.48	(+) 25.70
2006-07	2,586.11	3,205.80	(+) 23.96	(+) 44.91
2007-08	4,400.00	3,408.83	(-) 22.53	(+) 6.33

There was an increase in actual realisation of revenue as compared to budget estimates for the years 2003-04 to 2006-07. Department attributed increase in number of transactions of properties for increase in revenue for 2003-04 to 2006-07 and ban on registration of revenue sites for the decrease in revenue realisation during 2007-08. Though files relating to preparation of estimates were called for, the same were not made available to audit.

5.2.7 Arrears of revenue

The Department had prescribed a Management Information System (MIS) (which included a format prescribed to indicate the arrears of revenue) to be sent monthly by each DR to the IGRCS. However, the information when called for from the IGRCS was obtained from the DRs, indicating that the information in MIS was not being consolidated at IGRCS office.

⁶ Revenue realised during the year 2002-03 was Rs.1,115.35 crore.

As per the information furnished by the Department, Rs. 77.65 crore was pending collection as on 31 March 2008.

Audit observed that the closing balances of all years did not tally with the opening balances of the next year. Thus, figures furnished were not reliable and needed reconciliation. After this was brought to notice, the department stated (July 2009) that the figures would be reconciled after obtaining correct closing balance and opening balance of each DR.

Audit findings

System deficiencies

5.2.8 Inspections

5.2.8.1 Inspection of registering offices

There is no separate Internal Audit Wing (IAW) in the department. Karnataka Registration Rules, 1965, provides for inspection of the registering offices by DRs, IGRCS and Inspectors (Headquarters Assistant). Every DR is required to inspect 50 *per cent* of the offices of SRs in his district at least once a year while the Inspectors are required to inspect all the SRs once a year. The IGRCS was also required to inspect at least one SR in each district and fifty *per cent* of the offices of DRs every year.

As per the information furnished, 1,658 units were required to be inspected by DRs and Inspectors during the period 2003-04 to 2007-08 against which only 697 units were covered resulting in shortfall of 961 units as mentioned below:

Year	Number of units to be inspected	Number of units covered in inspection	Shortfall	Percentage
2003-04	316	107	209	66.14
2004-05	331	140	191	57.70
2005-06	331	128	203	61.33
2006-07	331	146	185	55.90
2007-08	349	176	173	49.57
Total	1,658	697	961	57.96

The shortfall in inspection ranged between 49.57 *per cent* and 66.14 *per cent* during the period 2003-04 to 2007-08. The shortfall in inspection was attributed to inadequate staff.

5.2.8.2 Absence of rules for conducting inspection of public offices

As per Section 67 of the KS Act, authorised officers⁷ may require every public officer⁸ for production of the records, registers, books, etc., for inspection

⁷ Any person authorised in writing by the Deputy Commissioners.

⁸ Officer in-charge of an office created by the Constitution of India or by any statute and vested with the power or charged with the duty of acting in execution or in enforcement of law.

which may tend to secure any duty. Further, Section 67-B of the KS Act, empowers authorised officers to enter and inspect any premises (not being a residential premises) and seize documents if they are not duly stamped. If upon such inspection, the officer is of the opinion that the instrument chargeable with duty is not duly stamped, he shall require the person liable to pay the proper duty or the amount required to make up the same and also penalty not exceeding five times the amount of deficient duty thereof.

It was noticed in audit that no rules prescribing the procedures for conducting the inspections had been framed. No inspections were conducted during 2003-04 to 2007-08. As such, the department was not aware of any leakage of revenue due to evasion of stamp duty on instruments not required to be presented for registration.

After this was brought to notice of the department, the IGRCS stated (July 2009) that rules would be framed to enable effective implementation of the provision and to minimise the leakage of revenue towards stamp duty.

5.2.9 Absence of a system of co-ordination with various agencies to ensure realisation of proper duty

Audit noticed that the department had not prescribed any returns to obtain data periodically regarding instruments chargeable with duty and details of duty realised thereon when presented before the officers-in-charge of public offices. There was no co-ordination between Stamps and Registration Department and other departments, local bodies, etc., before whom documents⁹ chargeable with stamp duty were presented. As such, the department could not monitor the realisation of proper stamp duty.

Audit obtained data from various institutions/boards/Government undertakings/Public sector banks which revealed non/short realisation of stamp duty of Rs. 213.14 crore and registration fee of Rs. 2.30 crore during 2003-04 to 2007-08 as mentioned in the succeeding paragraphs.

5.2.9.1 Non-realisation of stamp duty on conveyance relating to industrial machinery

As per article 20(5) of the Schedule to the KS Act, stamp duty at five *per cent* of the market value was leviable on conveyance relating to industrial machinery.

As per the information obtained from the offices of the Commissioners of Central Excise, Bangalore-III Commissionerate and Mysore, nine companies¹⁰ manufacturing industrial machinery had sold industrial machinery valued at Rs. 339.53 crore during the years 2003-04 to 2007-08. The total stamp duty payable amounted to Rs. 16.98 crore which was not realised.

⁹ acknowledgements, amalgamation orders, bonds, certificates of sale, clearance list, conveyance relating to industrial machinery, debentures, leases, licences, share certificates.

¹⁰ M/s Bangalore Integrated Systems, M/s Bharat Fritz Werner, M/s Hightemp Furnaces Limited, M/s HMT (Machine Tools Division) Limited, M/s Naetek Ferrocast Private Limited, M/s Shantala Spherocast Private Limited, M/s Thermit Alloys Private Limited, M/s Triveni Engineering Industries, M/s Vijay Technocrats.

5.2.9.2 Non/short realisation of stamp duty in respect of certificates of shares

As per Article No.16 of the Schedule to the KS Act, stamp duty on certificate or other document evidencing the right or title of the holder thereof to any share in or of any incorporated company or other body corporate or to become proprietor of share in or of any such company or body was leviable at one rupee for every one thousand rupees or part thereof of the value of the share including the amount of premium, if any.

Audit noticed that there was no co-ordination between the department and the Registrar of Companies (RoC)/Securities and Exchange Board of India (SEBI) to obtain information regarding issuing of shares, amount realised or to be realised thereunder on a periodic basis so as to monitor the stamp duty payable thereon.

As per the information obtained from RoC, SEBI and Government undertakings, it was noticed that during the years 2003-04 to 2007-08, 19 Government undertakings¹¹, 23 incorporated companies¹² and two banks¹³ issued 1,12,77,01,840 shares valued at Rs. 14,834.12 crore. The total stamp duty payable on the certificates of shares issued amounted to Rs. 14.83 crore against which Rs. 6 lakh was paid by one bank and Rs. 60,000 was paid by one Government undertaking. This resulted in non/short realisation of stamp duty of Rs. 14.77 crore.

After this was brought to notice, Mangalore Electricity Supply Company Limited, Karnataka Silk Industries Corporation Limited and D. Devaraj Urs Backward Classes Development Corporation remitted the entire duty of Rs. 10.03 lakh, Rs. 4.49 lakh and Rs. 1.30 lakh in March, July and August 2009 respectively. Reply in respect of the other cases has not been received (November 2009).

¹¹ Bangalore Mass Rapid Transit System Limited (now Bangalore Metro Rail Corporation Limited), Bharat Earth Movers Limited, B. R. Ambedkar Development Corporation Limited, Cauvery Neeravari Nigama Limited, D. Devaraj Urs Backward Classes Development Corporation Limited, Gulbarga Electricity Supply Company Limited, Karnataka Fisheries Development Corporation, Karnataka Food and Civil Supplies Corporation Limited, Karnataka Handlooms Development Corporation Limited, Karnataka Land Army Corporation, Karnataka Minorities Development Corporation Limited, Karnataka Neeravari Nigama Limited, Karnataka Road Development Corporation Limited, Karnataka Silk Industries Corporation Limited, Karnataka State Tourism Development Corporation Limited, Karnataka Togari Abhivruddhi Mandalli Limited, Karnataka Women Development Corporation Limited, Krishna Bhagya Jala Nigama Limited, Mangalore Electricity Supply Company Limited.

¹² Advanta India Limited, Bal Pharma, Biocon Limited, Brigade Enterprises Limited, Daksha Info Services Private Limited, Deccan Gold Mines Limited, GMR Infrastructure Limited, Gokaldas Exports Limited, Indus Fila Limited, Khoday's Systems, Manjushree Extrusions Limited, Mindtree Consulting Limited, On Mobile Global Limited, Opto Circuits India Limited, Page Industries Limited, Powersoft Global Solutions Limited, Royal Orchid Hotels Limited, Shree Renuka Sugars Limited, Sobha Developers Private Limited, Tata Coffee Limited, Transworks IT Services (India) Private Limited, United Breweries Limited, Vivimed Labs Limited.

¹³ ING Vysya Bank, Karnataka Bank.

5.2.9.3 Non/short realisation of stamp duty in respect of Bonds

Article 27 of IS Act prescribed levy of stamp duty on debentures being a marketable security¹⁴. According to Section 2(12) of Companies Act, 1956, “debenture” includes bond. As per circular issued by SEBI in September 2003, bonds (debt instruments) are to be listed in stock exchanges. The rate of stamp duty for debenture was seven rupees fifty paise for every rupees 500 or part thereof in excess of rupees 1,000 up to 29 February 2004 and three rupees seventy-five paise for every rupees 500 or part thereof in excess of rupees 1,000 from 1 March 2004.

As per the information obtained from three companies¹⁵, 29,955 bonds were issued during 2003-04 to 2007-08 valued at Rs. 749.55 crore and the stamp duty of Rs. 7.49 crore was realisable from the companies. However, only one company paid only Rs. 2 lakh against Rs. 3.74 crore payable. This has resulted in non/short realisation of stamp duty of Rs. 7.47 crore.

5.2.9.4 Non/short realisation of stamp duty in respect of clearance list

As per Article 18-A of the Schedule to the KS Act, stamp duty in respect of ‘Clearance List’¹⁶ was leviable at one rupee for every ten thousand rupees or part thereof of the value of the security at the time of its purchase or sale, as the case may be.

As per the information obtained from Bombay Stock Exchange (BSE), Mumbai and National Stock Exchange Limited (NSE), Mumbai, 19 trade members¹⁷ having registered offices in Karnataka were registered with them. The total turnover of these trade members relating to trading of marketable securities in BSE and NSE for the years 2003-04 to 2007-08 was Rs. 1,43,537.20 crore and stamp duty payable worked out to Rs. 14.35 crore which was not realised.

Further, it was noticed that 29 trade members had their registered offices outside the State of Karnataka and had 622 branches in Karnataka. The turnover relating to transactions of branches situated in Karnataka could not be ascertained. Hence, the stamp duty realisable could not be computed.

5.2.9.5 Non/short realisation of stamp duty in respect of licences

As per Article 32-A of the Schedule to the KS Act, ‘Licence of immovable or movable property’ granted by owner or authority for rent or fee or by whatever name it is called is liable to duty. The minimum rate of stamp duty on licences was five *per cent* of the fee realised.

¹⁴ Marketable security means a security of such description capable of being sold in any stock exchange in India or the United Kingdom.

¹⁵ Cauvery Neeravari Nigama Limited, Karnataka State Financial Corporation, Karnataka State Industrial Investment and Development Corporation Limited.

¹⁶ A list of transactions relating to contracts either maintained by an association or an individual or required to be submitted to the Clearing House of an association in accordance with the rules or bye-laws of the association and shall include all the transactions pertaining to sale as well as purchase of marketable securities.

¹⁷ Trade member means a member of BSE/NSE who is authorised to do trading activities.

Information obtained from State Excise Department, Transport Department and Bangalore Development Authority (BDA) revealed that they had issued licences for manufacture and sale of liquor, driving licences and licences for occupation of commercial complexes respectively during 2005-06 to 2007-08 and had realised licence fee of Rs. 517.89 crore. The minimum stamp duty realisable thereon was Rs. 25.89 crore against which stamp duty of Rs. 3,550 only was realised in respect of licences issued by BDA. This resulted in non/short realisation of stamp duty of Rs. 25.89 crore.

5.2.9.6 Non/short realisation of stamp duty in respect of leases

Article 30 (1) of the Schedule to the KS Act stipulates levy of stamp duty on 'lease of immovable property' granted by owner or authority for rent or fine or premium or for money advanced or for money advanced in addition to rent or fee or by whatever name it is called. The stamp duty was to be determined considering the average annual rent reserved or lump sum advance paid, if any, and the term for which lease was given. As per the provisions of the KS Act, lease of immovable properties include any instrument by which tolls of any description are let. Under the Registration Act 1908, lease of immovable property for any term exceeding one year is required to be compulsorily registered.

Information obtained from the National Highway Divisions, Karnataka State Industrial Investment and Development Corporation Limited (KSIIDC), Forest Department and Department of Mines and Geology (DMG) revealed non/short realisation of stamp duty of Rs. 17.71 crore and registration fees of Rs. 2.30 crore in respect of 163 lease agreements as mentioned below:

- The National Highways Division, Chitradurga executed a lease agreement in 2007-08 to collect tolls on Hagari Bridge and the consideration of lease amounted to Rs. 1.08 crore. However, the lease agreement was not registered. The stamp duty payable as per KS Act was Rs. 8 lakh against which the agreement was executed on stamp paper of Rs. 100 only. This resulted in short realisation of stamp duty of Rs. 8 lakh and registration fee of Rs. 1 lakh.
- 40 lease documents were executed during the years 2005-06 to 2007-08 by 17 divisions of Forest department for diversion of 2,821.759 hectares of forest land for different periods ranging from 10 to 30 years. Of these, 25 lease documents were registered and the remaining documents were not registered. The net present value¹⁸ of Rs. 209.26 crore was collected from the lessees for grant of lease in all the 40 cases. Stamp duty of Rs. 16.63 crore and registration fee of Rs. 2.13 crore were leviable against which stamp duty of Rs. 41.92 lakh and registration fee of Rs. 66,000 were realised. This resulted in non/short realisation of stamp duty of Rs. 16.21 crore and registration fee of Rs. 2.12 crore due to omission to consider net present value for levy of stamp duty in respect of such leases.

¹⁸ An amount collected at the prescribed rates for diversion of forest land for non-forestry purposes as per the Forest Conservation Act, 1980.

- 30 lease agreements executed during the years 2005-06 to 2007-08 by the KSIIDC for a consideration of Rs. 16.99 crore for occupation of its premises for a period of three years were not registered. The agreements were executed on stamp paper of Rs. 100 each. Stamp duty of Rs. 85 lakh and registration fee of Rs. 17 lakh leviable was not realised.
- 82 lease agreements were executed by the DMG during the years 2006-07 and 2007-08 for a consideration of Rs. 11.43 crore for quarrying ordinary sand for a period of one year. However, the stamp duty realisable amounting to Rs. 57 lakh had not been realised.

5.2.9.7 Non/short realisation of stamp duty in respect of acknowledgements

As per Article 1 of the Schedule to KS Act, stamp duty leviable for 'acknowledgement of a letter, article, document, parcel, package or consignment, of any nature or description whatsoever or by whatever name called, given by a person, courier company, firm, or body of persons whether incorporated or unincorporated to the sender of such letter, article, document, parcel, package or consignment' was Re. 1 for every Rs. 100 or part thereof of the amount charged therefor.

As per the information collected from South-Western Railways and four Commissionerates¹⁹ of service tax (in respect of couriers and goods transport operators by road) for the years 2005-06 to 2007-08, the charges collected by them from the senders for delivery of the parcels, etc., amounted to Rs. 11,597.48 crore²⁰. The acknowledgements issued by them attracted minimum stamp duty of Rs. 115.97 crore which was not realised.

After the above cases involving non/short realisation were brought to the notice of the Department, the IGRCS replied that they had addressed the Government (Revenue Department) to notify the public offices under Section 33 of KS Act and had sought sanction from Government for additional posts of DIGR to man their enforcement cell. It was further stated that the DRs had been directed to conduct inspection in respect of these cases.

5.2.10 Leakage of revenue due to non-execution of lease deeds subsequent to revision of mining plans

Section 27 of the KS Act stipulates that in the case of lease of mines granted by or on behalf of the Government in which royalty is received as rent, it shall, for the purpose of levy of stamp duty, be sufficient to have royalty claimable under such lease estimated by the Deputy Commissioner having regard to all the circumstances of the case. As per the circular of 1990 issued by the Commerce and Industries Department, the DMG computes the estimated

¹⁹ Bangalore, Belgaum, Mangalore, Mysore.

²⁰ The total revenue earnings from parcel/luggage/consignment was furnished by the South Western Railway Zone, Hubli. In respect of couriers and goods transport operators, the total revenue has been computed with reference to the data on service tax paid by them as obtained from the Commissioner of Service Tax, Bangalore and the Chief Commissioner of Central Excise & Service Tax, Mysore.

royalty realisable from a mining lease and indicates the same in the lease deed executed which is considered for levy of stamp duty.

Test check of records of the DMG revealed that nine mining lease agreements were executed between December 2003 and March 2007. Stamp duty of Rs. 1.22 crore and registration fees of Rs. 13 lakh was paid based on the consideration of Rs. 13.57 crore, being the anticipated average annual royalty mentioned in the lease deeds. Thereafter, the mining plan had been revised for enhancing the extraction of ore. The consideration based on the increased anticipated royalty mentioned in revised mining plan amounted to Rs. 43.92 crore. However, revised lease deeds based on the enhanced consideration on account of revision of mining plan were not executed. This resulted in escapement of stamp duty of Rs. 2.19 crore and registration fees of Rs. 30 lakh on the enhanced consideration due to differential royalty.

After this was brought to the notice of the department, the department stated that the DMG had been addressed to execute supplementary lease deed in such cases to enable collection of differential stamp duty and registration fees.

5.2.11 Disposal of cases selected for suo motu review

Section 45(A)(3) of the KS Act provides for DR to suo motu call for the instrument within two years from the date of registration and examine the correctness of the market value of the property and the duty payable thereon. However, no specific time limit has been prescribed in the KS Act for disposal of cases taken up for suo motu review. The KS Act provides for the IGRCS to suo motu call for and examine the records relating to the orders passed by the DRs within five years from the date of order passed by the DR.

It was noticed in audit that IGRCS had not selected any case for suo motu review during 2003-08. No targets were fixed by the IGRCS prescribing the minimum number of cases to be taken up for suo motu review by DR. During 2003-04 to 2007-08, four²¹ out of 33 DRs had not selected any cases for suo motu review.

Test check of the suo motu review cases disposed of during 2003-04 to 2007-08 revealed the following:

- In five DRs²², 27 cases were selected for suo motu review beyond two years from the date of registration which was in contravention to the provisions of the Act. Of these, 19 cases were pending adjudication as of May 2009.
- A considerable delay was noticed in disposal of the cases in 13 DRs. Audit selected 303 cases by systematic random sampling method and noticed that time taken to dispose the cases ranged from 10 days to 176 months from the date of initiation of suo motu proceedings. The age-wise analysis is mentioned below:

²¹ Bellary, Bidar, Gulbarga, Kodagu.

²² Bangalore (Rural), Gandhinagar, Jayanagar, Mandya, Shivajinagar.

Cases disposed of	Number of cases
Within 03 months	93
Between 03 months and 06 months	40
Between 06 months and 01 year	63
Between 01 year and 02 years	66
Between 02 years and 03 years	11
Between 03 years and 05 years	06
Between 05 years and 10 years	01
Beyond 10 years	23

After this was brought to the notice of the department, the IGRCS issued a circular on 30 June 2009 prescribing targets for suo motu review by DRs and also instructed to dispose of cases as far as possible within 90 days from the date of initiation of proceedings. IGRCS further stated that self prescribed targets would be fixed for selection of cases for suo-motu review and the cases disposed of in 2-3 hearings.

5.2.12 Disposal of appeal cases

Under the KS Act, any person aggrieved by an order of the DR can prefer an appeal within two months from the date of communication of order. As per provisions of the Limitation Act, 1963, delay in preferring appeal can be condoned if the appellate authority is satisfied with the cause mentioned for not preferring the appeal within the specified period. Prior to 1 April 2003, the Divisional Commissioners were responsible for disposal of appeal cases. From 1 April 2003 to 4 January 2007, DIGRs were entrusted the work of disposal of appeal cases and from 5 January 2007, the RCs²³ have been again entrusted with the work of disposal of appeal cases. However, no time limit has been fixed for disposal of appeal cases.

5.2.12.1 As per the information furnished by three RC offices²⁴, 862 cases were pending adjudication as on 31 March 2008. Year-wise analysis of the pending cases is given below:

Year	Number of cases pending
1997-98 to 2002-03	274
2003-04	135
2004-05	176
2005-06	123
2006-07	73
2007-08	81

5.2.12.2 Further information furnished by two RCs²⁵ revealed that time taken to dispose of 142 cases ranged from 1 month 27 days to 11 years 6 months. Age-wise analysis is given below:

²³ Divisional Commissioners were re-designated as Regional Commissioners.

²⁴ Bangalore, Belgaum, Gulbarga.

²⁵ Bangalore, Mysore.

Cases disposed of	Number of cases
Within 03 months	06
Between 03 months and 06 months	31
Between 06 months and 01 year	23
Between 01 year and 02 years	22
Between 02 years and 03 years	07
Between 03 years and 05 years	06
Between 05 years and 10 years	44
Beyond 10 years	03

Thus, it would be seen from the above that there has been a considerable delay in disposal of the cases by DIGRs/RCs.

In the absence of a mechanism for early disposal of cases, the revenue significance is adversely affected in those cases in the above RCs.

5.2.12.3 Test check of 142 cases disposed of during 2003-04 to 2007-08 revealed that appeal in respect of 120 cases had been preferred after a delay ranging from 3 days to 11 years after the prescribed period. Of these, in 71 cases, there were no explicit orders for condonation of delay.

After this was brought to the notice of the department, the IGRCS stated that the matter would be taken up with the Government for prescribing time limit for disposal of appeal cases.

Compliance Deficiencies

5.2.13 Assessments

5.2.13.1 Short levy of stamp duty due to misclassification of bonds

Bond comes under the meaning of securities as per Section 2(16-A) of IS Act, read with Section 2(h) of the Securities Control (Regulation) Act, 1956. According to Section 2(12) of Companies Act, 1956, “debenture” includes bonds. As per SEBI’s Circular²⁶, it was mandatory that all bonds shall be issued and traded in demat form and such bonds shall be listed in stock exchanges. Therefore, bonds are capable of being sold in NSE/BSE. A promissory note is an instrument containing an unconditional undertaking to pay a certain sum of money only to the bearer, which does not fall within the definition of securities.

During the course of audit, it was noticed that, seven²⁷ banking companies have issued Bonds in the nature of promissory notes valued at Rs. 11,413.20 crore and paid stamp duty on bonds at the rate applicable to the promissory notes amounting to Rs. 48.49 crore. Audit scrutiny revealed that these bonds were marketable securities and were transferable by endorsement and delivery. Further, they could not be redeemed during their tenure. Therefore, they had essential features of debentures and stamp duty of Rs. 91.14 crore should have been levied. Thus, the incorrect classification of instrument resulted in short levy of stamp duty amounting to Rs. 42.65 crore.

²⁶ Circular No. SEBI/MRD/SE/AT/36/2003/30/09 dated 30.09.2003.

²⁷ Canara Bank, Corporation Bank, ING Vysya Bank, Karnataka Bank Limited, State Bank of Mysore, Syndicate Bank, Vijaya Bank.

After this was brought to the notice of the department, the IGRCS stated that the matter would be pursued with the banking companies. Further progress in the case has not been intimated (November 2009).

5.2.13.2 Short levy of stamp duty and registration fees due to undervaluation

Under the KS Act, if the registering officer while registering any instrument has reason to believe that the market value of the properties has not been truly set forth, he shall estimate the market value and upon payment of duty on such market value, register the document. Further, market value of properties is determined in accordance with the guidelines published by the Government from time to time for the purpose of levy of stamp duty and registration fee.

In SRs, Peenya and Jayanagar, five documents were registered for a consideration of Rs. 9.21 crore between March 2005 and June 2007, on which stamp duty of Rs. 56.20 lakh and registration fees of Rs. 6.27 lakh were levied. However, as per the guidelines issued by the Government, market value of the properties worked out to Rs. 12.14 crore and stamp duty of Rs. 69.98 lakh and registration fees of Rs. 7.72 lakh were leviable in these cases. Thus, undervaluation of the properties resulted in short levy of stamp duty of Rs. 13.78 lakh and registration fee of Rs. 1.45 lakh.

After this was brought to the notice of the department, the IGRCS directed the concerned DRs to initiate recovery proceedings under the KS Act and Registration Act.

5.2.13.3 Short levy of stamp duty and registration fee

Audit scrutiny of 10 documents registered in three SRs revealed short levy of stamp duty of Rs. 2.07 lakh and registration fee of Rs. 90,000 as detailed below:

(Rupees in lakh)				
Sl. No.	Name of the SR	No. of documents	Short levy	
			Stamp duty	Registration fee
1.	Peenya	01	1.33	0.15
An instrument involving undervaluation of two properties located in the same area were referred to DR, Rajajinagar by SR, Peenya in April 2006. Of these, the value of one property was enhanced while the value of other was omitted to be enhanced. This resulted in short levy of stamp duty of Rs. 1.33 lakh and registration fee of Rs. 15,000.				
2.	Mysore (South)	01	-	0.75
In lease deed registered in January 2007, registration fee of Rs. 75,000 leviable on refundable security deposit of Rs. 75 lakh was not levied.				
3.	Mysore (North)	08	0.74	-
In respect of eight documents relating to 'joint development agreement' and 'general power of attorney for development purposes' registered between April and June 2007, stamp duty was levied at pre-revised rates/incorrect rates, resulting in short levy of stamp duty of Rs. 74,000.				
Total		10	2.07	0.90

After this was brought to the notice of the Department, the IGRCS stated that in respect of Sl.No.1, the case would be taken for up suo-motu review under Section 53-A of KS Act and in respect of other cases, the concerned DRs have been directed to initiate recovery proceedings under Section 46-A of the KS Act.

5.2.14 Other irregularities

5.2.14.1 Remittances

In terms of Karnataka Financial Code, 1958 (KFC), all Government moneys received shall be paid in full without undue delay, in any case, within two days into the Government treasury for being credited to the appropriate head of account. As per KFC, reconciliation of remittance with treasury figures was to be done within one month after the close of the month.

Test check of remittances revealed the following:

- In three²⁸ SRs, in seven cases, delay upto 39 days in remittance of cash involving Rs. 59,000 beyond the prescribed period was noticed.
- In seven²⁹ SRs, there were delays upto 10 days in remittance of demand drafts/pay orders amounting to Rs. 36.02 lakh.
- In 18³⁰ SRs, in 938 cases of remittances into banks involving Rs. 24.32 crore, delay upto 185 days in realisation of money into Government account was noticed.
- In seven³¹ SRs, reconciliation of remittances in respect of 132 months was not done. In SR, Mandya, in respect of 19 months, there was a delay upto 11 months 17 days beyond the prescribed period.

After this was brought to the notice of the Department, the IGRCS stated that necessary remedial measures would be taken up to avoid delay in remittances.

5.2.14.2 Central Valuation Committee

Government in August 2003 formed the Karnataka Stamp (Constitution of Central Valuation Committee (CVC) for estimation, publication and revision of market value guidelines of properties) Rules, 2003. The Sub-committees formed for each district were required to publish the intention of such estimation or revision and after considering all such suggestions and objections received from the public, process the guideline market values. The DR were required to forward the guideline values determined by the sub-committee to the CVC along with his remarks. The CVC was required to take final decision on the estimation of the market value after considering the suggestions made by the sub-committees and Registrars as far as possible and the approved statements were required to be published.

In respect of eight taluks in Mandya district, for the year 2005-06, the revision of guideline values by sub-committee recommended by the DR was sent to the CVC between March 2005 and February 2007. The same were not considered for approval by CVC since the procedure of publishing the intention of such revision in newspapers calling for public opinion/objection before finalisation

²⁸ Hubli, Kunigal, Nelamangala.

²⁹ Anekal, Jayanagar, Yelahanka, Tumkur, Kengeri, Belgaum, Gokak.

³⁰ Anekal, Belgaum, Devanahalli, Gandhinagar, Indiranagar, Jayanagar, Kengeri, Kolar, Malur, Mangalore (City), Mangalore (Taluk), Mysore (North), Mysore (South), Nelamangala, Peenya, Rajajinagar, Srirangapatna, Yelahanka.

³¹ Dharwad, Gandhinagar, K.R. Puram, Mandya, Mysore (South), Rajajinagar, Yelahanka.

had not been adhered to. However, no action was taken by the Department to rectify the procedural lapses and revise and publish the revised guideline values. The guideline market values were next revised and made effective from 1 March 2008, i.e., after a delay of three years. Stamp duty and registration fees were levied as per guideline values published in December 2001 for the period March 2005 to February 2008. Thus, delay in revising guideline market values resulted in foregoing of revenue to the Government.

After this was brought to the notice of the Department, the IGRCS stated that the matter would be examined.

5.2.15 Conclusion

There was no system in the department to obtain data periodically from the Officers in-charge of public offices to ensure realisation of proper duty on instruments presented before them. There was no co-ordination between stamps and registration department and other departments, local bodies, etc., before whom documents liable to stamp duty were presented. As such, the department could not monitor the realisation of proper stamp duty. In the absence of rules prescribing the procedures for conducting inspections of public offices, the department had not conducted any inspections and consequently the department was unaware of any leakage of revenue due to evasion of stamp duty and registration fee on instruments liable to duty.

5.2.16 Recommendations

The Government may consider:

- installing a system in the department for co-ordination with various departments/agencies to monitor realisation of proper stamp duty and registration fee on instruments presented before them.
- framing rules prescribing the procedures for conducting inspections to prevent any leakage of revenue due to evasion of stamp duty on instruments not required to be presented for registration.
- prescribing a mechanism for early disposal of appeal cases.
- setting up of an IAW to ensure timely detection and correction of errors in levy and collection of stamp duty and registration fee.

5.3 Other audit observations

Scrutiny of records relating to levy of stamp duty and registration fee revealed cases of non-detection of suppression of facts and evasion of stamp duty and short levy of stamp duty and registration fees as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on test check carried out in audit. Such omissions on the part of the offices are pointed out each year in audit, not only do the irregularities persist; but these remain undetected till an audit is conducted. There is a need for the Government to improve the internal control system including strengthening of internal audit.

5.4 Non-observance of provisions of the Acts/Rules

The Karnataka Stamp Act, 1957 provides:

- (i) that all facts affecting chargeability to duty are to be mentioned in the instrument and any person who executes any instrument which does not set forth all the facts affecting the amount of duty shall be punishable with a penalty not exceeding five times the deficient duty;*
- (ii) levy of stamp duty and registration fees on documents on the guideline market value published by the department or the consideration stated in the document, whichever is more; and*
- (iii) levy of stamp duty and registration fees on different instruments at rates prescribed in the Schedule to the Act.*

The Sub-Registrars had failed to detect suppression of facts resulting in evasion of stamp duty and had not followed the above provisions in cases as mentioned in paragraphs 5.4.1 to 5.4.5. This resulted in non/short levy of stamp duty and registration fees of Rs. 65.07 crore.

5.4.1 Leakage of stamp duty

As per the KS Act 1957, stamp duty on an agreement of sale is Rs. 100 when possession of the property is not given and same as a conveyance when possession of the property is delivered. As per the explanation to article 5(e) of the Schedule to the KS Act, when reference of a power of attorney (GPA) granted separately by the seller to the purchaser in respect of the property which is the subject matter of the sale agreement is made in the agreement, the possession of the property is deemed to have been given. Stamp duty on a GPA given for development or sale was Rs. 1.50 lakh when the market value of the property exceeded Rs. 10 crore. The consideration and all other facts and circumstances affecting the amount of duty chargeable on an instrument shall be fully and truly set forth therein. Section 61(a) of the KS Act provides that any person, who with intent to defraud the Government, executes any instrument in which all the facts and circumstances required to be set forth are not fully and truly set forth, shall be punishable with fine which may extend to five times the amount of the deficient duty thereof.

5.4.1.1 In SR, Devanahally, a sale agreement and a GPA were executed by two persons on 27 December 2007 in respect of converted land measuring 86 acres 24.50 guntas with a market value of Rs. 116.87 crore. The executants did not mention the fact of execution of GPA in the sale agreement though these were executed on the same day and presented for registration to two different registering authorities in the same office. The two documents were

levied stamp duty of Rs. 100 and Rs. 1.5 lakh treating them as separate instruments of sale agreement without possession and GPA. Stamp duty of Rs. 8.76 crore and registration fee of Rs. 1.17 crore were leviable on this transaction in view of explanation in the schedule. The Department did not detect the suppression of facts by the executants which resulted in loss of revenue to Government. Besides, penalty of Rs. 43.75 crore was leviable for suppression of facts. Further, the said agreement was cancelled vide cancellation deed registered on 27 August 2008 and stamp duty of Rs. 200 levied thereon. As per article 14 of the KS Act, stamp duty leviable on a cancellation deed is the same as the duty levied on the original instrument. Hence, stamp duty leviable on cancellation deed was Rs. 8.76 crore.

5.4.1.2 In SR, Mysore (North), two sale agreements and two GPAs were registered on 25 January 2008. Stamp duty of Rs. 100 each on the sale agreement and GPAs were levied. The purchaser, “an employees’ co-operative society” was the same in both the agreements. The fact of execution of the GPA in favour of the President of the employees co-operative society was not mentioned in both the agreements for sale. The stamp duty and registration fee leviable on these two agreements for sale on the market value of the property of Rs. 3.01 crore was Rs. 22.58 lakh and Rs. 3.01 lakh in view of the explanation in the schedule. Besides, penalty of Rs. 1.13 crore for suppression of facts affecting chargeability to duty at five times the deficit stamp duty was also leviable. The Department did not detect the suppression of facts leading to loss of revenue to Government.

After this was brought to the notice of the Department, the Department reported that the cases had been referred to the concerned DRs to initiate action under section 46A of the Act.

5.4.2 Evasion of stamp duty

Under the KS Act, 1957, stamp duty on various instruments is leviable as per the Schedule to the Act. Section 28 of the KS Act stipulates that the consideration and all other facts and circumstances affecting the chargeability of any instrument with the amount of duty shall be fully and truly set forth in the instrument. Further, under the provisions of the Act, Government constituted committees for estimation of guideline market values of properties and the same were published from time to time for the purpose of levy of stamp duty and registration fee. As per the instructions contained in the guideline market value published in October 2005, agricultural land converted for residential purposes had to be valued at 50 *per cent* more than the value of the agricultural land.

Test check of the records of Sub-Registrar, Peenya in November 2008 revealed that a sale deed conveying 15 acres of agricultural land for a consideration of Rs. 1.50 crore was registered in April 2006. Market value of the property was determined at Rs. 4.05 crore at the rate of Rs. 27 lakh per acre for agricultural land as per guideline value published and stamp duty of Rs. 34.34 lakh and registration fee of Rs. 4.05 lakh were levied. Another sale deed relating to a site formed in the above land was registered in April 2007. Recitals in the second document revealed that the land conveyed in the first document had been converted for non-agricultural purposes (residential) between November 2003 and July 2004. However, the fact of conversion was

concealed in the first sale deed. The value of the converted land conveyed worked out to Rs. 6.07 crore and stamp duty of Rs. 51.48 lakh and registration fee of Rs. 6.07 lakh were leviable. Thus, suppression of facts resulted in short levy of stamp duty of Rs. 17.14 lakh and registration fees of Rs. 2.02 lakh. Besides, maximum penalty of Rs. 85.70 lakh was also leviable for suppression of facts in the instrument.

After the case was brought to the notice of the department, the department reported in June 2009 that action had been initiated under section 46 A of the KS Act and section 80A of the Registration Act, 1908 for recovery of deficient duty and fees respectively.

The matter was reported to the Government in May 2009; their reply has not been received (November 2009).

5.4.3 Short levy of stamp duty and registration fee

Under the KS Act, 1957, stamp duty on instruments is leviable at rates prescribed in the Schedule to the Act. In case of immovable properties, stamp duty is levied on the consideration mentioned in the instrument or the guideline market value published by the Government, whichever is higher.

Test check of the records of two Sub-Registrar's offices between March and October 2008 revealed that the consideration for levy of stamp duty and registration fees was incorrectly computed resulting in short levy of stamp duty of Rs. 7.63 lakh and registration fees of Rs. 90,000 as mentioned below:

Office	Document number/ Date of execution	Market value	Stamp duty			Registration fees		
			Leviable	Levied	Short levy	Leviable	Levied	Short levy
SRO, Jayanagar	3894/07-08 (Exchange deed) 25.01.08	202.39	17.00	10.89	6.11	2.02	1.30	0.72
As per the KS Act, stamp duty in respect of an exchange deed is leviable on the market value of the property of greatest value among the properties exchanged. As per the recitals of an exchange deed registered in January 2008, the area of both the properties (A & B) exchanged was same, that is, 3,240 square feet and were located in the same area. Stamp duty had been accordingly levied on the market value of one of the properties. Audit scrutiny in October 2008 revealed that the extent of property A was 3,564 square feet as per recitals of the document and that of property B was 5,059.80 square feet as per a map appended to the document. Hence, stamp duty and registration fee had to be levied on the market value of property B which was larger. Levy of stamp duty on market value of property for 3,240 square feet resulted in short levy of stamp duty and registration fees.								
SRO, Nelamangala	9593/06-07 (Conveyance) 19.02.07	43.00	3.64	2.12	1.52	0.43	0.25	0.18
The property conveyed was 3 acres and 4 guntas of dry agricultural land in survey numbers 1/2, 1/3 and 113/2. The market value of the property as per the guideline values was Rs. 43 lakh computed at Rs. 15 lakh per acre for survey number 1/2 and 1/3 and Rs. 8 lakh per acre for survey number 113/2. However, stamp duty and registration fees were levied on the consideration of Rs. 25 lakh cited in the instrument resulting in short levy of stamp duty and registration fees.								
Total			20.64	13.01	7.63	2.45	1.55	0.90

After the cases were brought to the notice of the Department, it was reported in June 2009 that action had been initiated in both the cases under section 45(A)(3) of the KS Act and section 80A of the Registration Act for recovery of deficient duty and fees respectively.

The cases were referred to the Government in May 2009; their reply has not been received (November 2009).

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

Under the KS Act, 1957, stamp duty on lease deeds is leviable at prescribed rates on the average annual rent based on the period of lease and consideration for lease.

Test check of the records of Bangalore (Shivajinagar) and Hubli Sub-Registrar's offices between October 2007 and June 2008 revealed that four lease deeds were registered between August 2006 and July 2007. The stamp duty and registration fee leviable in these cases were Rs. 9.03 lakh and Rs. 1.84 lakh respectively. However, due to incorrect computation of consideration, stamp duty of Rs. 3.28 lakh and registration fee of Rs. 82,000 were only levied in these cases. This resulted in short levy of stamp duty of Rs. 5.75 lakh and registration fees of Rs. 1.02 lakh.

After the cases were brought to the notice of the Department, it was reported in June 2009 that stamp duty of Rs. 5.07 lakh and registration fees of Rs. 92,000 had been recovered in respect of three documents and in respect of the remaining one case, action had been initiated under section 46A of the KS Act and section 80A of the Registration Act for recovery of the deficient duty and fees.

The cases were referred to the Government in May 2009; their reply has not been received (November 2009).

5.4.5 Short levy of registration fee

The Registration Act, 1908 prescribes fees in respect of various documents presented for registration. From 1 April 1998, when power of attorney is given to a person other than the father, mother, wife or husband, son or daughter in relation to the executant authorising such person to sell immovable property, registration fee is leviable at one *per cent* of the market value of the property which is the subject-matter of power of attorney.

Test check of the records of six Sub-Registrar's offices³² between July 2007 and April 2008 revealed that 17 documents relating to power of attorney executed between April 2006 and October 2007 were registered levying stamp duty of Rs. 2,000. Audit scrutiny revealed that the power of attorney was given to the brother, that is, a person other than father, mother, wife or husband, son or daughter in relation to the executant authorising such person to sell immovable property and hence was liable to stamp duty at one *per cent* of the market value of the properties mentioned therein. The registration fees leviable on the properties worked out to Rs. 5.08 lakh on the market value of Rs. 5.08 crore. This had resulted in short levy of registration fees of Rs. 5.06 lakh.

After the cases were brought to the notice of the Department, it was reported in June 2009 that Rs. 85,000 had been recovered in four cases by three offices³³.

The cases were referred to the Government in May 2009; their reply has not been received (November 2009).

³² Bangalore (Basavanagudi), Bangalore (Hebbal), Bangalore (South), Bangalore (Srirampuram), Mangalore city and Mangalore taluk.

³³ Bangalore (Hebbal), Bangalore (South), Bangalore (Srirampuram).