

CHAPTER-V: STAMP DUTY AND REGISTRATION FEES

5.1 Results of audit

Test check of the records in the registration offices and offices of the Collector of Stamp Duty (Valuation of Property) in the State, conducted in audit during the year 2008-09 disclosed short realisation of stamp duty and registration fees amounting to Rs. 44.39 crore in 285 cases, which broadly fall under the following categories.

(Rupees in crore)			
Sr. no.	Category	No. of cases	Amount
1.	Underassessment of stamp duty on instruments of mortgage deeds	10	6.43
2.	Misclassification of documents	56	3.31
3.	Undervaluation of property	27	0.74
4.	Irregular acceptance of time barred cases postponement of realisation of Government duty	5	0.19
5.	Other irregularities	187	33.72
Total		285	44.39

During the year 2008-09, the department accepted underassessment of Rs. 3.11 crore in 21 cases and recovered Rs. 7.94 lakh in 10 cases including cases pertaining to the earlier years.

A few illustrative audit observations involving Rs. 77.23 crore are mentioned in the following paragraphs.

5.2 Audit observations

Scrutiny of the records of various registration offices and offices of the Collector of Stamp Duty (Valuation of Property) revealed several cases of non-compliance of the provisions of the Registration Act, 1908, the Bombay Stamp Act, 1958, the Bombay Stamp (Determination of Market Value of Property) Rules, 1984 etc., and the Government notifications and other rules as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out in audit. Such omissions on the part of the departmental officers are pointed out in audit each year, however, not only do the irregularities persist; these remain undetected till an audit is conducted in the next year. There is need for the Government to improve the internal control system and internal audit so that such omissions can be detected and prevented in future.

5.3 Non/short levy of stamp duty on notes sent by brokers/agents for purchase or sale of shares and allotment of shares through IPO/FPO

The Bombay Stamp Act, 1958 (as applicable to the state of Gujarat) provides for the levy of stamp duty at the prescribed rates on note or memorandum sent by a broker/agent to his principal intimating the purchase or sale on account of such principal in respect of any share, scrip, stock, bond, debenture stock or other marketable security. Further, the Act also provides for the levy of stamp duty on the letter of allotment or renunciation of shares in any company or certificate or other document evidencing the right or title of the holder to any share, stock or scrip.

Test check of the records of the office of the Superintendent of Stamps, Gandhinagar and Additional Superintendent of Stamps, Gandhinagar in February and April 2009 revealed that in nine cases, though the brokers/agents of shares carried out cash/delivery based transactions and forwarded contracts worth Rs. 2,91,487.08 crore on account of their principals, the departmental officials either did not recover the stamp duty or recovered it at an incorrect rate. Further, in seven cases, the companies registered in Gujarat had raised funds through Initial Public Offer (IPO)/Follow on Public Offer (FPO). These companies neither remitted the consolidated stamp duty payable on the allotment of shares nor did the department raise any demand for the stamp duty. **Audit observed that the department did not have any system to capture such revenue.** This has resulted in non/short levy of stamp duty of Rs. 35.88 crore.

This was brought to the notice of the department and the Government (April 2009); their replies have not been received (November 2009).

The Government may consider taking appropriate measures to prevent leakage of such revenue.

5.4 Short levy of stamp duty on delivery order of imported goods

The Bombay Stamp Act (as applicable to the state of Gujarat) provides for the levy of stamp duty at the prescribed rate on the instruments entitling any person to a delivery of any goods lying in any dock or port, or in any

warehouse in which the goods are stored. The Superintendent of Stamps, Gandhinagar issued instructions in April 2006 to levy stamp duty on gross value of the goods shown in the delivery orders.

During test check of the records of the office of Deputy Collectors, Valuation of Property (VoP), Bhavnagar and Surat II and Additional Superintendent of Stamps, Gandhinagar in February 2008 and February 2009, it was noticed that in 411 cases, the departmental officials did not levy stamp duty on the delivery orders for clearance of the imported goods valued at Rs. 1,454.90 crore from the Ship Breaking Yard, Bhavnagar and Inland Container Depot, Sabarmati, Ahmedabad. Further, in case of 48 delivery orders involving goods valued at Rs. 493.61 crore, the departmental officials levied stamp duty of Rs. 47 lakh instead of Rs. 49 lakh due to non-inclusion of the element of customs duty in the assessable value of the goods delivered which was contrary to the instructions of the Superintendent of Stamps. This resulted in non/short levy of stamp duty amounting to Rs. 9.66 crore.

This was brought to the notice of the department (June 2008 and April 2009) and the Government (April 2009); their replies have not been received (November 2009).

5.5 Short levy of stamp duty and registration fees on instruments comprising several distinct matters

Under the Section 5 of the Bombay Stamp Act (as applicable to the state of Gujarat) any instrument comprising or relating to several distinct matters is chargeable with the aggregate amount of the duties for which such separate instrument would be chargeable under the Act.

During test check of the records of 31 sub-registrar offices⁷⁰ between September 2006 and October 2008, it was noticed that 251 documents comprising several distinct matters of immovable properties valued at Rs. 120.99 crore were charged to stamp duty and registration fees for only one matter/transaction. This resulted in short levy of stamp duty and registration fees of Rs. 8.48 crore as given in the table below.

(Rupees in lakh)					
Sr. no.	Location	No. of documents	Value of property	Short levy	Nature of irregularity
1.	Ahmedabad II, IV, V, Gandhinagar, Junagadh, Kalol, Navsari, Surat I, II, Vadodara I, III, IV	75	6,022.10	530.12	The documents contained two distinct matters (i) deemed conveyance between vendor and developer for entire property and (ii) present conveyance of property by vendor and developer to the ultimate purchaser. Stamp duty and registration fees were not levied on the first matter.

⁷⁰ Ahmedabad II, IV, V, Anand, Ankleshwar, Bardoli, Bhavnagar II, Gandhinagar, Junagadh, Jamnagar I, II, Kadi, Kalol, Mahuva, Mangrol, Morbi, Navsari, Pardi, Porbandar, Rajkot I, II, III, IV, Surat I, II, III, Vadodara I, III, IV, Valsad and Veraval.

2.	Ahmedabad II, IV, V, Anand, Ankleshwar, Bardoli, Bhavnagar II, Junagadh, Jamnagar I, II, Kadi, Kalol, Mahuva, Morbi, Pardi, Porbander, Rajkot I, II, III, IV, Surat I, II, Vadodara III, Valsad, Veraval	154	4,455.92	290.79	The documents contained two distinct matters (i) deemed conveyance between mortgagor (the defaulting company) and mortgagee (the bank) and (ii) present conveyance of the property by the Bank through auction to the purchaser. Stamp duty and registration fees were not levied on the first matter.
3.	Ahmedabad V, Mangrol, Morbi, Veraval	14	153.52	9.30	The documents contained two distinct matters (i) execution of power of attorney for consideration and (ii) present conveyance of land. Stamp duty and registration fees were not levied on the first matter.

This was brought to the notice of the department (between March 2007 and January 2009) and the Government (April 2009); their replies have not been received (November 2009).

5.6 Short levy of stamp duty and registration fees due to misclassification of deeds

Under the Section 3 of the Bombay Stamp Act (as applicable to the state of Gujarat), every instrument mentioned in Schedule-I shall be chargeable with duty at the prescribed rates. For the purpose of levy of the stamp duty, an instrument is required to be classified on the basis of its recitals given in the document and not on the basis of its title. Registration fees on such documents are also to be charged *ad valorem* on the amount of the purchase money/loans.

During test check of the records of 33 sub-registrar offices⁷¹ between May 2006 and October 2008, it was noticed that 241 documents registered between 2005 and 2007 were classified on the basis of their titles and the stamp duty and registration fees were levied accordingly. Scrutiny of the recitals of these documents revealed that these were misclassified. This resulted in short levy of stamp duty and registration fees of Rs. 6.22 crore of which important cases are mentioned in the table below.

⁷¹ Ahmedabad II, III, IV, V, VII, Anjar, Bharuch, Bhavnagar I, II, Gandhinagar, Gandhidham, Himatnagar, Jamnagar I, II, Junagadh, Kalol, Mehsana, Morbi, Pardi, Porbander, Rajkot I, II, III, IV, Surat I, III, Talaja, Vadodara I, II, III, IV, Valsad and Veraval.

(Rupees in crore)

Sr. no.	Location	No. of Documents	Consideration/amount of loan	Short levy	Nature of objection
1.	Ahmedabad II, IV, VII, Bharuch, Bhavnagar I, Gandhinagar, Jamnagar I, II, Kalol, Mehsana, Pardi, Surat I, Vadodara I, III, IV	40	43.80	3.08	Recitals, such as handing over the possession, payment of the consideration to the land owners, acceptance of money by the developers from the prospective buyers, payment of all taxes by the developers after execution of the agreement, giving irrevocable power of attorney to the developers <i>etc.</i> clearly indicated conveyance of property, but stamp duty was levied as development agreements.
2.	Ahmedabad IV, V, Anjar, Bhavnagar I, II, Gandhinagar, Rajkot IV, Vadodara I, III, IV.	56	20.05	1.95	Agreements contained recitals such as “possession is being handed over, henceforth all taxes will be borne by the purchasers, seller executed irrevocable power of attorney in favour of purchaser” <i>etc.</i> , but stamp duty was levied as agreement instead of conveyance.
3.	Ahmedabad VII, Morbi, Surat I, III, Rajkot I, II, IV, Vadodara I, III, IV	57	73.62	0.20	Recitals contained conditions such as payment of compound interest, handing over the demand promissory note, power of attorney, fixing of conditions by sanction letter, <i>etc.</i> , clearly indicating creation of charge over properties, but the document was classified as equitable mortgage instead of mortgage.

This was brought to the notice of the department (between May 2006 and June 2008) and the Government (April 2009); their replies have not been received (November 2009).

5.7 Short levy of stamp duty due to undervaluation of properties

Section 32A of the Bombay Stamp Act (as applicable to the state of Gujarat) provides that if the officer registering the instrument has reasons to believe that the consideration set forth in the document presented for registration is not as per the market value of the property, he shall, before registering the document, refer it to the Collector (VoP) for determining the market value of

the property. The market value of the property is to be determined in accordance with the Bombay Stamp (Determination of Market Value of the Property) Rules, 1984.

During test check of the records of 23 sub-registrar offices and Deputy Collector (VoP), Rajkot between September 2006 and November 2008, it was noticed that the market value of the property was determined incorrectly in 192 documents registered between 2004 and 2007, which resulted in short levy of stamp duty and registration fees of Rs. 4.71 crore as mentioned in the table below.

(Rupees in lakh)

Sr. no.	Location	No. of documents	Short levy	Nature of irregularity
1.	Ahmedabad V, Ankleshwar, Gandhinagar, Kamrej, Jamnagar II, Navsari, Rajkot III, Surat I, IV, Vadodara III, IV and Valsad	88	367.94	The Government has prescribed <i>jantri</i> ⁷² for determining the market value of the land and properties respectively. Instead of adopting the <i>jantri</i> , lesser value of the properties as shown in the document was accepted.
2.	Kalol	3	2.81	While calculating the market value, the rates prescribed in <i>jantri</i> were not adopted.
3.	Bhuj	11	2.10	While calculating the market value, the sub-registrar adopted <i>jantri</i> rate prescribed for agricultural land instead of commercial/residential land.
4.	Anjar, Nakhtrana	28	77.26	While calculating the market value, the sub-registrar adopted the rate of agricultural land instead of industrial land.
5.	Surat III	1	0.46	While calculating the market value, premium paid has not been taken into consideration for market value.
6.	Vadodara III	1	5.91	While calculating the market value, the sub-registrar excluded the value of land for road set back instead of taking value of entire land.

⁷² Statement issued by the Government showing the rates for the purpose of determination of value of land and levy of stamp duty.

7.	DC, (VoP)-I Rajkot	1	0.59	While calculating the market value of flat, the sub-registrar did not include the value of terrace.
8.	Anjar, Botad, Mandvi (Bhuj), Morbi, Rajkot II, III, Surat II	57	11.96	While calculating the market value of land, the sub-registrar excluded value of the common plot.
9.	Ahmedabad II	2	1.99	While calculating the market value of the land, the sub-registrar did not consider the value determined by the committee for recovering premium on conversion of land from new tenure to old tenure.
Total		192	471.03	

This was brought to the notice of the department (between March 2007 and January 2009) and the Government (April 2009); their replies have not been received (November 2009).

5.8 Non-levy of stamp duty on instruments of amalgamation of companies

The Bombay Stamp Act (as applicable to the state of Gujarat), provides for the levy of stamp duty at prescribed rate on any instrument which relates to reconstruction or amalgamation of companies by an order of the High Court under the Section 394 of the Companies Act, 1956. The stamp duty is leviable on the market value of the shares or immovable property situated in Gujarat, whichever is higher, on the appointed date mentioned in the scheme of amalgamation and is payable on the next working day of approval of merger/amalgamation by High court. The Companies Act provides that every amalgamation order of the High Court is to be filed with the Registrar of Companies within 30 days for registration of the amalgamated company.

Test check of the records of the Additional Superintendent of Stamps, Gandhinagar in December 2008 revealed that out of 34 cases of amalgamation in 2007-08, in 25 cases, the transferor companies did not pay stamp duty and registration fees on orders issued for reconstruction or amalgamation as these orders were never presented before the Superintendent of Stamps for adjudication. **Audit observed that the department did not have any system for obtaining periodical information of the amalgamation of the companies to capture the revenue.** This resulted in non-levy of stamp duty and registration fees of Rs. 4.52 crore in 18 cases. In the remaining seven cases, non-levy could not be quantified as the details of the consideration paid or market value of the property transferred were not available.

This was brought to the notice of the department and the Government (April 2009); their replies have not been received (November 2009).

The Government may consider instituting a system to obtain periodical information of the amalgamation of companies in the interest of revenue.

5.9 Non-levy of stamp duty on allotment of Government land

As per an amendment to the Bombay Stamp Act in 2002 (as applicable to the state of Gujarat), every instrument executed by or on behalf of the Government is chargeable to stamp duty at the rates specified in the Act. Accordingly, Revenue Department instructed (April 2002) all competent authorities allotting Government land to the State undertakings, corporations, companies, private parties to insert condition of payment of proper stamp duty in allotment letters.

During test check of the records of the offices of the Collectors at Gandhinagar and Jamnagar in April and May 2008, it was noticed that in 24 cases of allotment of Government land measuring 37.08 lakh square meters valuing Rs. 73.23 crore relating to the periods 2005-06 and 2006-07, the condition of payment of the stamp duty was neither inserted in the allotment letters nor in the *Sanads*⁷³. Possession of the land was also handed over without realising proper stamp duty. This resulted in non-levy of stamp duty of Rs. 4.36 crore.

This was brought to the notice of the department (July 2008) and the Government (April 2009); their replies have not been received (November 2009).

5.10 Delay in realisation of stamp duty due to acceptance of time barred appeal applications

Under the Section 32-B of the Bombay Stamp Act (as applicable to the state of Gujarat), any person aggrieved by an order passed by the Collector (VoP) under Section 31 or 32-A determining the market value, may represent his case to the Chief Controlling Revenue Authority (CCRA) through the Collector (VoP), within the prescribed period (60 days upto 10 June 2004 and 90 days there after) from the date of order passed by the Collector (VoP). For this purpose, he has to pay 25 *per cent* of the differential amount of duty assessed by the Collector. The Section 53(1) (a) of the Act further provides that the CCRA shall not entertain an appeal application made by a person unless such an application is presented within the prescribed period. Further, Superintendent of Stamps has issued a circular on 19 June 2004 instructing all the deputy collectors (VoP) not to entertain time barred appeal applications and to recover deficit stamp duty as per their orders as the legal department has opined that deputy collectors (VoP) are not legally empowered to entertain time barred appeal applications and have no authority to condone delay even for sufficient causes.

During test check of the records of seven deputy collectors (VoP)⁷⁴ between September 2006 and May 2008, it was noticed that in 632 cases the aggrieved parties filed appeals after expiry of the prescribed period of 60/90 days. Though applications in 444 cases were time barred, the deputy collectors entertained these applications and referred these documents to the CCRA. Of these, 188 cases were returned by the CCRA with/without assigning

⁷³ *Sanad* is an agreement in prescribed form containing condition and restrictions of usage of land.

⁷⁴ Ahmedabad I, Gandhinagar, Godhra, Jamnagar, Rajkot I, Surat I and Vadodara I.

reasons of being time barred. Acceptance of appeal applications submitted beyond the stipulated time specified in the Act was beyond the powers vested in the deputy collectors under the Act. This resulted in delay in realisation of stamp duty of Rs. 1.54 crore.

After this was reported to the department (between March 2007 and December 2008), the department did not accept the audit observation and stated that the CCRA had returned these time barred appeal cases to the concerned deputy collectors. Instructions had been issued to the deputy collectors to recover the deficit stamp duty, interest and penalty at the prescribed rate and there was no loss of revenue. The report on recovery is awaited (November 2009). However, the fact remains that accepting appeals in time barred cases resulted in delay in realisation of revenue.

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

5.11 Escaping of stamp duty and registration fees due to non-impounding of unregistered/unduly stamped documents

Section 17 of the Registration Act, 1908, provides that registration of every document of sale, mortgage, lease or exchange of property of the value of Rs. 100 or more is compulsory. Further, Section 33 of the Bombay Stamp Act (as applicable to the state of Gujarat) empowers every person in charge of a public office to impound any instrument, produced before him in performance of his functions, if it appears that such instrument is not duly stamped.

5.11.1 During test check of the records of seven offices⁷⁵ of Collector, Deputy Collector, Ahmedabad, *Mamlatdar*, Vadodara and three district development offices⁷⁶ between February and April 2008, it was noticed that in 27 cases, the parties had submitted unregistered/unstamped power of attorneys for grant of permission for non-agricultural use of the land. In four cases, the land was granted on annual rent basis without getting the lease deed registered. In another case, the lease holder was granted permission for non-agricultural use of the land though the lease deed produced as evidence was not duly stamped. In one case, the sale deed produced as evidence was not properly stamped due to non-inclusion of liability passed on to the purchaser in the value of the property. The concerned officers did not impound those documents of properties valued at Rs. 22.77 crore produced by the parties before them and failed to exercise the powers conferred upon them under the Act. This resulted in non-realisation of revenue in the form of stamp duty and registration fees amounting to Rs. 1.57 crore.

After this was brought to the notice of the department (between July and September 2008), the department accepted the audit observation of Rs. 1.84 lakh in 10 cases and recovered an amount of Rs. 91,695 in six cases. Replies in the remaining cases have not been received (November 2009).

The Government may consider issuing instructions to the public officers to be more vigilant to ensure that document produced before them are

⁷⁵ Ahmedabad, Amreli, Bharuch, Mehsana, Navsari, Vadodara and Valsad.
⁷⁶ Mehsana, Narmada and Navsari.

duly stamped and if not, to take prompt action to impound the cases for proper realisation of stamp duty and registration fees.

5.11.2 During test check of the records of nine sub-registrar offices⁷⁷ and Chief Operation Manager, Vadinar, Jamnagar between June 2007 and September 2008, it was noticed that in 63 cases, recitals of the documents indicated the execution of another document, registration of which was compulsory. The executants of those documents did not register their documents with the registering authority. In two cases, the recitals of the documents indicated that the transfer of property on previous occasion was affected without execution of the documents. In one case, the document was executed after six month of the completion of sale of property in auction and taking over possession. **The department did not have a system for detection of such cases.** This resulted in escaping of stamp duty and registration fees of Rs. 1.14 crore.

This was brought to the notice of the department (between December 2007 and January 2009) and the Government (April 2009); their reply has not been received (November 2009).

The Government may consider issuing necessary instructions for in-depth scrutiny of the recitals to arrest cases of evasion of duty.

5.11.3 During test check of the records of three offices of the superintendent of prohibition and excise⁷⁸ between June and September 2008, it was noticed that 13 documents were presented during the period 2003-04 to 2007-08 for obtaining licence. These documents were executed in the presence of the Notary or were self attested. However, these documents were not presented to the sub-registrar for registration. The departmental officials failed to impound the documents. This resulted in non-realisation of stamp duty and registration fees amounting to Rs. 16.70 lakh.

In reply, the Superintendent of Prohibition and Excise stated that the documents pointed out in audit would be sent to the deputy collector (VoP) for taking necessary action.

After the above facts were brought to the notice of the department (between December 2008 and January 2009), the department stated (June 2009) that collection of stamp duty was the responsibility of revenue department and not the Home Department. However, all officers of this department have been instructed to refer the cases to the deputy collector (VoP) for verification of stamp duty liabilities. The reply is not acceptable as the Bombay Stamp Act casts a duty on the public officers to impound the documents not duly stamped and forward it to the proper officer for recovery of appropriate amount of stamp duty.

The above cases reported to the Government (April 2009); their reply has not been received (November 2009).

⁷⁷ Ahmedabad II, V, Gandevi, Jamnagar I, II, Porbander, Rajkot I, IV and Visnagar.
⁷⁸ Ahmedabad, Surat and Vadodara.

5.12 Short levy of stamp duty and registration fees on lease deed due to incorrect computation of annual rent/value

The Bombay Stamp Act (as applicable to the state of Gujarat) provides for levy of the stamp duty on lease at the rate applicable to conveyance deed. For calculating consideration of the lease, amount of average annual rent reserved depending on the period of the lease is to be considered. Further, premium paid or money advanced is also to be added in the consideration.

During test check of the records of 10 sub-registrar offices⁷⁹ between February 2006 and June 2008, it was noticed that in 14 documents of lease deeds, the annual rent reserved was not determined properly for levy of the stamp duty. In one case, security deposit paid by the lessee was not included in annual value. This resulted in short levy of stamp duty and registration fees of Rs. 23.90 lakh.

After this was brought to the notice of the department (between May 2006 and December 2008), the department accepted the audit observation in one case in October 2009 and recovered Rs. 55,163. Reply in the remaining cases has not been received (November 2009).

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

5.13 Short levy of stamp duty and registration fees due to incorrect computation of consideration

The Bombay Stamp Act (as applicable to the state of Gujarat) provides that 'conveyance' includes a conveyance on sale and every instrument by which property, movable or immovable is transferred. Thus, when property is sold or transferred, the total value of such property is to be taken as consideration for the purpose of levy of the stamp duty and registration fees.

During test check of the records of five sub-registrar offices⁸⁰ between May 2007 and July 2008, it was noticed in 31 documents of conveyance deeds executed between January 2005 and August 2007 that the departmental officials either did not consider the value of movable property, passing of liability to purchaser or cost of development charge in computing the value of the property for levy of stamp duty. This resulted in short levy of stamp duty and registration fees of Rs. 20.49 lakh.

This was brought to the notice of the department (between March 2007 and December 2008) and the Government (April 2009); their replies have not been received (November 2009).

5.14 Non-levy of stamp duty on advertisement agreement

The Bombay Stamp Act (as applicable to the state of Gujarat) provides for levy of the stamp duty at the prescribed rates on agreement relating to advertisement on radio, television, cinema, cable network or any media other

⁷⁹ Ahmedabad II, V, Anand, Bardoli, Dhrangadhra, Savli, Surat I, II, IV and Wagra.
⁸⁰ Ahmedabad IV, V, Kalol, Sanand and Rajkot II.

than newspaper, not exceeding Rs. 25,000 upto March 2006 and Rs. 3 lakh thereafter.

Cross check of the information collected from four offices⁸¹ located at Ahmedabad with those of three deputy collectors (VoP)⁸² in February 2009 revealed that the agreements for advertisements of Rs. 33.09 crore were executed with 717 agencies but the stamp duty was not paid on them. **The department did not have a system for detection of such cases.** This resulted in non-levy of stamp duty amounting to Rs. 7.52 lakh.

This was brought to the notice of the department in April 2009 and the Government in April 2009; their replies have not been received (October 2009).

The Government may consider setting up a mechanism for gathering information from these organisations to prevent leakage of revenue.

⁸¹ Municipal Corporation, *Akashwani*, *Doordarshan* and Gujarat State Road Transport Corporation.

⁸² Ahmedabad I, Rajkot I and Surat I.