

Chapter 6

Stamp Duty and Procedural Lapses

Issue regarding short levy of stamp duty on the deeds in respect of sale of sugar mills in the sale process has been discussed in succeeding paragraph.

UPSSCL & UPRCGVNL

Short levy of Stamp Duty due to under valuation of Land

6.1 The Advisor appointed for sale of sugar mills had decided that the average value of Land and Building as per the Valuers consideration should be

As per Section 3 read with Schedule I B (item -23) of the Indian Stamp Act, 1899 stamp duty on a deed of conveyance is chargeable on the market value of the property or on the value of consideration set forth therein, whichever is higher. As per Uttar Pradesh Stamp Rules, 1942 and U.P. Stamp (Valuation of Property) Rules, 1997, market rates of various categories of land situated in a district are to be fixed biennially by the collector concerned for the guidance of the registering authorities in his district. The Government order dated 23 August 2010, specified that on sale of Building, Plant and Machinery of industrial estates stamp duty is payable on valuation or consideration whichever is higher. As per provision of the U.P. Stamp (46 Amendment) Rules, 2002, a certified copy of the decision delivered by the Collector Stamp will be sent to Registering Authority. After consideration of all the facts, if Registering Authority feels that stamp duty was not properly paid, the case should be forwarded to Deputy Inspector General (DIG)/Assistant Inspector General (AIG) (Revenue) after seeking advice from District Government Advocate. DIG/AIG(R), if satisfied with the report of Registering Authority the case will be forwarded to Commissioner Stamp for appeal in CCRA.

discounted by 25 per cent on grounds of restricted land use, large land area, stamp duty to be paid by purchasers etc. This had an adverse impact on the valuation of Expected Price and the final bids received.

Scrutiny of sale deeds of these mills registered in 17 Sub-Registrar³⁸ (SR) offices and one

District Registrar, revealed that the stamp duty payable on valuation of ₹ 1645.87 crore of the sugar mills set forth by the valuers, was ₹ 104.43 crore while actual stamp duty paid was ₹ 27.35 crore, based on consideration of ₹ 440.75 crore. Thus, stamp duty of ₹ 79.57 crore³⁹ was short paid by the purchasers as detailed in *Annexure 22*.

We further noticed that in respect of 11 of these sugar mills⁴⁰ the valuation of land on the basis of market rates circulated by collectors, was short assessed by ₹ 329.43 crore by the valuers themselves. Hence, if the correct value is computed as per the prevailing circle rates, there was a further short payment of ₹ 21.20 crore (*Annexure 23*). The acceptance of under valuation of land by

³⁸ Sub- Registrar Amroha, Bahraich (Kesarganj), Bareilly, Bijnore, Bulandshahar, Chandpur Bijnor, Deoria, Deoria (Baitalpur), Deoria (Salempur), Hardoi (Sahabad), Jaunpur (Shahganj), Kushinagar (Khadda), Kushinagar Sadar, Kushinagar (Chhitauni), Kushinagar Hata (Laxmiganj), Kushinagar Hata (Ramkola), Maharajganj (Ghughali), District Registrar Saharanpur.

³⁹ There was a difference of ₹ 2.49 crore due to payment of stamp duty of ₹ 4.74 crore against payable stamp duty of ₹ 2.25 crore in case of Chandpur Sugar mill.

⁴⁰ Amroha, Bahraich (Kesarganj), Bulandshahar, Meerut (Sardhana), Muzaffarnagar, Barabanki (Nawabganj), Deoria (Baitalpur), Deoria (Salempur), Kushinagar (Chhitauni), Kushinagar Hata (Laxmiganj), Kushinagar Hata (Ramkola).

the registering authorities resulted in total loss of revenue of ₹ 100.77 crore (UPSSCL: ₹ 53.71 crore and UPRCGVNL: ₹ 47.06 crore) to the department.

For the purpose of adjudication as to stamp duty, the Managing Director of UPSSCL/ UPRCGVNL referred (between September 2010 and March 2011) all the cases of sale of sugar mills to Collector/Additional District Magistrate (ADM) (Finance and Revenue) under Section 31 of Indian Stamp Act. In all the cases the final consideration received (bid price after adjustment) was taken as the basis by the collector for determining stamp duty.

We noticed that:

- As per the conditions of the sale agreements, purchasers of the sugar mills were to bear expenditure on stamp duty. As such the Company should not have approached Collector/ADM (Finance and Revenue) for adjudication on stamp duty.
- In eleven ⁴¹ cases the concerned District Magistrates (DM) constituted committees in which Sub Divisional Magistrate (SDM) / Tehsildar/ Assistant Inspector General (AIG) (Stamps and Registration) / SR/ Executive Engineer (EE) PWD/ General Manager District Industries Centre/ District Government Advocate (Civil & Revenue) were members.

The findings of all these committees concluded that for the purpose of assessment of the Stamp Duty, the value of each sugar mill should be the adjusted bid amount (value of bid amount less the adjustments) in respect of Operating sugar mills and the 'bid amount' in respect of closed sugar mills. However, in respect of nine operating sugar mills except Khadda Sugar Mill, assessment of Stamp Duty was made on the adjusted bid amount.

- The recommendations of the above Committees were agreed to by the Collectors (Stamp) in all the cases and accepted the adjusted bid price for the valuation of the mills for the purpose of stamp duty payment.
- The adjudication orders for different mills were issued by the Collectors (Stamp) of the area concerned. However, adjudication orders of the collectors in respect of three sugar mills (Siswa Bazar, Amroha and Bulandsahar), four sugar mills (Laxmiganj, Ramkola, Chittauni and Khadda) and five sugar mills (Baitalpur, Bhatni, Deoria, Shahganj and Ghugli) were identical to each other except for changes in the name of the sugar mills and individual mill specific details. The remaining orders were also clearly on similar lines to the above with minor differences.
- In case of four mills (Nekpur Bareilly, Rohankalan Muzzaffar Nagar and Bijnore) not even the committees were constituted at District Magistrate level. In all these cases the Collectors (stamp) concerned straightaway accepted the mill values as per bid price and opined that if Government decided on a slump sale after inviting bid with proper system, they did not feel the need of any separate valuation at this stage, and adjudicated that the bid amount minus adjustments was the correct valuation.

⁴¹ Shahganj Jaunpur, Nawabganj Barabanki, Betalpur Deoria, Bhatni Deoria, Deoria, Bulandshahar, Amroha JP Nagar, Siswa Khurd Maharajganj, Khadda Padrauna, Jarwal Road Bahraich, Sakauti Tanda Meerut.

Thus, in all the cases the valuation made by the Valuers was not taken into consideration.

We further observed that after receipt of decision of the respective Collectors (Stamp) for valuation of mills at bid price (after adjustments), the concerned Registering Authorities (i.e. Sub-Registrars) did not feel the necessity to refer the issue to DIG/ AIG (Revenue) for their consideration, after obtaining advice of District Government Advocate. Thus, in none of the cases, necessity to file an appeal in CCRA in terms of the provisions of the U.P. Stamp (Amendment) Rules, 2002 was considered. Therefore, acceptance of valuation of mills at adjusted bid price/ bid price by the registering authorities as compared to circle rates, resulted in loss of revenue of ₹ 100.77 crore to the State Exchequer.

The Management of UPSSCL stated (August 2011) that adjusted bid was the sale price/ consideration for the sugar mills and therefore deeds of sugar mills were executed on sale price/ consideration and there was no provision in the Act or Rules which required payment of stamp duty on the basis of circle rate or market rate whichever was higher. It was also stated that the rates fixed under U. P. Stamp (Valuation of Property) Rules, 1997 were only for guidance of sub registrar and in each matter market value and liability of stamp was assessed by the concerned collector under Section 31 of the Act.

We are not in agreement with the reply as the provisions of the Indian Stamp Act, 1899 clearly provided for adopting the Market value of the property or Sale consideration, whichever is higher for charging of stamp duty. Further, the circle rates fixed by the Revenue Authorities are always considered to be a guiding factor for arriving at appropriate market value of property. Moreover issue of identical adjudication orders by the respective Collectors (Stamp) accepting the mill valuation at adjusted bid price/bid price appeared to be uncommon since even the language used was similar.

We are of the view that the Stamp and Registration department takes cognizance of this loss of revenue and goes in for appeal at the appropriate forum.

UPSSCL

Excess Payment to Advisor

6.2 In the first attempt of Disinvestment/sale of sugar mills initiated in June 2007, UPSSCL appointed (August 2007) Ernst & Young as Advisor at the fee of ₹ 4.80 crore (including Success Fee). In the event of transaction being called off by the Government, 'Drop Dead Fee' of ₹ 0.50 crore only was payable to the Advisor.

As per para 4.1 of Chapter-I of Guidelines on Disinvestment fees payable to advisors is generally of two types. The first is 'Success Fee' which is a fixed percentage of the gross proceeds to be received by the Government on disinvestment. The other is 'Drop Dead Fee' which is lump sum amount, payable to the Advisors in the event of transaction being called off by the Government.

The Government called off (14 November 2008) the sale process because of insufficient bid amount. Thus, at that stage only the financial bids were received but the transactions⁴² were not completed. As such the Advisor was eligible for 'Drop Dead Fee' only as per the guidelines.

⁴² Transaction is defined in EOI cum RFQ as "transfer of units of UPSSCL to the purchaser."

We noticed that, instead of paying the 'Drop Dead Fee' of ₹ 0.50 crore, the Advisor were paid success fee of ₹ 1.75 crore. Thus, there was excess payment of ₹ 1.25 crore to the Advisor.

The Management of UPSSCL stated (August 2011) that as per the agreement with the Advisors, Drop Dead Fee was payable when the sale process was cancelled before receipt of financial bid. It would not be out of place to mention that terms and condition of the agreement with the Advisor were in violation of the Guidelines of Disinvestment.

Recovery of Repair and Maintenance cost not provided for

6.3 Annual Repair and Maintenance (ARM) of a sugar mill is done before start of every crushing season (October to March). Therefore, major ARM activities are carried out during off season (April to September) to make the plant operational.

As per the slump sale agreements, sugar mills were to be handed over to the purchasers for repair and maintenance and preparation of mills for crushing activities after initial payment of 25 per cent of sale consideration and furnishing the financial guarantee for balance 75 per cent. The bidders paid initial amount of 25 per cent and submitted financial guarantee of 75 per cent of sale consideration on or before the date of agreements in respect of all 10 operating mills (17 July 2010 in respect of four mills and 4 October 2010 in respect of six mills).

Accordingly, the sugar mills were transferred (July 2010 to October 2010) to purchasers who operated the mills in crushing season October 2010 - March 2011. The UPSSCL incurred expenditure of ₹ 1.45 crore on repairs and maintenance of sugar mills before handing over the same to the purchasers as detailed below:

Name of Unit	Date of handing over of mills to purchaser	Total Expenditure on Repair and Maintenance (₹ in Lakh)
Amroha	17 July 2010	6.41
Bijnore	4 October 2010	38.16
Bulandsahar	4 October 2010	12.73
Chandpur	17 July 2010	22.89
Jarwal Road	17 July 2010	7.45
Khadda	4 October 2010	9.16
Siswa Bazar	17 July 2010	5.06
Rohankalan	4 October 2010	1.93
Saharanpur	4 October 2010	5.00
Sakoti Tanda	4 October 2010	36.45
Total		145.24

We noticed that the UPSSCL did not make any provision in the bidding document and agreement for sale of sugar mills to recover the expenditure on maintenance and repair from the purchasers who were to operate the mills after such maintenance and repair. In the absence of such provision, UPSSCL could not recover the expenditure of ₹ 1.45 crore from the purchasers.

The Management of UPSSCL replied that the sale of sugar mills was to be done on 'on-going' concern basis, mills were sold 'as is where is basis' and mills were to be kept in running condition at the time of sale. It further stated that if the amount was provisioned in the RFP, the bidders would have submitted bids after reducing expenditure on repair and maintenance.

We are not convinced with the reply as the prospective purchasers while submitting financial bids in June 2010 had taken into account the expenditure

on maintenance and repair for next crushing season. This is evident from the fact that Indian Potash Ltd. and Wave Industries Pvt. Ltd (purchasers of nine out of ten mills of UPSSCL) indicated their intention to bear such expenditure; this aspect is clear from the minutes of meeting of CGD held on 28 September 2010.

Conclusion

The acceptance of under-valuation of sugar mills and non-consideration of circle rate for determining the realistic value of land of the sugar mills by the registering authorities resulted in loss of revenue of ₹ 100.77 crore to the Government.

The Advisor engaged in first attempt (June 2007) of Disinvestment/sale of sugar mills was paid excess fee of ₹ 1.25 crore as a result of deviation from the Guidelines of Disinvestment. Further, UPSSCL could not recover expenditure of ₹ 1.45 crore incurred on Repairs and Maintenance of sugar mills from the purchasers, as no condition in this respect was included in the agreement with the purchasers.

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