

CHAPTER-V

EXECUTIVE SUMMARY

Revenue Impact of Audit Reports in respect of Stamp Duty and Registration Fees During the last five years (excluding the current year's report), through the audit reports we had pointed out cases of non/short levy, non/short realisation, underassessment/loss of revenue, application of incorrect rate of stamp duty, incorrect computation etc. with revenue implication of ₹ 524.71 crore in 42 cases. Of these, the Department/Government accepted audit observations in 13 cases involving ₹ 293.27 crore and had recovered ₹ 0.99 crore in seven cases only.

The recovery in accepted cases was very low (0.34 *per cent* of the accepted money value).

Revenue Impact of Audit Reports in respect of Entertainments Tax, Luxury Tax and Electricity Duty During the last five years, in our Audit Reports we had pointed out instances of Entertainments Tax, Luxury Tax and Electricity Duty with revenue implication of ₹ 43.39 crore in 20 paragraphs. Of these, the Department/ Government had accepted audit observations in 14 paragraphs involving ₹ 2.80 crore and had since recovered ₹ 1.36 crore.

The recovery in accepted cases was 48.57 *per cent* of the accepted money value.

Results of audits Test check of records in the offices of the Dy. Collectors of Stamp Duty (SDVO) and Sub-Registrars (SR) in the State and various departmental officers relating to Entertainments tax, Luxury tax and Electricity duty in the State during the year 2011-12 revealed short realisation of stamp duty and registration fees and other irregularities involving ₹ 44.15 crore in 457 cases.

During the course of the year, the Department accepted and recovered under-assessment and other irregularities of ₹ 101.33 lakh in 67 cases, of which eight cases involving ₹ 7.35 lakh were pointed out in audit during the year 2011-12 and the rest in earlier years. An amount of ₹ 72.82 lakh was recovered in 63 cases by the Department in respect of entertainments tax, luxury tax and electricity duty during the year 2011-12.

What we have highlighted in this Chapter

- In the office of the Additional Superintendent of Stamps, Gandhinagar, Collector, Vadodara, DC (SDVO), Valsad and 42 Sub-Registrar offices, incorrect determination of market value of properties in 258 cases resulted in short levy of stamp duty and registration fees of ₹ 11 crore.
- In the office of the Additional Superintendent of Stamps, Gandhinagar and 30 Sub-Registrar offices, in case of 284 documents, the documents were classified on the basis of their titles, which resulted in misclassification of documents and resultant short levy of stamp duty of ₹ 1.74 crore.
- In two Collector offices and Deputy Collector office, Anjar, luxury tax of ₹ 32.27 lakh including interest of ₹ 19.25 lakh was not levied/short levied from 14 hotel owners.

CHAPTER-V
STAMP DUTY AND REGISTRATION FEES,
ENTERTAINMENTS TAX, LUXURY TAX AND
ELECTRICITY DUTY

A. Stamp Duty and Registration Fees

5.1 Tax administration

The overall control on the levy and collection of stamp duty and registration fees rests with the Revenue Department. The Inspector General of Registration (IGR) and Superintendent of Stamps, Gandhinagar is the head of the Department. The IGR is assisted by the Sub-Registrar (at the district and *taluka* level) whereas the Superintendent of Stamps is assisted by the Deputy Collector (Stamp Duty Valuation Office) [DC] at the district level.

5.2 Analysis of budget preparation

The budget estimates are furnished by the IGR and Superintendent of Stamps, Gandhinagar in the prescribed format to the Finance Department. While preparing the budget estimates, the Department considers normal growth of the State economy, revenue of the previous year, inflation/recession factor and number of documents likely to be registered.

5.3 Cost of collection

The gross collection in respect of receipt of stamp duty and registration fees, expenditure incurred on its collection and the percentage of such expenditure to gross collection during the years 2009-10 to 2011-12 along with the relevant all India average percentage of expenditure on collection to gross collection of the preceding years are mentioned below:

(₹ in crore)

Heads of revenue	Year	Collection	Expenditure on collection of revenue	Percentage of expenditure on collection	All India average percentage of cost of collection for the preceding year
Stamp duty and registration fees	2009-10	2,556.72	53.38	2.09	2.77
	2010-11	3,666.24	62.73	1.71	2.47
	2011-12	4,670.27	70.68	1.51	1.60

The cost of collection in respect of stamp duty and registration fees during last three years was lower than the respective preceding years' all India average.

5.4 Impact of Audit Report in respect of Stamp Duty and Registration Fees – Revenue impact

During the last five years (excluding the current year's report), through the audit reports we had pointed out cases of non/short levy, non/short realisation, underassessment/loss of revenue, application of incorrect rate of stamp duty, incorrect computation etc. with revenue implication of ₹ 524.71 crore in 42 cases. Of these, the Department/Government accepted audit observations in 13 cases involving ₹ 293.27 crore and had recovered ₹ 0.99 crore in seven cases only. The details are shown in the following table:

(₹ in crore)

Year of Audit Report	Paragraphs included		Paragraph accepted		Amount recovered	
	Number	Amount	Number	Amount	Number	Amount
2006-07	6	8.66	1	1.83	--	0.05
2007-08	15	148.91	7	9.63	3	0.83
2008-09	12	78.77	2	0.03	2	0.02
2009-10	8	6.64	2	0.05	1	0.04
2010-11	1	281.73	1	281.73	1	0.05
Total	42	524.71	13	293.27	7	0.99

The above table has been prepared taking into consideration the replies of the Department wherein they accepted the audit observations. No replies were received in respect of remaining paragraphs. The above table indicates that recovery in accepted cases was very low (0.34 per cent of the accepted money value).

We recommend that the Government may consider issuing suitable instructions to the Department for taking effective/speedy steps in recovering the amounts, especially in those cases which have been accepted by the Department.

5.5 Impact of Audit Report in respect of Entertainments Tax, Luxury Tax and Electricity Duty – Revenue impact

During the last five years, in our Audit Reports we had pointed out instances of Entertainments Tax, Luxury Tax and Electricity Duty with revenue implication of ₹ 43.39 crore in 20 paragraphs. Of these, the Department/Government had accepted audit observations in 14 paragraphs involving ₹ 2.80 crore and had since recovered ₹ 1.36 crore. The details are shown in the following table:

(₹ in crore)

Year of Audit Report	Paragraphs included		Paragraph accepted		Amount recovered	
	No	Amount	No	Amount	No	Amount
2006-07	1	0.11	1	0.11	1	0.05
2007-08	4	0.87	3	0.15	3	0.05
2008-09	7	24.58	3	0.44	3	0.22
2009-10	2	0.34	2	0.31	2	0.25
2010-11	6	17.49	5	1.79	2	0.79
Total	20	43.39	14	2.80	11	1.36

The above table indicates that recovery in accepted cases was 48.57 per cent of the accepted money value.

5.6 Results of audit

Test check of records in the offices of the Dy. Collectors of Stamp Duty (SDVO) and Sub-Registrars (SR) in the State, and various departmental officers relating to Entertainments tax, Luxury tax and Electricity duty in the State during the year 2011-12 revealed short realisation of stamp duty and registration fees and other irregularities involving ₹ 44.15 crore in 457 cases, which fall under the following categories:

(₹ in crore)

Sl. No.	Category	No. of cases	Amount
A.	Stamp Duty and Registration Fees		
1	Misclassification of documents	56	5.03
2	Undervaluation of property	99	10.95
3	Incorrect grant of exemption	9	0.24
4	Underassessment of stamp duty on instruments of mortgage deeds	21	0.58
5	Short levy of Stamp Duty and Registration Fees	150	24.51
6	Other irregularities	51	2.16
	Total	386	43.47
B.	Entertainments tax, Luxury tax and electricity duty		
	Electricity duty		
1	Non-levy of Electricity Duty	3	0.04
	Total	3	0.04
	Entertainments tax and Luxury tax		
1	Non recovery of Entertainment Tax on service charge, Non/short recovery of Entertainment Tax and interest from cinema houses/cable operators/ video parlours etc.	21	0.26
2	Luxury Tax and interest thereon and Retention of tax collected by hotel owners	47	0.38
	Total	68	0.64
	Grand total	457	44.15

During the course of the year, the Department accepted and recovered under-assessment and other irregularities of ₹ 101.33 lakh in 67 cases, of which eight cases involving ₹ 7.35 lakh were pointed out in audit during the year 2011-12 and the rest in earlier years. An amount of ₹ 72.82 lakh was recovered in 63 cases by the Department in respect of entertainments tax, luxury tax and electricity duty during the year 2011-12.

A few illustrative cases involving ₹ 16.34 crore are mentioned in the succeeding paragraphs.

5.7 Short levy of stamp duty and registration fees due to undervaluation of properties

Section 32 A of the Bombay Stamp (BS) Act, 1958 (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 the same to the Collector for determination of 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, instruction and orders issued thereunder from time to time. As per the guidelines issued for implementation of revised *jantri* rates effective from 1st April 2008, developed land includes land which can be used for non-agriculture purpose, land wherein development can take place or which is capable of being developed e.g. land converted into non-agriculture, land included in development scheme (*vikas yojana*)/Town Planning (TP) scheme, land purchased under Section 63 A and 63 AA of the Bombay Tenancy Act, 1948 and land included in SEZ and IT parks. Where agricultural land is purchased for non-agricultural purposes with the permission of competent authority and total area of such land is more than 10,000 sq. mt., duty at concessional rate i.e. 20 per cent less than the effective rate of the duty is chargeable, if order of competent authority is presented at the time of registration. IGR in his circular 26 November 2007, instructed to all SRs to include area of common plot, internal road etc. in total area of land for arriving at the market value of property for the purpose of levy of stamp duty. As per Article 5(ga) Schedule I of BS Act, if any agreement gives authority or power to a promoter or developer, by whatever name called for construction or development of or sale or transfer (in any manner whatsoever) of any immovable property, stamp duty at the rate of 1 per cent is chargeable.

During test check of documents of Additional Superintendent of Stamps (SS), Gandhinagar, Collector, Vadodara, Deputy Collector (DC), Valsad and 42 Sub-Registrar (SR) offices registered between April 2006 and March 2011, we noticed that the market value of the properties was determined incorrectly in 258 documents, which resulted in short levy of stamp duty and registration fee of ₹ 11 crore as mentioned in the following table.

Sl. No.	Location of the registering authority/ No. of documents Short levy of stamp duty	Nature of irregularity
1.	Gandhidham, Gondal, Kınrej, Navsari, Palanpur, Viramgam 33 ₹ 88.06 lakh	In 33 documents, agricultural land was transferred to non-agriculturists for <i>bonafide</i> industrial purpose under Section 63AA of Bombay Tenancy Act or for other non-agricultural purposes with permission of competent authority. However, Registering Authorities (RA) adopted rates of agricultural land instead of non-agricultural rates for levy of stamp duty. In these cases, properties were registered for a consideration of ₹ 3.86 crore. The market value of the properties was ₹ 19.98 crore. Besides, liability of payment of premium price of the land amounting to ₹ 2.19 crore was passed onto purchasers in seven cases. Thus, these properties were

		required to be registered for a consideration of ₹ 22.17 crore instead of ₹ 3.86 crore resulting in short levy of stamp duty ₹ 88.06 lakh.
2.	Ahmedabad-II (Wadaj), Ahmedabad-VII (Odhav), Anand, Bhuj, Borsad, Gandhidham, Gandhinagar, Godhra, Amnagar-I, Amnagar-II, Mangrol, Olpad, Surat-II (Udhna), Vadodara-II (Danteshwar), Valsad <u>32</u> ₹ 294 lakh	In 32 documents, agricultural lands were transferred to company/businessmen/trust etc. (i.e. non-agriculturists) by way of conveyance/ Power of Attorney (PoA) with possession for various non-agricultural purposes. The lands were transferred to non-agriculturists and the purpose of transfer was also very clear. However, RAs adopted rates of agricultural land instead of developed/ non-agricultural rates for levy of stamp duty. In these cases, properties were registered for a consideration of ₹ 25.63 crore instead of ₹ 87.38 crore. This resulted in short levy of stamp duty of ₹ 2.94 crore.
3.	Ahmedabad-V (Narol), Ahmedabad-VI (Naroda), Ahmedabad-VII (Odhav), Amnagar-I, Amnagar-II, Kurej, Navsari, Rajkot-IV, Surat-I (Athwa) <u>69</u> ₹ 463 lakh	As per guidelines the land situated in town planning is considered to be developed land. The value of the developed land is more than that of agricultural land. In 69 deeds, the land registered was covered under Town Planning (TP) scheme/City Survey. However, while registering the documents the stamp duty was levied at non-agricultural rate. In these cases, properties were registered for a consideration of ₹ 31.69 crore at agricultural rates instead of ₹ 134.95 crore at the developed land rates. This resulted in short levy of stamp duty of ₹ 4.63 crore.
4.	Anjar, Bhuj, Mehsana, Rajkot-IV, Vadodara-III (Akota) <u>27</u> ₹ 16.18 lakh	In 27 documents, while calculating the market value, the SRs excluded the area of common plot and internal road from the total area of properties. In these cases, properties were registered for a consideration of ₹ 6.16 crore. These properties were required to be registered for a consideration of ₹ 10.86 crore. The RAs did not ensure inclusion of area of common plot and internal roads in the total area for the purpose of levy of stamp duty. This resulted in short levy of stamp duty of ₹ 16.18 lakh.
5.	Rajkot-I and Surat-III (Navagam) <u>5</u> ₹ 3.69 lakh	As per the guidelines issued under Annual schedule of Rates 2008 (<i>Jantri</i>) 20 per cent deduction is permissible on the cost of construction of building and not on the cost of land for the purpose of levy of stamp duty. However, deduction was allowed on value of land in five cases. These properties were registered for a consideration of ₹ 2.14 crore instead of ₹ 3.81 crore, resulting in short levy of stamp duty of ₹ 3.69 lakh.
6.	Rajkot-II and Navsari <u>6</u> ₹ 4.61 lakh	The recitals of the six documents revealed that rates of stamp duty were levied incorrectly. The rates of land located in other zones were adopted. These properties were required to be registered for a consideration of ₹ 2.32 crore instead of ₹ 1.24 crore resulting in short levy of stamp duty of ₹ 4.61 lakh.
7.	Collector (NA), Vadodara <u>2</u> ₹ 4.36 lakh	In two cases of allotment of land, though stamp duty was required to be levied as per market value of ₹ 1.68 crore decided by the Collector, but the properties were registered for a consideration of ₹ 79.60 lakh. These properties were required to be registered for a consideration of ₹ 1.68 crore. The RA did not ensure that market value fixed by the Collector is adopted for levy of stamp duty. This resulted in short levy of stamp duty of ₹ 4.36 lakh.

8.	Ahmedabad-I (City) <u>2</u> ₹ 2.94 lakh	As per schedule of rates no depreciation is admissible on the building constructed within two years from its sale and thereafter depreciation depends upon the age of building. However, we noticed that in one case the building was sold within two years from the date of construction but depreciation (29 per cent) was allowed, while in another case RA allowed depreciation for 18 years instead of 11 years. These properties were required to be registered for a consideration of ₹ 2.98 crore instead of ₹ 1.79 crore resulting in short levy of stamp duty of ₹ 2.94 lakh.
9.	Ahmedabad-I, Surat-I (Athwa) and Veraval <u>4</u> ₹ 8.70 lakh	We noticed that in four cases the valuation of property was not done correctly. Of these undivided portion of the property was not included in the consideration, in another value of the land was not added to the building and assignment of leasehold property was undervalued. These properties were registered for a consideration of ₹ 54.94 lakh instead of ₹ 2.33 crore resulting in short levy of stamp duty of ₹ 8.70 lakh.
10.	Anand <u>3</u> ₹ 30.51 lakh	Scrutiny of three documents revealed that the properties were situated in commercial complexes, as such <i>jantri</i> rates of shops were leviable but they were incorrectly registered at lower rates as applicable to offices. These properties were registered for a consideration of ₹ 11.21 crore instead of ₹ 16.81 crore resulting in short levy of stamp duty of ₹ 30.51 lakh.
11.	Ahmedabad-VI (Naroda), Ahmedabad -V (Narol) and Ahmedabad-VII (Odhav), Kdi (Gandhinagar) and Vadodara-IV (Gorva), DC-Valsad and Addl. SS, Gandhinagar <u>8</u> ₹ 31.50 lakh	Scrutiny of eight documents revealed that the amounts aggregating to ₹ 6.89 crore received by confirming parties, premium and compensation, part of market value were not included in the consideration of deeds. In these cases, properties were registered for a consideration of ₹ 9.99 crore instead of ₹ 16.88 crore resulting in short levy of stamp duty of ₹ 31.50 lakh.
12.	Bhuj, Borsad, Deesa, Gandevi, Gandhidham, Gandhinagar, Godhra, Navsari, Porbandar, Vadodara-I (City) and Vadodara-II (Danteshwar) <u>52</u> ₹ 76.07 lakh	Our scrutiny of 52 documents revealed that in 15 cases RA has adopted incorrect rates i.e. of ones other than the one in which property was situated, in 23 cases the rates were incorrectly applied of <i>Jantri</i> , while in 14 cases incorrect rates were applied due to incorrect survey number. These properties were registered for a consideration of ₹ 10.89 crore instead of ₹ 28.09 crore resulting in short levy of stamp duty of ₹ 76.07 lakh.
13.	Ahmedabad-III, Gandhinagar and Kmrej <u>5</u> ₹ 14.10 lakh	Scrutiny of total five documents revealed that, in two cases, land owners had executed development agreements in favour of developers, but <i>jantri</i> rates of developed/non-agricultural lands were not adopted for levy of stamp duty. In two cases, stamp duty was levied on the market value of the property as per <i>jantri</i> and not on the consideration set forth in the development agreement. In one case, land was already converted into non-agricultural land and included in Town Planning scheme, but <i>jantri</i> rates of agriculture land instead of developed land were adopted. In these cases, properties were registered for a consideration of ₹ 12.78 crore instead of ₹ 27.55 crore. The RA did not ensure correct application of rates for valuation of the land. This resulted in short levy of stamp duty of ₹ 14.10 lakh.

14.	Ahmedabad-V, (Narol), Bharuch, Vadodara-II (Danteshwar) 4 ₹ 44.61 lakh	Our scrutiny in four cases revealed that agreement of sale was entered in (August 2007, November 1992 and June 2008), while sale deeds were executed in (July 2009, February 2008 and January 2010), these properties were required to be registered for ₹ 10.17 crore new <i>jantri</i> rates but were incorrectly valued at ₹ 1.06 crore at old <i>jantri</i> rates. This resulted in short levy of stamp duty of ₹ 44.61 lakh.
15.	Savli 1 ₹ 4.14 lakh	In one case, the purchaser (developer) had availed exemption of SD on the instrument of conveyance in respect of land purchased in Industrial Park. The benefit was applicable subject to approval from Government for setting up of Industrial Park. The purchaser had applied for approval from Industrial Commissioner, Gandhinagar and Ministry of Commerce, New Delhi only a day before execution of sale deed. Thus grant of exemption before approvals was obtained from Government was incorrect. This resulted in short levy of stamp duty of ₹ 4.14 lakh.

This was pointed out to the Department between July 2010 and May 2012. The Department had accepted (July 2012) all the audit observations and issued demand notices in all the cases, and recovered (July 2012) ₹ 30.32 lakh in 27 cases. Details of recoveries in remaining cases had not been received (September 2012).

5.8 Undervaluation of properties

Section 31 of the BS Act, 1958 provides that when any instrument, whether executed or not, is brought to the Collector, for his opinion as to the duty with which it is chargeable and pays the required fees, the Collector shall determine the duty with which, in his judgment, the instrument is chargeable. Section 32 A of the BS Act 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 the same to the DC for determination of the market value of the property. After payment of full duty, the Collector shall certify the same by endorsement on such document. Adjudication by the Collector is effective only if he certifies by endorsement on the document the fact of payment of full duty. If no such certificate is recorded, the adjudication is rendered useless in law¹⁰².

Test check of records of DC-II, Surat and eight SR offices¹⁰³ for the year 2009 to 2011 revealed that in 198 cases, market value determined by DC under section 31 was much lower than the market value as per *jantri*, but these cases were not referred to the DC under section 32 A for determination of true market value and certificate of endorsement. This resulted in short levy of stamp duty of ₹ 10.41 crore.

¹⁰² CCRA Vs. Dr. Manjunath Rai, (1976), 2 MLJ279: AIR 1977 M 10 (FB)
¹⁰³ Gondal, Kurej, Morbi, Rajkot-III, Surat-I, II, IV, Vadodara-II

This was pointed out to the Department between July 2010 and May 2012. The Department had referred (July 2012) all the cases to Chief Controlling Revenue Authority (CCRA) for their opinion. Details of recoveries had not been received (July 2012).

5.9 Short levy of stamp duty and registration fees due to misclassification of documents

Under Section 3 of the BS Act, every instrument mentioned in Schedule-I shall be chargeable with duty at the prescribed rates. As per various court judgments, at the time of registration of document, regard should be to the substance of the document and not to the description at the head of the document.

During test check of documents in the office of the Addl. SS, Gandhinagar and 30 SR offices, we noticed that 284 documents registered between 2007 and 2010 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 the documents were misclassified. This resulted in short levy of stamp duty

and registration fees of ₹ 1.74 crore as mentioned in the following table:

(₹ in crore)

Sl. No.	Location of the registering authority	No. of documents Amount of loan	SD&RF leviable	SD & RF levied	Short levy of SD&RF
1	Additional Superintendent of Stamps, Gandhinagar and 27 SRs ¹⁰⁴	269 6,842.40	4.20	2.91	1.29
Nature of observation: As per instructions issued by the IGR in July 1993, if documents styled as deposit of title deed contain recitals such as power of attorney, provision of payment of compound interest, any mention about execution of any writing or document etc. the documents are classifiable as mortgage deed. In these documents, recitals contained conditions such as payment of compound interest, penal interest in case of default, fixing of conditions by sanction letter etc. which clearly indicate creation of charge over properties. These documents were classified as equitable mortgage under Article 6 (1) (a) instead of mortgage under Article 36(b) of Schedule-I of BS Act. Thus, mortgage deed was misclassified as equitable mortgage.					
2	Ahmedabad-I, II, IV, Bhuj, Rajkot-II and Surat-IV	11 6.91	0.38	0.05	0.33
Nature of observation: Recitals of documents indicated that release of rights over properties was by one co-owner in favour of another co-owner. In two cases, stamp duty was chargeable as conveyance but stamp duty was levied at the rate applicable to partition deed. In one case, stamp duty was chargeable as conveyance but stamp duty was levied at the rate applicable to correction deed though the recitals indicated transfer of the properties. In one case, stamp duty was chargeable as conveyance but stamp duty was levied at the rate applicable to confirmation deed. Thus, release/conveyance deeds were misclassified as partition/ correction/confirmation deeds.					

¹⁰⁴ Ahmedabad-I, II, III, IV, V, Anand, Akleshwar, Bhuj, Gandhidham, Gondal, Amnagar-I, II, Kmrj, Mangrol, Porbandar, Rajkot-I, II, III, Surat-I, II, III, IV, Vadodara-I, II, III, IV, Valsad

3	Gandevi	$\frac{1}{0.30}$	0.02	Negligible	0.02
Nature of observation: Recitals reveal that possession of the property was handed over to the purchaser. Thus, conveyance was misclassified as agreement of sale instead of conveyance.					
4	Ahmedabad-III	$\frac{1}{0.46}$	0.03	Negligible	0.03
Nature of observation: Lessor had taken loan from an appointee to whom he was unable to pay back. Therefore, he had appointed the mortgagee as owner of the premise with right to collect rent and appropriate the same towards the loan. Thus, transfer of lease in favour of mortgagee was misclassified as agreement.					
5	Rajkot-I (City)	$\frac{1}{0.52}$	0.03	Negligible	0.03
Nature of observation: The property was transferred/distributed in favour of legal heirs by the owners of the property during their lifetime. Thus, settlement was misclassified as partition. The stamp duty was leviable at the rates applicable for conveyance.					
6	Himatnagar	$\frac{1}{0.66}$	0.04	Negligible	0.04
Nature of observation: Land was gifted to an educational trust. Thus, gift was misclassified as notice of gift instead conveyance deed.					
Total		$\frac{284}{6,851.24}$	4.70	2.96	1.74

After being pointed out by us (September 2010 and May 2012); the Department accepted audit observations and issued demand notices in all the cases and recovered (July 2012) ₹ 3.73 lakh in 4 cases. Details of recoveries in remaining cases had not been received (September 2012).

5.10 Stamp duty and registration fees on release of property by co-owners not levied

As per section 5 of the Bombay Stamp Act (as applicable to Gujarat) any instrument comprising of distinct transactions shall be chargeable with aggregate amount of duties with which separate instruments would be chargeable under the Act.

As per Explanation I under Section 2(g) of the BS Act, an instrument whereby a co-owner of any property, transfers his interest to another co-owner of the property and which is not an instrument of partition, shall be deemed to be an instrument by which property is transferred *inter-vivos* and is chargeable to duty as conveyance.

During test check of documents of seven SR Offices¹⁰⁵ for the period 2009 and 2010, we noticed from recitals of nine documents that there were two distinct transaction, one relating to release of property between co-owners and subsequent sale of property by transferee. While duty was paid on sale it was not paid on release of property by one co-owner in favour of another co-owner. The SRs did

¹⁰⁵ Ahmedabad-II, IV, Rajkot-II, III, Surat-II, Vadodara-II, III

not take cognisance of the recitals of the documents and verify the nature of transaction through the document. Stamp duty and registration fees forgone in these cases were ₹ 39.80 lakh.

After this being pointed out (January and October 2011) by us the Department accepted and issued demand notices (July 2012) in all the cases. Details of recoveries had not been received (September 2012).

5.11 Short levy of stamp duty and registration fees on loans taken from different banks

As per circular issued by the Superintendent of Stamps on 2nd April 2007, documents falling under the category of distinct matters under Section 5 of the BS Act would also include different transactions from different institutions/individuals/companies and if mortgage, conveyance etc. are executed in a single document, then as per Section 5, they are chargeable to duty considering the same as separate document. The rate of stamp duty is twenty five paise for every hundred rupees or part thereof of the amount of loan where the amount of loan does not exceed ₹ 10 crore subject to maximum of ₹ one lakh and fifty paise for every hundred rupees or part thereof of the amount of loan where the amount of loan exceeds ₹ 10 crore subject to maximum of ₹ three lakh.

During test check of documents registered with six SR offices¹⁰⁶ in 2010, it was noticed in 13 cases that loan of ₹ 2,929.09 crore was taken from banks by loanees. Out of these, in 12 cases, loan was taken from different banks and in one case, two loanees had availed loan from one bank. The registering authorities levied stamp duty and registration fees only on the total amount of loan taken from different banks, instead of levying separate stamp duty and

registration fees on loan taken from each bank/loan taken by separate loanees treating this transaction under Section 5. This resulted in short levy of stamp duty and registration fees of ₹ 1.61 crore in 13 cases.

After this being pointed out (July and December 2011) by us the Department issued (July 2012) demand notices in all the cases. However, details of recoveries had not been received (September 2012).

¹⁰⁶ Ahmedabad-II, Anjar, Ankleshwar, Gandhidham, Rajkot-I and Surat-I

5.12 Short levy of stamp duty and registration fees on lease deeds due to incorrect computation

Article 30 of Schedule I to the BS Act provides for levy of stamp duty on lease at the rate applicable to conveyance deed. For calculation of consideration for the purpose of levy of stamp duty on lease deeds, average annual rent reserved depending on the period of lease is to be considered. Further, premium paid or money advanced is also to be added in the consideration.

During test check of the documents of seven¹⁰⁷ SR offices for the period 2009 and 2010, we noticed that out of total 20 cases, in seven lease documents, provision for escalation in rent at the rate of 15 per cent every three years, security deposit and taxes were not taken into consideration for the purpose of levy of duty. In two cases,

security deposit and taxes were not included in average annual rent for levy of duty. In 10 cases, it was clearly mentioned in the terms and conditions that after expiry of lease term, the lease may be extended/ renewed for further periods as may be agreed upon between lessor and lessee, but it was nowhere mentioned that execution of new lease deed would be mandatory. However, periods of extension were not included in period of lease for levy of duty. In one case, one time transfer fees and land revenue were not included in total consideration for levy of registration fees. This resulted in short levy of stamp duty and registration fees of ₹ 16.81 lakh.

After this being pointed out (July 2010 and January 2012) by us the Department had issued (July 2012) demand notices in all the cases. Details of recoveries had not been received (September 2012).

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

As per Section 2(g) of the BS Act, conveyance on sale includes every instrument by which movable/ immovable property is transferred *inter vivos*. Thus, when movable property is sold or transferred, the total value of such property is to be taken for the purpose of levy of the stamp duty and registration fees.

During test check of the records of three¹⁰⁸ SR offices for the period 2009 and 2010, we noticed in three cases that properties were sold through auction by financial institutions to recover their outstanding dues. Recitals of document revealed that consideration of properties (i.e. plant, machinery, etc.) valued at ₹ 3.35 crore was not included in total sale consideration of

properties for the purpose of levy of stamp duty and registration fees. This resulted in short levy of stamp duty and registration fees of ₹ 8.17 lakh.

¹⁰⁷ Ahmedabad-I(City), II (Wadaj) and VII (Odhav), Gandhinagar, Amnagar-I, Mehsana and Surat-I(Athwa)

¹⁰⁸ Kadi, Kol and Narol (Ahmedabad)

After this being pointed out (March and August 2011) by us the Department had issued (July 2012) demand notices in all the cases. Details of recoveries had not been received (September 2012).

5.14 Short levy of stamp duty and registration fees on dissolution of partnership

As per Article 44(3) (a) of Schedule I to the BS Act where any immovable property is taken as share on dissolution of partnership by a partner other than a partner who brought that property as a share or contribution to partnership, stamp duty is chargeable at the rate applicable on a conveyance. As per Article 44 (3) (b), stamp duty payable on dissolution of partnership is ₹ 100.

During test check of records of five¹⁰⁹ SR offices for the period 2008 and 2010, we noticed that the recitals of the six documents indicated that the time of dissolution of partnerships the partners of firms distributed among themselves immovable property purchased by their respective firms, the Department did not levy stamp

duty on the transfer of property by treating these as conveyance deeds. This resulted in non/short levy of stamp duty and registration fees of ₹ 19.04 lakh on consideration of ₹ 3.47 crore.

After this being pointed out to the Department between August 2009 and February 2012, the Department had issued (July 2012) demand notices in all the cases. Details of recoveries had not been received (September 2012).

¹⁰⁹ Amnagar-II, Rajkot-I,III & V and Vadodara-II

5.15 Stamp duty and registration fees not levied due to non-execution of conveyance deeds between owners and developers of properties

Stamp duty chargeable on Development agreement¹¹⁰ is covered under Article 5(ga) and 45(g) of Schedule I of BS Act, 1958. As per Article 5(ga) agreement given to a promoter or developer, by whatever name called for construction or development of or sale or transfer (in any manner whatsoever) of any immovable property, stamp duty at the rate of one rupee for every hundred rupees or part thereof is chargeable on the market value of the property.

In case of development agreement, the owner of the land hands over the land to the developer and the developed property along with the right in land is sold to the buyer. Since the ownership of land is not transferred by the owner to the developer, the developer does not get the right to transfer the land to the buyer. It is necessary that after the development of property is completed, a proper conveyance deed is executed between the owner/s and the developer of property.

During test check of records of 17 SR offices¹¹⁰, we noticed in 35 documents registered during 2004 to 2010 that consideration was already paid/ agreed to be paid by the developer to the land owner before the development of the property. The land owner also empowered the developer to sell the constructed/developed properties, along with the right in land and to receive its consideration. Since the power to sell the land cannot be transferred without the execution of conveyance deed for land, the parties in these development agreements should have executed separate conveyance deeds

conveying the land to the developer. In one of these documents, it was clearly mentioned in the recitals of the agreement that if the vendor fails to execute the sale deed, the developers are at liberty to enforce the agreement and get the sale deed executed. Despite this, the Sub Registrar did not insist on the execution of conveyance deed for land. The Sub Registrars also could not confirm whether separate conveyance deeds were executed by the parties for land or not, in the absence of any system developed for watching registration of conveyance deeds.

Non-insistence of separate conveyance deed by the owners of land in favour of developers in such kind of transactions resulted in transfer of land without payment of proper stamp duty and registration fees. The stamp duty and registration fees foregone on consideration of ₹ 99.94 crore were to the tune of ₹ 4.40 crore in such cases.

This was pointed out to the Department between September 2009 and August 2011. The Department had issued (July 2012) demand notices in all the cases. Details of recoveries had not been received (September 2012).

¹¹⁰ Ahmedabad-II, III, IV, V, VII, Bharuch, Bhavnagar-I, Dehgam, Gandhinagar, Mehsana, Pardi, Rajkot-I, II, IV, Vadodara-III, IV, Surat-I

5.16 Incorrect levy of stamp duty and registration fees on leave and licence agreements

Article 30A of Schedule I of BS Act provides for levy of stamp duty on leave and licence agreements relating to immovable property other than residential property at the rate of fifty paise for every hundred rupees or part thereof on the whole amount payable or deliverable plus the total amount of fine or premium or money advanced or to be advanced irrespective of the period for which such leave and licence agreement is executed.

During test check of documents registered with three SR offices¹¹¹ for the period 2007 to 2009, it was noticed that out of 10 documents registered as leave and licence agreement, in six cases, security deposit and maintenance charges were not included in the total amount payable/deliverable for levy of stamp duty. In one case, security deposit and maintenance charges were not included in the total amount payable/deliverable for levy of registration fees. In six cases, registration fees were levied at incorrect rates. This resulted in short levy of stamp duty and registration fees of ₹ 63.35 lakh in 10 cases.

After this being pointed out the Department between April 2009 and September 2010; the Department had issued (July 2012) demand notices in all the cases. Details of recoveries had not been received (September 2012).

5.17 Registration fees and stamp duty on partnership deeds levied short

As per revised registration fee table, registration fee on partnership deed, partition etc. is leviable on *ad valorem* scale at the rate of 1 per cent on the amount or value of property. As per Section 23 of the Indian Registration Act, documents have to be presented within four months from the date of execution.

As per Article 40 to Schedule I of BS Act, in case of partnership deed, stamp duty is leviable at the rate of one rupee for every hundred rupees or part thereof of the amount of the capital of partnership, subject to maximum of ₹ 10,000.

During test check of documents registered with three SR offices¹¹² for the period 2009 and 2010, it was noticed that in seven documents registered as partnership deed, registration fees were not levied/short levied to the extent of ₹ 10.41 lakh due to adoption of incorrect market value of the property.

In one case, amount paid by a partner to another partner was not included in the deed. In two cases, RA adopted incorrect rate of *Jantri*. In two cases,

¹¹¹ Ahmedabad-IV, V and Vadodara-IV

¹¹² Ahmedabad-II, Gandhinagar and Surat-II

Jantri rates were not applied instead consideration mentioned in the deeds was taken into account for levy of RF.

Besides, in two cases, the amount of stamp duty of ₹ 20,000 was not levied. This resulted in short levy of stamp duty and registration fees of ₹ 10.61 lakh.

This was pointed out to the Department between September 2010 and August 2011. The Department had issued (July 2012) demand notices in all the cases. The Department had accepted and recovered ₹ 2.51 lakh in one case. Details of recoveries in remaining cases had not been received (September 2012).

ENTERTAINMENTS TAX

5.18 Non/short levy of entertainment tax and interest from cable operators

Section 6-B of Gujarat Entertainments Tax Act, 1977, provides that tax is leviable for exhibition of programmes with the aid of antenna or cable television. The tax shall be paid in advance in quarterly instalments.

During test check of the Demand and Collection Register and returns filed by cable operators of four Collector offices¹¹³ relating to the period 2010-11, between May and December 2011, we noticed that 119 cable operators had neither paid the entertainment tax of ₹ 9.03 lakh (including interest of ₹ 0.35 lakh) during 2010-11 nor was it demanded by the Department.

After this being pointed out the Department in January, March and April 2012; the Department accepted (June 2012) a audit observation involving money value of ₹ 7.72 lakh in 111 cases and recovered an amount of ₹ 5.89 lakh in 65 cases. In other cases, particulars of recovery had not been received (September 2012).

LUXURY TAX

5.19 Non/short levy of luxury tax and interest

Section 3(1) of Gujarat Tax on Luxuries (Hotels and Lodging Houses) Act, 1977 as amended in 2006 provides for levy of tax on luxury provided in a hotel in respect of a room under the occupation of a person at the specified rates on the basis of 50 per cent occupancy as per the average declared tariff. If the proprietor failed to pay the tax in time, interest at the rate of 18 per cent per annum for the period of delay is recoverable.

During test check of the Demand and Collection Register and returns filed by hotel owners of two Collector offices¹¹⁴ and Deputy Collector office, Anjar relating to the period 2007-08 to 2010-11, between November 2008 and October 2011, we noticed that luxury tax of ₹ 32.27 lakh including interest of ₹ 19.25 lakh was not levied from 14 hotel owners.

After this being pointed out the Department in Septemebr 2009 and March 2012;the Department accepted (July 2012) audit observation involving money value of ₹ 31.45 lakh in all cases and recovered an amount of ₹ 4.77 lakh in one case (September 2012).

¹¹³ Bharuch, Rajkot, Vadodara and Gandhinagar
¹¹⁴ Ahmedabad and Bhuj