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**For use in the Indian Audit and Accounts Department only**

**OFFICE OF THE PRINCIPAL ACCOUNTANT  
GENERAL (AUDIT), HIMACHAL PRADESH,  
SHIMLA-171003**

**REVENUE AUDIT MANUAL**

**on**

**(STAMP DUTY)**

**(Issued by the authority of the Principal Accountant General, Himachal Pradesh under  
approval of the Comptroller & Auditor General of India, New Delhi)**

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## **PREFACE**

This manual has been prepared for the guidance of those entrusted with the audit of receipts relevant to the Indian Stamp Act, 1899 and the Rules made thereunder by the Central and State Government broadly outline the system of assessment and collection of revenue on various instruments as stamp duty. A knowledge of various terms often used in the administration of "Stamp Act" is absolutely essential to properly conduct audit of such receipts.

The manual should be treated only as a guide and the audit checks indicated should not be taken as exhaustive.

Receipt Audit Section (Headquarters) will be responsible for keeping this manual upto date. The updation of manual has been completed upto March, 2018.

**Shimla:**

**Dated:**

**Pr. Accountant General (Audit)**

**Himachal Pradesh**

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## CONTENTS

		Page
Chapter 1	Introduction	1
Chapter 2	General Principles of Audit and Auditing Standard	4
Chapter 3	Stamp Duty	7
Chapter 4	Adjudication as to Stamps and the Examination Impounding of Instruments	15
Chapter 5	Allowances for stamps in certain cases	20
Chapter 6	Revisions and penalties	23
Chapter 7	Remissions and Regulations of duty	26
Chapter 8	Use of impressed and adhesive stamps	30
Chapter 9	Supply, distribution of Stamps and system of audit by stamp auditors	33
Chapter 10	Refund, renewal and disposal of stamps	36
Chapter 11	Audit Procedures	41
Appendix I	Important and interesting decisions of the High Courts and Supreme Court under the Indian Stamp Act	43
Appendix II	Registration Fee	55
Appendix A	Rates of Stamp Duty	57



## CHAPTER 1

### INTRODUCTION

**1.1** In terms of entry 91 of list I of the Seventh<sup>1</sup> Schedule to the Constitution of India, the Parliament has exclusive power to make laws with respect to rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts. Entry 63 of list II of the Constitution, similarly, empowers the Legislature of any State to enact laws with regard to the rates of stamp duty in respect of documents other than those specified in the provisions of list *ibid*. List III of the Seventh Schedule to the Constitution, however, includes entry 44 in the Concurrent List whereby the Parliament and the Legislature of any State have powers to make laws in respect of stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty. The Indian Stamp Act,<sup>2</sup> 1899, a law passed by the Central Legislature and modified by both Central and State Legislatures from time to time regulates the provisions connected with stamp duties throughout India.

#### **Object of the Indian Stamp Act, 1899**

**1.2** The Indian Stamp Act, 1899 and the Rules made thereunder by the Central and State Governments broadly outline the system of assessment and collection of revenue on various instruments as stamp duty. A knowledge of various terms often used in the administration of “Stamp Act” is absolutely essential to properly conduct audit of such receipts. Unless there is anything repugnant in the subject or context, the meanings that have been assigned to the terms commonly used in the Act will be followed:

- (1) “**Bill of exchange**”<sup>3</sup> means a bill of exchange as defined by the Negotiable Instruments Act, 1881, and includes also a hundi, and any other document entitling or purporting to entitle any person whether named therein or not, to payment by any other person of, or to draw upon any other person for, any sum of money;
- (2) “**Bill of lading**”<sup>4</sup> includes a “through bill of lading” but does not include a mate's receipt;
- (3) “**Bond**”<sup>5</sup> includes:-
  - (a) any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be;
  - (b) any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another ; and
  - (c) any instrument so attested, whereby a person obliges himself to deliver grain or other agricultural produce to another.
- (4) “**Chargeable**”<sup>6</sup> means, as applied to an instrument executed or first executed after the commencement of this Act, chargeable under this Act, and, as applied to any other instrument, chargeable under the law in force in India when such instrument was executed or, where several persons executed the instrument at different times, first executed.

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<sup>1</sup> Vide Article 246 of the Constitution of India

<sup>2</sup> Govt. of India, Act No. 2 of 1899.

<sup>3</sup> Section 2(2) of the Act.

<sup>4</sup> Section 2(4) of the Act.

<sup>5</sup> Section 2(5) of the Act.

<sup>6</sup> Section 2(6) of the Act.



- (5) “**Conveyance**”<sup>7</sup> includes a conveyance on sale and every instrument by which property, whether moveable or immovable, is transferred *inter vivos* and which is not otherwise specifically provided for by Schedule I.
- (6) “**Duly stamped**”<sup>8</sup> as applied to an instrument means that the instrument bears an adhesive or impressed stamp of not less than the proper amount and that such stamp has been affixed or used in accordance with the law for the time being in force in India.
- (7) “**Impressed stamp**”<sup>9</sup> includes:
  - (a) labels affixed and impressed by the proper officer, and
  - (b) stamps embossed or engraved on stamped paper;
- (8) “**Instrument**”<sup>10</sup> includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded;
- (9) “**Instrument of partition**”<sup>11</sup> means any instrument whereby co-owners of any property divide or agree to divide such property in severally, and includes also a final order for effecting a partition passed by any Revenue Authority or any Civil Court and awarded by an arbitrator directing a partition.
- (10) “**Lease**”<sup>12</sup> means a lease of immovable property, and includes also:
  - (a) a patta;
  - (b) a Kabuliyat or other undertaking in writing, not being a counterpart of a lease, to cultivate, occupy or pay or deliver rent for immovable property;
  - (c) any instrument by which tolls of any description are let;
  - (d) any writing on an application for a lease intended to signify that the application is granted.
- (11) “**Marketable security**”<sup>13</sup> means a security of such a description as to be capable of being sold in any stock market in India or the United Kingdom .
- (12) “**Mortgage-deed**”<sup>14</sup> includes every instrument whereby, for the purpose of securing money advanced or to be advanced, by way of loan, or an existing or future debt, or the performance of an engagement, one person transfers, or creates to or in favour of, another, a right over or in respect of specified property.
- (13) “**Policy of insurance**”<sup>15</sup> includes:
  - (a) any instrument by which one person, in consideration of a Premium, engages to indemnify another against loss, damage or liability arising from an unknown or contingent event; and
  - (b) a life policy, and any policy insuring any person against accident or sickness, and any other personal insurance.
- (14) “**Power of attorney**”<sup>16</sup> includes any instrument (not chargeable with a fee under the law relating to Court fees for the time being in force) empowering a specified person to act for and in the name of the person executing it.
- (15) “**Promissory note**”<sup>17</sup> means a promissory note as defined by the Negotiable Instruments Act, 1881 (XXVI of 1881);

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<sup>7</sup> Section 2(10) of the Act.

<sup>8</sup> Section 2(11) of the Act.

<sup>9</sup> Section 2(13) of the Act.

<sup>10</sup> Section 2(14) of the Act.

<sup>11</sup> Section 2(15) of the Act.

<sup>12</sup> Section 2(16) of the Act.

<sup>13</sup> Section 2(16-A) of the Act.

<sup>14</sup> Section 2(17) of the Act.

<sup>15</sup> Section 2(19) of the Act.

<sup>16</sup> Section 2(21) of the Act.

<sup>17</sup> Section 2(22) of the Act.



It also includes a note promising the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen.

(16) “**Receipt**”<sup>18</sup> includes any note, memorandum or writing:

- (a) Whereby any money, or any bill of exchange, cheque or promissory note is acknowledged to have been received, or
- (b) whereby any other movable property is acknowledged to have been received in satisfaction of a debt, or
- (c) whereby any debt or demand, or any part of a debt or demand, is acknowledged to have been satisfied or discharged, or
- (d) which signifies or imports any such acknowledgement, and whether the same is or is not signed with the name of any person.

(17) “**Settlement**”<sup>19</sup> means any not-testamentary disposition, in writing, of movable or immovable property made:

- (a) in consideration of marriage,
  - (b) for the purpose of distributing property of the settler among his family or those for whom he desires to provide, or for the purpose of providing for some person dependent on him, or
  - (c) for any religious or charitable purpose:
- and includes an agreement in writing to make such a disposition has not been made in writing, any instrument recording, whether by way of declaration of trust or otherwise, the terms of any such disposition.

## Legislation

**1.3** The Indian Stamp Act (Act No. 11 of 1899), as amended from time to time, provides for the procedures as to the liability of instruments<sup>20</sup> to stamp duty, how<sup>21</sup> and by whom<sup>22</sup> duties are to be paid and the time<sup>23</sup> of stamping duties along with valuation<sup>24</sup> thereof. The effect of instruments not duly stamped as also penalty for executing the instruments not duly stamped or offences connected with the provisions of the Act have also been laid down in Sections 33 to 48 and 62 to 69 of the Act. To facilitate an easy administration of the Act, the Collector in each district has been empowered to adjudicate<sup>25</sup> as to proper valuation of stamp duty chargeable on any instrument whether executed or not and whether previously stamped or not.

## Audit

**1.4** In terms of section 16 of the Comptroller and Auditor General’s (Duties Powers & Conditions of Service) Act, 1971, the audit of all receipts of the Union and State is the statutory responsibility of the Comptroller and Auditor General of India. In pursuance of this provision, the receipt audit of stamp duties was taken up from 1970-71. The general principles of audit of all receipts under Stamp Act are, however, similar to those laid down in chapter III of Comptroller and Auditor General's Manual of standing orders (Audit).

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<sup>18</sup> Section 2(23) of the Act.

<sup>19</sup> Section 2(24) of the Act.

<sup>20</sup> Section 3 to 5 of the Act.

<sup>21</sup> Section 10 of the Act.

<sup>22</sup> Section 29 of the Act.

<sup>23</sup> Section 17-19 of the Act.

<sup>24</sup> Section 20-28 of the Act.

<sup>25</sup> Section 31 of the Act.



## **CHAPTER 2**

### **GENERAL PRINCIPLES OF AUDIT AND AUDITING STANDARD**

**2.1** Audit of revenue receipts is to be regulated by the general principles governing the audit of receipts as laid down in Chapter 3 of section II of Comptroller and Auditor General's Manual of standing orders (Audit) and provisions of this manual.

**2.2** Auditors should conduct themselves in a manner, which promotes co-operation and guide relations between auditors and the audited entity. They should be fair and impartial. It is, therefore, essential that the opinions formed during audit are thoroughly accurate and reliable.

**2.3** Auditors have a duty to adhere to high standards of honesty and candidness in the course of their work and in relationship with the staff of audited entity. In order to sustain public confidence, the conduct of auditors should be above suspicion and reproach.

**2.4** Auditors should behave in a way that increases their independence. They should be objective in dealing with the issues and topics under review.

**2.5** Auditors should not disclose information obtained in the auditing process to third parties either orally or in writing.

**2.6** The auditor should scrutinize all the matters that are considered material and knowledge of which is to influence the user of audit report. It is not always in terms of money but a transaction can be material in terms of characteristics and in the context of its occurrence. The auditors must exercise his judgment in determining the audit procedures to afford a reasonable basis for his opinion.

**2.7** The aim of the audit is to safe guard the financial interests of the state and to upload and promote public accountability. It is primarily the responsibility of the departmental authorities to see that all the revenue or other debts due to the Government which have been to be brought to account, are correctly and promptly assessed, realized and credited to the Government account. It is to be ensured in audit that there exists an adequate information control/internal control and reporting system that will minimize the risk of errors and irregularities and jaccitable the accountability process.

**2.8** The auditor should plan the audit in a manner, which ensures that an audit of high quality is carried out in an economic, efficient and effective way. For the purpose, important aspects of functions of audited office are to be identified and audit objectives and tests required to achieve them are specified. Audit is to provide for a review to determine whether appropriate action has to been taken on previously reported audit findings.

**2.9** The work of the audit staff at each level of audit should be properly supervised to ensure fulfillment of audit objectives and the supervision should be directed both to substance and to the method in order to ensure that all evaluations and conclusions are soundly based and supported by reasonable audit evidence and off errors, deficiencies and unusual matters have been identified and documented/ reported.

**2.10** The auditor in determining the extent and scope of audit should study and evaluate the veliability of Internal Control and highlight the shortcomings giving rise to errors and irregularities.

**2.11** The auditor should be well versed with the Act/Rules, Notifications and orders issued by department from time to time and settled law on the subject. The lacunae in the Act/Rules leading to non-fulfillment of stated objectives of the Government regarding revenues be highlighted and suggest remedies to overcome legal infirmities. Where there is difference of opinions regarding interpretation of law the opinion of the law department be sought and accepted.

**2.12** The audit findings, conclusions and recommendations must be based on evidence. Therefore, data collection and sampling technique be chosen carefully. Where the computer based system data is an important part, the reliability of data be assessed and data base of the department may be used to seek audit evidence. They should apply technique of inspection, observation, enquiry and confirmation to collect audit evidence, which should be properly documented.



**2.13** Auditors should adequately document the audit evidence in working papers, including the bases and extent of the planning, work performed and the findings of audit. Working papers should contain sufficient information to enable an experienced auditor having no previous connection with the audit to ascertain from them the evidence that supports the auditor's significant findings and conclusions.

**2.14** The audit should not in any way substitute itself for the revenue authorities in the performance of their statutory duties. Physical verification of the premises and stock of any class of licenses and independent enquiry from the general public are outside the scope of the Audit.

**2.15** In the audit of Govt. revenue receipts such as taxes duties and other files, the auditor should satisfy himself that the rules and procedures in that behalf are designed to secure an effective check on assessment, collection and proper allocation of revenue and are being duly observed and for this purpose carry out such examination of the account as he thinks fit.

**2.16** On the completion of each audit assignment, the auditor should prepare a written report setting out the observations and conclusions in an appropriate form. Its contents should be easy to understand and free from vagueness or ambiguity. It should include only information which is relevant and supported by sufficient and competent audit evidence and be independent, objective, fair, complete, accurate, constructive and concise as the subject matter permits.

**2.17** Auditors should recognize that their judgment is being applied to actions resulting from past management decisions, care should, therefore, be exercised in making such judgements, and the report should indicate the nature and extent of information reasonably available (or which ought to have been available) to the audited entity at the time the decisions were taken. By stating clearly the scope, objectives and findings of the audit, the reports demonstrate to the reader that the auditor is being fair. Fairness also implies the presentation of weakness or critical findings in such a way as to encourage correction, and to improve systems and guidance within the audited entity. Accordingly, the facts are generally agreed with the audited entity in order to ensure that they are complete, accurate and fairly presented in the report. There may also be a need to include the audited entity's responses to the matters raised, either verbatim or in summary, especially where an auditor presents its views or recommendations.

**2.18** Fraud involves deliberate misrepresentation of facts and/or significant information to obtain undue or illegal financial advantage, through manipulation, falsification or alteration of records or documents, misappropriation, suppression or omission of the effects of transactions from records or documents, recording of transactions without substance and misapplication of accounting policies. Basic elements of fraud include a material omission or false representation by the perpetrator and it involves betrayal of trust.

**2.19** Corruption involves efforts to influence and/or the abuse of public authority through the giving or the acceptance of inducement or illegal reward for undue personal or private advantage. An act of corruption comprises misuse of office or position of authority for private gain and involves either on offer and or acceptance of inducement for performance of official act. Corruption involves two parties namely the person who offers the reward or inducement and the party accepting it.

**2.20** In the audit of Receipts, it would be necessary in the case of department which is receiver of public monies to ascertain what arrangements are in place to ensure the prompt detection, investigation and prevention of irregularities, double refunds, fraudulent or forged refund vouchers or other loss of revenue through fraud, error or willful omission or negligence to levy or collect taxes or to make refunds. For instance, the department could be requested to undertake a comparison of a sample set of counterfoils of receipts with those available with the tax payers or other debtors, the results of the comparative study being made available to Audit. Audit may also suggest any appropriate improvements in procedure.

**2.21** It is the primary duty of the department concerned to establish an environment that prevents valuable entity assets from being lost through frauds and corruption by providing adequate controls and checks. This doesn't absolve the auditor of its responsibility to detect and report the frauds by analyzing the internal control system and transactions in depth. High-risk areas of fraud in revenue receipts are in cash management, Assessment of revenue and refunds.

**2.22** While determining materiality levels for different audit areas the auditor may take into account adjustments to the materiality level that may make audit more responsive to risk arising from fraud and



corruption. For this purpose auditor should apply its own judgment to determine the extent of audit investigation to be undertaken in cases of suspected fraud and corruption and formulate a formal policy or strategy for deterring fraud and corruption.

**2.23** Audit should review whether applicable accounting standards ensure disclosure of true financial inclusive of any losses resulting from fraud and corruption. The responsibility for adequate and timely disclosure of any cases of fraud and corruption rest with the office concerned and the auditor must evaluate and report on the adequacy and competence with which the office concerned has discharged its responsibility.

**2.24** Shortcomings in systems and controls which provide an environment conducive to fraud and corruption should proactively reported by audit to the department to improve the control environment and minimize the risk of fraud and corruption. Audit should make the department aware that the absence or lack of application of reliable or valid performance measures and indicators could increase the responsibility of occurrence of fraud and corruption.

**2.25** Since complete documentary proofs about cases may not be available to audit, due care should be exercised in arriving at an audit conclusion. In many circumstances additional checks may have to be performed and additional evidence acquired than would normally be considered appropriate and necessary for arriving at an audit opinion.

**2.26** Before taking up the audit the auditor should have a complete understanding of the auditee organization and environment in which it operates the level of internal control and past performance especially previous instances of fraud and corruption. Based on the risk, assessment, the auditor should develop the audit objective and design audit procedures so to have reasonable expectations of detecting and evaluating material mis-statement and irregularities arising from fraud and corruption.

**2.27** Increasing use of Information Technology systems by auditee, requires that the auditors should know reliable and verifiable system based audit trails to evaluate the internal controls as computerized fraud could involve manipulation of a computer or computer data by whatever method in order to dishonestly obtain money, properly or same other advantage of value or to causeless. The auditor has to be particularly aware of the audit trail, of the checks and balances of I.T. systems, of the levels of the control and needs to also have fair idea of how processing controls can be circumvented by the perpetrator of fraud and how data can be accessed and manipulated. It is particularly important for the auditor of the IT system to assess in his audit the level of security controls built in and if these are in tune with the sensitivity of data.

**2.28** Whenever a material instance of failure to comply with the applicable laws and regulations is observed the auditor should investigate the lapses in control system. He may also examine if the supporting evidence has been tampered in any manner or any individual(s) could have benefited from the material violation.

**2.29** Auditors need to be alert to deviations from acceptable accounting standards including disclosure requirements particularly when there is suspicion of fraud and corruption.

**2.30** When in the opinion of auditor the financial statements include material fraudulent transactions or such transactions have not been adequately disclosed or the audit conducted by the auditor leads him to the conclusion that instance(s) of fraud and/or corruption have taken place and when the auditor has adequate evidence to support his conclusion he should ensure that the findings are adequately included in audit report. However, the terms fraud and corruption may not be used in a conclusive sense unless such action is established in a court of law.

**2.31** In following up on reported cases of fraud and corruption the auditor should determine whether the necessary action is being taken with due regard to urgency that the situation demands and become aware of the changes in the system and procedures which could be violated through subsequent audits.



## **CHAPTER 3**

### **STAMP DUTY**

#### **A-Instruments liable to duty**

**3.1** Subject to the provisions of the Act and the exemptions contained in the schedule annexed to this part of the Manual, the following instruments<sup>1</sup> shall be chargeable with duty of the amount indicated in that schedule:-

- (a) every instrument which, not having been previously executed by any person, is executed in India on or after the first day of July 1899;
- (b) every bill of exchange (Payable otherwise than on demand) or promissory note drawn or made out of India on or after that day and accepted or paid, or presented for acceptance or payment, or endorsed, transferred, or otherwise negotiated in India and
- (c) every instrument (other than a bill of exchange or promissory note) which not having been previously executed by any person, is executed out of India on or after that day, relates to any property situate, or to any matter or thing done or to be done, in India and is received in India.

Provided that no duty shall be chargeable in respect of:-

- (i) any instrument executed by, or on behalf of or in favour of the Government in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument;
- (ii) any instrument for the sale, transfer or other disposition, either absolutely or by way of mortgage or otherwise of any ship or vessel, or any part, interest, share or property of or in any ship or vessel registered under the Merchant Shipping Act 1894, or under Act XIX of 1838, or the Indian Registration of Ships Act, 1841 as amended by subsequent Acts.

#### **Several instruments used in single transaction of sale, mortgage or settlement<sup>2</sup>**

**3.2** (1) Where, in the case of any sale, mortgage or settlement, several instruments are employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed in the Schedule forming Annexure to this part, for the conveyance, mortgage or settlement, and each of the other instruments shall be chargeable with a duty of two rupees instead of the duty (if any) prescribed for it in that Schedule.

(2) The parties may determine for themselves which of the instruments so employed shall, for the purposes set out in (1) above, be deemed to be principal instrument;

Provided that the duty chargeable on the instrument so determined shall be the highest duty which would be chargeable in respect of any of the said instruments employed.

#### **Instrument relating to several distinct matters<sup>3</sup>**

**3.3** Any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under this Act.

Note- Section 5 applies even when the instrument comprises matters of same description.

#### **Instruments coming with several description<sup>4</sup>**

**3.4** Subject to the provisions of the last preceding Para an instrument so framed as to come within two or more of the description given in the schedule, shall, where the duties chargeable there under are different, be chargeable only with the highest of such duties.

Provided that nothing contained in the Act shall render chargeable with duty exceeding two rupees a counterpart or duplicate of any instrument chargeable with duty and in respect of which the proper duty has been paid.

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<sup>1</sup> Section 3 of the Act.

<sup>2</sup> Section 4 of the Act.

<sup>3</sup> Section 5 of the Act.

<sup>4</sup> Section 6 of the Act.



### **Policies of Sea-Insurance<sup>5</sup>**

**3.5** (1) No contract for Sea insurance (other than such insurance as is referred to in section 506 of Merchants Shipping Act 1984) shall be valid unless the same is expressed in a Sea-policy.

(2) No sea-policy made for time shall be made for any time exceeding twelve months.

(3) No sea-policy shall be valid unless it specifies the particular risk or adventure or the time for which it is made, the names of the subscribers or underwriters and the amount or amounts insured.

(4) Where any sea insurance is made for or upon a voyage and also for time, or to extend to or cover any time beyond thirty days after the ship shall have arrived at her destination and been there moored at anchor, the policy shall be charged with duty as a policy for or upon a voyage, and also with duty as a policy for time.

### **Bonds, debentures or other Securities issued on loans under Act XI of 1879<sup>6</sup>**

**3.6** (1) Notwithstanding anything contained in the Act, any local authority raising a loan under the provisions of the Local Authorities Loan Act, 1879, or of any other law for the time being in force, by the issue of bonds, debentures or other securities, shall in respect of such loans, be chargeable with a duty of one per centum on the total amount of the bonds, debentures, or other securities issued by it, and such instruments need not be stamped and shall not be chargeable with any further duty on renewal, consolidation, sub-division or otherwise.

(2) The provisions of (1) above exempting certain bonds, debentures or other securities from being stamped and from being chargeable with certain further duty shall apply to the bonds, debentures or other securities of all outstanding loans of the kind mentioned therein, and all such bonds, debentures or other securities shall be valid, whether the same are stamped or not:

Provided that nothing herein contained shall exempt the local authority which has issued such bonds, debentures or other securities from the duty chargeable in respect thereof prior to the twenty-sixth day of March, 1897, when such duty has not already been paid or remitted by order issued by the Central Government.

(3) In the case of willful neglect to pay the duty required by this section, the local authority shall be liable to forfeit to the Government a sum equal to ten per centum upon the amount of duty payable, and a like penalty for every month after the first month during which the neglect continues.

### **Power to reduce, remit or compound duties<sup>7</sup>**

**3.7** The Government may, by rule or order published in the official gazette:

- (a) reduce, or remit, whether prospectively or retrospectively, in the whole or any part of the territories under its administration, the duties with which any instruments or any particular class of the instruments or any of the instruments belonging to such class, or any instruments when executed by or in favour of any particular class of persons, or by or in favour of any members of such class, are chargeable, and
- (b) provide for the composition or consolidation of duties in the case of issues by any incorporated company or other body corporate debentures, bonds or other marketable securities.

Note 1:- In this context, the expression, the “Government” means:-

- (i) in relation to stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts and in

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<sup>5</sup> Section 7 of the Act.

<sup>6</sup> Section 8 of the Act

<sup>7</sup> Section 9 of the Act



- (ii) relation to any other stamp duty chargeable under the Act and falling within entry 96 in List 1 in the Seventh Schedule to the Constitution, except the subject matters referred to in clause(b) of sub section (1); the Central Government;
- (iii) Save as aforesaid, the State Government.

Note 2:- Specific instances of reduction and remission of stamp duty as set-out by the Central Government are reproduced in chapter 7 of this Manual.

## **B- Mode of use of stamp and payments of stamp duty**

### **3.8 How the duties are to be paid<sup>8</sup> :**

(1) Except as otherwise expressly provided in the Act, all duties with which any instruments are chargeable shall be paid, and such payment shall be indicated on such instruments, by means of stamps:

- (a) according to the provisions herein contained; or
- (b) when no such provision is applicable thereto-as the State Government may by rule direct.

(2) The rules made under sub section (1) may, among other matters, regulate:-

- (a) in the case of each kind of instruments the description of stamps which may be used;
- (b) in the case of instruments stamped with impressed stamps-the number of stamps which may be used;
- (c) in the case of bills of exchange or promissory notes-the size of the paper on which they are written.

### **Use of Adhesive stamps<sup>9</sup>**

### **3.9 The following instruments may be stamped with adhesive stamps namely:**

- (i) instruments chargeable with a duty not exceeding Ten Naye Paise, except parts of bills of exchange payable otherwise than on demand and drawn in sets;
- (ii) bills of exchange, and promissory notes drawn or made out of India;
- (iii) entry as an advocate, vakil or attorney on the roll of a High Court;
- (iv) notarial acts; and
- (v) transfers by endorsement of shares in any incorporated company or other body corporate.

### **Cancellation of adhesive stamps<sup>10</sup>**

### **3.10 (1) (a) Whoever affixes any adhesive stamps to any instrument chargeable with duty which has been executed by any person shall, when affixing such stamp, cancel the same so that it cannot be used again; and**

(b) whoever executes any instrument on any paper bearing an adhesive stamp shall, at the time of execution, unless such stamp has already been cancelled in the aforesaid manner, cancel the same so that it cannot be used again.

(2) Any instrument bearing an adhesive stamp which has not been cancelled so that it cannot be used again, shall so far as such stamp is concerned, be deemed to be unstamped.

(3) The person required by sub section (1) to cancel an adhesive stamp may cancel it by writing on or across the stamp his name or initials or the name or initials of his firm with the true date of his so writing, or in any other effectual manner.

<sup>8</sup> Section 10 of the Act.

<sup>9</sup> Section 11 of the Act.

<sup>10</sup> Section 12 of the Act.



## **System of writing instruments stamped with impressed stamps<sup>11</sup>**

**3.11** Every instrument written upon paper stamped with an impressed stamp shall be written in such manner that the stamp may appear on the face of the instrument and cannot be used for or applied to any other instrument. No second instrument chargeable with duty shall be written upon a piece of stamped paper upon which are instrument chargeable with duty has already been written.

Provided that nothing in this respect shall prevent any endorsement which is duly stamped or is not chargeable with duty being made upon any instrument for the purpose of transferring any right created or evidenced thereby, or of acknowledging the receipt of any money or goods the payment or delivery of which is secured thereby.

Provided further that every instrument written in contravention of the above shall be deemed to be unstamped.

## **C—Time of stamping instruments**

### **Instruments executed in or out of India<sup>12</sup>**

**3.12.** (i) Instruments executed in India. All instruments chargeable with duty and executed by any person in India shall be stamped before or at the time of execution.

(ii) Instruments other than bills and notes executed out of India:-

(a) Every instrument chargeable with duty executed only out of India and not being a bill of exchange or promissory note, may be stamped within three months after it has been first received in India.

(b) Where any such instrument cannot, with reference to the description of stamp prescribed therefore, be duly stamped by a private person, it may be taken within the said period of three months to the Collector, who shall stamp the same, in such manner as the State Government may by rule prescribe, with a stamp of such value as the person so taking such instrument may require and pay for.

(iii) Bills and notes drawn out of India:-

The first holder in India of any bill of exchange (payable otherwise than on demand) or promissory note drawn or made out of India shall, before he presents the same for acceptance or payment, or endorses, transfers or otherwise negotiates the same in India, affix thereto the proper stamp and cancel the same.

Provided that:

(a) If, at the time any such bill of exchange, or note comes into the hands of any holder thereof in India, the proper adhesive stamp is affixed thereto and cancelled in manner prescribed by section 12 of the Act and such holder has no reason to believe that such stamp was affixed or cancelled otherwise than by the person and at the time required by the Act, such stamp shall, so far as relates to such holder, be deemed to have been duly affixed and cancelled;

(b) nothing contained in the proviso shall relieve any person from any penalty incurred by him for omitting to affix or cancel a stamp.

## **D—Valuations for duty**

### **3.13 (1) Conversion of amount impressed in foreign currencies<sup>13</sup>**

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<sup>11</sup> Section 13 to 15 of the Act.

<sup>12</sup> Section 17 to 19 of the Act

<sup>13</sup> Section 20 of the Act.



(i) Where an instrument is chargeable with *ad-valorem* duty in respect of any money expressed in any currency other than that of India, such duty shall be calculated on the value of such money in the currency of India according to the current rate of exchange on the day of the date of the instrument.

(ii) The Central Government may from time to time, by notification in the Official Gazette, prescribe a rate of exchange for the conversion of British or any foreign currency into Indian currency for the purposes of calculating stamp duty, and such rate shall be deemed to be the current rate for the purposes of (i) above.

**(2) How to value stock and marketable securities<sup>14</sup>**

Where an instrument is chargeable with *ad valorem* duty in respect of any stock or of any marketable or other security, such duty shall be calculated on the value of such stock or security, according to the average price or the value thereof on the day of the date of the instrument.

**(3) Instruments reserving interest<sup>15</sup>**

Where interest is expressly made payable by the terms of an instrument, such instrument shall not be chargeable with duty higher than that with which it would have been chargeable had no mention of interest been made therein.

**(4) Certain instruments connected with mortgages of marketable securities to be chargeable as agreements<sup>16</sup>**

(i) Where an instrument (not being a promissory note or bill of exchange)

(a) is given upon the occasion of the deposit of any marketable security by way of security for money advanced or to be advanced by way of loan or for an existing or future debt, or

(b) makes redeemable or qualifies or a duly stamped transfer, intended as a security, of any marketable security,

it shall be chargeable with duty as if it were an agreement or memorandum of an agreement chargeable with duty under Article No. 5(c) of the schedule annexed to this part of the Manual.

(ii) A release or discharge of any such instrument shall only be chargeable with the like duty.

**(4) Method of charging transfer<sup>17</sup>** in consideration of debt, or subject to future payment except in the case of a certificate of sale as mentioned in Article No. 18 of the Schedule, where any property is transferred to any person in consideration, wholly or in part, of any debt due to him or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or encumbrance upon the property or not, such debt, money or stock is to be deemed the whole or part, as the case may be, of the consideration in respect whereof the transfer is chargeable with *ad valorem* duty.

**Explanation**

In the case of a sale of property subject to a mortgage or other incumbrance, any unpaid mortgage money or money charged together with the interest (if any) due on the same, shall be deemed to be part of the consideration for the sale.

Provided that where property subject to a mortgage is transferred to the mortgagee, he shall be entitled to deduct from the duty payable on the transfer the amount of any duty already paid in respect of the mortgage.

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<sup>14</sup> Section 21 of the Act.

<sup>15</sup> Section 23 of the Act.

<sup>16</sup> Section 23-A of the Act

<sup>17</sup> Section 24 of the Act



## **(6) Valuation in case of annuity, etc<sup>18</sup> -**

Where an instrument is executed to secure the payment of an annuity or other sum payable periodically, or where the consideration for a conveyance is an annuity or other sum payable periodically, the amount secured by such instrument or the consideration for such conveyance, as the case may be shall, for the purpose of this Act, be deemed to be:-

- (a) where the sum is payable for a definite period so that the total amount to be paid can be previously ascertained such total amount;
- (b) where the sum is payable in perpetuity or for an indefinite time not termable with any life in being at the date of such instrument or conveyance the total amount which, according to the terms of such instrument or conveyance, will or may be payable during the period of twenty years calculated from the date on which the first payment becomes due; and
- (c) where the sum is payable for an indefinite time terminable with any life in being at the date of such instrument or conveyance—the maximum amount which will or may be payable as aforesaid during the period of twelve years calculated from the date on which the first payment becomes due.

## **(7) Stamp where value of subject matter is indeterminate<sup>19</sup>**

Where the amount or value of the Subject matter of any instrument chargeable with *ad valorem* duty cannot be, or (in the case of an instrument executed before the commencement of this Act) could not have been, ascertained at the date of its execution or first execution, nothing shall be claimable, under such instrument more than the highest amount or value for which, if stated in an instrument of the same description, the stamp actually used would, at the date of such execution, have been sufficient :

provided that in the case of the lease of a mine in which royalty or a share of the product is received as the rent or part of the rent, it shall be sufficient to have estimated such royalty or the value of such share, for the purpose of stamp duty :

- (a) when the lease has been granted by or on behalf of the Government at such amount or value as the Collector may having regard to all the circumstances of the case, have estimated as likely to be payable by way of royalty or share to the Government under such lease, or
- (b) when the lease has been granted by any other person, at twenty thousand rupees a year, and the whole amount of such royalty or share, whatever it may be, shall be claimable under such lease.

Provided also that, where proceeding have been taken in respect of an instrument under section 31 or 41, the amount certified by the Collector shall be deemed to be the stamp actually used at the date of execution.

## **(8) Direction as to duty in case of certain conveyances<sup>20</sup>**

- (i) Where any property has been contracted to be sold for one consideration for the whole, and is conveyed to the purchaser in separate parts by different instruments, the consideration shall be apportioned in such manner as the parties think fit, provided that a distinct consideration for each separate part is set-forth in the conveyance relating thereto, and such conveyance shall be chargeable with *ad valorem* duty in respect of such distinct consideration.
- (ii) Where property contracted to be purchased for one consideration for the whole, by two or more persons jointly, or by any person for himself and others, or wholly for other is conveyed in parts by separate instruments to the persons by or from whom the same was purchased, for distinct

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<sup>18</sup> Section 25 of the Act.

<sup>19</sup> Section 26 of the Act.

<sup>20</sup> Section 28 of the Act.



parts of the consideration, the conveyance of each separate part shall be chargeable with *ad valorem* duty in respect of the distinct part of the consideration therein specified.

- (iii) Where a person, having contracted for the purchase of any property but not having obtained a conveyance thereof, contracts to sell the same to any other person and the property is in consequence conveyed immediately to the sub-purchaser, the conveyance shall be chargeable with *ad-valorem* duty in respect of the consideration for the sale by the original purchaser to the sub-purchaser.
- (iv) Where a person having contracted for the purchase of any property but not having obtained a conveyance thereof, contracts to sell the whole, or any part thereof, to any other person or persons and the property is in consequence conveyed by the original seller to different person in parts, the conveyance of each part sold to a sub purchaser shall be chargeable with *ad valorem* duty in respect only of the consideration paid by such sub-purchaser, without regard to the amount or value of the original consideration, and the conveyance of the residue (if any) of such property to the original purchaser shall be chargeable with *ad valorem* duty in respect only of the excess of the original consideration over the aggregate of the excess of the original consideration over the aggregate of the consideration paid by the sub-purchasers.

Provided that the duty on such last mentioned conveyance shall in no case be less than one rupee.

(v) Where a sub-purchaser takes an actual conveyance of the interest of the person immediately selling to him, which is chargeable with *ad valorem* duty in respect of the consideration paid by him and is duly stamped accordingly, any conveyance to be afterwards made to him of the same property by the original seller shall be chargeable with a duty equal to that which would be chargeable on a conveyance for the consideration obtained by such original seller, or where such duty would exceed five rupees, with a duty of five rupees.

#### **E- Duty by whom payable<sup>21</sup>**

(9) In the absence of an agreement to the contrary, the expense of providing the proper stamp shall be borne :

- (a) in the case of any instrument described in any of the following Articles of Schedule I, namely :
  - No. 2 (Administration Bond).
  - No. 6 (Agreement relating to Deposit of Title-Deeds, Pawn or Pledge).
  - No. 13 (Bill of Exchange).
  - No.15 (Bond)
  - No. 16 (Bottomry Bond).
  - No. 26 (Customs Bond).
  - No. 27 (Debenture).
  - No. 32 (Further charge).
  - No. 34 (Idemnity Bond).
  - No. 40 (Mortgage deed).
  - No. 49 (Promissory note).
  - No. 55 (Release).
  - No. 56 (Respondentia Bond).
  - No. 57 (Security Bond or Mortgage-deed).
  - No. 58 (Settlement).
  - No. 62(a) (Transfer of shares in an incorporated company or other body corporate).
  - No. 62(b) (Transfer of debentures, being marketable securities, whether the debenture is liable to duty or not, except debentures provided for by section 8).
  - No. 62(c) (Transfer of any interest secured by a bond, mortgage deed or policy of insurance).

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<sup>21</sup> Section 29 of the Act.



By the person drawing, making or executing such instruments.

- (b) in the case of a policy of insurance other than fire insurance by the person effecting the insurance;
- (bb) in the case of a policy of fire insurance- by the person issuing the policy ;
- (c) in the case of a conveyance (including a reconveyance of mortgaged property) by the grantee ; in the case of a lease or agreement to lease- by the lessee or intended lessee.
- (d) in the case of a counterpart of a lease – by the less or;
- (e) in the case of an instrument of exchange by the parties in equal shares;
- (f) in the case of a certificate of sale – by the purchaser of the property to which such certificate relates, and;
- (g) in the case of an instrument of partition – by the parties thereto in proportion to their respective shares in the whole property partitioned, or when the partition is made in execution of an order passed by a Revenue authority or Civil Court or Arbitrator, in such proportion as such authority, court or arbitrator directs.

### **Obligation to give receipt in certain cases<sup>22</sup>**

Any person receiving any money exceeding twenty rupees in amount, or any bill of exchange, cheque or promissory note for an amount exceeding twenty rupees, or receiving in satisfaction or part satisfaction of a debt any moveable property exceeding twenty rupees in value, shall on demand by the person paying or delivering such money, bill, cheque, note or property, give a duly stamped receipt for the same.

Any person receiving or taking credit for any premium or consideration for any renewal of any contract of fire-insurance, shall, within one month after receiving or taking credit for such premium or consideration, give a duly stamped receipt for the same.

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<sup>22</sup> Section 30 of the Act.



## CHAPTER 4

### ADJUDICATION AS TO STAMPS AND THE EXAMINATION IMPOUNDING OF INSTRUMENTS

#### **Adjudication as to proper stamps<sup>23</sup>**

**4.1(1)** When an instrument, whether executed or not and whether previously stamped or not is, brought to the Collector, and the person bringing it applies to have the opinion of that officer as to the duty (if any) with which it is chargeable, and pays as fee of such amount not exceeding five rupees and not less than fifty naye paise as the Collector may in each case direct, the Collector shall determine the duty (if any) with which, in his judgement the instrument is chargeable.

**(2)** For this purpose the Collector may require to be furnished with an abstract of the instrument, and also with such affidavit or other evidence as he may deem necessary to prove that all the facts and circumstances affecting the chargeability of instrument with duty, or the amount of duty with which it is chargeable are fully and truly set forth therein, and may refuse to proceed upon any such application until such abstract and evidence have been furnished accordingly.

Provided that –

- (a) no evidence furnished in pursuance of this section shall be used against any person in any civil proceedings, except in an enquiry as to the duty with which the instrument to which it relates is chargeable; and
- (b) every person by whom any such evidence is furnished, shall, on payment of the full duty with which the instrument to which it relates, is chargeable, be relieved from any penalty which he may have incurred under this Act by reason of the omission to state truly in such instrument any of the facts or circumstances aforesaid.

#### **Certificate by Collector<sup>24</sup>**

**4.2 (1)** When an instrument brought to the Collector under Para 4.1 above, is in his opinion, one of a description chargeable with duty, and

- (a) the Collector determines that it is already fully stamped, or
- (b) the duty determined by the Collector under Section 31, or such a sum as, with the duty already paid in respect of the instrument, is equal to the duty so determined, has been paid, the Collector shall certify by endorsement on such instrument that the full duty (stating the amount) with which it is chargeable has been paid.

**(2)** When such instrument is, in his opinion, not chargeable with duty, the Collector shall certify in manner aforesaid that such instrument is not so chargeable.

**(3)** Any instrument upon which an endorsement has been made under this section, shall be deemed to be duly stamped or not chargeable with duty, as the case may be; and , if chargeable with duty, shall be receivable in evidence or otherwise, and may be acted upon and registered as if it had been originally duly stamped:

Provided that nothing in this section shall authorize the Collector to endorse -

- (a) any instrument executed or first executed in India and brought to him after the expiration of one month from the date of it's execution or first execution, as the case may be;
- (b) any instrument executed or first executed out of India and brought to him after the expiration of three months after it has been first received in India, or,

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<sup>23</sup> Section 31 of the Act.

<sup>24</sup> Section 32 of the Act.



- (c) any instrument chargeable (with a duty not exceeding ten naye paise), or any bill of exchange or promissory note, when brought to him, after the drawing or execution thereof, on paper not duly stamped.

### **Examination and impounding of Instruments, when not duly stamped<sup>25</sup>**

**4.3** (1) Every person having by law or consent of parties authority to receive evidence, and every person in charge of public office, except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.

(2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in India. When such instrument was executed or first executed.

Provided that -

(a) nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound, if he does not think fit so to do, any instrument coming before him in the course of any proceeding other than a proceeding under chapter XII or chapter XXXVI of the Code of Criminal Procedure, 1898 ;

(b) in the case of a judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the court appoints in this behalf.

(3) For the purposes of this section, in cases of doubt -

(a) the State Government may determine what offices shall be deemed to be public offices ;  
and

(b) the State Government may determine who shall be deemed to be persons in charge of public offices.

### **Special provision as to un-stamped receipts<sup>26</sup>**

Where any receipt chargeable (with a duty not exceeding ten naye paise) is tendered to or produced before any officer unstamped in the course of the audit of any public account, such officer may in his discretion, instead of impounding the instrument, require a duly stamped receipt to be substituted therefore.

### **Instruments not duly stamped inadmissible in evidence etc<sup>27</sup>.**

**4.4** No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped:

Provided that -

(a) any such instrument not being an instrument chargeable (with duty not exceeding ten naye paise) only, or a bill of exchange or promissory note, shall subject to all just exceptions be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;

(b) where any person from whom a stamped receipt could have been demanded, has given an unstamped receipt and such receipt and if stamped, would be admissible in evidence against him, then such receipt shall be admitted in evidence against him on payment of a penalty of one rupee by the person tendering it;

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<sup>25</sup> Section 33 of the Act.

<sup>26</sup> Section 34 of the Act.

<sup>27</sup> Section 35 of the Act.



- (c) where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped;
- (d) nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal procedure 1898;
- (e) nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of the government, or where it bears the certificate of the Collector as provided under the Act.

#### **Admission of instrument where not to be questioned<sup>28</sup>**

**4.5** Where an instrument has been admitted in evidence, such admission shall not, except as provided in section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.

#### **Admission of improperly stamped instruments<sup>29</sup>**

**4.6** The State Government may make rules providing that, where an instrument bears a stamp of sufficient amount but of improper description, it may, on payment of the duty with which the same is chargeable, be certified to be duly stamped, and any instrument so certified shall then be deemed to have been duly stamped as from the date of its execution.

#### **Instruments impounded – how dealt with<sup>30</sup>**

**4.7** (1) When the person impounding an instrument under Section 33 has by law or consent of parties authority to receive evidence and admits such instrument in evidence upon payment of penalty as provided by Section 35 or of duty as provided by Section 37, he shall send to the Collector an authenticated copy of such instrument, together with a certificate in writing stating the amount of duty and penalty levied in respect thereof, and shall send such amount to the Collector, or to such person as he may appoint in this behalf.

(2) In every other case, the person so impounding an instrument shall send it in original to the Collector.

#### **Collector's power to refund penalty paid under Section 38 sub section (1)<sup>31</sup>**

**4.8** (1) When a copy of an instrument is sent to the Collector under Section 38, sub section (1), he may, if he thinks fit, refund any portion of the penalty in excess of five rupees which has been paid in respect of such instrument.

(2) When such instrument has been impounded only because it has been written in contravention of Section 13 or Section 14, the Collector may refund the whole penalty so paid.

#### **Collector's power to stamp instruments impounded<sup>32</sup>**

**4.9** (1) When the Collector impounds any instrument under Section 33, or receives any instrument sent to him under Section 38, sub section (2) not being an instrument chargeable (with a duty not exceeding ten Naye paise) only or a bill of exchange or promissory note, he shall adopt the following procedure -

- (a) if he is of opinion that such instrument is duly stamped, or is not chargeable with duty, he shall certify by endorsement there on that it is duly stamped, or that it is not so chargeable, as the case may be ;
- (b) if he is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same, together with a

<sup>28</sup> Section 36 of the Act.

<sup>29</sup> Section 37 of the Act.

<sup>30</sup> Section 38 of the Act.

<sup>31</sup> Section 39 of the Act.

<sup>32</sup> Section 40 of the Act.



penalty of five rupees, or, if he thinks fit, an amount not exceeding ten times the amount of the proper duty or of the deficient portion thereof, whether such amount exceeds or falls short of five rupees:

Provided that, when such instrument has been impounded only because it has been written in contravention of Section 13 or Section 14, the Collector may, if he thinks fit, remit the whole penalty prescribed by this section.

- (2) Every certificate under clause (a) of sub section (1) shall, for the purposes of the Act, be conclusive evidence of the matters stated therein.
- (3) Where an instrument has been sent to the Collector under Section 38, sub section (2), the Collector shall, when he has dealt with it as provided by this section, return it to impounding officer.

#### **Instruments unduly stamped by accident<sup>33</sup>.**

**4.10** If any instrument chargeable with duty and not duly stamped, not being an instrument chargeable (with a duty not exceeding ten Naye paise) only or a bill of exchange or promissory note, is produced by any person of his own motion before the Collector within one year from the date of its execution or first execution, and such person brings to the notice of the Collector the fact that such instrument is not duly stamped and offers to pay to the Collector the amount of the proper duty, or the amount required to make up the same, and the collector is satisfied that the omission to duly stamp such instrument has been occasioned by accident, mistake or urgent necessity, he may, instead of proceeding under Section 33 and 40, receive such amount and proceed as next herein after prescribed.

#### **Endorsement of instruments on which duty has been paid under Section 35, 40 or 41<sup>34</sup>**

**4.11** (1) When the duty and penalty (if any) leviable in respect of any instrument have been paid under Section 35, 40 or 41 the person admitting such instrument in evidence or the Collector, as the case may be, shall certify by endorsement thereon that the proper duty or, as the case may be, the proper duty and penalty (stating the amount of each) have been levied in respect thereof, and the name and residence of the person paying them.

(2) Every instrument so endorsed shall thereupon be admissible in evidence, and may be registered and acted upon and authenticated as if it had been duly stamped, and shall be delivered on his application in this behalf to the person from whose possession it came into the hands of the officer impounding it, or as such person may direct:

Provided that -

- (a) No instrument which has been admitted in evidence upon payment of duty and a penalty under Section 35, shall be so delivered before the expiration of one month from the date of such impounding, or if the Collector has certified that its further detention is necessary and has not cancelled such certificate ;
- (b) nothing in this section shall affect the Code of Civil Procedure, section 144, clause 3.

#### **Prosecution for offence against stamp law<sup>35</sup>**

**4.12** The taking of proceedings or the payment of a penalty under this Chapter in respect of any instrument shall not bar the prosecution of any person who appears to have committed an offence against the stamp law in respect of such instrument:

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<sup>33</sup> Section 41 of the Act.

<sup>34</sup> Section 42 of the Act.

<sup>35</sup> Section 43 of the Act.



Provided that no such prosecution shall be instituted in the case of any instrument in respect of which such a penalty has been paid, unless it appears to the Collector that the offence was committed with an intention of evading payment of the proper duty.

**Persons paying duty or penalty may recover same in certain cases<sup>36</sup>**

**4.13** (1) When any duty or penalty has been paid under Section 35, Section 37, Section 40 or Section 41, by any person in respect of an instrument, and, by agreement or under the provisions of section 29 or any other enactment in force at the time such instrument was executed, some other person was bound to bear the expense of providing the proper stamp for such instrument, the first mentioned person shall be entitled to recover from such other person the amount of the duty or penalty so paid.

(2) For the purpose of such recovery, any certificate granted in respect of such instrument under this Act shall be conclusive evidence of the matters therein certified.

(3) Such amount may, if the Court thinks fit, be included in any order as to costs in any suit or proceeding to which such persons are parties and in which such instrument has been tendered in evidence. If the Court does not include the amount in such order, no further proceedings for the recovery of the amount shall be maintainable.

**Power to Revenue authority to refund penalty or excess duty in certain cases<sup>37</sup>**

**4.14** (1) Where any penalty is paid under Section 35 or Section 40, the Chief Controlling Revenue authority may, upon application in writing made within one year from the date of the payment, refund such penalty wholly or in part.

(2) Where, in the opinion of the Chief Controlling Revenue authority, stamp duty in excess of that which is legally chargeable has been charged and paid under Section 35 or section 40, such authority may, upon application in writing made within three months of the order charging the same, refund the excess.

**Power of payer to stamp bills and promissory notes received by him unstamped<sup>38</sup>**

**4.15** When any bill of exchange or promissory note chargeable with a duty not exceeding ten naye paise, is presented for payment unstamped, the person to whom it is so presented, may affix thereto the necessary adhesive stamp, and, upon cancelling the same in manner herein before provided may pay the sum payable upon such bill or note, and may charge the duty against the person who ought to have paid the same, or deduct it from the sum payable as aforesaid, and such bill or note shall, so far as respects the duty, be deemed good and valid:

Provided that nothing herein contained shall relieve any person from any penalty or proceeding to which he may be liable in relation to such bill or note.

**Recovery of duties and penalties<sup>39</sup>**

**4.16** All duties, penalties and other sums required to be paid under this Chapter may be recovered by the Collector by distress and sale of the movable property of the person from whom the same are due, or by any other process for the time being in force for the recovery of arrears of land revenue.

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<sup>36</sup> Section 44 of the Act.

<sup>37</sup> Section 45 of the Act.

<sup>38</sup> Section 47 of the Act.

<sup>39</sup> Section 48 of the Act.



## CHAPTER 5

### ALLOWANCES FOR STAMPS IN CERTAIN CASES

#### Allowance for spoiled stamps<sup>1</sup>

**5.1** Subject to such rules as may be made by the State Government as to the evidence to be required, or the enquiry to be made, the Collector may, on application made within the period prescribed in section 50, and if he is satisfied as to the facts, make allowance for impressed stamps spoiled in the cases hereinafter mentioned, namely -

- (a) the stamp on any paper in advertently and undesignedly spoiled, obliterated or by error in writing or any other means rendered unfit for the purpose intended before any instrument written thereon is executed by any person;
- (b) the stamp on any document which is written out wholly or in part, but which is not signed or executed by any party thereto;
- (c) in the case of bills of exchange payable otherwise than on demand or promissory notes :-

(1) the stamp on any such bill of exchange signed by or on behalf of the drawer which has not been accepted or made use of in any manner, whatever or delivered out of his hands for any purpose other than by way of tender for acceptance.

Provided that the paper on which any such stamp is impressed, does not bear any signature intended as or for the acceptance of any bill of exchange to be afterwards written thereon;

(2) the stamp on any promissory note signed by or on behalf of the maker which has not been made use of in any manner whatever or delivered out of his hands;

(3) the stamp used or intended to be used for any such bill of exchange or promissory note signed by, or on behalf of, the drawer thereof, but which from any omission or error has been spoiled or rendered useless, although the same, being a bill of exchange may have been presented for acceptance or accepted or endorsed, or, being a promissory note, may have been delivered to the payee:

Provided that completed and duly stamped bill of exchange or promissory note is produced identical in every particular, except in the correction of such omission or error as aforesaid, with the spoiled bill or note;

- (d) the stamp used for an instrument executed by any party thereto which -
  - (1) has been afterwards found to be absolutely void in law from the beginning;
  - (2) has been afterwards found unfit by reason of any error or mistake therein, for the purpose originally intended ;
  - (3) by reason of the death of any person by whom it is necessary that it should be executed, without having executed the same, or of the refusal of any such person to execute the same, cannot be completed so as to effect the intended transaction in the form proposed ;
  - (4) for want of the execution thereof by some material party, and his inability or refusal to sign the same, is in fact incomplete and insufficient for the purpose for which it was intended ;

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<sup>1</sup> Section 49 of the Act



- (5) by reason of the refusal of any person to act under the same, or to advance any money intended to be thereby secured, or by the refusal or non-acceptance of any office thereby granted, totally fails of the intended purpose ;
- (6) becomes useless in consequence of the transaction intended to be thereby effected or being effected by some other instrument between the same parties and bearing a stamp of not less value ;
- (7) is deficient in value and the transaction intended to be thereby effected has been effected by some other instrument between the same parties and bearing stamp of not less value ;
- (8) is inadvertently and undersignedly spoiled and in lieu whereof another instrument made between the same parties and for the same purpose is executed and duly stamped.

Provided that, in the case of an executed instrument, no legal proceeding has been commenced in which the instrument could or would have been given or offered in evidence and that the instrument is given up to be cancelled.

*Explanation :-* The certificate of the Collector under Section 32 that the full duty with which an instrument is chargeable, has been paid is an impressed stamp within the meaning of this section.

### **Allowance for misused stamps<sup>2</sup>**

**5.2** (a) When any person has inadvertently used for an instrument chargeable with duty; a stamp of a description other than that prescribed for such instrument by the rules made under this Act, or a stamp of greater value than was necessary, or has inadvertently used any stamp for an instrument not chargeable with any duty; or

(b) when any stamp used for an instrument has been inadvertently rendered useless under Section 15, owing to such instrument having been written in contravention of the provisions of Section 13 ;

The Collector may, on application made within six months after the date of the instrument, or if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed and upon the instrument, if chargeable with duty, being re-stamped with the proper duty, cancel and allow as spoiled the stamp so misused or rendered useless.

### **Allowance for spoiled or misused stamps how to be made<sup>3</sup>**

**5.3** In any case in which allowance is made for spoiled or misused stamps, the Collector may give in lieu thereof-

- (a) other stamps of the same description and value; or
- (b) if required and he thinks fit, stamps of any other description to the same amount in value; or
- (c) at his discretion, the same value in money deducting ten naye paise for each rupee or fraction of a rupee.

### **Allowance for stamps not required for use<sup>4</sup>**

**5.4** When any person is possessed of a stamp or stamps which have not been spoiled or rendered unfit or useless for the purpose intended, but for which he has no immediate use, the Collector shall repay to such person the value of such stamp or stamps in money, deducting ten naye paise for each rupee or portion of a rupee, upon such person delivering up the same to be cancelled, and proving to the Collector's satisfaction-

- (a) that such stamp or stamps were purchased by such person with a bonafide intention to use them; and
- (b) that he has paid the full price thereof; and

<sup>2</sup> Section 52 of the Act

<sup>3</sup> Section 53 of the Act

<sup>4</sup> Section 54 of the Act



(c) that they were so purchased within the period of six months next preceding the date on which they were so delivered.

Provided that, where the person is a licensed vendor of stamps, the Collector may, if he thinks fit, make the repayment of the sum actually paid by the vender without any such deduction as aforesaid.

### **Allowance on renewal of certain debentures<sup>5</sup>**

**5.5** When any duly stamped debenture is renewed by the issue of a new debenture in the same terms, the Collector shall, upon application made within one month repay to the person issuing such debenture, the value of the stamp on the original or on the new debenture, whichever shall be less.

Provided that the original debenture is produced before the Collector and cancelled by him in such manner as the State Government may direct.

*Explanation :-* A debenture shall be deemed to be renewed in the same terms within the meaning of this section notwithstanding the following changes :-

- (a) the issue of two or more debentures in place of one original debenture, the total amount secured being the same;
- (b) the issue of one debenture in place of two or more original debentures, the total amount secured being the same;
- (c) the substitution of the name of the holder at the time of renewal for the name of the original holder; and
- (d) the alteration of the rate of interest or the dates of payment thereof.

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<sup>5</sup> Section 55 of the Act



## CHAPTER 6

### REVISIONS AND PENALTIES

#### **Control of, and statement of case to, Chief Controlling Revenue authority<sup>1</sup>**

**6.1** (1) The powers exercisable by a Collector under Chapter IV and Chapter V and under clause (a) of the first proviso to Section 26 shall in all cases be subject the control of the Chief Controlling Revenue authority.

(2) If any Collector, acting under Section 31, Section 40 or Section 41, feels doubt as to the amount of duty with which any instrument is chargeable, he may draw up a statement of the case, and refer it, with his own opinion thereon, for the decision of the Chief Controlling Revenue authority.

(3) Such authority shall consider the case and send a copy of its decision to the Collector, who shall proceed to assess and charge the duty (if any) in conformity with such decision.

#### **Revision of certain decisions of Courts regarding the sufficiency of stamps<sup>2</sup>**

**6.2** (1) When any Court in the exercise of its civil or revenue jurisdiction or any Criminal Court in any proceeding under chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898 makes any order admitting any instrument in evidence as duly stamped or as not requiring a stamp, or upon payment of duty and a penalty under Section 35, the Court to which appeals lie from, or references are made by, such first mentioned Court may, of its own motion or on the application of the Collector, take such order into consideration.

(2) If such Court, after such consideration, is of opinion that such instrument should not have been admitted in evidence without the payment of duty and penalty under section 35, or without the payment of a higher duty and penalty than those paid, it may record a declaration to that effect and determine the amount of duty with which such instrument is chargeable, and may require any person in whose possession or power such instrument then is, to produce the same, and may impound the same when produced.

(3) When any declaration has been recorded under sub section (2), the Court recording the same shall send a copy thereof to the Collector, and, where the instrument to which it relates has been impounded or is otherwise in the possession of such Court, shall also send him such instrument.

(4) The Collector may thereupon, notwithstanding anything contained in the order admitting such instrument in evidence, or in any certificate granted under Section 42, or in Section 43, prosecute any person for any offence against the stamp law which the Collector considers him to have committed in respect of such instrument:

Provided that:-

(a) no such prosecution shall be instituted where the amount (including duty and penalty) which, according to the determination of such Court, was payable in respect of the instrument under Section 35, is paid to the Collector, unless he thinks that the offence was committed with an intention of evading payment of the proper duty;

(b) except for the purposes of such prosecution, no declaration made under this section shall effect the validity of any order admitting any instrument in evidence, or of any certificate granted under Section 42.

#### **Penalty for executing etc., instrument not duly stamped<sup>3</sup>**

**6.3** (1) Any person

(a) drawing, making, issuing, endorsing or transferring or signing otherwise than as a witness, or presenting for acceptance or payment, or accepting, paying or receiving payment of, or in any manner negotiating, any bill of exchange payable otherwise than on demand or promissory note without the same being duly stamped; or

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<sup>1</sup> Section 56 of the Act

<sup>2</sup> Section 61 of the Act

<sup>3</sup> Section 62 of the Act



(b) executing or signing otherwise than as a witness any other instrument chargeable with duty without the same being duly stamped; or

(c) voting or attempting to vote under any proxy not duly stamped;

shall for every such offence be punishable with fine which may extend to five hundred rupees.

Provided that, when any penalty has been paid in respect of any instrument under Section 35, Section 40 or Section 61, the amount of such penalty shall be allowed in reduction of the fine (if any) subsequently imposed under this section in respect of the same instrument upon the person who paid such penalty.

(2) If a share-warrant is issued without being duly stamped, the company issuing the same, and also every person who, at the time it is issued, is the managing director or secretary or other principal officer of the company, shall be punishable with fine which may extend to five hundred rupees.

**Penalty for failure to cancel adhesive stamp<sup>4</sup>**

**6.4** Any person required by Section 12 to cancel an adhesive stamp and failing to cancel such stamp in manner prescribed by that section, shall, be punishable with fine which may extend to one hundred rupees.

**Penalty for omission to comply with provisions of Section 27<sup>5</sup>**

**6.5** Any person who, with intent to defraud the Government:

(a) executes any instrument in which all the facts and circumstances required by section 27 to be set forth in such instrument are not fully and truly set forth; or

(b) being employed or concerned in or about the preparation of any instrument, neglects or omits fully and truly to set forth therein all such facts and circumstances; or

(c) does any other act calculated to deprive the Government of any duty or penalty under this Act;

shall be punishable with fine which may extend to five thousand rupees.

**Penalty for refusal to give receipt, and for devices to evade duty on receipts<sup>6</sup>**

**6.6** Any person who-

(a) being required under section 30 to give a receipt, refuses or neglects to give the same; or

(b) with intent to defraud the Government of any duty, upon a payment of money or delivery of property exceeding twenty rupees in amount or value gives a receipt for an amount or value not exceeding twenty rupees, or separates or divides the money or property paid or delivered;

shall be punishable with fine which may extend to one hundred rupees.

**Penalty for not making out policy or making one not duly stamped<sup>7</sup>**

**6.7** Any person who-

(a) receives, or takes credit for, any premium or consideration for any contract of insurance and does not, within one month after receiving, or taking credit for such premium or consideration, make out an execute a duly stamped policy of such insurance; or

(b) makes, executes or delivers out any policy which is not duly stamped, or pays or allows in account, or agrees to pay or allow in account, any money upon, or in respect of any such policy;

shall be punishable with fine which may extend to two hundred rupees.

**Penalty for not drawing full number of bills or marine policies purporting to be in sets<sup>8</sup>**

**6.8** Any person drawing or executing a bill of exchange payable otherwise than on demand or a policy of marine insurance purporting to be drawn or executed in a set of two or more, and not at the same time drawing a executing on paper duly stamped the whole number of bills or policies of which such bill or policy purports the set to consist, shall be punishable with fine which may extend to one thousand rupees.

**Penalty for post dating bills, and for other devices to defraud the Revenue<sup>9</sup>**

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<sup>4</sup> Section 63 of the Act

<sup>5</sup> Section 64 of the Act

<sup>6</sup> Section 65 of the Act

<sup>7</sup> Section 66 of the Act

<sup>8</sup> Section 67 of the Act

<sup>9</sup> Section 68 of the Act



**6.9** Any person who -

- (a) with intent to defraud the Government of duty, draws, makes or issues any bill of exchange or promissory note bearing a date subsequent to that on which such bill or note is actually drawn or made; or
  - (b) knowing that such bill or note has been so post-dated, endorses, transfers, presents for acceptance or payment, or accepts pays or receives payment of, such bill or note, or in any manner negotiates the same; or
  - (c) with the like intent practices or is concerned in any act, contrivance or device not specially provided for by the Act or any other law for the time being in force;
- shall be punishable with fine which may extend to one thousand rupees.

**Penalty for breach of rule relating to sale of stamps and for unauthorized sale<sup>10</sup>**

**6.10** (a) Any person appointed to sell stamps who disobeys any rule made under Section 74, and

(b) any person not so appointed who sells or offers for sale any stamp (other than a ten naye paise or five naye paise adhesive stamps);

Shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

**Institution and conduct of prosecutions<sup>11</sup>**

**6.11** (1) No prosecution in respect of any offence punishable under the Act or any Act hereby repealed shall be instituted without the sanction of the Collector or such other officer as the State Government generally, of the Collector specially, authorises in that behalf.

(2) The Chief Controlling Revenue authority, or any officer generally or specially authorised by it in this behalf, may stay any such prosecution or compound any such offence.

(3) The amount of any such composition shall be recoverable in the manner provided by Section 48.

**Books, etc., to be open to inspection<sup>12</sup>**

**6.12** Every public officer having in his custody any registers, books, records, papers, documents or proceedings, the inspection whereof may tend to secure any duty, or to prove or lead to the discovery of any fraud or omission in relation to any duty, shall at all reasonable time permit any person authorised in writing by the Collector to inspect for such purpose the registers, books, papers, documents and proceeding, and to take such notes and extracts as he may deem necessary, without fee or charge.

**Power to make rules relating to sale of stamps<sup>13</sup>**

**6.13** The State Government may make rules for regulating:-

- (a) the supply and sale of stamps and stamped papers;
- (b) the persons by whom alone such sale is to be conducted; and
- (c) the duties and remuneration of such persons.

Provided that such rules shall not restrict the sale of ten naye paise or five naye paise adhesive stamps.

**Power to make rules generally to carry out Act<sup>14</sup>**

**6.14** The State Government may make rules to carry out generally the purposes of this Act and may by such rules prescribe the fines, which shall in no case exceed five hundred rupees, to be incurred on breach thereof

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<sup>10</sup> Section 69 of the Act

<sup>11</sup> Section 70 of the Act

<sup>12</sup> Section 73 of the Act

<sup>13</sup> Section 74 of the Act

<sup>14</sup> Section 75 of the Act



## CHAPTER 7

### REMISSIONS AND REGULATIONS OF DUTY

The Government of India, in exercise of the powers conferred by clause (a) of Section 9 of the Act, passed orders<sup>1</sup> to reduce the duties chargeable for certain instruments as also for remission of duty in certain other cases as detailed below :

#### A – Cases of reduction of stamp duty

(1) Instrument<sup>2</sup> of partition relating to land held on Revenue settlement for a period not exceeding forty years and paying the full assessment. Duty reduced to the amount of duty chargeable on a Bond for the amount equivalent to five times the annual revenue of the land.

(2) Mortgage deed executed a fresh in lieu of a previous mortgage deed for the purpose of giving effect to the provisions of Section 9, sub Section (2), of the Punjab Alienation of Land Act, 1900 (XIII of 1900) so much of the duty remitted as is not in excess of the duty already paid in respect of the previous mortgage deed.

(3) <sup>3</sup>Trust deed entered into in compliance with the rules for the time being in force in the State regulating grants-in-aid made by the Government for building purposes to schools and Colleges in the State. Duty reduced to the amount payable in respect of a bond for like amount or value, or to Rs. 15 whichever shall be less.

(4) Agreement which has been or may be entered into in compliance with the rules relating to due regulations for the armed forces towards regulating the deposits of regimental funds with private banks or firms or such other rules for that purpose as may hereafter be in force. Duty reduced to the amount payable in respect of a bond for like amount or value, or to Rs. 5, whichever shall be less.

(5) Agreement executed for service or for performance of work in any estate not less than ten acres in extent, whether held by one person or by more persons than one as Co-owners, and whether in one or more blocks, and situated in any part in India excluding the State of Assam, which is being prepared for the production of, or actually produces, tea, coffee, rubber, pepper, cardamom or cinchona, where the advance given under agreement does not exceed fifty rupees. Duty reduced to ten naye paise.

(6) Attested instrument evidencing an agreement relating to the Hypothecation of movable property where such hypothecation has been made by way of security for the repayment of money advanced or to be advanced by way of loan or of an existing or future debt. Duty reduced to the amount chargeable on a bill of exchange under Article No. 13(b) of Schedule I of the Stamp Act, for the amount secured, if such loan or debt is repayable on demand or more than three months from the

date of the instrument; and to half that amount, if such loan or debt is repayable not more than three months from the date of the instrument.

(7) Instrument of entry as an Advocate or Vakil of the High Court of Judicature, of a pleader of the first grade, who has, as such pleader, paid for certificates issued or renewed in his favours under section 7 of the Legal Practitioners Act, 1879 (XVIII of 1879) Stamp duty aggregating ₹1,000 or more for certificates issued or renewed in his favours under section 7 of the Act *ibid*.

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<sup>1</sup> Government of India, Finance Department (Central Revenue) Notification Stamp No.6 Dated the 12<sup>th</sup> September, 1931.

<sup>2</sup> Government of India, Finance Department (Central Revenue) Notification Stamp No.1 Dated the 6<sup>th</sup> January, 1934.

<sup>3</sup> Government of India, Finance Department (Central Revenue) Notification Stamp No.8 Dated the 3<sup>rd</sup> September, 1932.



(8) Mortgage deed being collateral or auxiliary or additional security or being by way of further assurance. Duty reduced to Rs.15, provided that the duty paid on the principal of or primary security exceeds the amount of duty so reduced.

(9) Proxy empowering a person to vote at a meeting of creditors. Duty reduced to the rate chargeable on a proxy empowering a person to vote at any one meeting of members of an incorporated Company.

#### **B – Cases of remission of Stamp duty**

(1) Lease or counterpart thereof executed at the time of settlement made directly by the Government with the existing occupant of land, whether a zamidar or a tenant, and whether self cultivating or not.

Provided that no fine or premium is paid in consideration of the lease-

(2) Instrument executed for the purpose of security the repayment of a loan made, or to be made, under the Land Improvement Loans Act, 1883 (XIX of 1883) or the Agriculturist's Loans Act, 1884 (XII of 1884), including an instrument where by a land-lord binds himself to consent to the transfer, in the event of default in such repayment, of any land, or interest in land, on the security of which any such loan is made to his tenant.

(3) Receipt given by a person for advances exceeding ₹.20 received by him from the Government under the Agriculturists Loans Act, 1884 (XII of 1884).

(4) Copy of the map or plan certified to be a true copy of a map or plan prepared or maintained under Chapter IV of the Land Revenue Act and Chapter IV of the Himachal Pradesh Land Revenue Act, 1954 (Act No. 6 of 1954) whether such copy is granted under Rule 71 of the Rules connected with the said Act or Rule 3 (IV) of the financial Commissioner's Standing Order No. 5.

Provided that the copy is supplied for the private use for the person applying for it, and that it is not used or intended to be used as evidence in a Court of Justice or before any public officer.

(5) Agreement or security bond required to be executed, under the rules to regulate the training and appointments in the Subordinate Forest Service, by a student and his surety previous to his entry into a Forest School or College in India.

(6) Instrument in the nature of a conveyance by the Government of standing trees or any other forest produce in a Government forest.

(7) <sup>4</sup>Agreement, bond or security bond required to be executed by or on half of the holder of a scholarship or stipend awarded by Government.

(8) <sup>5</sup>Security bond taken under the authority of the Government from an Armed forces Medical student of the Assistant Surgeon or sub-Assistant Surgeon Branch of the Indian Medical Department or from the surety of any such student.

(9) <sup>6</sup>Agreement executed by a private medical practitioner on acceptance of service as a surgeon to the Armed forces with the temporary ranks of Lieutenant in the Medical services under the Defence department.

(10) Letter which a person depositing money in a Post Office Savings Bank, as security to the Government or a local authority for the due execution of an office or for the fulfillment of a contract or for any other purpose, is required to address to the Postmaster in charge of the Post Office Savings Bank agreeing to special conditions with respect to the application and withdrawal of the money deposited and the payment of interest accruing due thereon.

(11) Receipt given by, or on behalf of, a depositor in a Post Office Savings Bank for a sum of money withdrawn from any such Bank.

(12) Receipt endorsed by the payee on a Postal Money Order or given by the payee to the Post Office for a sum paid to him in adjustment of a short or wrong payment of such an order.

(13) receipt endorsed by the holder of a Post Office Cash Certificate at the time of its discharge.

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<sup>4</sup> Government of India, Finance Department (Central Revenue) Notification Stamp No.8 Dated the 3<sup>rd</sup> September, 1932.

<sup>5</sup> Government of India, Finance Department (Central Revenue) Notification Stamp No.8 Dated the 3<sup>rd</sup> September, 1932.

<sup>6</sup> Government of India, Finance Department (Central Revenue) Notification Stamp No.8 Dated the 3<sup>rd</sup> September, 1932.



(14) Receipt given by an Office of the Indian Post and Telegraph Department in respect of a sum paid to him by the Government as advance for the purpose of railway or steamer tickets.

(15) Agreement made with a Railway Administration or an Inland Steamer Company for the conveyance of goods.

(16) Agreement or indemnity bond given to a Railway authority or an Inland Steamer Company by a passenger permitted to travel without payment of fare, indemnifying such authority or Company from any claim for damages in case of accident or injury.

(17) Agreement or indemnity bond given to a Railway authority or an Inland Steamer Company by a consignee (when the Railway receipt or bill of lading is not produced) in respect of the delivery of articles carried at half parcels rates or at goods rates, namely, fresh fish, fruits, vegetables, bazaar baskets bread, meat, rice, and other perishable articles.

(18) receipt or bill of lading issued by Railway Administration or an Inland Steamer Company for the fare for the conveyance of passengers or goods, or both, or animals, or for any charges incidental to the conveyance thereof or given to such company or Administration or Inland Steamer company for the refund of an overcharge made in respect for such fare or charges.

(19) Agreement paper passed by a contractor of the supply and transport Corps. where his security deposit is transferred to a Post Office Saving Bank.

(20) Instrument in the nature of a memorandum or agreement furnished to, or made or entered into, with, a supply and Transport Officer by a Contractor.

(21) Agreement or declaration by which a tender made to a Supply and Transport Officer is accepted as a contract, where the deposit of the Contractor as security for his contract is made in Government of India Promissory notes or in cash.

(22) <sup>7</sup>Instrument in the nature of a memorandum agreement or security bond furnished to or made, or entered into, by a Contractor for the due performance of his contracts with -

- (a) the Ordnance department; or
- (b) the Army Clothing Department; or
- (c) the Military Farms Department; or
- (d) the Opium Department; or
- (e) the Forest Department; or
- (f) the State Railway Department; or
- (g) the Public Works Department; or
- any other administrative department empowered to execute public works.

(23) Instrument furnished to or made or entered into with any of the departments mentioned in item 22 above by a contractor under which the due performance of any contract is secured by the deposit of money or of Government or other securities, and an instrument under which materials belonging to a contractor are mortgaged as security for an advance made to him by any such department.

(24) Mortgage deed executed by an officer of Government in Civil or Military employee for securing the repayment of an advance received by him from the Government for the purpose of constructing, purchasing or repairing a dwelling house for his own use.

(25) Instrument of re-conveyance of mortgaged property executed by Government in favour of an officer in Civil or Defence employee on the repayment of an advance received by him from the Government for the purpose of constructing, purchasing or repairing a dwelling house for his own use.

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<sup>7</sup> Government of India, Finance Department (Central Revenue) Notification No.3 Dated the 25 June, 1932.



(26) <sup>8</sup>Instrument of re-conveyance executed by Government in respect of property mortgaged by an officer of Government or his surety as security for the due execution of an office or the due accounting for money or other property received by virtue thereof.

(27) Mortgage deed or agreement executed by an Officer of the Government for securing the repayment of an advance received by him from the Government for the purpose of purchasing a motor car, motor boat, a motor cycle, a horse, a cycle, or a type-writer.

(28) Agreement executed by an officer of the Government relating to the repayment of an advance received by him from the Government for defraying the cost of passages for himself or his family or both.

(29) receipt given for pension or allowances paid by Government to an heir of a deceased non-commissioned officer or petty officer, soldier, sailor or airman of Indian Armed, Naval or 'Air Force.

(30) receipt given for payment of interest on Government of India promissory notes.

(31) Letter of authority or power of attorney executed for the sole purpose of authorizing one or more of the joint holders of a Government security to give on behalf of the other or others of them, or any one or more of them, a discharge for interest payable on such security or on any renewed security issued in lieu thereof.

(32) Sanad of zagir or other instrument conveying land granted to an individual by the Government otherwise than for a pecuniary consideration.

(33) Instrument of exchange executed by a private person where land is given by him for public purposes in exchange for other land granted to him by the Government.

(34) Transfer by endorsement of a mortgage of rates and taxes authorised by any Act for the time being in force in India.

(35) Un-attested instrument evidencing an agreement relating to the hypothecation of movable property, where such hypothecation has been made by way of security for the repayment of money advanced or to be advanced by way of loan or of an existing or future debt.

(35)(A) Instrument of transfer of Government stock registered in the book debt account.

(36) Receipt or bill of lading issued by the Commercial Carrying Company, Limited, for the fare for the conveyance of passengers or goods or both, or receipt given by the said Company for the refund of an overcharge made in respect of such fare.

(37) Agreement between an employer and a workman employed by or under him regarding the payment of compensation under the Workmen's Compensation Act, 1923 (VIII of 1923).

(38) Agreement or memorandum of agreement relating to the hire of a bicycle for a period of less than a week.

(39) Receipts for advances of pay drawn by commissioned Officers of Indian Naval, Military and Air forces on field service in India.

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<sup>8</sup> Government of India, Finance Department (Central Revenue) Notification Stamps No.4 Dated the 2<sup>nd</sup> December, 1933.



## CHAPTER 8

### USE OF IMPRESSED AND ADHESIVE STAMPS

In terms of the provision contained in the Government of India Rules namely “The Indian Stamps Rules, 1925” evidently there are two kinds of stamps for indicating the payment of duty with which instruments are chargeable, namely :-

- (a) Impressed stamps, and
- (b) Adhesive stamps.

#### **Impressed Stamps**

- (1) Hundis, other than hundis which may be stamped with an adhesive stamp under section 11 of the Act shall be written on papers as follows, namely:-
  - (a) A hundi, payable otherwise than on demand, but not at more than one year after date or sight and for an amount not exceeding rupees thirty thousand in value, shall be written on paper on which a stamp of the proper value bearing the word “Hundi” has been engraved or embossed.
  - (b) A hundi for an amount exceeding rupees thirty thousand in value or payable at more than one year after date or sight, shall be written on paper supplied for sale by the Government to which a label has been affixed by the Collector of Stamp Revenue, Calcutta, or a Superintendent of Stamps, and impressed by such officer in the manner prescribed by the rule indicating the mode of affixing and impressing labels.
- (2) A promissory note or bill of exchange shall, except as provided by section 11 of the Act, be written on paper on which a stamp of the proper value, with or without the word of hundi has been engraved or embossed.
- (3) Every other instrument chargeable with duty shall except as provided by section 11 of the Act, be written on paper on which a stamp of the proper value, not bearing the word “hundi” has been engraved or embossed.
- (4) The officers specified by the Central Government and those appointed in this behalf by the local Government of a Governor’s Province, are empowered to affix and impress or perforate labels, and each of them shall be deemed to be “the proper officer” for the purposes of the Act and of these rules.
- (5) (i) The proper officer shall, upon any instrument being brought to him before it is executed, and upon application being made to him, affix thereto a label or labels of such value as the applicant may require and pay for and impress or perforate such label or labels by means of stamping machine or a perforating machine, and also stamp or write on the face of the label or labels the date of impressing or perforating the same.
  - (ii) On affixing any label or labels under this rule, the proper officer shall, where duty amounts to rupees five or upwards write on the face the label or labels his initials and where the duty amounts to rupees twenty or upwards shall also attach his usual signature to the instrument immediately under the label or labels.



- (iii) Any principal assistant of the proper officer empowered by the Local Government in this behalf, may discharge the functions of the proper officer under the foregoing sub-rule.

## **Adhesive Stamps**

(6) The following instruments may be stamped with adhesive stamps, namely :-

- (a) Bills of exchange payable otherwise than on demand and drawn in sets, when the amount of duty does not exceed one anna for each part of the set.
- (b) Transfers of debentures of public companies and association.
- (c) Copies of maps and plans and printed copies.
- (d) Instruments chargeable with duty under Article 5(a) & (b) and 43 of schedule I.
- (e) Instruments chargeable with stamp duty under Articles 19, 36, 37, 47, 49 (a)(ii) and (iii) and 52 of schedule-I.

(7) Notwithstanding anything contained in these rules whenever the stamp duty, payable under the Act in respect of any instrument, cannot be paid exactly by reason of the fact that the necessary stamps are not in circulation the amount by which the payment of duty shall on that account ten paise adhesive stamps provided that a state Government may direct that instead of such stamps, adhesive Court-fee stamps shall be used for the purpose.

(8) When any instrument of transfer of shares in a Company or Association is written on a sheet of paper on which a stamp of the proper value is engraved or embossed, and the value of the stamp so engraved or embossed is subsequently, in consequence of a rise in the value of such shares, found to fall short of the amount of duty chargeable under Article No. 62(a) of Schedule I one or more adhesive stamps bearing the words "Share Transfer" may be used to make up the amount required.

(9) When adhesive stamps are used to indicate the duty chargeable on entry as an advocate, vakil or Attorney on the roll of any High Court such stamps shall be affixed under the superintendence of a gazetted officer of the High Court, who shall obtain the stamp from the Superintendent of Stamps or other officer appointed in this behalf by the State Government and account to him for it. Such gazetted officer shall, after affixing the stamp, write on the face of it his usual signature with the date thereof.

(10) When an instrument bears a stamp of proper amount, but of improper description, the Collector may, on payment of the duty with which the instrument is chargeable, certify by endorsement that it is duly stamped.

(11) The Collector may require any person claiming a refund or renewal under chapter V of the Act, or his duly authorised agent, to make an oral deposition on oath or affirmation, or to file an affidavit, setting forth the circumstances under which the claim has arisen, and may also if he thinks fit, call for the evidence of witnesses in support of the statement, set forth in any such deposition or affidavit.

(12) When an application is made for the payment, under Chapter V of the Act, of an allowance in respect of a stamp which has been spoiled or misused or for which the applicant has no immediate use or on the renewal of a debenture, and an order is passed by the Collector sanctioning the allowance or calling for further evidence in support of the application, then if the amount of the allowance for the stamp given in lieu thereof is not taken or if the further evidence required is not furnished, as the case may be, by the applicant within one year of the date of such order, the application shall be struck off, and the spoiled or misused stamp (if any) sent to the Superintendent of Stamps or other officer appointed in this behalf by the State Government for destruction.

(13) When the Collector makes a refund under section 55 of the Act, he shall cancel the original debenture by writing on or across it the word "Cancelled" and his usual signature with the date thereof.



(14) On the conviction or any offender under the Act, the Collector may grant to any person who appears to him to have contributed thereto a reward not exceeding such sum as the Local Government may fix in this behalf. For this purpose the provisions of section 69 of the Act, Part I-AX may also be referred to. The State Government has, however, fixed the amount of award at ₹ 50. Any magistrate trying an offender (section 71) should, if he thinks the grant of a reward necessary, refer the matter for the orders of the Collector. In order that cases in which rewards should be given are not lost sight of, the Record Keeper should pass over the files of all such relevant cases before filing them to the Head Vernacular Clerk in order that he might obtain the orders of the Collector. Fines under the Stamp Act are to be credited to Government account should be drawn on separate bills and debited to the allotment provided for the purpose under the stamps Head.



## CHAPTER 9

### SUPPLY, DISTRIBUTION OF STAMPS AND SYSTEM OF AUDIT BY STAMP AUDITORS

**9.1** <sup>1</sup>Rules for the supply and distribution of all classes of stamps through the Central Stamp Store attached to the security Printing Press, Nasik now framed in 1935 by the Government of India, which cover also the procedures relating to the judicial or non-judicial stamps as are the property of the State Governments. The security Printing Press, therefore, arranges the printing of such revenue stamps as are required by any State Government. According to Rules 7 of the Government of India Rules the Controller of Stamps, Central Stamp Store, Nasik is responsible for supplying the stamps that are required by State Governments. Such supplies for the state of Himachal Pradesh are regulated on the basis of indents of Treasury Officers (or officers in charge of local depots) submitted direct by the Treasury Officers concerned or as may directed by the Financial Commissioner from time to time. For this purpose consolidated forecasts and indents are sent to the controller of stamps by 15<sup>th</sup> August each year. Such indents are, however based on the annual requirements of the Treasury Officers and the Local Depots showing separately their probable demand for each denomination of stamps. The Government of Himachal Pradesh have framed rules for the Receipt and Despatch of the stamps at the treasuries, sub treasuries and the local depots. The procedures for replenishment of stock, withdrawal of stamps from double locks and the system of counting and comparison of numbers, description and value of stamps with various denominations as also that relating to keeping of account and sale of such stamps have been laid down by the Government of Himachal Pradesh in their Rules namely "The Himachal Pradesh Stamp Despatch and Receipt Rules, 1973" and "The Himachal Pradesh Stamp Rule, 1973".

#### **Defalcation/losses of stamps and disposal of unserviceable and obsolete stamps<sup>2</sup>**

**9.2** In case of discrepancy defalcation or loss of stamps, the Deputy Commissioner, on receipt of the report prescribed in rule 12 will immediately depute an Extra Assistant Commissioner or Assistant Commissioner unconnected with treasury work to hold enquiry at once. The result of this enquiry should be communicated to the Superintendent of Police, Accountant General, and to the Superintendent Financial Commissioner. Any persecutions necessary should be started at once on the conclusion of the criminal proceedings, including appeals, if any, a detailed report should be made by the Deputy Commissioner fixing the responsibility with reference to these rules, and suggesting disciplinary action against those responsible after explanations. This detailed report should be submitted to the Accountant General through Financial Commissioner accompanied with three spare copies for use in Financial Commissioner's and Accountant General's offices. In this connection the relevant provisions of Himachal Pradesh Financial Rules should also be referred to.

**9.3** In the case of any deficiency in stamps received from the Central Stamp Store, the Treasury Officer should send immediately to the Controller of stamps, Nasik, a detailed report as prescribed in rule 12, and keep the invoice pending instruction from him. When the deficiency is confirmed a detailed report should be made to the Deputy Commissioner, who will order an enquiry and take necessary action to inform the Police and Railway authorities.

<sup>3</sup>Stamps found in excess of the quantities stated to have been sent should be immediately returned to the officer concerned with the wrapper of the bundle in which they were found.

**9.4** <sup>4</sup>Damaged and obsolete postage stamps that can be counted and identified shall be sent once a quarter to the Controller of Stamps, Nasik Road, for destruction. The necessary entries on account of stamps sent shall be made in the plus and minus memorandum. Damaged adhesive stamps in loose labels shall be pasted on a sheet or sheets of paper to facilitate verification before transmission to the collector. The collector shall, after examining and verifying the stamps and satisfying himself that they are genuine, destroy them and grant a destruction certificate. The destruction certificate shall show the quantity and the face value of stamps

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<sup>1</sup> Circulated with Govt. of India letter Dis. No. 79-Stamps/34 dated the 4<sup>th</sup> February, 1935.

<sup>2</sup> Rule 20 of Himachal Pradesh Government Notification No. 17-3/67-Rev.I dated 29<sup>th</sup> March, 1974.

<sup>3</sup> Section 21. H.P. Government Notification No. 17-3/67-Rev.I 29<sup>th</sup> March, 1974.

<sup>4</sup> Rule 46 under Part-III Chapter 1 of the Punjab Stamp Manual, 1934.



destroyed. At the beginning of each month the Controller of Stamps shall furnish to the Civil Accountant General concerned with copies of destruction certificates granted by him during the previous month to enable him to verify the entries in the plus and minus memoranda.

### **Audit and Control of Stamp Revenue**

**9.5** The Punjab Stamps Manual, 1934 as adopted by the Government of Himachal Pradesh, incorporates the Rules relevant with the audit control of Stamp Revenue through the agency of stamps Auditors appointed in this behalf by the State Government. The Rules on the subject have been termed as the “The Punjab Stamp Audit Instruction, 1933”. The important instructions out of the said rules are reproduced below:-

- (1) <sup>5</sup>There shall be appointed stamp auditors for the purpose of the audit of every document requiring a stamp which is presented to a Court of law other than the High Court or a public officer.
- (2) <sup>6</sup>The Stamps auditors shall be under the direct control of the Commissioner of the Division in which they are from time to time operating and shall be authorized by the Collector in writing in the term of Section 73 of the Indian Stamps Act. The Financial Commissioner as the Chief Controlling Authority will determine the districts within the jurisdiction of each auditor and fix also his head quarters.
- (3) <sup>7</sup>The auditor shall spend the least possible time in travelling and more time on actual audit work. He shall visit each district in his charge once a quarter and spend about eight days at the headquarters of a district and two days at each Tehsil.
- (4) <sup>8</sup>The auditor shall, on visiting a district, audit all fresh institutions, documents and files pending or otherwise in all Court and registration and other offices including record rooms. Such inspection shall be from the date on which the last audit terminated. The auditor shall, in particular, see that the stamps used are genuine and have not been removed from files and re-used.
- (5) <sup>9</sup>Every person described in section 33 of the Indian Stamp Act and every public official referred to in section 6 of the Court Fees Act shall maintain a register of stamp deficiencies in Form 8.A.2. These registers shall be maintained in respect of all deficiencies whether found in audit or independently.
- (6) <sup>10</sup>The auditor shall examine the above said register as maintained by the Court of office with a view to seeing that it is properly maintained and that collections are made not only on account of deficiencies detected in audit but on account of deficiencies detected independently. He shall also examine the register maintained by the Collector in Form S.A.5.
- (7) <sup>11</sup>All deficiencies in stamp duty may be brought to the notice of the collector of the district with a view to take action under Section 61 of the Stamp Act.
- (8) <sup>12</sup>In the course of his audit the auditor shall draw the attention of presiding officers of Courts and heads of offices to documents before them which are insufficiently stamped and shall advise then where necessary in relation to their powers and obligations under the Stamp Act as follows :-
  - (a) To impound documents under Section 33 of the Stamp Act.
  - (b) To admit unstamped documents in evidence under Section 35.
  - (c) To dispose of impounded documents under Section 38.The Collector may also ask the auditor to note all cases coming before him under Sections 39 to 43 and also seek any other assistance which he may consider necessary.
- (9) <sup>13</sup>The auditor will maintain for each district a register in Form S.A.I. in which he will note as it is discovered, each deficiency in stamp duty and Court fees.
- (10) <sup>14</sup>After discussion of his rough notes of audit with presiding officer or the head office, the auditor will prepare his audit note and sent type written copies to the presiding officer or the head of the

<sup>5</sup> Rule 2 of the Punjab Stamp Audit Instructions 1933.

<sup>6</sup> Rule 3 *ibid.*

<sup>7</sup> Rule 4 *ibid.*

<sup>8</sup> Rule 5 *ibid.*

<sup>9</sup> Rule 6 *ibid.*

<sup>10</sup> Rule 7 *ibid.*

<sup>11</sup> Rule 8 *ibid.*

<sup>12</sup> Rule 10 *ibid.*

<sup>13</sup> Rule 11 *ibid.*



office as the case may be, to the Collector of the district concerned and to the Commissioner of the division. This note will include a statement in Form S.A.3 of deficiencies discovered.

- (11) <sup>15</sup>The presiding officer of the Court or head of the office as also the Collector, if he thinks fit and after consulting the Financial Commissioner, if necessary will take action on the note of the stamp auditor under section 61 of the Stamp Act.
- (12) <sup>16</sup>All Courts and offices shall, in addition to the Account of recoveries effected by them in Form S.A.2, should show the recoveries effected at the instance of the stamp auditor in columns 9 and 10 of forms S.A.2 and S.A.3. Irrecoverable loss of stamp revenue is required to be written off under the relevant provisions of Book of Financial powers.
- (13) <sup>17</sup>The auditor shall, at the time of his visit to a district, inspect the applications for grant of refund of the value or renewal of spoilt and unused non-judicial stamps and the register maintained by the refund clerk and report the result of his inspection to the Collector of the district. The auditor shall also inspect the registers of stamp venders and check their stock of stamps.

In his reports the auditor should give details of the period spent, and of the work done on each day. They should also state the total number of cases examined and note separately for each district the total number of deficient stamp duty discovered and recovered at their instance under the following heads :-

- (1) On plaints ;
- (2) On copies ;
- (3) On applications, etc.
- (4) On process fees ;
- (5) On objection petitions ;
- (6) On powers of Attorney ;
- (7) On Security bonds, etc ; filed in Courts ;
- (8) On miscellaneous petitions in the English record room ; and
- (9) On documents filed by the parties.

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<sup>14</sup> Rule 12 *ibid.*

<sup>15</sup> Rule 13 *ibid.*

<sup>16</sup> Rule 14 *ibid.*

<sup>17</sup> Rule 16 *ibid.*



## CHAPTER 10

### REFUND, RENEWAL AND DISPOSAL OF STAMPS

**10.1** <sup>1</sup>Rules regarding stamp refund, renewal and disposal as framed by the Punjab Government during 1934 namely “The Punjab Stamp Refund Renewal and Disposal Rules, 1934” were adopted by the Government of Himachal Pradesh. The important provisions out of the said Rules are reproduced below :-

#### **Disposal of Obsolete, Unserviceable & Spoil-stamps**

**10.2** (1) <sup>2</sup>All non postal stamps that are obsolete, unserviceable or spoilt shall be sent by the Deputy Commissioner of the district to the Commissioners of the division. The Deputy Commissioner shall explain how the damage occurred, who was responsible for it, and what steps have been taken to guard against similar damage in future.

(2) <sup>3</sup>The Commissioner shall, if he is satisfied that the explanation is adequate, pass orders for the writing off of the value of such stamps upto a limit of ₹ 500 in each individual case, and the superintendent of the office of the Commissioner shall personally destroy the stamps. If the value of such stamps to be written off exceeds ₹ 500 but does not exceed ₹ 1000, the Commissioner shall forward the case with his opinion to the Financial Commissioner who shall if he is satisfied that the explanation is adequate, pass orders for the written off of the value of such stamps upto a limit of ₹ 1,000 in each individual case, and the Assistant Secretary to the Financial Commissioner shall personally destroy the stamps.

(3) <sup>4</sup>If the value of the obsolete, unserviceable or spoilt stamps exceeds ₹ 1000, the sanction of the local government, shall be obtained to the writing off of the value of such stamps and their destruction, on receipt of sanction the Assistant Secretary to the Finance Commissioner shall personally destroy the stamps.

(4) <sup>5</sup>When stamps are totally destroyed by fire or otherwise or are stolen or lost in transit, the instructions contained in the Punjab Stamp Losses and Defalcations Rules, 1935<sup>6</sup>, shall be observed.

(5) <sup>7</sup>If any stamps received are found unfit for issue because of faulty manufacture, they shall be returned at once by the Deputy Commissioner direct to the Collector of Stamps, Nasik Road, for exchange. If, however, the Stamps are unfit for issue because of damage due to defective packing at Nasik, the matter shall be referred to the Assistant Secretary to the Financial Commissioner, who will if satisfied that the facts alleged are correct, have the stamps in question returned to the Collector of Stamps for exchange.

(6) <sup>8</sup>All stamps forwarded to the Financial Commissioner or returned to the Collector of Stamps, Nasik Road, shall be packed and sealed in the presence of the Treasury Officer in Treasuries and of the Sub-treasury Officer in Sub-treasuries and be sent by registered post if this can be done conveniently.

(7) <sup>9</sup>The necessary entries on account of stamps sent to the Collector of Stamps, Nasik road, or to the Financial Commissioners shall be made in the plus and minus memos, by the Treasury Officers.

(8) <sup>10</sup>Orders conveying sanctions to the writing off of losses under these rules shall be communicated to the Pr. Accountant General, Himachal Pradesh as follows:-

- (a) if the order is issued by the Financial Commissioner, by the Assistant Secretary to financial Commissioner;
- (b) if the order is passed by the Local Government, under the endorsement of the Assistant Secretary to Government, Himachal, in the revenue Department or the Deputy Secretary to the Government, Himachal, in the Finance Department, according as the order is issued by the local Government in the Administrative or the Finance Department.

<sup>1</sup> Incorporated as Chapter 7 under Part III of the Punjab Stamps Manual, 1993.

<sup>2</sup> Rules 3 of the Punjab Stamp Refund, Renewal & Disposal Rules, 1934.

<sup>3</sup> Rule 4 & 44 *ibid*.

<sup>4</sup> Rule 5 *ibid*.

<sup>5</sup> Rule 6 *ibid*.

<sup>6</sup> Published vide Punjab Govt. Notification No. 970 of dated the 28<sup>th</sup> August, 1935.

<sup>7</sup> Rules 7 of the Punjab Stamp Refund, Renewal, & Disposal Rule, 1934.

<sup>8</sup> Rules 8 *ibid*.

<sup>9</sup> Rules 9 *ibid*.

<sup>10</sup> Rules 10 *ibid*.



## Disposal of stamps cancelled on payment of refund or on renewal

10.3 (1) <sup>11</sup>Sections 49, 51, 52, 53, 54 and 55 of the Stamp Act give to the Collector certain powers to grant :-

- (a) allowance for spoiled impressed stamps (Section 49);
- (b) allowance for printed forms (Section 51);
- (c) allowance for misused stamps (Section 52);
- (d) allowance for stamps not required for use (Section 54);
- (e) allowance on renewal of certain debentures (Section 55);

which with certain delegations are also repeated/reproduced in the book of financial powers.

(2) <sup>12</sup>Applications for refund of the value or renewal of stamps presented to a Collector do not require to be stamped.

(3) <sup>13</sup>Application for grant of refund or renewal of a non-judicial stamp shall be made personally or by registered post or through an agent appointed by a duly attested power of attorney to the Collector of the district where it was purchased. Such applications for refund or renewal<sup>14</sup> shall be received and promptly dealt with in office of the Deputy Commissioner under the supervision of the office Superintendent.

(4) <sup>15</sup>The following instructions, however, embody the provisions of section 54 of the Stamp Act, and also the rules of the Local Government under section 49 of the Stamp Act in relation to allowance for spoiled stamps as well as that for stamps not required for use :-

- (i) the application should be within time and in the proper form;
- (ii) the stamps are genuine;
- (iii) the stamps bear the endorsement of the stamp vendor in the name of the applicant or the person on whose behalf the authorized agent claims refund or renewal. But when applicant claims to be the heir or successor of the deceased in whose name the stamp was originally endorsed, the applicant, shall produce a certificate of succession or proof of succession;
- (iv) no marks of cancellation have been erased;
- (v) in the case of every stamp tendered as not required for use under section 54 of the Stamp Act, and in other cases, if the value of the stamps tendered for refund or renewal is ₹ 100 or above, the actual purchase of the stamps is verified from the register of :-
  - (a) the stamp vendor concerned through the excise inspector or sub-inspector in charge of the district, or
  - (b) ex-officio stamp vendor as the case may be.

If under the rules, the competent authority to sanction the refund or renewal is the Collector, the dealing assistant in the office of the Collector shall, after carefully examining the grounds of the application, record a note whether he considers the claim to be admissible, and, if so, he shall submit the case along with the register in Form SR-I after completing the relevant columns thereof. He shall also prepare and submit with the case refund renewal statement in Form S.R.2/S.R.4 and enter both in words and figures the amount of the refund after deducting ten paise in the rupee where this is necessary or of the fresh stamps (one anna) admissible. The deductions must be calculated on each stamp for which the allowance is claimed and not on the aggregate value of the stamps presented for refund at any one time.

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<sup>11</sup> Rules 11 of the Punjab Stamps Refunds Renewal & Disposal Rules, 1934.

<sup>12</sup> Rules 12 *ibid.*

<sup>13</sup> Rules 13 *ibid.*

<sup>14</sup> Rules 14 *ibid.*

<sup>15</sup> Rules 15 *ibid.*



(5) <sup>16</sup>The Collector shall satisfy himself that the claim is admissible; he may require the applicant to make an oral deposition on oath or affirmation or to file an affidavit setting forth the circumstances under which the claim has arisen and may also, if he deems fit, call for evidence in support of such deposition or affidavit.

If he is satisfied that the claim is in order in all respects, he shall check the register and the refund/renewal statement with the relevant stamps and see that the amount of refund/fresh stamps to be granted/issued is correctly entered both in the register and the refund/ renewal statement in such a way that no gap is left to enable the amount to be altered.

He shall then tear off the right hand top corner of each stamp, punch the head of the figure and record on it the following with a large rubber stamp :-  
Cancelled.

Refund/Renewal/Sanctioned on.....

.....

(Signature of the Collector )

.....District

(It is essential that each stamp where there are more than one shall be torn, punched and stamped individually in the above manner.)

He will then sign the refund/renewal statement and fill up columns 16 & 17 of the register, and then return the case to the Superintendent.

(6) <sup>17</sup>If the Collector decides that the refund/renewal is not admissible; he shall record his reasons for refusal, stamp all the stamps as “Refund/Renewal/Refuse” and then return the papers to the Superintendent. The latter shall return the application, with stamps, to the applicant in the manner laid down in rule 18 of the Rules *ibid*.

If the Collector calls for further evidence in support of the application, a memo shall be issued to the applicant giving full particulars of the documents required to be furnished.

(7) <sup>18</sup>After an order has been passed by the Collector sanctioning the claim, or calling for further evidence in support of the application, if the refund/renewal statement is not taken or further evidence required is not furnished by the applicant within one year (or 3 years in case the claim exceeds ₹.5 in value) of the date of such order, the application with stamp and refund/renewal statement shall be destroyed under the orders and the fact noted in column 21 of the register in Form S.R.-1.

(8) (i) <sup>19</sup>The procedure as regards applications and grant of refund and renewal in respect of stamps issued for retail sale to an authorized vender which have not been sold by him and are taken back from him or his heirs, shall be the same as for stamps received back from the public except that if the stamps received are in good condition and fit for re-issue, the same shall not be cancelled or destroyed, but sent to the Treasury Officer with a memo in duplicate Form S.R.-5.

(ii) The number and value of the stamps received shall be compared by the Treasury Officer with the memo submitted, and if they are correct and the stamps are serviceable and fit for re-issue, they shall be deposited immediately in the main store under double lock, necessary entries being made in the double lock register. The Treasury Officer shall then sign the certificate, on the second copy being retained for record in the Treasury. Necessary adjustments shall also be made by the Treasury Officer in the plus and minus memorandum submitted monthly to the Accountant General and the Financial Commissioner.

<sup>16</sup> Rule 7 of the Punjab Stamps Refund Renewal & Disposal Rules, 1934.

<sup>17</sup> Rule 19 of the Punjab Stamps Refund, Renewal & Disposal Rules, 1934.

<sup>18</sup> Rule 20 *ibid*.

<sup>19</sup> Rule 21 *ibid*.



(iii) On receipt of the aforesaid certificate from the Treasury Officer, the clerk concerned shall prepare the refund/renewal voucher in Form S.R.3/S.R.4 and submit it with the case through the Superintendent, to the Collector for his signature.

(iv) Before signing the refund/renewal vouchers, the Collector shall personally satisfy himself that the stamps have actually been sent to the Treasury Officer and that the letter's acknowledgement, therefore has been duly obtained in the prescribed form No. SR-5. He shall also particularly see that in the case of refunds the deductions of one anna in the rupee or any discount allowed to the stamp vendor has been made as required by paragraph 20.12 of the Book of Financial Powers. The Collector shall then sign the vouchers and return it to the office Superintendent for further action in accordance with rule 13 of the Rules *ibid*.

(9) <sup>20</sup>When a claim for a refund or renewal requires the sanction of the Commissioner, the Chief Controlling Revenue Authority viz. the Financial Commissioner or Government, the Collector shall forward to the Commissioner of the division with his opinion, the application together with the stamps (if any) tendered by the applicant.

The Commissioner shall if he is satisfied that the claim is admissible under the provisions of the Book of Financial Powers, pass orders for the grant of refund/renewal and shall personally destroy the stamps and communicate the orders to the Deputy Commissioner concerned and also endorse a copy thereof to the Accountant General. If the commissioner decides against the refund/renewal he will inform the applicant through the Deputy Commissioner of the district and stamp all the stamps as "refund/renewal refused" and return then to the Deputy Commissioner for delivery to the applicant in accordance with rule 18.

(10) <sup>21</sup>If the claim for refund/renewal requires the sanction of the Chief Controlling Revenue Authority or Government, the Commissioner shall address the Assistant Secretary to the Financial Commissioner, and also forward to that officer the stamps (if any) tendered by the applicant.

The Financial Commissioner shall, if he is satisfied that the claim is admissible under paragraph 20.12 of the Book of Financial Powers, pass orders for the grant or refund or renewal, and the Assistant Secretary to the Financial Commissioners shall personally destroy the stamps and communicate the orders to the commissioner and the Deputy Commissioner concerned and also endorse a copy thereof to the Accountant General.

Similarly, when the claim for refund or renewal requires the sanction of Government, the Financial Commissioner shall refer the matter to the local Government, and the orders of Government shall be communicated to the Commissioner of the division and the Pr. Accountant General under the signature of the Secretary or Assistant Secretary to Government, in the Revenue Department. In this case also the stamps shall be destroyed by the Assistant Secretary to the Financial Commissioners.

In case the Financial Commissioner or the Local Government decides that the refund or renewal is not admissible, the original stamps shall be destroyed by the Assistant Secretary to the Financial Commissioner and the orders of rejection communicated to the Commissioner and the Deputy Commissioner concerned.

On receipt of orders from Government or the Financial Commissioners, as the case may be, the Collector shall inform the applicant of the decision, and in case the refund or renewal has been sanctioned, he shall also prepare the necessary voucher in Form S.R.2 or S.R.4, as the case may be, and deliver the same to the applicant or his duly authorised agent, who shall acknowledge its receipt in column 18 of the register.

(11) <sup>22</sup>Applications for the grant of refund or for renewal shall be preserved by the Collectors for a period of one complete financial year following the one in which they are sanctioned.

(12) <sup>23</sup>The stamp auditor shall audit the records and registers required to be kept under these rules at regular intervals not exceeding one year and shall report the result of his inspection to the Collector of the district.

When examining the records and registers of the Refund Clerks, the stamp auditor shall, in order to ensure that serviceable stamps received from a licensed stamp vendor have been duly deposited in the double lock of the treasury, check the entries in refund/renewal statement in Form S.R. 3/S.R. 4 with the certificate

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<sup>20</sup> Rule 22 of the Punjab Stamp Refund, Renewal and Disposal Rules, 1934.

<sup>21</sup> Rule 23 *ibid*.

<sup>22</sup> Rule 24 of the Punjab Stamp Refund, Renewal & Disposal Rules, 1934.

<sup>23</sup> Rules 25 *ibid*.



of the Treasury Officer in Form S.R.5 and also check the entries of receipt of stamps made by the Treasury Officer in the copies of plus and minus memos, kept in treasuries.

(13) <sup>24</sup>Immediately after audit, the cancelled stamps referred to in Rule 17, shall be destroyed by the auditor in the presence of the Collector and the destruction shall be certified by the Collector in the manner prescribed in Rule 27 of the Rules *ibid*.

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<sup>24</sup> Rule 26 of the Punjab Stamp Refund, Renewal & Disposal Rules, 1934.



## **CHAPTER 11**

### **AUDIT PROCEDURES**

#### **Composition of inspection parties and procedures for conducting of local inspection**

**11.1** The parties assigned to audit the accounts of an Registrar/Sub-Registrar under the Act, shall consist of two trained Assistant Audit Officer and an Auditor. Necessary supervision by a Sr. Audit Officer /Audit Officer shall be provided where possible. It shall be the duty of the Inspecting Officer to test check the complete accounts of at least one month and in case certain transactions irregularly made, come to his notice, he shall get the accounts of all the months checked. A report to this effect shall be made to the headquarters along with his findings.

**11.2** The party visiting an office in connection with an inspection shall usually send an advance intimation of its taking up the audit by a probable date specifying therein the records etc. to be made available to it. Though it will supplement the intimation already sent by the headquarters, yet in case of any change in the programme due to unavoidable reasons it will serve as a fresh intimation.

**11.3** A party visiting an office, shall in the first instance call for a list of auditable documents from the head of the office and thereafter assign specific checking duties among the Assistant Audit Officers and the Auditor. Cases of importance along with the relevant records should be scrutinised by the Assistant Audit Officers. The Auditor attached to the party should be assigned duties of less importance of miscellaneous nature but should include verification of payment made into the Treasury and drawn from it. The list of payments made into the Treasury as supplied by the Treasury Officer should also be thoroughly scrutinised so as to avoid any chance of embezzlement, etc.

**11.4** During course of audit if anything important reflecting on the working of the office or affecting the revenues of the Government come to the notice of the party, a memo stating the facts alongwith the records on which such facts are based, should be issued to the Head of the Office requesting him to confirm the facts and explain the position. On receipt of his reply, the case should be perused further and discussed with him if necessary, before incorporating it, in the Audit and Inspection Report. Such memos should form part of the rough sheets and forwarded to headquarters.

**11.5** All important points noticed in audit, should be incorporated in the Audit and Inspection Report. It should be drafted very meticulously in a legible hand in the manner laid in chapter V of the Outside Audit Department Manual and should comprise an introductory Para review of outstanding objections from previous reports in brief and schedule of persistent irregularities in Part-I. In Part-II, important irregularities coming to the notice of the party during course of audit which have the potential of being developed into draft Paras even at a later stage, should be included in Section I and all other points of lesser importance in Section B. All minor points should be included in Part-III, i.e. Test Audit Note. Minor points of errors in classification erroneous accountals and improper maintenance of records should as far as possible be settled at the spot after getting the compliance made by the head of the offices.

**11.6** The Audit and Inspection Reports should thereafter be discussed on the last day of the inspection with the Head of Office who should be informed before hand of the same. He should be requested to be present at the Headquarters for discussion at the time of completion of the audit. The Head of the Office inspected should sign on the Part-III of the Audit & Inspection Report, to the effect that the Report has been discussed and the facts mentioned therein have been verified and found correct.

**11.7** After completion of the audit, the inspection report should invariably be submitted by the Inspecting Officer, demi-officially to the Deputy Accountant General (RS) so as to reach headquarters not later than five days after the completion of audit. Any delay in its receipt at the headquarters should be got condoned under the orders of the Deputy Accountant General (RS).



**11.8** The Inspecting Officer while forwarding the inspection report, should frame tentative draft Paras in respect of points included in Section-A of the Current Audit and Inspection Report (Part II) supported with relevant documents, extracts of records etc. on which these Paras are based and the facts duly admitted by the Head of the Office. Inclusion of certain Paras in Section A on the one hand and not framing tentative draft Paras on the other without cogent reasons should be viewed seriously. Clear-cut cases of embezzlement of Government money or misappropriation of revenues or instances of glaring irregularities should however be included in Section A irrespective of the fact whether such cases could or could not be developed into draft Paras.

**11.9** The Inspecting Officer shall be responsible for the review of old objections of previous reports. He should investigate the reason for not complying with the observations made in the previous inspection reports. He should, if necessary discuss each case with the Head of Office and stress upon the importance of taking early action for liquidation of such objections. He should, however, drop the objections where compliance has been made and shown to him. In case he is satisfied that the Head of Office has not taken adequate action towards the expeditious settlement of the old objections particularly those of glaring magnitude, the matter should be specifically brought to the notice of the Head of the Department calling upon him the necessity of early taking action at his end.

**11.10** The Inspection Report after its receipt at the headquarters, should be scrutinized by the Section incharge and submitted to the Deputy Accountant General (RS) for his approval and issue to the Department concerned. All cases recommended by the Inspecting Officer and considered fit for further processing as tentative draft Paras should be pursued vigorously by a special cell. Other Paras will, however, continue to be pursued by the Section concerned through the Inspection Reports.

**11.11** Time schedule for issue of Audit and Inspection notes.

The Audit and Inspection Notes are to be issued within one month from the date of completion of the local audit / inspection.

The period of one month for issue of inspection Notes / Reports from the date of completion of audit has to be computed as under:-

- (i) 5 working days for the receipt of the draft report from the Audit Party (the draft report is expected to be discussed with the officer in charge before the close of the day of inspection )
- (ii) 5 working days for the Section to submit the Audit and Inspection Note.
- (iii) 4 working days for the Audit Officer and the Group Officer to pass the Audit and Inspection Note.
- (iv) 10 working days for the typing, feeding Headquarter entry form in Inspection Report Processing System (IRPS) and issue of the Audit and Inspection Note.
- (v) Total 24 working days (say one month)

**11.12** The headquarters office shall maintain a register in proper form to ensure that no delay occurs at any stage and immediate remedial measures are taken to avoid it. Any delay should be brought to the notice of the DAG (RS) for investigation.

**11.13** The records in connection with the Inspection Reports shall be preserved in accordance with the provisions of Appendix II of the outside Audit Department Manual and approval of the Deputy Accountant General (RS) shall be necessary before weeding out of old records is ordered by the Records Branch/Librarian.



## APPENDIX I

### IMPORTANT AND INTERESTING DECISIONS OF HIGH COURT AND SUPREME COURT UNDER THE INDIAN STAMP ACT, 1899

#### Object of the Act

(1) The Act aims at protection of the revenue by excluding proof of a bargain by an instrument not only stamped, but does not alter the terms of the bargain between the parties<sup>1</sup>. The Act is thus purely fiscal regulation whose primary object is to prevent evasion of the revenue it imposes. The Act is not limited to affording a party a protection of which he may avail himself or not according to his will and is also not enacted solely for the protection of the revenue and to be enforced solely at the instance of the revenue officials<sup>2</sup>.

#### Construction

(2) (a) *General*- There are two well established rules of construction, namely (i) where the words of a statute, are in themselves precise and un-ambiguous, no more is necessary than to expound those words in their natural and ordinary sense, the words themselves in such case best declaring the intension of the legislatures, and (ii) where alternative constructions are equally open that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating, and that alternative is to be rejected which will introduce uncertainty, friction or confusion into the working of the system<sup>3</sup>. The golden rule is that the words of a statute must *prima facie* be given their ordinary meaning unless that leads to some absurdity, or some repugnancy of inconsistency in which case the grammatical and ordinary sense of the words may be modified so as to avoid that absurdity and inconsistency<sup>4</sup>.

(b) *Fiscal enactment* (i) *clear and unambiguous words* – Where the words of a statute are – themselves precise and unambiguous, those words should be expounded their natural and ordinary sense<sup>5</sup>. In interpreting a fiscal statutes, like the Stamp Act, equitable considerations are entirely out of place. There is no scope for interpreting such a statute on any presumptions or assumptions. The Court cannot proceed to make good deficiencies if there be any, it can not import provisions in the statutes so as to apply any assumed deficiency nor can it imply any thing which is not expressed. The Court must look squarely at the words of the statute and interpret them and in case of doubt in a manner favorable to the subject<sup>6</sup>.

(ii) *Strict construction* – If an instrument comes within the words of the Act, the tax must be levied irrespective of any hardship or oppression resulting to the subject from the error or mistake, if any, as it is for the Legislature to rectify the error or mistake. If on the other hand, instrument does not come within the meaning of the words in the Act, the Court has not the right to force the meaning or give the crown the benefit of equitable or benevolent construction, however much the case may be within the spirit of the Act, in other words, the subject must not be taxed unless the language of the Act clearly imposes the obligation<sup>7</sup>.

“In a taxing Act. one has to look merely at what is clearly said. There is no room for intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used”<sup>8</sup>. “The effect of the rule of strict construction might almost be summed up in the remark, that, where an equivocal word or ambiguous sentence leaves a reasonable doubt of its meaning which the canons of interpretation fail to solve, the benefit of the doubt

<sup>1</sup> Kumar Broja Moahn Singh V. Lachmi Narain Agarwal, 5 Pat-L-J 660; 58 i.e. 99; 1920, at 50 Affirmed in Lachmi Narain Agarwala V. Rameshwar Prashad Singh, 51.1.A 332. 4 Pat-34; 26 Bom. L-R. 1140; 82 I.C. 789; 1924 P.C. 221. See also Sethuraman V. Rama Nathan I.L.R. (1947) Mad. 141; 227 I. 360, 1946 Mad : 437

<sup>2</sup> Surajmull V. Triton Insurance Co; 521 A, 126 : 52 Cal. 408 : 86, Ltd ? IC, 545 : 192 P.C. 83.

<sup>3</sup> Collector of Custom V. Digvijay Singh Ji spinning & Weaving Mills Ltd; 1961 S.C. 1549, See also State of West Bengal V.M/S Mondal B.K. 1962 S.C. 779.

<sup>4</sup> No Kes V. doncaster Amalagamted Collieries (1940) A.C. 1014, Grey, V Peason (1857) 6. H.L. Gas 106, H.L. Pye Vo Minister of Land for New South Wales (1955) 3 All. E.R. 514.

<sup>5</sup> Shri Ram V. State Tax of Maharashtra (1961) ISJC 677 : 1961 S.C. 674.

<sup>6</sup> Commr. of Sales Tax V. Modi Sugar Mills Ltd; (1961) 25. P.C.R. 189 (1961) I.S.C.A. 635 (1961) C.S. 1047. Akhar Abbas V. Asstt Collector Central Excise 1961. M.P.G. 653 (1961) M.P.L.J. 1244; 1961 jab L.J.1193 : 1961 M.P. 353, Jagananath V.B.N. Datta 1963 Cal. 26.

<sup>7</sup> Partington V.A.G (1849) L.R.4. H.L. 100-112, applied in Northdumber land (Duke) V.I.R.G. (1911) 2 K.B. 343, 358

<sup>8</sup> Cape Brand Syndicate V.I.R.C. (1931) I.K.B. 64 approved in Candiaen Eagle oil Co. V.R. (1946) A.C. 119, 140.



should be given to the subject and against the legislature, which has failed to explain it self. But it yields to the paramount rule that every statute is to be expounded according to its expressed or manifest intention, and that all cases within the mischiefs aimed at are, if the language permits, to be held to fall within its remedial influence”<sup>9</sup>.

(iii) *Cases where the meaning of words is doubtful or ambiguous* – In such cases, the benefit of doubt must go to the subject. The language of the Stamp Act, must be read in a manner most beneficial to the subject<sup>10</sup>. If in construing tax statute, there are two interpretations possible, then effect is to be given to the one that favours the citizen and not the one that imposes a burden on him”<sup>11</sup>.

### **Application of Act to particular instruments**

(3) There are two guiding principles which govern the application of the Stamp Act to particular instruments. The principles may be stated thus :-

(a) The Court is not bound by the apparent tenor of the instrument but will decide according to the real nature of substance of the transaction<sup>12</sup>.

(b) The duty is on the instrument, not the transaction<sup>13</sup>.

The first principle is based upon the proposition that the substance and not the form that matters in effecting the liability to stamp duty. One has “to look at the substance of the terms agreed upon and not to the nomenclature given to the deed by the parties<sup>14</sup>.” “Thus in order to determine, whether any, and if any, what stamp duty is chargeable upon an instrument, the legal rule is that the real and true meaning of the instrument is to be ascertained; that the description of it given in the instrument itself by the parties is immaterial. The question, therefore, stamp or no stamp, and if stamp to what amount, is to be determined upon the real and true character and meaning of the writing<sup>15</sup>.”

The second principle really stakes from the first. It is based upon the proposition what is struck at is the instrument and not the bargain between the parties. The duty is on the instrument and not on the transaction<sup>16</sup>. Lord Esher’s observations in this connection are very instructive. The first thing to be noticed is that the thing which is made liable to the duty is an instrument. If a contract of purchase and sale or a conveyance by way of purchase and sale, can be, or is, carried out without an instrument, the case is not within the section, and no tax is imposed. It is not the transaction of purchase and sale which is struck at; it is the instrument where by the purchase and sale are affected which is struck at. And if any one can carry through a purchase and sale without an instrument, then the Legislature have not reached the transaction<sup>17</sup>. In *Hankins V. Clutter buck*<sup>18</sup>, Baron Rolfe observed; “If the party so acted as not to be hit by the Stamp Act, he had a right to do so. “Thus, a land-lord orally letting out property to tenant on terms in a letter is not hit by the Act as the letter is not a lease<sup>19</sup>. So also a letter reciting a past sale and past receipt of consideration money is not a conveyance<sup>20</sup>. Likewise a gift made orally escaped duty<sup>21</sup>. Similarly, an entry in the book of sale or purchase of goods on credit is not liable to stamp duty as it is neither acknowledgement nor agreement<sup>22</sup>; or a letter of a mortgagor confirming an equitable mortgage already effected does not require to be stamped<sup>23</sup>.

It is undoubtedly true that the stamp duty is leviable upon instruments and not upon transactions. But it is equally true that the court is not thereby debarred from inquiring what is the true nature and intended

<sup>9</sup> Max well Interpretations of Statutes, 11th Edn. P. 275.

<sup>10</sup> *Gurr. V. Scudder* (1855) 11 Exc. 190, per Pullock G. B.; *Fry V.I.R.C* (1959) Ch. 86 A.I.R.C.V. wolfson (1949)I. All E.R. 865

<sup>11</sup> *The Central India Spinning and Weaving and mfg. Co. Lt. V. Municipal committee* 1958. Sx.C.J. 604; S.C. 341. *Escorts (Agnt) Private Ltd. v. commissioner of Income Tax* I.L.R (1958) Punj : 1956. 2 Punj I.L.R 613; 1959, Punj 364.

<sup>12</sup> *Limner As phalt paving Co. V. comer of Inland Revenues*, (1872) 7 Exc. 211, *Cheon & Moove V Inland Rev. Commrs*, (1933) K.B.2K.B. 126.

<sup>13</sup> *Hankins V. Clutter buck*, (1848) 2 Car & Kir, 810; *Commissioner of Inland Revenue V. Angns*, (1899) 23 Q.B.D 579s

<sup>14</sup> *In re-Burmah Shell Oil storage and Disributing Co*; 55 All. 874; 145 I.C. 674; 1953 All. 735 (FB).

<sup>15</sup> *Limmer Asphalt Paving Co. V. Commrs of Inland Revenue*, 8817 Q.B. D. 16 171, per Marton.

<sup>16</sup> *Nanak Chand V. Fathen Lab* 1 : 158 I.C. 234; 1935 Lah 567.

<sup>17</sup> *Commer. of Inland Revenue V. Angus* (1839) 23 Q.B.D. 579. 589.

<sup>18</sup> (1848) 2 Car. & Kir, 810. 813.

<sup>19</sup> *Prince of Arcot Endowment V. Arunachalam Pillai*, I.L.R. (1945) Mad. 539, 1945 Mad. 138 (F.B.)

<sup>20</sup> *Rustnji V.E. mperor*, 44 I.C. 261 : 1918 Lah. 354 (S.B.).

<sup>21</sup> *Minister Of Stamps V. Townerd* (1909) A.C. 633, 638 (P.C)

<sup>22</sup> *Nanak chand V. Fattu*, 1935 Lah 567, *Supra*.

<sup>23</sup> *Tayabali A. Mandviwalla V. Parpatibai*, 26 S.L.R 29 139 I.C. 95 : 1932 Sin 73.



purpose of the instrument sought to be charged.<sup>24</sup> In determining the duty payable on an instrument, the Court must have regard only to the terms thereof and is not entitled to take into consideration evidence dehors the instrument itself<sup>25</sup>. The duty being on the instrument, the instrument is chargeable even if the transaction embodied therein is not carried out. Thus in *Suffield V. Inland Revenue Commr.*<sup>26</sup> a debenture trust deed was executed to secure a debt which did not exist at the time of the execution, the deed was, nevertheless, held liable to duty.

It must be noted that an instrument does not become a mere memorandum of a past transaction and do not chargeable as a conveyance because of the use of the past tense<sup>27</sup>. It is not permissible to refer to any policy underlying an Act to construe the provision of a specific section of a fiscal enactment<sup>28</sup>.

In a recent full Bench decision, the Madras High Court has pointed out the true scope of the rule prevailing over the form with reference to a document chargeable to stamp duty. Its true scope as pointed out therein is that the recitals in a document should not be lost sight of merely because the parties gave a particular description of the nature of the document. But there can be no legal impediment to a party selecting and adopting a particular form of transaction to minimize the expenses of stamp duty. In such a case the Revenue can't say that the object of the transaction was to achieve a purpose not disclosed in the document and that therefore the document should be deemed to be that which it is not<sup>29</sup>.

(4) Under Section 26 and Section 35 it was held that the object of the Stamp Act is not to alter the terms of the bargain between the parties but to protect the Revenue by excluding proof of the bargain by an instrument unduly stamped.

In *Kumar Broj Mohan Singh's* case it was held that a lessor under a mining lease was entitled to recover the royalty in excess of the royalty in excess of the amount covered by the stamp in the lease deed provided penalty was paid for the amount not covered by the stamp affixed thereto. It has also been held in another case that an objection by the defendant appellant that the lease having been stamped under Section 26, the plaintiff was not entitled to recover anything in excess of the amount for which the stamp was paid was not a tenable objection on which a decree could be set aside<sup>30</sup>.

(5) Under Section 27 of the Indian Stamp Act, 1899, it was held that the rule of stating the facts affecting the chargeability to duty in the instrument fully and truly is more directory than obligatory and is intended to protect the revenue. Disregard of this rule would neither invalidate the instrument nor render it inadmissible in evidence but it would entail the penalty under Section 64.

This section corresponds with section 5 of the English Stamp Act, 1891. Under that Act, where a deed of conveyance omitted to state in terms of the consideration for the sale, although the Commissioners might have insisted upon the insertion of the real and true consideration in the deed, the provision might be considered rather as directory than imperative, the real object being to obtain the revenue<sup>31</sup>. It has also been said that the omission to set forth the consideration in express terms would not invalidate an instrument<sup>32</sup>. The mere failure on the part of the parties to a transaction to set out facts in document to comply with this section does not either render the document, inadmissible or liable to impounding and taxed in the manner provided in section 35. For that, one will have to go to that section and the appropriate Article in the schedule which is Art. 33<sup>33</sup>.

### **Duty on instrument as it stands (Section 27)**

(6) It is well established that stamp duty is to be calculated on the instrument as it stands and not any collateral circumstances which may be shown in evidence and the duty must be paid on what is stated in the instrument<sup>34</sup>. In most cases if the instrument bears a stamp commensurate with the consideration stated it is

<sup>24</sup> *Oughtred V. Inland Revenue Commr.* (1958) 2 W.L.R. 64.

<sup>25</sup> *The Fin. Commr; Buin V.E.R.M.M.A Chettiar Firm*, 151 I.C. 533 : 1935 Rang. 613.

<sup>26</sup> (1908) I.K.B. 865.

<sup>27</sup> *Horshall V. Hery*, (1848) 2 Exct. 778.

<sup>28</sup> *Sri K.G. and G.N.O. Mill V. State of Madras* (1975) I.M.L.J. 169 : 1955 M.W.N 57 : (1955) 6 S.T.C. 38 : I.L.R. (1955) Mad. 825.

<sup>29</sup> *Board of Revenue, Madras V.N. Narasimhan*, I.L.R (1960) Mad. 926.

<sup>30</sup> *Baronicoal Concern, Ltd; V. Pan Charank*, 1930 Cal. 526, 530.

<sup>31</sup> *Furness Railway Co. V. Commr.* (1864) 33 L.J. Ex. 173.

<sup>32</sup> *Landowners, West of Engand etc. Co. V. Ashford*, L.R. 16 Cr. D. 411.

<sup>33</sup> *Vinayak Datta traya V. Hussanali Haji Nazarali*, 1960 M.P. L.J. 1346 : 1961 Madh. Pra. 6.

<sup>34</sup> *Ramen chetty v. Mhamed Ghouse*, 16 Cal. 432; *Chandra Kant Mookerji V. Kaitrik Charan chaile*, 5 Beng. L.R. 103; 14. W.R.A O.J. 38.



duly stamped for the duty is generally on the amount or value of the consideration as stated in the instrument.<sup>35</sup> Many articles of schedule I require duty to be calculated on the amount or value as set forth in the instrument.

### **Duty to be assessed on real consideration (Section 27)**

(7) It is well settled that the stamp duty payable on an instrument must be determined by referring to the terms of the document and the Court is not entitled to take into consideration the evidence to depose the instrument itself. Thus, where an instrument of conveyance stated the consideration to be a total sum of ₹ 300 made up of ₹ 250 being the total of two terms of principal and ₹ 50 being the balance of interest on the two loans arrived at by waiving ₹ 145-10-0 out of ₹ 195-10-0, the total interest actually due on the two loans and the transferee agreeing therein to release the sum of ₹ 145-10-0, it was held that the real consideration set forth in the conveyance was ₹ 445-10-0 and the stamp duty was leviable on the said amount.<sup>36</sup>

### **Instrument of gift (Section 27)**

(8) A deed of gift contained no statement of the value of the property gifted. The Collector ascertained the value of the property in order to cause the instrument to be stamped accordingly. It was held that no “Value” was set forth in the instrument, it did not require any stamp under the Stamp Act and for the purposes of the stamp law the valuation given in the instrument would have to be accepted, and if there was an intentional undervaluation then a prosecution would protect the Government against the attempted fraud but there was no provision in the Stamp Act to authorise the Collector to ascertain the value of the property in order to cause it to be stamped accordingly.<sup>37</sup>

The “value of the property as set forth” in the instrument of gift in Article 33 is the value that may or may not have been actually set forth, notwithstanding the provisions of Section 27. The words set forth in that Article refer to “value” and not to property. A person should, for failure to comply with this section, be liable to prosecution under Section 64 but such failure does not render the instrument inadmissible nor makes it liable to be impounded and taxed under Section 35.<sup>38</sup>

### **Instrument of settlement what the value of property should be stated to be (Section 27)**

(9) In a deed of settlement the question often arises what the value of the property concerned in settlement should be. The value of the property might have been much lower at the time the settler purchased or acquired it. As there is no definition of “Value” any where in the Stamp Act, it should be understood in its ordinary sense of “value in the open market” or “market value” unless any term in the Act suggests the contrary, and further such market value must be related to date of execution of the deed of settlement. In fact, there is no machinery in the Stamp Act for ascertaining true value of property or consideration as the case may be. Moreover, the expression “set forth in such settlement” used in Art. 58 does not apply to the value of the interest created by the instrument but to the value of the property settled. The above two portions are illustrated as follows :-

### **Illustrations**

(a) A settled the property by a deed of settlement in favour of B, whose admitted value stated by the settler to be ₹ 2 lakhs. The property was subject to a mortgage of one lakh of Rupees so that the value of the equity of redemption would be at least one lakh of rupees. The settlor stated in the document thus “value for the purposes of stamp and registration is ₹ 3,000,” held, “value must mean market value” and such value should be ₹ 2 lakhs at the time of the execution of the deed and not the value of the property when the execution required it, and hence the statement in the deed that the value of the property was ₹ 3,000 contravened the provisions of Section 27 of the Act.<sup>39</sup>

(b) A, by a deed of settlement, conferred a limited interest on B in certain immovable property and an unlimited interest in certain movable property. The instrument stated the value of the interest in the properties to be ₹ 1,500. The Collector levied deficit duty and penalty on the real value of the properties

<sup>35</sup> *Ibid.*

<sup>36</sup> In re C.R.M.L Chettyar Firm, 13 Rang 613 : 157 I.C. 538 ; 1935 Rang 243 (S.B.).

<sup>37</sup> In the matter of Muhammad Mujoffar Ali, 44 All 339 : 20 A.L.J. 166 : I. 65 811 ; 1922 All 82 (F.B)

<sup>38</sup> Vinayak Dattatraya V. Hussanali Hali Nazarali, 1960 M.P.L.J. 1346 ; 1961 Madh, Pra. 6.

<sup>39</sup> Joint Secretary, Board of Revenue, Madras V. Venkatarama Ayyar, L.R. (1951).



which was ascertained to be ₹ 4,674-11-3; held, the terms “setforth in such settlement” did not apply to the value of interests created by the instrument but to the value of the property settled.<sup>40</sup>

### **Lease providing for payment of rent in kind**

(10) Instruments of lease providing for the payment of rent wholly in kind or partly in money and partly in kind (for instance grain) should state the approximate market value of the consideration in kind<sup>41</sup>.

### **Omission to state full particulars as to consideration or value, penalty for (Section 27)**

(11) An omission to state full particulars as to consideration or value as required by this section, if made with intent to defraud the Government is an offence punishable under Section 64 of the Act, when such a prosecution is initiated the burden is on the prosecution to show affirmatively that terms of this section have not been complied with. On the other hand the accused is entitled to rely upon evidence that has been produced on behalf of the prosecution to urge that such evidence does not establish the guilt. Section 64 requires proof of intention to defraud, mere non-payment does not make person liable for prosecution under the said section but the intention can be inferred from the circumstances of the case<sup>42</sup>.

### **Illustrations**

(a) A sold certain property of ₹ 20,000 to R who paid ₹ 1,000 to A in cash and the balance of the purchase money, viz., ₹ 19,000, was agreed to remain with R to be the credit of A to draw upon as and when required. A did not draw any part of the said money. Later the parties agreed to rescind the contract and R resold the property to A, the consideration being stated to be ₹ 1,000 in cash. A bare reference was made of the prior sale in the second instrument, but the extinguishment of R's liability to pay ₹ 19,000 to A was not mentioned, held, R committed an offence under Section 64(9) read with this section<sup>43</sup>.

(b) A obtained from B a lease of site for 99 years either to himself or his nominee and built a house thereon. He contracted to sell his interest in the site and the house to C, A, B. and C joined in the execution of the instrument and the terms of the lease to C were the same as agreed to by A. The instrument omitted to set for the money paid to the builder as consideration for the deed, held, the instrument was really a conveyance and A was liable to penalties<sup>44</sup>.

### **Document sought to be registered on an under valuation duty of the Registrar (Section 27)**

(12) As the law stands two courses are open to a Registering Officer when a document is sought to be registered on an undervaluation. Firstly, if he either from his own information or otherwise inspects that the valuation given is an under valuation with intent to cheat the Government by the legitimate duty, he can ask for particulars from the party and if satisfied with its under-valuation, can refuse to register the document unless proper duty was paid, Secondly, in case where the document gets registered and the information is subsequently received that the valuation shown is an under-valuation and that the legitimate stamp duty has been intentionally evaded to defraud the State, it will be open to the Registrar to initiate a prosecution under Section 27 read with Section 64 of the Stamp Act<sup>45</sup>.

### **(13) Sub-Section (1) to (3) of Section 64 of the Indian Stamp Act**

Provides for levy of penalty for omission to comply with provisions of Section 27 stating *inter alia*, any person who with intent to defraud the Government:-

(a) executes any instrument in which all the facts and circumstances required by Section 27 to be set forth; or

(b) being employed or concerned in or about the preparation of any instrument, neglects or omits fully and truly to set forth therein all such facts and circumstances; or

(c) does any other act calculated to deceive the Government of any duty or penalty under the Act; shall be punishable with fine which may extend to five thousand rupees.

The section makes it penal not to set forth fully and truly the particulars required by Section 27. The section provides that any person who executes any instrument or takes part in its preparation without fully and truly setting forth all the fact and circumstances required by Section 27 is liable to be punished. It also

<sup>40</sup> Reference under Stamp Act, sec. 46 & Med. 453 (F.B.)

<sup>41</sup> Mombay C.O. Nos. 1238, dated 16th February, 1883 and 3425, dated 28th April, 1894.

<sup>42</sup> In re: vankataswami 1953 Gr. L. 31756, 1953 Med. 941.

<sup>43</sup> Emperor V. Rameshor Dass, 32 All, 171 : 7 A.L.R 110 : 5. I.C. 697.

<sup>44</sup> A-G V. Blown, (1849) 3 Exch. 662; 154 E.R. 1011 ; See also onghtred V Commer; (1960) A.C;206.

<sup>45</sup> In: Re: Venkataswami, 1953 Cr. L.3. 1756; 1953 Med, 941, 942.



provides that any person who does any other act calculating to deprive the Government of any duty or penalty under the Act is also liable to be punished. Punishment prescribed is up to five thousand rupees.

Intention to defraud is an essential ingredient of the offence. There is a difference of judicial opinion on the question whether clause (c) should be construed as falling outside clause (a) and (b) or it should be construed *egusdem generis* with clause (a) and (b)<sup>46</sup>.

### **Intention to defraud**

(14) The phrase “with intent to defraud the Government” in the opening words of the section shows that an intention to defraud the Government is an essential ingredient of the offence and it can be inferred only from the circumstances. Mere nonpayment of proper stamp duty does not make a person liable to prosecution under this section. Clear proof of accused’s intention to evade payment of proper stamp duty, and of the execution of the instrument with intent to defraud Government, is essential to conviction<sup>47</sup>. No offence is committed under this section by the sale of a property for less than its worth (the market value being irrelevant) unless it is shown that the real consideration differs from that recited in the instrument and there was an intention to defraud the Government of its stamp Revenue<sup>48</sup>. But where a re-conveyance of property purported to be for consideration of ₹ 1000 when the full consideration was ₹ 20000 there was clearly intent to defraud Government of stamp duty and the person who affected the reconveyance was guilty of an offence under this section<sup>49</sup>. As already stated, the intent to defraud can only be inferred from circumstances where there was no secrecy about the preparation of an instrument attested as a will, though in reality it was deed of settlement, the circumstances fell far short of establishing intent to defraud<sup>50</sup>. It is a strong presumption that a person will not risk a penalty for fraud in a case in which he is not interested. Again, it may be presumed that open handed acts are not done fraudulently<sup>51</sup>. A person should, for failure to comply with Section 27, be liable to prosecution under this section, but that does not render the instrument either inadmissible in evidence or liable to impounding and taxed in manner provided in Section 35.

The intent to defraud is very seldom, the only or the principal intention entertained by the fraudulent person whose principal object in nearly every case is his own advantage. The injurious deception is usually intended only as a means to an end, though it does not prevent it from being intentional. Therefore, it is only when there is an intention to deceive and by means of deceit to obtain an advantage, there is fraud<sup>52</sup>. Sir J. F. Stephen has observed thus: “whenever the words fraud or intent to defraud” or fraudulently occur in the definition of a crime, two elements at least are essential to the commission of the crime, namely first, deceit, or an intention to deceive or in some cases move secrecy and secondly either actual injury or possible injury or an intent to expose same person either to actual injury or to risk of possible injury by means of that deceit or secrecy<sup>53</sup>.

Sub-section 4(a) under Section 64 of the Stamp Act provides for a punishment where an individual executes any instrument without setting forth all facts and circumstances. The Act clearly stipulates punishment to any person who executes an instrument omitting to comply or failing to comply with the provisions of Section 27. A person in whose favour an instrument is executed is not hit by this clause of the section; except in the case of a partition deed or a share transfer. An instrument is duly stamped if the stamp is adequate for the consideration.

(15) Clause (b) of Section 64 of Indian Stamp Act provides for Neglects & Omission to set forth fully & truly all facts and circumstances in the instrument.

This clause applies to a person who is employed or concerned in or about the preparation of a deed without complying with the requirements of Section 27. This clause is not restricted to the scribe of the instrument but is wide enough to punish the person who is in truth, the author of the deed and is responsible

<sup>46</sup> Ram chand V. Emperor, 1940 Lah 274 : 41 Cr. L.S. 729 Brajendra Bakshi V Emperor, 45. IC 275;19 Cr. L.S. 515 Keishnawami, Iyer V. Empeor, 1937 M.W.N. 867.

<sup>47</sup> Brajendra Nath V. Emperor, 45 I.C. 275; Rang Lal Sahu V. Emperor, 108 I.C 427 : 29 Cr L. 3397 ; Nihal Chand V. Emperor 13 Lah. L.T. 18 Maya Shah V. Emppror 34 P.L.R. 1072;1461 I.C. 1055;1033 Lah 959,35 Cr. L. 5291, Ram Chand Vo Emperor 1940 Lah, 274.

<sup>48</sup> Narassinha Iyer V. Tehsildar of Wallazal, 1937, M.W.N. 1071.

<sup>49</sup> Rameshwar Das v. Emperor 32 All. 171 : 7A L.J. 110 : 51 c. 697 : 11 Cr. L. 3.204.

<sup>50</sup> Ram Chand v. Emperor 42. P.L.R. 215 : 1891, c. 343 : 1940 Lah 274 : 41 Cr.L. 3.729.

<sup>51</sup> Vinayak Datt Atraya V. Hassanali Hagi Nayarali, 1960 M.P. L.J. 134 1961 Madhya Pradesh-6.

<sup>52</sup> In re: Venkata Swami (1953) J.M.L 3658 : 1953 Mad. 941, 943. Nihal Chand V. Emperor 13 Lah. T.18.

<sup>53</sup> Quoted in re:Venkataswami, Supra.



for it, though he writes the deed through the hand of another<sup>54</sup>. A person who is the moving spirit in the matter of sale and who is real purchaser through the deed is nominally taken in the name of another who engineers the whole thing and arranges for the wording of the sale deed, is a person concerned in or about the preparation of the instrument. It is not correct to say that a vendee of sale-deed will never be liable under clause (a) and (b) of this Section are the executants of the documents above would be liable. If the vendee was concerned with the preparation of the conveyance and if the consideration was stated therein to be ₹ 300 instead of ₹ 2000, which was the real value of the property and if there was good faith, the vendee also will be liable under clause (b). But the scribe, who scribes the deed without any knowledge of the fraud, does not commit an offence under this clause<sup>55</sup>.

Whatever may be the circumstances under which prosecutions launched the burden of proof is upon the prosecution to show affirmatively and satisfactorily that the terms of section 27 have not been complied with<sup>56</sup>. In all criminal cases, the onus of proving every-thing essential to establish the charge against accused is on the prosecution. The difficulty of proving a fact may affect the quantum of evidence demanded in the first instance, but does not change the dominant presumption of innocence. It is also not necessary in all these cases for the accused to produce independent evidence. He is entitled to rely upon evidence that has been produced on behalf of the prosecution to urge that such evidence does not establish the guilt<sup>57</sup>.

(16) Clause (c) of Section 64 of Indian Stamp Act, provides for levy of penalty for depriving the Government of any duty.

This clause is new and did not find place in the Act of 1879. A difference of opinion exists as to whether or not the words “any other act calculated to deprive the Government of any duty or penalty under the Act,” should be construed *ejusdem generis* with the words in the preceding clause (a) and (b). In *Chhakmal Choppra V. Emperor*,<sup>58</sup> it was said : “the section must be read as a whole to understand the meaning of clause (c)” and in construing clause (c) it would be right to say “that any other act” must be taken to mean an act of a like nature to those which are specified in clause (a) and (b), i.e. clause (c) should be construed *ejusdem generis* with the words in the preceding clause (a) and (b). Following such construction it was held herein that that a person who put a stamp on a document which he knew was not of proper value would not come within clause (c) of this section. The other view is that clause (c) should not be construed *ejusdem generic* with the words in the preceding clause (a) and (b). Hence, according to this view, a creditor who himself perceives the signing of an improper unstamped entry in his account book, commits the offence punishable under this clause<sup>59</sup>. But an entry made by a debtor in the book of the creditor that a payment was made by him is not an act calculated to deprive the Government of any duty under the Act<sup>60</sup>. Again, a person selling property ostensibly for ₹ 1,000 while the real consideration was ₹ 1,000 in cash and ₹ 19000 deposit with the vender to be drawn by the vender, is guilty under this clause<sup>61</sup>. It is also to be borne in mind that the Court would not infer a fraudulent intention merely because the result; of the action of the parties would be to deprive the Government of duty. Thus where the accused, a money lender kept an account book called *vyaj vahi*, in which he made entries as to loans advanced by him, in which entries were signed by the borrowers but none of them was stamped, it was held that the accused was not guilty under this clause because the Government had failed to prove any intent to defraud the Government of duty<sup>62</sup>.

With regard to the rule of *ejusdem generic*, the general principle is that the terms are to receive their plain and ordinary meaning and Courts are not at liberty to impose on them limitations not called for by the sense, the objects or the mischief of the enactment. But the general word which follows particular and specific words of the same nature as itself takes its meaning from them, and is presumed to be restricted to the same genus as those words. In other words, it is to be read as comprehending only things of the same kind as those designated by them, unless, of course, there be something to show that a wider sense was

<sup>54</sup> Charan Dass, V. Emperor. I.L.R. (1944) Kar 246 : 1944 sand 222 (S.B.) : 46 Cr L.J. 369.

<sup>55</sup> In re: senga Govindan, I. Weir 905, In re: Trimlok Madho, 166-I-C 681 : 1937 Mag 57 : 38 Cr. C.J.258.

<sup>56</sup> Panchanan Rao V. Emperor 1929 Cal. 723 : 31 Cr. L.J.

<sup>57</sup> Woolmington V Director of Public Prosecutions (1935) A.G. 462 followed in Mancini V. Director of Public Prosecutions. 1942 M.W.N Cr. 140, See also Mahadeo V. King 1936 P.C. 242 : 37 Cr. L.J 914 cited in Inre venkataswami , 1953 Mad. 941 Supra.

<sup>58</sup> 44 Cal, 321 : 21 C.W.N. 248 : 24 C.L.J. 441 : 361 C. 146 : 17 Cr.L.J. 466.

<sup>59</sup> Chhagan Lal V. Emperor, 153 : I.C. 952 : 1934 Nag. 261 : 36 Cr.L.J. 493.

<sup>60</sup> Emperor v. Kalu Mal (1903) 23 A.W.N. 173.

<sup>61</sup> Emperor V. Rameshwar Dass 32 All 171. II Cr. L.J.204.

<sup>62</sup> Emperor. N. Ramachandra Raoji Rujjar I.L.R (1938) born, 114 : 39 Bom. L.R. 1184:1938, Bom 87 : 38 Cr L.J. 284.



intended. Unless there is a genus or category, there is no room for the application of *ejusdem generis* doctrine<sup>63</sup>.

**(17) Powers of the Collector to prosecute under Section 64 of the Indian Stamp Act.**

Where Section 27 has been contravened, there is no section in the Act empowering the Collector to take evidence for ascertaining the consideration, all that the Collector can do is to prosecute the executants under this section for not complying with the provisions of Section 27.<sup>64</sup>

In cases coming under this section, the proviso to Section 43 has no application. Hence a conviction under this section is not vitiated by the Collector's failure to take proceeding and to satisfy himself that there was an intention to evade payment of proper duty.<sup>65</sup>

A sanction to prosecute under clause (a) of this Section is not a Sanction by implication to prosecute under clause (b) of Section 62. Hence when a complaint was brought under clause (a) of this Section, before the accused could be convicted under clause (b) of Section 62. The Magistrate should warn the accused that he also stood in jeopardy under clause (b) of Section 62.<sup>66</sup>

It cannot be said that the offences under Section 62(I) (b) and Section 64(a) are respectively minor and major offences.

When a document is sought to be registered on an under valuation, two courses are open to the Registrar before whom the document is presented for registration. Firstly, he can refuse to register the document unless proper duty was paid on asking particulars of valuations from the party when he either from his information or otherwise suspects that the valuation given was an under-valuation with intent to cheat the Government of the legitimate duty. Secondly, in case where the document was registered and the information was subsequently received that the valuation shown was an under valuation and that the legitimate stamp duty had been intentionally evaded to defraud the State, it would be open to the Registrar to initiate prosecution under Section 27 read with this section<sup>67</sup>.

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<sup>63</sup> Mazwali on Interpretation of statutes, 1961 ed. See also stephins commentaries Suthar Land Statutory construction 3rd Ed. Vol-2 Art 4913.7 Bindra Interpretation of statutes, 2nd Ed. P. 32 and all cases of smelting Co. V. land (1897) I.Q.B. 175 Re, Ellwood (1927) I.Ch. 255. R.V. Fasper (1945) I.W.W.R 49 Fersey V. Neat 22 Q. B.D. 565, 566.

<sup>64</sup> Miran Baksh V. Emperor, 47 P.L.R. 41, 1945 Lab 69 Reference under stamp Act 46. 8 Mad 453 (EB) Mohamed Muzaffar Ali In re. 44. All 339 : 651 C. 811 (1922) All 82 (FB) (a case of gift) Financial Commissioner V.C.R.M.M.C.A. Chhattior Firm, 13, Rang 613. 157 I.C. 538 : 1935 Rang 243 (a case of conveyance) Reference, 20 Mad 27, See also Vinayak Dattarviya. V. Hassanali Haji Nazarali 1960 M.P.L.J. 1346 : 1961 Madh Pra. 6 See also note 8 under Section 27 ante and the cases cited therein.

<sup>65</sup> Queen-Empereors V. Verkatarayudu, 12 Mad. 231.

<sup>66</sup> Maya Shah V. Emperor 34 P.L.R. : 1072 : 146 I.C. 1055 : 1933 Lah 959 : 350 L.J. 291.

<sup>67</sup> In re-Venkataswami, 1953 Mad. 941, 942.



## **AMENDMENT UNDER THE HEAD “0030 STAMPS AND REGISTRATION**

The Government of Himachal Pradesh vide notification No. Rev.Stamp(F)6-1/2009 dated 13-01-2012 substitute the existing note under Appendix-XXI of H.P. Land Records Manual, with the following:-

**REVENUE  
(STAMP CELL) DEPARTMENT  
NOTIFICATION  
Shimla, 13th January, 2012**

**(A) Rural Areas :**

**I. Classification of land for valuation:** There will be three categories:

- (i) Property, in which any point of the concerned Khasra No. or part thereof abuts any road in a road in a revenue estate.
- (ii) Property not falling in (i) above, in which any point of the concerned Khasra No. or part thereof is land up to a distance of 50 meters from a road.
- (iii) Property not falling in (i) above, in which no point of the concerned Khasra No. or part thereof is within 50 metres from such road.

**II. Applicable Rates :**

- (i) For a transactions relating to category 1(i) above, the highest from among the following rates will be applied :
  - (a) Highest value of any transaction in the estate or if no transaction is available for that estate, then the highest value in neighboring estates.
  - or
  - (b) Actual Consideration amount.
  - or
  - (c) Transaction in best quality land in the revenue estate or if no transaction in best quality land is available for that estate, then the value of such a transaction in neighboring estates.
- (ii) The rates for property in category 1(ii) will be 25% less than the rate arrived at in II (i) above.
- (iii) The rates for property in category 1(iii) will be 50% less than the rate arrived at in II (i) above.

**Explanation:**

The roads in any revenue estate may be categorized as NH, SH and Other Roads (OR).

- (a) In case of sale of share in a joint holding, Khasra No. of joint holding closest to any category of road will be taken for classification in the appropriate category.
- (b) In case the nearest road is in another revenue estate, distance from that will be taken for the classification in the appropriate category.
- (c) In case of equal proximity to more than one road, the value will be computed on the basis of the road with higher value property.

In each Revenue Estate, the Deputy Commissioner of the district concerned shall, by having regard to the number of roads in the estate, classify them in to NH, SH and OR and the rate above shall be computed separately for each category as far as possible, with the highest rate being assigned to the highest class of road in the estate.

The Deputy Commissioner may, after inviting objections and considering the same, vary the rates for any of the categories in any Rural revenue estate, by passing a speaking order in this behalf.



**(B) Urban Areas :**

**(I)** There will be three categories:

- (i) Property in which any point of the concerned Khasra No. or part thereof abuts any road in a revenue estate.
- (ii) Property not falling in (i) above, in which any point of the concerned Khasra No. or part thereof is land up to a distance of 25 metres from a road.
- (iii) Property not falling in (i) above, in which no point of the concerned Khasra No. or part thereof is within 25 metres from such road.

**(II) Applicable Rates :**

- (i) For a transactions relating to category 1(i) above, the highest from among the following rates will be applied.
  - (a) Highest value of any transaction in the estate or if no transaction is available for that estate, then the highest value in neighboring estates.
  - or
  - (b) Actual Consideration amount.
  - or
  - (c) Transaction in best quality land in the revenue estate or if no transaction in best quality land is available for that estate, then the value of such a transaction in neighboring estates.
- (ii) The rates for property in category 1(ii) shall be 25% less. (iii)  
The rates for property in category II(i) shall be 50% less.

**Explanation:**

In each Revenue Estate, the Deputy Commissioner of the district concerned shall, by having regard to the number of roads in the estate, classify them as I, II, III, and so on, and the rate above shall be computed separately for each category as far as possible, with the highest rate being assigned to the highest class of road in the estate.

The Deputy Commissioner may, after inviting objections and considering the same, vary the rates for any of the categories in any Urban revenue estate, by passing a speaking order in this behalf.

**(C) Revision of Rate :**

The above exercise for fixation of rates in both rural and urban areas shall be undertaken immediately and the rates arrived at will be applicable w.e.f. 01.04.2012. In future also, the rates shall be fixed in March and be effective from 1st April for an entire year. However, after the rates are fixed on 01.04.2012, no detailed exercise will be undertaken again. In each year, the Deputy Commissioner concerned shall notify an enhancement of rates as a percentage of previous rates separately for rural and urban areas in each Tehsil/Sub Tehsil of the district. The enhancement will take into account actual transaction amount in previous year, inflation and special factors affecting a particular urban/rural area. The new rate so arrived at or the actual consideration amount whichever is higher, will be the applicable rate for calculating stamp duty/registration fee for any transaction.

**(D) Procedure for Identifying Classification of Land for a Specific Transaction :**

The purchaser will be required to file affidavit stating the distance of the relevant land or holding from a State Highway and National Highway or Other Road in the revenue estate in the case of a rural area or from relevant Class of Road in the urban area. This will be the basis for the rate to be used for stamp duty calculation. Provided that where the information in the affidavit is subsequently shown to have been false in order to evade the stamp duty and registration fee applicable to a higher category, then a penalty of up to 50% of the applicable duty/registration fee and may be levied and the recovery of the penalty and balance applicable duty and fee may be made from the purchaser as arrear of land revenue, if required.



(II) The Governor of Himachal Pradesh vide Revenue Department's notification **No. Rev. 1-2(Stamp)1/87-I dated 13.08.2014**—In exercise of the powers conferred by clause (a) of sub-section (1) of Section 9 of the Indian Stamp Act, 1899 (Act No. II of 1899), as applicable to the State of Himachal Pradesh, the Governor, Himachal Pradesh is pleased to remit 50% stamp duty on instruments of conveyance deed and lease deed in favour of the new industrial enterprises to be set up in the State from the date of its publication in the Rajpatra (Extra Ordinary), Himachal Pradesh.

(III) The Governor of Himachal Pradesh vide Revenue Department's notification **No Rev.I-9(Stamp) 3/79/2010-11 dated 12.01.2012** In exercise of the powers conferred by Section 9 of Indian Stamp Act, 1899 (Act No. II of 1899), as applicable to the State of Himachal Pradesh, and in supersession of all the previous notifications issued in this regard, from time to time, the Governor of Himachal Pradesh is pleased to prescribe the following Schedule I-A of stamp duty for whole of Himachal Pradesh, to be effective from the date of its publication in the Rajpatra (27.01.2012), Himachal Pradesh, as per annexure A.

(IV) The Governor of Himachal Pradesh vide Revenue Department's notification **No Revenue Stamp(F) 6-1/2009-I dated 26.06.2013** In exercise of the powers conferred by Section 75 of Indian Stamp Act, 1899 (Act No.7 of 1989) amended the rule 4 of the Himachal Pradesh Stamp(Prevention of Undervaluation of Instruments) Rules, 1992,as under:-

in the case of built up structure:-

- I. The following factors shall be taken into consideration for fixing the rates of valuation of residential or non-residential buildings:-
  - (i) *classification of buildings into the Pucca, Semi Pucca and Katcha;*
  - (ii) *classification of area in which buildings are located on the basis of similar land classification for finalizing per square meter rates in different areas;*
  - (iii) *latest plinth area rates notified by the Himachal Pradesh Public Works Department;*
  - (iv) *premium for annual increase; and*
  - (v) *land area occupied by the structure to be included, proportionately or wholly, as the case may be, included in all transactions unless specifically excluded in the transaction deed.*

## II Classification of buildings:

- (a) *Pucca building:* Complete Reinforced Cement Concrete (RCC) structure with Reinforced Cement Concrete columns/beams or load bearing walls with Reinforced Cement Concrete (RCC) slab/Common Gateway Interface (CGI) sheet roofing. All such buildings having a life span of 90 years as per Public Works Department's specifications.
- (b) *Semi Pucca:* Wooden structure with dry masonry and mud plaster with wooden/slate/Common Gateway Interface roofing or Reinforced Cement Concrete (RCC) slab. All such buildings having a life span of 40 years as per Public Works Departments's specifications.
- (c) *Katcha Building:* stone wall with dry masonry/mud plaster with wooden and mud straw roofing.

## III Calculation of plinth area rates

Himachal Pradesh Public Works Department	₹. 9,442/-
Plinth area rates, 2008	Per sqm.
Add 10% for site development	₹. 944/-
Add 12.5% for Electricity fittings	₹. 1,180/-
Add 12.5% for sanitary installation	₹. 1,180/-
<b>Total</b>	<b>₹. 12,746/-</b>

IV The above rate shall be applicable for the lowest category of land rates in every revenue estate as already notified by the concerned Deputy Commissioners. The Deputy Commissioners shall finalize rates for higher categories of land in the concerned revenue estate by making an increase on the base rate for the building in the same proportion as in the land rates. The rates fixed by the Deputy Commissioners shall be applicable upto 31st March of the proceeding year and for the next year rates shall be revised which shall be effective from 1st April till end of the financial year. In each year, the Deputy Commissioner concerned shall notify an enhancement of rates as a percentage of previous rates separately for rural and urban areas in each



Tehsil/Sub-Tehsil of the district. The enhancement shall be based on the account actual transaction amount in previous year, inflation and special factors affecting a particular urban/rural area. The new rate so arrived at or the actual consideration amount whichever is higher, shall be the applicable rate for calculating stamp duty/registration fee for any transaction.

(V) The following multiplicative factor(s) shall be employed to arrive at minimum cost of building/structures so as to provide for depreciation of older buildings:

<b><i>Year of Completion</i></b>	<b><i>Prior to 1970</i></b>	<b><i>Between</i></b>				<b><i>2010 Onwards</i></b>
		<b><i>1970-79</i></b>	<b><i>1980-89</i></b>	<b><i>1990-99</i></b>	<b><i>2000-09</i></b>	
Duration factor	0.5	0.6	0.7	0.8	0.9	1.0

The following factor shall be employed to the above minimum cost of building/structures for different types of structures:-

<b><i>Structure Type</i></b>	<b><i>Pucca</i></b>	<b><i>Semi Pucca</i></b>	<b><i>Katcha</i></b>
Multiplicative factor	1.0	0.75	0.5

## **VI Other Conditions**

- (i) Where the entire building is being transferred with land then the total value of the land shall be added in the value of the structure.
- (ii) Where only part of the building is to be transferred the proportionate cost of land shall be added.
- (iii) Any person/party intending to sell/transact the built up structure(s) shall give a self declaration to the concerned Registering Officers mentioning area, type of structure, whether electrification and sanitary installations provided or not and year of construction of the structure along with latest copy of Jamabandi in support of ownership/possession of land on which the structure has been built."



## APPENDIX- II REGISTRATION FEES

The Governor of Himachal Pradesh vide Revenue Department's notification of **No. Rev.1-9(Stamp) 3/79/2010-11 dated 12.01.2012**. In Exercise of the powers conferred by Section 78 and 79 of the Registration Act, 1908 (XVI of 1908) as applicable to the State of Himachal Pradesh and in supersession of all the previous notifications issued regarding Registration Fees. The Governor of Himachal Pradesh is pleased to prescribe the **Article-1** of the Table of Registration Fees of the documents, as notified vide Notification No.17-13/66-Rec.-1 dated 14 April, 1969 for whole of Himachal Pradesh to be effective from the date of its publication in the Rajpatra (27.01.2012).

**TABLE OF REGISTRATION FEES**  
**(Sections 78 and 79 of Registration Act, 1908)**

Description of instrument	Rates of Registration Fee
<b>Article-1 For the registration of document:</b>	
(A) For the registration of following documents relating to immoveable property:- (i) Certificate of Sale; (ii) Conveyance/Sale; (iii) Further Charge(with possession); (iv) Gift; (v) Mortgage-Deed(with possession).	Registration fee @ 2.00% to the market value of the property or consideration amount, as the case may be, whichever is higher, subject to the minimum of rupees one hundred and fee rounded off to the nearest rupees Ten shall be charged.
(B) On the instruments of assignment of debt by the Financial Institutions and Banks chargeable as Conveyance under Article 23 of Schedule 1-A of the Indian Stamp Act, 1899 executed in favour of Assets Reconstruction Company constituted under Section 3 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Act No.54 of 2002) and registered under the Companies Act, 1956 (Act No.1 of 1956) by the Department of Non-Banking Supervision, Reserve Bank of India, Mumbai.	Registration Fee shall be charged as per the rates given in clause (A) above.
(C) Lease for immovable property.	Registration Fee given in clause (A) above shall be charged on the same amount of the market value of the leased property, on which stamp duty has been assessed under article 35 of Schedule 1-A of the Indian Stamp Act, 1899.
(D) For the registration of following miscellaneous documents:- (i) Deposit of Title-Deeds, Pawn or Pledge; (ii) Bond;	Registration Fee @0.05% of the value or the consideration amount, if any, subject to the



<ul style="list-style-type: none"> <li>(iii) Bottomry Bond;</li> <li>(iv) Exchange Deed;</li> <li>(v) Further Charge(without possession);</li> <li>(vi) Mortgage-Deed(without possession);</li> <li>(vii) Partition Deed;</li> <li>(viii) Release Deed;</li> <li>(ix) Respondentia Bond;</li> <li>(x) Settlement Deed;</li> <li>(xi) Transfer of lease.</li> </ul>	<p>minimum of rupees one hundred and maximum rupees one thousand shall be charged.</p>
<p>(E) For the registration of any other documents:-</p> <p>Documents which cannot be brought under the scale prescribed by the preceding clauses of this Table (including Power of Attorney, will or deposit, withdrawal and opening of Sealed Wills or Adoption Deed etc.).</p>	<p>A registration fee of rupees one hundred shall be charged.</p>

Note 1:- Such fee in the case of duplicates, if presented with the original shall be Rs.10 only. Duplicate, if not presented alongwith their original shall be treated like the originals.

Note 2:- The registration fee to be paid on partition deeds shall be calculated on the value of the share or shares on which stamp duty has been assessed under Article 45 of Schedule 1A to the Indian Stamp Act, 1899.

Provided that no registration fee shall be chargeable on a document executed in favour of or on behalf of Government where registration fee is payable be the Government.



**ANNEXURE- A**  
**RATES OF STAMP DUTY**  
**SCHEDULE I-A**

**STAMP DUTY ON CERTAIN INSTRUMENTS**

<i>Art</i>	<i>Note:- The Articles in Schedule I-A are numbered so as to correspond with similar Articles in Schedule I. of Indian Stamp Act, 1899.</i>	
	<i>Description of Instrument</i>	<i>Rates of Stamp Duty</i>
<b>1.</b>	<b>Acknowledgement of a debt</b> , exceeding twenty rupees in amount or value, written or signed by, or on behalf of, a debtor in order to supply evidence of such debt, in any book (other than a Banker's pass-book) or on a separate piece of paper when such book or paper is left in the creditor's possession: Provided that such acknowledgement does not contain any promise to pay the debtor any stipulation to pay interest or to deliver any goods or other property.	Twenty-five paise.
<b>2.</b>	<b>Administration Bond</b> , including a bond given under section 6, of the Government Savings Bank Act, 1873, or section 29, 375 and 376 of the Indian Succession Act, 1925-in every case.	Fifteen rupees.
<b>3.</b>	<b>Adoption-Deed</b> , that is to say, any instrument (other than a Will), recording an adoption, or conferring or purporting to confer an authority to adopt. <b>Advocate-</b> See Entry as an Advocate (No. 30).	Thirty seven rupees, fifty paise.
<b>4.</b>	<b>Affidavit</b> , including an affirmation or declaration in the case of persons by law allowed to affirm or declare instead of swearing. <i>Exemptions</i> Affidavit of declaration in writing when made- (a) as a condition or enrolment under the Army Act, 1950; or Air Force Act, 1950; (b) for the immediate purpose of being filed or used in any Court or before the officer of any Court; or (c) for the sole purpose of enabling any person to receive any pension or charitable allowance.	Three rupees.
<b>5.</b>	<b>Agreement or Memorandum of an Agreement</b> , (a) if relating to the sale of a bill of exchange; (b) if relating to the sale of a Government Security or share in any incorporated company or other body corporate;  (c) if not otherwise provided for	Forty paise.  Subject to a maximum of twenty two rupees and fifty paise, twenty-five paise for every ₹ 10,000 or part thereof of the value of the security or share.



	<p style="text-align: center;"><i>Exemption</i></p> <p>Agreement or memorandum of agreement-</p> <p>(a) for or relating to the sale of goods or merchandise exclusively, not being a Note or Memorandum chargeable under No. 43;</p> <p>(b) made in the form of tenders to the Central Government for or relating to any loan.</p> <p><b>Agreement to Lease- See Lease (No. 35)</b></p>	Two rupees, twenty-five paise.
6.	<p><b>Agreement relating to Deposit of Title-Deeds, Pawn or Pledge</b>, that is to say any instrument evidencing an agreement relating to- deposit of title-deeds or instrument constituting or being evidence of the title to any property whatever (other than a marketable security) or the pawn or pledge of movable property (where such deposit, pawn or pledge has been made by way of security for the repayment of money advanced or to be advanced by way of loan or an existing or future debt.</p> <p style="text-align: center;"><i>Exemption</i></p> <p>Instrument of pawn or pledge of goods if unattested.</p> <p style="text-align: center;"><b>Comments</b></p> <p><b>An agreement of hypothecation and question of stamp duty.</b>-There is distinction between a transaction of hypothecation and a transaction of pledge. Because unlike a pledge where the possession of the goods pledged must pass on to the pawnee, no such possession passes on to the creditor in case of hypothecation. As the document in the present case, sought to create two rights in favour of the Bank, i.e. one pertaining to hypothecation of the property and the other pertaining to creation of attorneyship a total stamp of ₹ 11.50 was chargeable to in respect of the document under Section 5 of the Stamp Act. Thus the document has been duly stamped being neither a pledge nor a pawn but an agreement of hypothecation covered by Cl. (e) of Art. 5 of Sch. I to the Stamp Act with a covenant to confer rights of an attorney of the defendant on the plaintiff.</p> <p><b>Deed of Pawn or Pledge</b>-There is no dispute between the parties, and rightly so, because even on a plain reading of Cl. 6 of the agreement it transpires that the possession of the goods hypothecated was to remain with the debtor itself. That being so, this deed cannot be held to be a deed of pawn or pledge so as to attract the mischief of Art. 6(2) of Sch. I to the Stamp Act.</p>	0.05% of the secured amount, subject to the minimum of rupees one hundred and maximum rupees one thousand and duty rounded off to nearest rupees Ten.



7.	<b>Appointment in execution of a Power</b> , whether of trustees or of property movable or immovable, where made by any writing not being a will.	Thirty seven rupees, fifty paise.
8.	<p><b>Appraisalment or Valuation</b>, made otherwise than under an order of the Court in the course of a suit in every case.</p> <p><i>Exemptions</i></p> <p>(a) Appraisalment or valuation made for the information of one party only, and not being in any manner obligatory between parties either by agreement or of operation of law.</p> <p>(b) Appraisalment of crops for the purpose of ascertaining the amount to be given to a landlord as rent.</p>	Fifteen rupees.
9.	<p><b>Apprenticeship-Deed</b>, including every writing relating to the service or tuition of any apprentice, clerk or servant placed with any master to learn any profession, trade or employment, not being articles of clerkship (No. 11).</p> <p><i>Exemption</i></p> <p>Instruments of apprenticeship executed by a Magistrate under the Apprentices Act, 1850, or by which a person is apprenticed by or at the charge of, any public charity.</p>	As in Schedule-I.
10.	<p><b>Articles of Association of a Company</b>,</p> <p>(a) when the authorized capital of the company does not exceed one lac;</p> <p>(b) in other case.</p> <p><i>Exemption</i></p> <p>Articles of any Association not formed for profit and registered under section 25 of the Companies Act, 1956.</p> <p>See also Memorandum of Association of a Company (No. 39).</p>	<p>Sixty rupees.</p> <p>One hundred and twenty rupees.</p>
11.	<p><b>Articles of Clerkship.</b></p> <p><b>Assignment</b>-See Conveyance (No. 23) Transfer (No. 62) and Transfer of Lease (No. 63), as the case may be.</p> <p><b>Attorney</b>-See Entry as an Attorney (No. 30), and Power of Attorney (No. 48).</p> <p><b>Authority to Adopt</b>- See Adoption-Deed(No. 3).</p>	As in Schedule-I.
12.	<p><b>Award</b>, that is to say, any decision in writing by an arbitrator or umpire, not being an award directing a partition, on a reference made otherwise than by an order of the court in the course of a suit-</p> <p>(a) where the amount or value of the property to which the award relates as set forth in such award, does not exceed ₹ 5,000;</p>	Fifteen rupees.



	(b) if it exceeds ₹ 5,000.	One hundred and twenty rupees, fifty paise.
<b>13.</b>	<b>Bill of Exchange.</b>	As in Schedule-I.
<b>14.</b>	Bill of Lading (including a through bill of lading).	As in Schedule-I.
<b>15.</b>	<p><b>Bond</b>, as defined by section 2(5), not being a debenture (No. 27), and not being otherwise provided for by this Act or by the Court-fees Act, 1870.</p> <p><i>See</i> Administration Bond (No.2), Bottomry Bond (No.16), Custom Bond (No.26), Indemnity Bond (No.34), Respondentia Bond (No.56), Security Bond (No.57).</p> <p style="text-align: center;"><i>Exemption</i></p> <p>Bond when executed by any person for the purpose of guaranteeing that the local income derived from private subscription to a charitable dispensary or hospital or to any other object of public utility, shall not be less than a specified sum per mensem.</p>	0.05% of the secured amount, subject to the minimum of rupees one hundred and maximum rupees one thousand and duty rounded off to nearest rupees Ten.
<b>16.</b>	<b>Bottomry Bond</b> , that is to say, any instrument whereby the master of a sea-going ship borrows money on a security of the ship to enable him to preserve the ship or prosecute her voyage.	0.05% of the secured amount, subject to the minimum of rupees one hundred and maximum rupees one thousand and duty rounded off to nearest rupees Ten.
<b>17.</b>	<b>Cancellation</b> , Instrument of (including any instrument by which any instrument previously executed is cancelled) if attested and not otherwise provided for. <i>See</i> also Release (No. 55), Revocation of Settlement (No. 58-A), and Surrender of Lease (No. 61), Revocation of Trust (No. 64- B).	Fifteen rupees.
<b>18.</b>	<b>Certificate of Sale</b> , (in respect of each property put up as a separate lot and sold), granted to the purchaser of any property sold by public auction by a Civil or Revenue Court, or Collector or other Revenue Officer.	5.00% of the market value of the property or to the amount of purchase money, " <i>whichever is higher</i> ", subject to the minimum of rupees one hundred and duty rounded off to nearest rupees ten.
<b>19.</b>	<b>Certificate or other Document</b> , evidencing the right or title of the holder thereof, or any other person, either to any shares scrip or stock in or of any incorporated company or other body corporate, or to become proprietor of shares, scrip or stock in or of any such company or body.	Forty paise.
<b>20.</b>	<b>Charter Party</b> , that is to say, any instrument (except an agreement for the hire of a tug steamer), whereby a vessel or some specified principal part thereof is let for the specified purposes of the Charterer, whether it includes a penalty clause or not.	Three rupees.
<b>21.</b>	<b>Cheque</b>	[****]. Omitted by Act No. 5 of 1927.



22.	<p><b>Composition-Deed</b>, that is to say, any instrument executed by a debtor whereby he conveys his property for the benefit of his creditors, or whereby payment of a composition or dividend on their debts is secured to the creditors, or whereby provision is made for the continuance of the debtor's business under the supervision of inspectors or under letters of license, for the benefit of his creditors.</p>	Thirty rupees.
23.	<p><b>Conveyance</b>, as defined by section 2(10) not being a Transfer charged or exempted under No. 62-where the conveyance amounts to sale of immovable property.</p> <p style="text-align: center;"><i>Exemption</i></p> <p><b>Assignment of copyright</b> under the Copyright Act, 1957, Section 18.</p> <p><b>Co-partnership-deed.</b>-See Partnership (No. 46).</p> <p style="text-align: center;"><b>Comment</b></p> <p><b>Conveyance of Property-</b> There is no difference between a case of retirement and that of dissolution. A partner stands on the same footing in relation to partnership as a co-owner. In the present case the document executed by the firm relinquishing the rights in favour of the former partner could only be a release. It was not a transfer having not been made in favour of a partner who had no interest in the property. The document executed does not transfer property, hence it was not a conveyance.</p>	<p>5.00% of the market value of the property or consideration amount, "<i>whichever is higher</i>", subject to the minimum of rupees one hundred and duty rounded off to nearest rupees Ten.</p> <p>Note 1:- Rate @ "4.00% for women and 6.00% for other persons," will be applicable w.e.f. 31.01.2014. (Government amendment dated 27.01.2014).</p> <p>Note 2:- Stamp Duty 3% in favour of women for registration of built up house for residential purpose (Government Amended dated 21.06.2016).</p>
23(A)	<p><b>Conveyance in the Nature of Part Performance</b>, Contracts for the transfer of immovable property in the nature of part performance in any Union territory under section 53 A of the Transfer of Property Act, 1882.</p>	As in Schedule-I.
24.	<p><b>Copy or Extract</b>, certified to be true copy or extract, by or by order of any public officer and not chargeable under the law for the time being in force relating to court fees-</p> <p>(i) if the original was not chargeable with duty or if the duty with which it was chargeable does not exceed two rupees;</p> <p>(ii) if any other case not falling within the provisions of section 6-A.</p> <p style="text-align: center;"><i>Exemptions</i></p> <p>(a) Copy of any paper which a public officer is expressly required by law to make or furnish for record in any public office or for any public purpose.</p> <p>(b) Copy of, or extract from, any register relating to births, baptisms, namings, dedications, marriages, divorces, deaths or burials.</p>	<p>One rupee fifteen paise.</p> <p>Three rupees.</p>



<p><b>25.</b></p>	<p><b>Counterpart or Duplicate</b>, of any instrument chargeable with duty and in respect of which the proper duty has been paid-</p> <p>(a) if the duty with which the original instrument is chargeable does not exceed two rupees;</p> <p>(b) in any other case not falling within the provisions of Section 6-A.</p> <p style="text-align: center;"><i>Exemption</i></p> <p>Counterpart of any lease granted to a cultivator, when such lease is exempted from duty.</p> <p><b>Comment</b></p> <p><b>Whether the stamp duty payable is payable on a counterpart</b>-Article 25 of the First Schedule to the Indian Stamp Act simply states the stamp duty payable on a counterpart or on a duplicate. Hence, an unstamped counterpart can be validated by payment of proper stamp duty and penalty therefore.</p>	<p>One rupees, fifteen paise.</p> <p>Three rupees.</p>
<p><b>26.</b></p>	<p><b>Customs-Bonds</b>, in every case.</p>	<p>Fifteen rupees.</p>
<p><b>27.</b></p>	<p><b>Debenture</b>, (whether is mortgage debenture or not), being a marketable security transferable-</p> <p>(a) by endorsement or by a separate instrument of transfer;</p> <p>(b) by delivery.</p> <p><i>Explanation.-</i> The term “Debenture” includes any interest coupons attached thereto, but the amount of such coupons shall not be included in estimating the duty.</p> <p style="text-align: center;"><i>Exemption</i></p> <p>A debenture issued by an incorporated company or other body corporate in terms of a registered mortgage-deed, duly stamped in respect of the full amount of debentures to be issued there under, whereby the company or body borrowing makes over, in whole or in part their property to trustees for the benefit of the debenture holders; provided that the debentures so issued are expressed to be issued in terms of the said mortgage-deed.</p> <p><i>See also</i> Bond (No.15) and sections 8 and 55; Declaration of any trust-<i>See</i> Trust (No.64).</p>	<p>As in Schedule-I.</p> <p>As in Schedule-I.</p>
<p><b>28.</b></p>	<p><b>Delivery Order in respect of Goods, Deposit of Title-Deeds</b></p> <p><i>See</i> Agreement Relating to Deposit of Title-Deeds, Pawn or Pledge (No. 6).</p> <p><b>Dissolution of Partnership.-</b> <i>See</i> Partnership (No.46).</p>	<p>Twenty-five rupees.</p>



29.	<p><b>Divorce, Instrument of-</b> that is to say, any instruments by which any person effects the dissolution of his marriage.</p> <p><b>Dower, Instrument of-</b> See Settlement (No. 58).</p> <p><b>Duplicate,</b> See Counterpart (No.25).</p>	Thirty rupees.
30.	<p><b>Entry as an Advocate, Vakil or Attorney on the Roll of the High Court-</b></p> <p>(a) in the case of an Advocate or Vakil;</p> <p>(b) in the case of an Attorney.</p> <p style="text-align: center;"><i>Exemption</i></p> <p>Entry as an Advocate, Vakil or Attorney on the roll of any High Court, when he has previously been enrolled in any other High Court.</p>	<p>Seven hundred and fifty rupees..</p> <p>Seven hundred and fifty rupees.</p>
31.	<p><b>Exchange of Property, Instrument of- Extract.-</b> See Copy (No.24).</p>	0.05% of the higher value of exchanged property, subject to the minimum of rupees one hundred and maximum rupees one thousand and duty rounded off to nearest rupees Ten.
32.	<p><b>Further Charge, Instrument of,</b> that is to say, any instrument imposing a further charge on mortgaged property-</p> <p>(a) if at the time of execution of the instrument of further charge, the possession of the property is given or agreed to be given under such instrument;</p> <p>(b) if possession is not so given.</p>	<p>5.00% of the market value of the property or consideration amount, "<i>whichever is higher</i>", subject to the minimum of rupees one hundred and duty rounded off to nearest rupees Ten.</p> <p>0.05% of the secured amount, subject to the minimum of rupees one hundred and maximum rupees one thousand and duty rounded off to nearest rupees Ten.</p>
33.	<p><b>Gift, Instrument of-</b> not being a Settlement (No. 58) or Will or Transfer (No. 62).</p> <p><b>Hiring Agreement or Agreement for Service.-</b> See Agreement (No. 5).</p>	<p>5.00% of the market value of the property, subject to the minimum of rupees one hundred and duty rounded off to nearest rupees Ten.</p> <p>Note:- Rate @ "4.00% for women and 6.00% for other persons," will be applicable w.e.f. 31.01.2014. (Government amendment dated 27.01.2014.)</p>
34.	<p><b>Indemnity Bond,</b> in every case.</p> <p><b>Inspector ship-deed-</b>See Composition-deed (No. 22).</p>	Fifteen Rupees.



<p><b>35.</b></p>	<p><b>Lease</b>, including an under-lease or sub-lease and any agreement to let or sublet-</p> <p>(a) where the lease purports upto one hundred years or exceeding hundred years;</p> <p>(b) where the lease purports in perpetuity and does not purport to be for any definite term and time.</p> <p style="text-align: center;"><i>Exemption</i></p> <p>Lease executed in the case of a cultivator and for the purposes of cultivation (including a lease of trees for the production of food or drink) without the payment or delivery of any fine or premium, when a definite term is expressed and such term does not exceed one year or when the average annual rent reserved does not exceed one hundred rupees.</p> <p>In this exemption a lease for the purposes of cultivation shall include a lease of lands for cultivation together with a homestead or tank.</p> <p>Explanation- When a lessee undertakes to pay any recurring charge such as Government revenue, the land-lords share of cesses, or the owner's share of municipal rates or taxes, which is by law recoverable from the lessor, the amount so agreed to be paid by the lessee shall be deemed to be part of the rent.</p> <p><b>Comments</b></p> <p><b>Any agreement to let-Whether amounts to a lease.-</b>Article 35 would indicate that it is not only a lease which is covered by this Article, but also any agreement to let. An agreement to let need not be a lease. In order to determine whether in any given case, it is reasonable to infer the existence of agreement one has to see if one party has made an offer and the other party has accepted the same. To constitute an agreement, it is necessary that the intention of the parties must be definite and common on both. This can be achieved if the terms and condition are expressly arrived at or could impliedly be found.</p>	<p>5.00% of the market value of the leased property, subject to the minimum of rupees one hundred and duty rounded off to nearest rupees Ten.</p> <p><b>Formula for calculating the stamp duty on Lease Deeds :-</b>  <math display="block">5\% \times \text{Market Value} \times (\text{Period of Lease}) 100</math> 5.00% of the market value of the leased property or the whole lease amount which would be paid or delivered under such lease, if any, "whichever is higher, subject to the minimum of rupees one hundred and duty rounded off to nearest rupees Ten.</p>
<p><b>36.</b></p>	<p><b>Letter of Allotment of Shares.</b></p>	<p>Thirty paise.</p>
<p><b>37.</b></p>	<p><b>Letter of Credit.</b>  <b>Letter of Guarantee-See</b> Agreement (No.5).</p>	<p>As in Schedule-I.</p>



38.	<b>Letter of License</b> , that is to say, any agreement between a debtor and his creditors that the latter shall, for a specified time, suspend their claims and allow the debtor to carry on business at his own discretion.	Thirty rupees.
39.	<p><b>Memorandum of Association of a Company-</b></p> <p>(a) if accompanied by articles of association under section 26, 27 and 28 of the Companies Act, 1956;</p> <p>(b) if not so accompanied.</p> <p style="text-align: center;"><i>Exemption</i></p> <p>Memorandum of any association not formed for profit and registered under section 25 of the Companies Act, 1956.</p>	<p>Sixty rupees.</p> <p>One hundred and fifty rupees.</p>
40.	<p><b>Mortgage-Deed</b>, not being an agreement relating to deposit of Title-deeds, Pawn or Pledge (No. 6), Bottomry Bond (No. 16), Mortgage of a crop (No. 41), Respondentia Bond, (No. 56), or Security Bond (No. 57),-</p> <p>(a) when possession of the property or any part of the property comprised in such deed is given by the mortgagor or agreed to be given;</p> <p>(b) when possession is not given.</p> <p style="text-align: center;"><i>Explanation.-</i> A mortgagor who gives to the mortgage a Power-of-Attorney to collect rents or a lease of the property mortgaged or part thereof is deemed to give possession within the meaning of this article.</p> <p style="text-align: center;"><i>Exemption</i></p> <p>Instrument, executed by persons taking advances under the Land Improvement Loans Act, 1883, or the Agriculturists Loans Act, 1884, or by their sureties as security for the repayment of such advances.</p> <p style="text-align: center;"><b>Comment</b></p> <p><b>Undertaking affidavit whether could be charged as a mortgage-deed.-</b> The undertaking affidavit has to be charged as a mortgage deed, which has to suffer stamp duty as prescribed under Art. 40 of Sch-I to the Indian Stamp Act. Thus Art. 40 and not Article 57 of Sch-I to the Stamp Act is the appropriate article applicable to the instant case.</p>	<p>(a) 5.00% of the market value of the property or consideration amount, "<i>whichever is higher</i>", subject to the minimum of rupees one hundred and duty rounded off to nearest rupees Ten.</p> <p>(b) 0.05% of the secured amount, subject to the minimum of rupees one hundred and maximum rupees one thousand and duty rounded off to nearest rupees Ten.</p> <p>Note:- Rate @ "4.00% for women and 6.00% for other persons," will be applicable w.e.f. 31.01.2014. (Government amendment dated 27.01.2014.)</p>



41.	<p><b>Mortgage of a Crop</b>, including any instrument evidencing an agreement to secure the repayment of a loan made upon any mortgage of a crop, whether the crop is or is not in existence at the time of the mortgage-</p> <p>(a) when the loan is repayable not more than three months from the date of the instrument- for every sum secured not exceeding ₹.200; and for every ₹ 200 or part thereof secured in excess of ₹ 200.</p> <p>(b) when the loan is repayable more than three months, but not more than eighteen months, for the date of the instrument- for every sum secured not exceeding ₹100; and for every ₹.100 or part thereof secured in excess ₹.100.</p>	<p>Fifteen paise.</p> <p>Thirty paise.</p>
42.	<p><b>Notarial Act</b>, that is to say, any instrument, endorsement, note, attestation certificate or entry not being a Protest (No. 50) made or signed by a Notary Public in the execution of the duties of his office, or by any other person lawfully acting as a Notary Public.</p> <p>See also Protest of bill or note (No. 50).</p>	Four rupees, fifty paise.
43.	<p><b>Note or Memorandum</b>, sent by a broker or agent to his principal intimating the purchase or sale on account of such principal-</p> <p>(a) of any goods exceeding in value twenty rupees;</p> <p>(b) of any stock or marketable security exceeding in value twenty rupees.</p>	<p>Forty paise.</p> <p>Thirty paise, for every ₹ 10,000 or part thereof of the value of the stock or security, subject to a maximum of rupees thirty.</p>
44.	<b>Note of Protest by the Master of a Ship.</b>	Seventy-five paise.
45.	<b>Partition</b> , Instrument of as defined by Section 2(15).	<p>0.05% of the separated share of property, subject to the minimum of rupees one hundred and maximum rupees one thousand and duty rounded off to nearest rupees Ten.</p> <p><b>N.B.-</b> The largest share remaining after the property is partitioned (or, if there are two or more shares of equal value and not smaller than any of the other shares, then one of such equal shares) shall be deemed to be that from which the other shares are separated.</p>



<b>46.</b>	<b>Partnership-</b> A. Instrument of- (a) where the capital of the partnership does not exceed ₹.500; (b) in any other case.  B. Dissolution of- <b>Pawn or Pledge-See</b> Agreement relating to Deposit of Title- Deed, Pawn or Pledge (No.6)	Three rupees, seventy-five paise. Twenty-two rupees, fifty paise.  Fifteen rupees.
<b>47.</b>	<b>Policy of Insurance.</b>	As in Schedule-I.
<b>48.</b>	<b>Power of Attorney</b> (as defined by section 2(21), not being a Proxy (No. 52),- (a) when executed for the sole purpose of procuring the registration of one or more documents in relation to a single transaction or for admitting execution of one or more such documents; (b) when required in suits or proceedings under the Presidency Small Cause Courts Act, 1882; (c) when authorizing one person or more to act in a single transaction other than the case mentioned in clause (a); (d) when authorizing not more than five persons to act jointly and severally in more than one transaction or generally; (e) when authorizing more than five but not more than ten persons to act jointly and severally in more than one transaction or generally; (f) when given for consideration and authorising the attorney to sell any immovable property;  (g) in any other case.	One rupee, fifty paise.  One rupee, fifty paise.  Three rupees.  Fifteen rupees.  Thirty rupees.  The same duty as a Conveyance (No.23) as levied by this Act for the amount of consideration. Three rupees for each person authorized.  <b>N.B.-</b> The term "registration" includes every operation, incidental to registration under the Indian Registration Act, 1908.
	<b>Explanation.-</b> For the purposes of this article more persons than one when belonging to the same firm shall be deemed to be one person.	
<b>49.</b>	<b>Promissory Note</b>	As in Schedule-I.
<b>50.</b>	<b>Protest of Bill or Note</b> , that is to say, any declaration in writing made by a Notary Public or other person Lawfully acting as such, attesting the dishonor of a Bill of Exchange or promissory note.	Three rupees.
<b>51.</b>	<b>Protest by the Master of a Ship</b>	As in Schedule-I.
<b>52.</b>	<b>Proxy</b>	As in Schedule-I.



<b>53.</b>	<b>Receipt</b>	As in Schedule-I.
<b>54.</b>	<b>Re-Conveyance of Mortgaged Property-</b> (a) if the re-conveyance relates to immovable property situated within a Municipality, Cantonment Board, Small Town or Notified Area;  (b) in other case.	Forty-five rupees.    Thirty Rupees
<b>55.</b>	<b>Release</b> , that is to say, any instrument (not being such a release as is provided for by Section 23-A) whereby a person renounces a claim upon another person or against any specified property .  In every case.  <p style="text-align: center;"><b>Comments</b></p> <p><b>A release deed-whether can transfer title-</b> A release deed would not be effective to transfer title. A release deed can only feed title but cannot transfer title.</p> <p><b>Renunciation or relinquishment.-</b> If the appellant had no title to the property at the time of renunciation except the offchance of succeeding by survivorship to the estate after the death of his father, the renunciation or relinquishment under the deed would not clothe him with any title to the property. Renunciation must be in favour of a person, who had already title to the estate, the effect of which is only to enlarge the right.</p>	Fifteen rupees.
<b>56.</b>	<b>Respondentia Bond</b> , that is to say, any instrument securing a loan on the cargo laden or to be laden on board a ship and making repayment contingent on the arrival of the cargo at the port of destination.	0.05% of the secured amount,  subject to the minimum of rupees one hundred and maximum rupees one thousand and duty rounded off to nearest rupees ten.
	<b>Revocation of any Trust or Settlement-See Settlement (No.58) trust (No.64).</b>	
<b>57.</b>	<b>Security-Bond or Mortgage Deed</b> , executed by way of security for the due execution of an office, or to account for money or other property received by virtue thereof, or executed by a surety to secure the due performance of a contract or the due discharge of a liability in every case.  <p style="text-align: center;"><i>Exemption</i></p>	Fifteen rupees.



	<p>Bond or other instrument when executed-</p> <p>(a) by any person for the purpose of guaranteeing that the local income derived from private subscriptions to a charitable dispensary or hospital or any other object of public utility, shall not be less than a specified sum per mensem;</p> <p>(b) by persons taking advances under the Land Improvement Loans Act, 1883, or the Agriculturist's Loans Act, 1884, or by their sureties, as security for the repayment of such advances;</p> <p>(c) by officers of Government or their sureties to secure the due execution of an office, or the due accounting for money or other property received by virtue thereof.</p> <p style="text-align: center;"><b>Comment</b></p> <p><b>Undertaking affidavit-Whether amounts to a mortgage deed.</b>-The undertaking affidavit has to be charged as a mortgage deed, which has to suffer stamp duty as prescribed under Art 40 of Sch. I to the Indian Stamp Act. It was not correct to say that the affidavit merely disclosed an undertaking and if at all it was chargeable it could be only under Art. 57 (b) of Sch. I of the Indian Stamp Act.</p>	
<b>58.</b>	<p><b>Settlement-</b> A-Instrument of (including a deed of dower).</p> <p style="text-align: center;"><i>Exemption</i></p> <p style="text-align: center;">Deed of dower executed on the occasion of a marriage between Muhammadans.</p> <p>B-Revocation of- <i>See also Trust (No. 64).</i></p>	<p>0.05% of the settled property, subject to the minimum of rupees one hundred and maximum rupees one thousand and duty rounded off to nearest rupees ten.</p> <p>Thirty rupees</p>
<b>59.</b>	<p><b>Share Warrants,</b> to bearer issued under the Companies Act, 1956.</p> <p style="text-align: center;"><i>Exemptions</i></p> <p>Shares warrant when issued by a company in pursuance of the Companies Act, 1956, section 114, to have effect only upon payment, as composition for that duty, to the Collector of stamp revenue of-</p> <p>(a) one-and-a-half per centum of the whole</p>	<p>The same duty as payable on a mortgage deed with possession [40(a)] for the amount equal to the nominal amount of the shares specified in the warrant.</p>



	<p>subscribed capital of the company; or</p> <p>(b) if any company which has paid the said duty or composition in full, subsequently issues an addition to its subscribed capital-one-and-a-half per centum of the additional capital so issued.</p>	
<b>60.</b>	<b>Shipping Order.</b>	Fifteen paise.
<b>61.</b>	<p><b>Surrender of Lease</b> In every case.</p> <p style="text-align: center;"><i>Exemption</i></p> <p>Surrender of lease, when such lease is exempted from duty.</p>	Fifteen rupees.
<b>62.</b>	<p><b>Transfer,</b> (whether with or without consideration)-</p> <p>(a) of shares in an incorporated company or other body corporate;</p> <p>(b) of debentures, being marketable securities, whether the debenture is liable to duty or not, except debentures provided for by section 8;</p> <p>(b) of any interest secured by a bond, mortgage-deed or policy of insurance;</p> <p>(c)</p> <p>(d) of any property under the Administrator-General's Act, 1913, Section 25;</p> <p>(e) of any trust-property without consideration from one trustee to another trustee, or from a trustee to a beneficiary.</p> <p style="text-align: center;"><i>Exemption</i></p> <p>Transfers by endorsement-</p> <p>(a) of a bill of exchange, cheque or promissory note;</p> <p>(b) of a bill of lading, delivery order, warrant for goods, or other mercantile document of title to goods;</p> <p>(c) of a policy of insurance;</p> <p>(d) of securities of the Central Government. <i>See also Section 8.</i></p>	<p>As in Schedule-I.</p> <p>One-half of the duty payable on a debenture (No.27) for a consideration equal to the face amount of the debenture.</p> <p>One-half of the duty with which such bond, mortgage-deed or policy of insurance is chargeable subject to maximum of seventy five rupees.</p> <p>Twenty-two rupees, fifty paise.</p> <p>Eleven rupees, twenty-five paise or such smaller amount as may be chargeable under clauses (a) to (c) of this article.</p>
<b>63.</b>	<p><b>Transfer of Lease,</b> by way of assignment, and not by way of under lease.</p> <p style="text-align: center;"><i>Exemption</i></p> <p>Transfer of any lease exempted from duty.</p>	The same duty as a Conveyance (No. 23) as levied by this Act, for a consideration equal to the amount of the consideration for the transfer.



	Transfer of any lease exempt form duty.	
<b>64.</b>	<p><b>Trust</b></p> <p>A. Declaration of or concerning any property when made by any writing not being a will.</p> <p>B. Revocation of, or concerning any property when made by any instrument other than a Will.</p> <p><i>See also Settlement (No. 58), Valuation-See Appraisement (No. 8), Vakil-See Entry as Vakil (No.30).</i></p> <p><b>Comment</b></p> <p><b>Religious or charitable endowment- fall within the purview of the Trusts Act.-</b>Religious or charitable endowments, whether public or private, do not fall within the purview of the Trusts Article 64 of the Stamp Act provides for the levy of stamp duty on trust. Accordingly, Article 64 cannot be pressed into service in case which deals with charitable trusts.</p>	<p>Forty-five rupees.</p> <p>Thirty rupees.</p>
<b>65.</b>	<b>Warrant for Goods</b> , that is to say, any instruments evidencing the title of any person therein named, or his assigns, or the holder thereof, to the property in any goods lying in or upon any dock, warehouse or wharf, such instrument being signed or certified by or on behalf of the person in whose custody such goods may be.	One rupee, fifteen paise.