



STATE RECEIPT AUDIT MANUAL

Stamp duty and registration fees

(Second Edition)

OFFICE OF THE
PRINCIPAL ACCOUNTANT GENERAL (AUDIT),
PUNJAB & UT, CHANDIGARH.

manual

PREFACE

This manual is for the guidance of the officials entrusted with the audit of “Stamp duty and Registration Fee”. The procedure for levy, assessment and collection of Stamp Duties and Registration Fees has been set out with reference to relevant Acts/Rules and executive instructions issued by the Punjab government, Revenue Department.

The important points to be seen in audit are also set out in this manual. Though these instructions need full compliance they do not, in any way debar looking out, in course of audit, for other points of interest.

While making any reference in the Audit and Inspection Note to a particular provision of law, such reference should be made to the provisions of the Indian Stamp Act, 1899 and the Indian Registration Act, 1908 and rules framed thereunder and not to the paras of this manual.

State Receipt Audit Headquarters will be responsible to keep the Book up-to-date. The Section Officers, Assistant Audit Officers, Audit Officers and the Sr. Audit Officers may bring to the notice of that section any inaccuracy or omission orders which have become obsolete or which require amendment.

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CHAPTER – I

LEGISLATIVE BACKGROUND AND ORGANISATIONAL SET UP

Legislative Background:

1.1 Registration of a document with a Registering authority involves levy of Stamp Duty and registration fee. They are levied by the State Government by virtue of the power given to the State Legislative by entries 63 and 66 of List II of the Seventh Schedule to the Constitution of India. Stamp duties other than duties on fees collected by means of judicial stamp but not included rates of Stamp duty is a subject included in the concurrent list of the Seventh Schedule to the Constitution (entry 44 of list III). As such there are both the Union and State Legislation. The Union Legislations as amended in their application to Punjab have been adopted by the State Government.

The levy of Stamp Duty and Registration fee in Punjab is based on and regulated by the following Acts and Rules: -

- (a) The Indian Stamp Act, 1899
- (b) The Punjab Stamp Rules, 1934
- (c) The Indian Registration Act, 1908
- (d) The Punjab Registration Manual, 1929

Organisation :

1.2 The Organisational set-up: The Inspector General of Registration is the Organisational head of the Registration Department. The Director, Land Records, Punjab, is the ex officio Inspector General of Registration. At district level, the Deputy Commissioner is ex officio Registrar for the District. At every tehsil headquarter; the Tehsildar acts as Sub Registrar and the Naib Tehsildar as Joint Sub Registrar. In some Theisils, however, the Punjab Government have

appointed Sub Registrars exclusively for registration work. The Sub Registrar and Joint Sub Registrar of Tehsil Headquarters have concurrent powers of registration and have the same set of books and staff. At sub tehsil headquarters, Joint Sub Registrars (Naib Tehsildars) are independent registering authorities. These officers are inspected periodically by the Inspector of Stamps and Registration of the Office of Inspector General of Registration.

1.3 The provisions of the Indian Stamp Act, 1899 and the Punjab Stamp rules, 1934, have been set forth in Chapters 2 to 7 and those of the Indian Registration Act, 1908 and the Punjab Registration Manual in Chapter 8 to 13 of this Manual.

CHAPTER – 2

GENERAL RULES FOR INTERPRETATION OF STAMP LAW AND SOME DEFINITIONS

Introductory

2.1 The Indian Stamp Act, 1899 is a fiscal enactment and its provision must be construed as having in view the protection of revenue. In case of any reasonable doubt, construction most beneficial to the subject has to be adopted. The construction of a statute, however, is not to be influenced by extraneous constructions such as thereof equity or hardship to any one.

Object of the Stamp Act :

The object is three fold, viz

- (i) to raise revenue by taxing instruments ;
- (ii) to penalise by rendering an unduly stamped instrument to be in admissible in evidence, and also
- (iii) to provide for penalty against evasions of Stamp Duty.

General principles governing levy of Stamp Duty:

2.2 (i) The basic principle of the Indian Stamp Act is that levies the duty on instruments and not on the transactions covered by the instruments. That is levy of Stamp Duty is on the instruments recording the transaction and not on the transactions themselves.

(2) The Stamp Duty on an instrument depends on the real nature on substance of the transactions recorded in the instruments and not on any title on description or nomenclature given by the parties who execute the instruments. The description in any deed given by the parties is thus not decisive in classifying the documents but it is only the actual character of the transactions and the true nature of the right created by the instruments that are

decisive in such matters. It is however, open to parties to select and adopt a particular form of transaction so as to attract less duty.

(3) The third principle is that the sufficiency of Stamp Duty leviable on a document must be determined by looking at the document and what is stated therein and not on any other evidence. The valuation for the purpose of Stamp Duty is also to be based on the value on the date the instrument is executed and not with reference to subsequent changes.

(4) Stamp Duty chargeable on an instrument should be determined with reference to law in force on the date of the execution of the instrument but the levy of penalty is to be determined by reference to the law in force at the time of the presentation of the instrument in evidence.

(5) Schedules specifying the rates of Stamp Duty form part of the statute and must be read together with it for purposes of construction. If there is any inconsistency between the schedule and enactment, the latter shall prevail.

Definitions

2.3 Definitions of some of the important terms used in this Manual and as given in the Indian Stamp Act, 1899 (as amended in its application to the Punjab) are given below:

Conveyance: "Conveyance" 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 or by schedule IA as the case may be:

Note:- A transfer inter vivos means the voluntary transfer between two persons by their mutual consent for consideration (Section 2(10))

"Instrument" includes every document by which any right or liability is, or purports to be created, transferred, limited, extended, extinguished or recorded (CF Section 2(14))

Instrument of Partition:-“Instrument of Partition” means any instrument where by co-owners of any property divide or agree to divide such property in severally and includes also a final order for affecting a partition passed by any Revenue authority or any civil court, and an award by an arbitrator directing a partition.

The essence of partition is that there should be co-ownership and it should be put to an end with the result that the property is divided in severalty

(CF Section 2(15))

Lease “Lease” means a lease of immoveable 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 granted.

Note (1) The following are the essentials of a lease :

- (1) There must be an immovable property
- (2) The premises must be transferred to other person
- (3) The right must be that of enjoyment of premises which includes the right to possess the property
- (4) The tenant must hold an interest in the property
- (5) The transfer can be made for a certain period express or implied on in perpetuity.
- (6) Such transfer of right must be for consideration
- (7) There must be competent parties i.e. lesser lessee. It must be executed by both lesser and lessee because it is a bilateral transaction.

(2) Lease and Licence :- When one person grants to another, or to a definite member of other persons, a right to do, or to

continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a “licence”. It is thus clear that in a licence no interest in immovable property is transferred to a licensee while in a lease, sale and exclusive occupation is given to the grantee so as to amount to a transfer of interest in immovable property to the grantee

(c.f. Section 2(16))

Mortgage Deed:- “Mortgage Deed” 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 (Section 2(17))

Power of Attorney:- “Power of Attorney” 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 (CF Section 2(21))

Settlement:- “Settlement” means any non-testamentary disposition in writing, of moveable or immoveable 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 and where any such disposition has not been made in writing, any such instrument recording, whether by way of declaration of trust or otherwise the terms of any such disposition.

Note:- In order to make the deed settlement the property comprised in the deed must belong to the settler alone lest it should be an instrument of partition (CF Section 2(24))

“Release”:- A release of right or of a claim can only be in favour of a person who has a pre existing right or claim and by reason of the release, the latter’s right or claim is enlarged or is made fuller in its content. The essentials of release deed are as follows: -

- (a) It does not pass a right to another but gives up the right or claim of the person executing it
- (b) It must be in writing
- (c) It must expressly state the right or claim given up
- (d) Right or claim given up must be pre-existing and certain
- (e) It must not tantamount to partition, gift or transfer by conveyance.

Notes:- (1) A transfer by a trust in favour of a beneficiary is not release, (but a trust) there is no claim to be renounced.

(2) A partition deed by which co-owners divide property in severalty does not become a release; the partition is an incident of division. It is a bilateral act whereas a release is a unilateral act. Partition binds all those who have joint interest in the property sought to be partitioned but a release deed binds the executant alone.

CHAPTER – 3

INSTRUMENTS CHARGEABLE WITH STAMP DUTY

Rates of stamp duty:

- 3.1 All instrument enumerated in schedule 1 and 1-A of the India Stamp Act, 1899 (reproduced in this manual as appendix-I & II) whether executed out of India or in Punjab or out of Punjab and relates to any property situated or to any matter or thing done or to done in India or in Punjab and is received in India or in Punjab are chargeable with the duty of amount indicated in those schedules subject to the exemptions mentioned therein.

(c.f. Section 3 Stamp Act)

Documents executed outside Punjab:

- 3.2. The duty in respect of the instruments mentioned in schedule I is uniform throughout India as they constitute the subject matter of Union legislations, but the duty in respect of the instruments mentioned in schedule I-A differs from state to state as they are in the state list under the constitution. As such, if a document mentioned in schedule I-A is executed outside the state of Punjab and is received in Punjab for being acted upon, it requires the duty prescribed for this state. For instance, an adoption deed executed on Stamp of Rs. 35 in the state of Bihar, who received in Punjab will require an additional duty of Rs.2.50P. as the duty in this state on such deed is Rs. 37.50P

(c.f. Section 3(bb))

Several instruments used in single transaction:

- 3.3. Several instruments used in single transaction of sale, mortgage or settlement.- If in the case of any sale, mortgage or settlement, several instruments are employed for

completing the transaction, the principle instruments only shall be chargeable with the Stamp Duty prescribed in schedule 1-A for the conveyance, mortgage or settlement and each of other instruments shall be chargeable with a duty of five rupees instead of the duty (if any) prescribed for it in that schedule.

(c.f. Section 4 Stamp Act)

Highest duty on principal instrument:

- 3.4. However, the duty chargeable on the instrument determined as the principal instrument by the party shall be highest duty, which is chargeable in respect of the said instrument employed.

Example: - Two brothers having come to an agreement as to the settlement of their joint property, embodied the agreement in a deed which was duly stamped according to the value of the property indicated therein subsequently the parties to the deed executed a second deed of settlement which modified the provisions of the first in certain respects, but dealt with no property which was not covered by that document. Both deeds were contingent on the happening of events which at the time of the second deed were still future events. It was held that the first deed was liable to duty as settlements and the second under this section

Instruments relating to several distinct matters:

- 3.5. Any instrument comprising or relating to several distinct matters is chargeable with the aggregate amount of the duties with which separate instruments each comprising or relating to one such matters, are chargeable under the Stamp Act, (Section 5 of Stamp Act, 1899)
- 3.6. Section 5 provides for the determination of stamp duty on a multifarious instrument on an instrument relating to several distinct transactions

Example: - A bond was executed by sixteen persons each of whom borrowed a certain quantity of rice. They did not bind themselves to repay the debt, jointly and severally but each agreed thereby to repay the amount written against his name separately. The instrument comprised sixteen distinct contracts of loan and required the aggregate amount of duties which would have been payable if sixteen separate bonds were executed.

Instrument with in several descriptions:

3.7. Instrument coming within several descriptions in schedule I and I-A. An instrument so framed as to come within two or more descriptions in schedule I or schedule I-A and the duties chargeable thereunder are different, is chargeable only with the highest of such duties.

(Section 6 of Stamp Act, 1899)

Example:- In an instrument executed by a lessee, he agreed to take a lease of the property, make repairs pay a certain rent and not to quit the premises for a certain period. The deed was a lease as well as an agreement and under the above provisions, the higher duty either as lease or agreement is chargeable.

Stamp duty on registration outside Punjab :

3.8 Payments of the Punjab Stamp Duty or copies etc registered outside Punjab- If for completing a transaction of sale, mortgage or settlement several instruments have been employed and instead of the principal or the original instruments, a supplementary instrument, counterpart, duplicate or copy is received in Punjab, the difference between the enhanced duty as payable in Punjab and that already paid in respect of the principal or original instrument, shall be realized before any of the aforesaid instruments can be admitted in evidence

(c.f. section 6-A Stamp Act, 1899)

CHAPTER - 4

POWER TO REDUCE, REMIT OR COMPOUND DUTIES

Power to reduce, remit or compound duties:

- 4.1. The Government are empowered to: -
- (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 instrument or any particular class of 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 incorporate company or other body corporate, of debentures, bonds or other marketable securities

(c.f. Section 9 of Stamp Act, 1899)

4.2. In the above, the expression “the Government” means: -

- (a) 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 share, debentures, proxies and receipts and in relation to any other stamp duty chargeable under the stamp Act and falling within entry 96 in the Union List in the seventh schedule to the constitution , the Central Government ;
- (b) save as aforesaid, the state government.

Reduction and remission:

- 4.3. In exercise of aforesaid powers the state government have allowed reduction and remission in many cases, which are listed in Appendix III to this manual.

(c.f. section 9)

CHAPTER - 5

PAYMENT OF DUTY

Duties payable on Non-Judicial Stamp:

5.1. All duties with which any instruments are chargeable are paid by mean of non-judicial stamp under section 10 of the Indian Stamp Act, 1899. This instrument should be written on a impressed Stamp of chargeable amount. The cases in which duty is paid on instruments otherwise than by Stamp are:

- (i) When instruments are brought to the collector under section 31 of the Stamp Act for adjudication of duty, or under section 41 of the Stamp Act for voluntary payment of duty
- (ii) **Cases involving cash payment:** When excess duty and penalty are levied on the impounded documents: -

In the above cases the stamp duty is paid in cash, the payment is indicated by the endorsement of the collector on the instrument

(c.f. section 10)

Payment of duty through treasury challan:

- 5.2. (1) Payment of duty is not to be normally made in cash, if, however the collector is stratified that there is temporary shortage of stamp in the district or that stamps of required denominations, are not available, he may by a general or special order issued in this behalf permit the duty to be paid in cash and authorise the officers in charge of the treasury or the sub-treasury as the case may be, on production of a challan evidencing payment of duty in the Government treasury or Sub –Treasury to certify by endorsement on the instrument the amount of duty so paid in cash
- (2) The order so issued, if it is general, shall specify the period for which it shall remain operative.

- (3) Upon issue of the order referred to in sub-rule (i) the amount of duty in question shall be deposited under the head “0030-Stamp and Registration Fee-C- Stamp Non-Judicial sale of Stamps” by filling in ordinary challan form in duplicate. One copy of the challan shall be retained in the Treasury/Sub-Treasury or the State Bank of India, as the case may be and the other shall be given to the depositor, in token of receipt of the amount. The challan shall clearly show the nature and names of the parties to the instrument in respect of which the amount required to be deposited
- (4) The depositor concerned shall then submit the unexecuted instrument together with his copy of treasury challan aforesaid for the amount received by the Treasury Officer or the State Bank of India, as the case may be to the Officer-in-charge of the Treasury and Sub-Treasury as the case may be where the amount has been deposited
- (5) The Treasury Officer shall, upon any instruments being presented to him before it is signed and accompanied with an application for the purpose, endorse thereon a certificate in the form given hereunder showing the amount of stamp duty paid in cash

“It is certified that an amount of Rs. _____ (In words _____)
has been paid in cash as stamp duty in respect of this instrument in
the State Bank of India /Treasury/Sub-Treasury by challan No. _____
Date _____ a copy of which is annexed therewith

Dated _____ Officer-in-Charge
Treasury/Sub-Treasury

The challan refund in Sub-rule (4) shall be retained by the Treasury Officer cancelled so that it may not be used again

Note:- All the Treasury Officers and Assistant Officers in Punjab have been appointed as collector for the purpose of Sections 41 and 42 of the Indian Stamp Act, 1899 within their respective jurisdiction

