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A Birds Eye view of Indian Stamp Act, 1899

Indian Stamp Act, 1899 is a fiscal Act enacted with the aim and object of raising the Government Revenue by taxing certain type of instruments (documents) prescribed in Schedule – I / I – A of Indian Stamp Act, 1899. Thus stamp duty a tax to be collected on the instruments in the shape of stamps issued by the Government.

This Act extends to all over India except Jammu & Kashmir. The stamp Department hierarchy is as under: -

Central Government in certain cases
in other State Government through Hon'ble Lt. Governor (Section 9)
Chief Controlling Revenue Authority (CCRA) (Divisional Commissioner)
Collector of Stamps (All Dy. Commissioners – Revenue / all SDOs)

The Government has delegated the power of the CCRA to the Hon'ble Divisional Commissioner. All the Deputy Commissioners are notified as Collector of Stamps having the jurisdiction over their district whereas all the Sub – Divisional Officers (SDMs) are notified as Collector of Stamps with the jurisdiction of their sub – Division by virtue of their post of SDO.

There are certain words which come time and again while dealing with this Act and are defined as follows:

(a) Stamp, (b) execution / executed and (c) instrument.

(a) “Stamp” Stamp means any mark, seal or endorsement by any agency or persons duly authorized by the State Government and includes an adhesive or impressed stamp for the purpose of duty chargeable under the Indian Stamp Act. The Stamps are of two types (1) the Court fee stamps (may be called judicial stamps) (2) non judicial stamp. The Court fee stamps are used for paying the court fee while filing suits, appeals in the courts or in quasi – judicial court/Public offices and are governed by the provision of Indian Court Fee Act. These are beyond the purview of Indian Stamp Act. The other type of stamps are non-judicial stamps i.e. the stamps other than the Court fee stamps and are used for payment of Stamp Duty and are governed under the provision of Indian Stamp Act, 1899. The non-judicial stamps may be adhesive stamps, impressed stamp, e-stamping certificate and in the shape of a certificate issued by the Collector of Stamps for proper stamp duty paid on the document. The adhesive stamp include notary stamps, revenue stamp, insurance policy stamp, share transfer stamp, bonds, debentures, bill of exchange, promissory note etc. etc. Whereas the impressed stamp papers are the papers on which the matter of the deed is written. E-stamping certificate was introduced recently and this also is included in the definition of stamps.

(2) Execution / executed which means signed i.e. whenever any document is finally signed it is said to be executed. Executants, the persons who have signed these documents in the capacity of a party or parties to the

Documents and these are called the executants. The document after signature is called as executed document / instrument.

(3) Instrument is defined under Section 2 (14) of the Indian Stamp Act as “instrument” includes every document by which any right or liability is, or purposed to be, created, transferred, limited, extended, extinguished or record. The documents which fulfill the above definition are termed as instruments which are chargeable to stamp duty. All the documents are not instrument but all instruments are document. It is the instrument which is chargeable to stamp duty as per the rates described in Schedule 1 A applicable to Delhi.

According to Section 3 all the document / instrument contained in schedule 1 / 1A shall be chargeable with the duty as per the rates mentioned therein. It prescribes the rate of Stamp Duty ad valorem as well as fixed rate. The stamp duty is to be paid either at the time of execution of the deed / instrument or prior to it if executed in India as per Section 17 of the Indian Stamp Act. If the document is executed out of India but to be used in India, it has to be presented before the Collector of Stamps within 3 months after it has been first received in India for adjudication and payment of stamp duty as per Section 18 of Indian Stamp Act.

As per Section 9 the State Government / Central Government has the power to reduce, remit or compound the duties prospectively or retrospectively. In the case of stamp duty on bill of exchange, cheques, promissory note, bill of lading, letter of credit, policies of insurance, transfer of share, debentures or the documents under Companies Act, 1956 and

falling within entry 96 in the list 1 of the 7th Schedule to the Constitution, the Central Government is empowered for reduction, remission and composition, whereas in the cases of other instruments, it is the State Government which is empowered to take the above actions.

The stamp duty is to be charged on the contents of the document and after taking into consideration its recital part and intention of the parties to the document and not on the basis of the title alone because titles are sometime deceptive with ill intention of evasion of stamp duty. If the interpretation of the instrument is such that it involves distinct matters the consolidated duty is to be charged as per the rates on each matter given in Schedule 1A for each type of document. If several documents are used to complete the transaction of sale, mortgage etc. the principal instrument only shall be charged with the duty for the conveyance, mortgage or settlement and other will be charged with the stamp duty of Rs. 2/- each. The duty is to be charged on the original document subject to the provision mentioned in Section 47 -A (newly inserted Section in 2001) and not on photocopies. Therefore, it is necessary that the document should be in original if any action is to be taken for realization of the duty and penalty, if any.

Every instrument should be written upon a stamp paper in a manner that the matter should appear on the face of the stamp paper and no backside should be used while writing the material. Similarly, appropriate adhesive stamps should be used for particular purpose for which stamp is meant contravention of the above use attracts the action under the Stamp Act under the provisions of the Act and at the same time the cancellation after use is also necessary under the provision of the Act.

If the consideration / amount in the document is mentioned in the foreign currency the rate of exchange of currency in India on the day of execution should be taken into consideration for the purpose of stamp duty. If the duty is to be charged on the market value, the market value means the value which the article would fetch on the day of execution or transfer and if it is an immovable property the market value / minimum market value has been prescribed under the Delhi Stamps (Under-valuation of Instruments) Rules, 2007. The stamp duty is to be paid by the persons mentioned in the deed but in the absence of an agreement to the contrary the expenses of providing proper stamp shall be born by the person mentioned in Section 29 of the Stamp Act. Where the Government is liable to make the payment of stamp duty the same is exempted as per the provision of Section 3 of Indian Stamp Act.

Functions of the Collector of Stamps

1. **Advisory functions:**

- (i) **Adjudication as to proper stamps:** If anyone wants to know as to how much stamp duty is to be paid on a particular document, one will make an application to the Collector of Stamps concerned alongwith the three copies of the unsigned deeds and would deposit Rs. 5/- as adjudication fee with the Cashier in TR – 5. Thereafter the Collector of Stamps would examine the contents, recital and intentions of the parties to the document and after making necessary

inquiries into the matter he will inform the applicant about the quantum of stamp duty and transfer duty if any. The party concerned shall deposit the same in the State Bank of India through the challan issued by the Collector of Stamps and after due verification of the amount in Government account he will endorse the document with a certificate of proper stamp duty / transfer duty paid and document is properly stamped. The certificate of the Collector of Stamps mentioned above is also taken as stamp as far as payment of stamp duty is concerned. This advisory function is provided under Section 31 of the Indian Stamp Act. The Collector of Stamps can also entertain the executed document / instrument for adjudication of stamp duty if the executed document is submitted to him within one month of its execution and not after that. Similarly, when any document executed out of India is received in India the receiver can submit the same within three months after it has been received in India to the concerned Collector of Stamps for adjudication and payment of stamp duty on such document failing which it would not be taken into evidence but would be impounded by the concerned public officer before whom it is produced either for evidence or for any other benefit.

- (ii) **Realization of stamp duty and penalty on the unstamped / deficiently stamped documents:** According to Section 33 of the Indian Stamp Act, if the Courts or the public officers receive any document for evidence or comes before them

during the performance of their duties for any benefit and if it appears that the instrument is not duly / properly stamped, the court or the public officer shall not grant it any benefit either taking it as evidence or for any other purpose but shall impound it, sign it and refer it in original to the Collector of Stamps for realization of deficient stamp duty and penalty. However, the courts have the discretion to take it in evidence only if the party concerned pays the total deficient stamp duty and 10 times penalty of the deficient stamp duty to the court. The court can take it into evidence and thereafter shall forward the original document and the total amount so received to the Collector of Stamps. The Collector of Stamps after receiving the impounded document shall serve a notice upon the executants by providing an opportunity of being heard as to why the deficient stamp duty and penalty equal to 10 times may not be realized from the executants and also why the prosecution for intentional evasion of stamp duty should not be made in the competent court. The Collector of Stamps would hear them and pass necessary order for the amount of stamp duty and penalty. After the receipt of the payment of the stamp duty and penalty, Collector of Stamp will certify the document as properly stamped under Section 40 of the Indian Stamp Act and if the payment is not made the same can be realized as an arrear of land revenue as per Section 48 of the Act and if the document is already properly stamped he will certify it as properly stamped one. From the

above it is clear that the functions of the Collector of Stamps starts only when he has received the instrument / document from the court or the other public offices or if he received such documents in his office during the course of performance of his duty. Ordinarily the Collector of Stamps has no authority to pressurize the parties to produce the document as to whether the stamp duty has been paid or not on a particular transaction. He cannot go for search or inquiry for the purpose of knowing as to whether proper stamp duty on any document has been paid or not.

(iii) **Refund of spoiled and unused stamp papers:**

Sometimes it happens that stamp paper purchased is not utilized for one reason or the other and it becomes useless for the purchaser. The persons with such paper can have a refund from the Collector of Stamps by making an application and filing an affidavit in support of bonafide reasons and original stamp papers which become useless for them. The Collector of Stamps after making an inquiry from the treasury office regarding purchase of the said stamp papers and e-certificate and after hearing the applicant and satisfaction refund is allowed by way of refund vouchers by the Collector of Stamps after deducting 10 % of the amount of the stamp paper purchased. These stamp papers are cancelled and signed by the CBS to avoid any further misuse and are to be destroyed as per treasury rules. The Collector of Stamps of sub-divisions are empowered to allow refund if applied within the year of the date of

purchase for refund and two years in the case of empowerment of Deputy Commissioner. After the above period the Government (Hon'ble Lt. Governor) is empowered to allow the refund of such spoiled stamp papers.

(iv) Supervision over the stamp vendors and stamp stock taking at the end of the year:

There are more than 200 private stamp vendors in Delhi who sell the non-judicial and court fee stamps upto Rs. 500/- and get commission as remuneration. Their working and functioning is checked from time to time by the Collector of Stamps for their smooth functioning. The private stamp vendors are appointed according to the guidelines and rules pertaining to the appointment of stamp vendors.

(v) Law relating to transfer duty, levy-able in NCT of Delhi:

Beside the stamp duty another important duty on the transfer of immovable property in Delhi in the case of sale deed, gift deed, perpetual lease deed, exchange deed and mortgage with possession of immovable property is to be recovered as a surcharge of stamp duty by the office of the CCRA as provided under Section 147 and 148 of the Delhi Municipal Corporation Act, 1957 if the proper transfer duty at the time of the execution of the above document is not paid in the shapes of stamp the registration is refused under the Registration Act, 1908 and its realization is made by the Collector of Stamps.

Chief Controlling Revenue Authority (CCRA):

Chief Controlling Revenue Authority is the overall supervisory authority of the Collector of Stamps in respect of the adjudication of stamp and instrument not duly stamped matter. There is no provision of appeal in the Indian Stamp Act against the orders of the Collector of Stamps whether it is adjudication, refund or dealing with the impounded document. However, revision power is there under Section 56 of the Act. CCRA has the power to compound the matter or reduce the penalty. In case of need the Collector of Stamps may refer the matter for advice to the CCRA regarding the chargeability of Stamp duty on a particular document. CCRA can also make a case and refer it to the Hon'ble High Court for opinion in the matter of the nature of the document and chargeability of duty. The Hon'ble High Court after placing the matter before the Constituted Bench will forward the judgement to the CCRA for necessary action. He has the power to issue orders consistent with the provision of the Stamp Act.

Criminal Offences:

There is provision of penalty and prosecution against the persons who evade the stamp duty or assist in evasion of stamp duty and who intentionally defraud the Government by not giving all the facts in the document regarding chargeability of the stamp duty as per provision of section 27 and the omission and contravention of this provision lead to penalty and prosecution under Section 64 of the said Act and there is also

penalty for breach of rules relating to the sale of stamp and for **unauthorized** sale. The penalties are not so heavy at present. The Collector of Stamps is empowered to sanction the prosecution whereas CCRA may stay such prosecution or compound any such offence. The amount of such composition is recovered as an arrear of land revenue. Section 75 empowers the Government to make rules to carry out the purposes of the Act.

The following rules under the Stamp Act are there to deal with the provisions of Indian Stamp Act, 1899: -

1. The Delhi Province Stamp Rules, 1934 regarding supply of non-judicial and court fee stamps and stamp papers and keeping of all such stamps used, sale and the mode of sale and duties and remuneration of the persons selling.
2. Delhi Stamp (Under-valuation of Instruments of Immovable Properties) Rules, 2007 dealing with the evaluation of market value / minimum market value of immovable property for the purpose of stamp duty and transfer duty chargeability.
3. Schedule 1 – A containing the rates of stamp duty advolrum and fixed rate.
4. The Punjab Stamp Refund, Renewal and Disposal Rules, 1934.

Evasion of Stamp Duty and transfer duty:

There is a large evasion of stamp duty and transfer duty in the matter of the sale and purchase or otherwise transfer of immovable properties in Delhi. The property is transferred on the basis of the Power of Attorney, Will, and Agreement to Sell etc. etc. without getting these registered in accordance with the provision of the Registration Act, 1908. In some of the cases only the possession is given and the documents are attested by the Notary Public or Oath Commissioner. The private builders in private malls transfer the premises by executing different type of documents as revealed through the Court petition from time to time and these such tools are neither registered nor properly stamped, and even subsequent sales are made through the endorsement on such documents by such builders / evader of stamp duty. Even DDA, MCD and DMRC, private builders and property dealers take part in the evasion of stamp duty to a great extent. One of the reasons for this evasion is that the public officers receiving the documents for evidence or other administrative and legal purposes are not aware about the provisions of Indian Stamp Act, 1899 and Registration Act, 1908. What to talk of the other office our own staff dealing with the matter of Stamp Act are also not well aware of the provisions and procedures of dealing with the stamp matters including realization of stamp duty, refund and adjudication etc. There is need to have an awareness among such public officers, departments and local bodies and even the public also.

About decade back there had been a practice of conducting the stamp audit of every public office like Sales Tax Department, Excise, Courts, DDA, Sub-Registrar Offices, Registrar of Companies, Registrar Cooperative Societies Offices and other public dealing departments through stamp auditors functioning under the Collector of Stamps. The strength of 8-

Stamp Auditors and these audits not only added to the Government exchequer but had a moral fear on the public officers while receiving these documents for evidence or giving other benefits to the public. It has become the things of past. There is a need to have a strong coordination among the public offices and particularly, DDA, MCD, DMRC and other local bodies, Railway, DJB, Agricultural Market Committee, VAT Department, Income Tax, Labour, Excise. There is need to create moral fear among the public officers with the caution note that any deficiently stamped document if entertained will lead not only to disciplinary action but prosecution also under the Indian Stamp Act and relevant provision of IPC. Every department at the level of the Govt. of NCT of Delhi must appoint one coordinator to assist the Collector of Stamps office about the implementation of the provisions of Indian Stamp Act and rules. The stamp audit needs to be started in all the offices under the supervision of the officers of SDM. All Collector of Stamps must undergo compulsory training before being deputed to audit and it should be the personal responsibilities of the Deputy Commissioners / SDMs in their area concerned. There is a need to make a pressure upon the builders of mall including on DDA land and private builders and in posh colonies including authorized and unauthorized colonies that they should come for registration of document after payment of stamp duty. For this purpose the DDA, MCD and Income Tax Authority and other authorities can help by sending the documents to the Collector of Stamps for realization of deficient Stamp duty. It should be impressed upon the public offices to entertain the registered document only and not others and no GPA, Will and half hearted agreement of sale be accepted for the purpose of ownership of the premises. There is large evasion of duty on the transfer of Cooperative Society's plots / flats to private persons and

subsequent sale and transfer without registration and properly stamped documents. Matter of coordination taken at the State Government level would bring fruitful result of detection and realization of the evaded stamp duty to Government exchequer and at the same time the Government has to adopt liberal and soft corner for the registration of document of transfer of immovable properties. We have to encourage the public through various media including TV and other advertisement mode to come forward with proper document stamped for registration and it will have a good impact on the Government exchequer. At the same time staff dealing with the stamp matters in the Department needs to be provided preliminary training for their smooth functioning in the matter of stamp duty.

The other part of this "Birds Eye View on the Stamp Act" containing the description and the characteristic of the documents being received by the public officers / offices and registering authorities will follow soon.