

THE BOMBAY STAMP ACT, 1958  
[BOMBAY ACT No. ,LX OF 1958]<sup>1</sup>

This Act received the assent of the President on 4<sup>th</sup> June 1958, and assent was first published in the Bombay Government Gazette, Part IV, on the 11<sup>th</sup> June, 1958

An Act to consolidate and amend the law relating to stamps and stamp duties in the State of Bombay

Amended by Bom. 95 of 1958.

Adapted and modified by the Maharashtra Adaptation of Laws (State and Concurrent Subjects) order, 1960.

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| Amended by Mah. 10 of 1960                           | Amended by Mah. 17 of 1993 (1-5-1993) <sup>4</sup>    |
| “ “ “ 31 of 1962                                     | “ “ “ 20 of 1994 (28-2-1994) <sup>4</sup>             |
| “ “ “ 10 of 1965                                     | “ “ “ 29 of 1994 (1-5-1994) <sup>4</sup>              |
| “ “ “ 29 of 1972                                     | “ “ “ 38 of 1994 (17-8-1994) <sup>4</sup>             |
| “ “ “ 13 of 1974 (1-5-1974) <sup>4</sup>             | “ “ “ 12 of 1995 (8-6-1995) <sup>4</sup>              |
| “ “ “ 16 of 1979 (4-7-1980) <sup>4</sup>             | “ “ “ 16 of 1995 (1-9-1995) <sup>4</sup>              |
| “ “ “ 27 of 1985 (10-12-1985) <sup>4</sup>           | “ “ “ 9 of 1997 <sup>5</sup> (15-9-1996) <sup>4</sup> |
| “ “ “ 9 of 1988 (22-4-1988) <sup>4</sup>             | “ “ “ 30 of 1997 (15-5-1997) <sup>4</sup>             |
| “ “ “ 1 of 1989 (6-1-1989) <sup>4</sup>              | “ “ “ 21 of 1998 <sup>6</sup> (1-5-1998) <sup>4</sup> |
| “ “ “ 18 of 1989 (1-12-1989) <sup>4</sup>            | As Amended by Mah. Tax Law (Levy &                    |
| “ “ “ 9 of 1990 <sup>3</sup> (7-2-1990) <sup>4</sup> | Amendment), Act, 2001                                 |

WHEREAS it is expedient to consolidate and amend the law relating to stamp and rates of stamp duties other than those in respect of document specified in entry 91 of List I in the Seventh Schedule to the Constitution of India in the State of Bombay; It is hereby enacted in the Ninth Year of Republic of India as follows :-

1. For Statement of Objects and Reasons, see Bombay Government Gazette, 1958 Extra., Part V. P. 122.
2. Maharashtra Ordinance No. VI of 1988 was repealed by Mah. 27 of 1990, S.3(1)
3. Maharashtra Ordinance No. II of 1990 was repealed by Mah. 9 of 1990, S.4(1)
4. This indicates the date of enforcement of Act.
5. Mah. Ordinance No. XII of 1996 was repealed by Mah. 9 of 1997,
6. Maharashtra Ordinance No. VI of 1998 was repealed by Mah. 21 of 1998,

### Constitutional Position –

Law relate to stamps and stamp duties regarding documents other than those specified in Entry 91 of List I of Schedule VII of the Constitution, Specified documents are bills of exchange promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts and the field related to rates of stamp duties. List II empowers state to enact laws for rates of stamp duty in respect of documents other than specified in List I. Rates for stamp duties for specified documents in List I. Entry 91 can be prescribed by Parliament and rates for stamp duties for other documents can be prescribed by State laws. Entry 44 List II empowers concurrently Parliament and State legislatures to make laws for stamp duties. Thus levy and charge of stamp duties can be imposed by both the Parliament and State legislatures subject to repugnancy and occupied field. Rates however have to be prescribed exclusively by Parliament for specified documents and by State legislatures in respect of other documents.

Thus the preamble indicates that the Act prescribes rates of stamp duty and levies stamp duties on documents as set out in the Act. Section 74 of the Act specifically excludes the documents as mentioned.

### Scheme of the Act-

Section 3 is a charging section and provides for charging stamp duties on instrument and to that extend it levies duties on instrument and not on the transaction. The taxing events is when the instrument is executed in the State for the first time without being previously executed. Document as defined in Evidence Act means any matter expressed or described upon substance by means of letters, figures or marks or by more than one of those means intended to be used or which may be used for the purpose of recording that matter. Explanations to Section 62 of the Evidence makes each counterpart of a document to be primary evidence as mentioned and where document is executed in several parts each part is primary evidence of the document. Section 4 of the Bombay stamp Act provides for specified documents executed in several parts and the duties chargeable thereon. Here the distinction made is between principal instrument and other instruments Sub Section 4,5,6. Further duty is payable and has to be paid on the principal instrument and it is only when such duties are paid that other instruments can be received in the state having regard to Section 7. Section 8 provides for special rates on certain documents as mentioned.

Sub-section 10 prescribes the mode of paying duties on instruments by user of stamps on such instruments. Sub-section 10 to 14 are machinery sections providing as to how the stamp duty is to be collected. Section 15 provides that when stamp duties are not paid as provided for then the instrument shall be deemed to be not duly stamped. Sub-section 17 to 19 prescribes the time when stamp duty can be said to be duly paid. Events prescribed are two-(1) When the instrument is executed in the state; (2) When the instrument though executed outside is brought into the State.

Sub-section 20 to 29 sets out as to how the instruments have be valued for the purposed of stamp duty. Sub-section 21 to 23, 25 prescribes how ad valorem stamp duties have to be valued. Sub-section 24,26, 17 provides for the valuation is cases as mentioned therein.

Section 28 prescribes that all matters must be mentioned in the instrument affection chargeability to stamp duty.

Section 29 provides for apportionment of duties regarding separate parts of instrument among different persons.

Section 30 provides for persons liable to pay the stamp duties.

Chapter III SCHEDULE 31 TO 32 C provides for adjudication.

Chapter IV deals with consequences and effect of instruments correctly stamped and not correctly stamped. In particular it contains provisions for impounding of instruments and for inadmissibility of instruments not duly stamped in evidence. Penalty proceedings and prosecutions are provided for. Refund of penalty and excess duty are provided for in Section 44 whilst Section 46 provides for recovery of duties and penalties by distress and sale of movables or as arrears of land revenue as provided therein.

Chapter V makes provisions for allowances and the procedure for the same. Section 52 B provides that stamps purchased have to be used within 6 months and if not so done or no allowances is claimed the same shall become invalid.

Chapter VI provides for reference, revision and appeal against orders passed under the Act. Procedure for offences and for penalties are provided in Chapter VII. Chapter VIII contains supplemental provisions and inter alia in Section 69 confers rule making power on State Government generally for purposes of the Act and for specifically provided subject. Rounding off of fractions (Section 70) and delegation of power is provided for (Section 72). Court fees are excluded as subject matter of the Act under Section 73. Schedule I mentions description of instrument and provides for the proper stamp duty as chargeable.

Perusing the above, it may be observed that stamp duty becomes an important source of revenue for the State affecting various transactions of individuals though it is a duty levied on instruments meaning documents which create rights or liability or transfers, limits, extends, extinguishes or records such rights or liabilities. Further generally speaking it is an indirect source of revenue though duty becomes payable by the parties to the documents to the State.

Noting the legislative history it may be noted that Acts 27 of 1985, 17 of 1993, 20 of 1994, ordinance 12 of 1996 did bring about changes of material nature in the Act as it stood enacted.

Further note the provisions relating to amnesty being given in respect of instruments executed on or after 19.12.85 to 16.3.88 in the State of Maharashtra under Amnesty Scheme applicable as between 1.4.94 to 30.9.94 in relation to residential premises in cooperative housing society or under Ownership Flats Act to the extent of rates as applicable under Article 25(d) to Schedule I. For getting amnesty what is required is (a) to make an application with instrument in original with Xerox copies as required and with stamp affixed of 65 paise; (b) along with affidavit as prescribed in form as given. All details regarding location of property, ward number, number of storeys, year of construction. Area of flat required to be stated in the application made to the Collector of Stamps. Market value then will be ascertained. This concept of market value was brought in Amnesty Act, 1979.

Occupying house or premises of flat as owner or member of a cooperative society or of a condominium or land deals and building construction activity bring in their wake several documents affecting rights and liabilities of individuals as well as legal personalities they are involved with.

Similarly share transactions, corporate formations, mergers and movements get regulated by Companies Act, securities contracts (Regulation) Act, SEBI Act and the latest being the Depositories Act, 1996 and similar other Acts widening the scope for bringing into existence several documents affecting rights and liabilities of individuals involved.

It is in this context and system that the revenue collection through Stamp Act operates and its knowledge and understanding become significantly vital to avoid the instruments being inadmissible in evidence. Impounded or being invalid. Stamp Act levies and exemptions have been widened in scope, definition. Concept and rate requiring its knowledge to be part of legal equipment.

“Indirect Impact on Value of Property- It has now to be understood and appreciated that having regard to Articles 2(g), 8, 25, 36, newly added Article 36a and provision in Chapter in Chapter III read with Bombay Stamp (Determination of True Market Value of Property) Rules and use of standardised rent values area-wise or of ready reckoner by authorities add a dimension

to values of property especially in metropolitan areas. A further dimension to be noted is added by operation of the new Rent Act where by certain properties/premises are exempted by virtue of Section 3 of the Maharashtra Rent Control Act, 1999. It is these exempted categories of premises that rents can be fixed on a higher denomination which may have no bearing to standard rent concepts envisaged in rent laws. Such exempted premises thus fetches high rents enhancing the realisable value of the property as may be chargeable by local authorities. Links with cut off dates may not strictly apply and in that sense the change in provisions of law may make holding of property well nigh difficult especially in metropolis.

## CHAPTER I PRELIMINARY

### 1. Short title, extent and commencement

- (1) This Act may be called the Bombay Stamp Act, 1958
- (2) It extends to the whole of the <sup>1</sup>[State of Maharashtra].
- (3) It shall come into force on such date as the state Government may, by notification in the Official Gazette, direct.

Principles for the Application of the Act :

1. For charging stamp duty, the instrument is not to be treated by the name it bears but by the substance or real nature of the transaction recorded therein.
2. The stamp duty is imposed upon the instrument and not upon the transaction.
3. The instruments or documents have to be read as they are i.e. as they are worded or drafted.
4. Nothing illegal to adopt a method in effecting a transaction so as to reduce or lessen the liability of stamp duty.
5. The Act is a fiscal measure enacted to secure revenue for the state from certain classes of instruments.
6. A document which is not stamped, though required to be stamped or is understamped, is not by that reason, invalid as between the parties.

[See C. C. R.A. v. Maharashtra Sugar Mills 52, Bom. L.R./82; LIC vs. Di ]

No technicalities

Stamp Act is a fiscal measure enacted to secure revenue for the state on certain cases of instruments, It is not equipped to arm litigant with a weapon of technicalities.

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1. These words were substituted for the words "State of Bombay" by the Maharashtra Adaption of Laws (State and Concurrent Subjects) Order, 1960.

AIR 1969 S.C. 1238 – Hindustan Steel Ltd, v. M/s. Dilip Construction Co.  
Consolidating & Amending Acts are constructed as forming a code complete in itself and its provision construed as exhaustive of matters dealt with.

AIR 1956 SC 604 – Revulu v. CIT

The Act being a fiscal statute it is to be interpreted strictly and in a manner in favour of the subject. AIR 1957 SC 657 – A. V. Fernandez v. State of Kerala. Exemption has to be construed strictly in favour of the state.

The stamp Act has to be construed strictly as it is a taxing statute. 1995-3 S.C.C. 716 Hindustan Lever Ltd. V. Municipal Corporation.

## 2. Definitions

In this Act, unless there is anything repugnant in the subject or context, --

- (a) “association” means any association, exchange, organization or body of individuals, whether incorporated or not, established for the purpose of regulating and controlling business of the sale or purchase of, or order transaction relating to, any goods or marketable securities;
- <sup>1</sup>[(b) “banker” means an association, a company or person who accepts, for the purpose of lending or investments, deposits of money from the public, repayable on demand or otherwise and withdrawable by cheque, draft, order or otherwise;]
- (c) “bond” includes --
  - (i) any instruments whereby a person obliges himself to pay money to another on condition that obligation shall be void if a specified act is performed, or is not performed, as the case may be;
  - (ii) any instrument attested by a witness and not payable to order or bearer, whereby, a person obliges himself to pay money to another; and
  - (iii) any instruments so attested whereby a person, obliges himself to deliver grain or other agriculture produce to another;

<sup>2</sup> [Explanation – Notwithstanding, anything contained in any law for the time being in force, for the purpose of this clause, “attested” in relation to an instrument, means attested by one or more witness each of whom has seen the executant sign or affix his mark to this instruments, or has seen some other person sign the instrument in the presence and by the direction of the executant, or has received from the executant a personal acknowledgement of his signature or mark of the signature of such person, and each of whom has signed the instrument in the presence of the executant; but it shall not be necessary that more than one of such witness shall have been present at the same time, and no particular form of attestation shall be necessary.]

1. Clause (b) was substituted, for the original by Mah. 27 of 1985, s 2(a), (w.e.f. 10-12-1985)

2. This explanation was added, by Mah. 27 of 1985, s 2(b), (w.e.f. 10-12-1985)

If the documents creates an obligation itself with an express promise incorporated therein to pay the amount and is attested by witness, the document is a bond and not an agreement; (ILR 20 Bom. 791) The test for distinguishing a 'bond' from an agreement is that in the former case in the event of breach, the party to the instrument, who had obliged to pay money to the others, is liable to pay the sum stipulated in the instruments; in the latter case, the quantum of damages has to be fixed by the court. (AIR 1966 Del.). If a pro-note is attested and not made payable to order or bearer, it would amount to a 'bond'; (74 Bom. LR. 174 " AIR 1973 Bom. 27). Instrument in the form of an agreement containing a covenant to make certain payments which is attested by a witness and is not payable to order or bearer, comes within the definition of a bond; (AIR 1939 All. 205). In a Civil Reference No. 14 of 1953, C.C.R.A., Bombay v. Dr. U.B. Narayan Rao, it was held that in as much as the instrument is not attested by a witness, the document does not fall under this section and it cannot be looked upon as satisfying the general definition of a bond, although inclusive one, given by the legislature.

Acknowledging the payment made and admitting of liability to repay in an instrument makes the instrument a bond.

AIR 1976 Bom 234 – K. Mallaya v. Prabhakar

Supplementary document keeping original document alive is not bond. It is only when original contract is substituted that a document be treated as bond.

[See 19 G.L.R. 626 Chinawala v. Minoos Jal.]

Non – negotiability and attestation have been the attributes of bond as per the provisions.

Sub-clauses refer to various types of bonds. Bond has to be given wide meaning as it follows "includes". In substance bond creates obligation to pay and binds the promisor. In form attestation is required as covered in the sub-section. Promissory note when invalidated may become a bond. Obligation is created out of the instrument itself and is not negotiable. In bond the liability to pay emerges as an obligation unlike in an agreement where breach may result in obligation to pay as damages for breach. Khata Account called bond. (3 Bom LR696 Lala v. Bhasa). Stipulated penalty amount still remains in realm of agreement and cannot be called bond.

Where a document which shows sale of range produce for a particular year mentioning consideration and other terms refer to right to take fruit and payment is not a bond but agreement falling under schedule-1, Article 5(h).

[Bhaurao v. Kesharao 1977 Mah. L.J.Note 32]

(d) "chargeable" 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 instruments, chargeable under the law in force in the State when such instrument was executed or, where several persons executed the instrument at different times, first executed;

The chargeability of an instrument starts:-

- (i) at the time of its execution in the state;
- (ii) in case of an instrument executed outside this state, from the date of its receipt in this state; and

(iii) when several persons execute and instrument, when first of these persons signs the same in this state.

(iv) <sup>1</sup>(dd) “Chief Controlling Revenue Authority” means such officer as the State Government may, by notification in the Official Gazette, appoint in this behalf for the whole or any part of the <sup>2</sup>[State of Maharashtra];]

(e) “clearance list” means a list of transaction relating to contracts required to be submitted to the clearing house of an association in accordance with the rules or bye-laws of the association:

“I/We here by solemnly declare that the above list contains a complete and true statement of my/our transactions <sup>3</sup>[including crossed out transactions and transactions required to be submitted to the clearing house in accordance with the rules/bye-laws of the association]. I/We further declare that no transaction for which an exemption is claimed under Article 5 or Article 43 in Schedule I to the Bombay Stamp Act, 1958, as the case may be, is omitted.”

Explanation-- Transaction for the purpose for this clause shall include both sale and purchase;

1. Clause(dd) was inserted by Bom. 95 of 1958,s.2
2. These words were substituted for the words “State of Bombay” by the Maharashtra Adaptation of Laws (State and Concurrent Subjects) Order, 1960
3. This portion was substituted for the portion beginning with the words “and that it” and ending with the words “of the association” by Mah. 10 of 1965, s.2.

(f) “Collector” means <sup>1</sup>[\* \* \* \* \*] the Chief Officer in charge of the revenue administration of a district and includes any officer whom the State Government may, be notification in the Official Gazette, appoint in this behalf;

<sup>2</sup>[and on whom any or all the powers of the Collector under this Act are conferred by the same notification or any other like notification]

#### Notification

No. STP. 1091/3528/CR-772/M-1 – In Exercise of the powers conferred by clause (f) of section 2 of the Bombay Stamp Act, 1958 (Bom. LX of 1958) hereinafter referred to as “the said Act”) and in suppression of Government Notification, Revenue and Forests Department Nos. (1) STP. 107/251605/N, dated 15<sup>th</sup> September, 1972, (2) STP. 1072/108242/N, dated 15<sup>th</sup> November, 1972, and (3) STP. 1088/2432/cr-568/m-1/N, dated the 28<sup>th</sup> July, 1989, the Government of Maharashtra hereby appoints the officers mentioned in column (2) of the Schedule hereto appended, to be the respective Collectors of the district mentioned in column (3) thereof for the purpose of the said Act.

#### Schedule

Notification – Addition Officers for Amnesty Scheme

No. EST. 1095/1163/CR-233/M.- Whereas, the Government of Maharashtra have declared Amnesty Scheme regarding recovery of deficit Stamp Duty vide Revenue and Forests Department Order No. STP. 1904/CR -369(D)/M-1, dated the 11<sup>th</sup> May, 1994, and subsequently continued it upto the 30<sup>th</sup> June, 1995 vide Revenue and Forests Department Order No. STP. 1094/CR-369(D)>M-1, dated the 30<sup>th</sup> March, 1995.

And whereas, the said Amnesty Scheme has received unprecedented response at Bombay, Thane and Pune. In order to recover the deficit stamp duty at the earliest and to ensure the return of original instruments to the parties, duly certified, it has become necessary to empower additional officers as Collector under Clause(f) of section 2 of the Bombay Stamp Act, 1958(LX of 1958) (hereinafter referred to as “the said Act”);

Now, therefore, in exercise of the powers vested in the Government under Clause(f) of section 2 of the said Act, the Government of Maharashtra hereby appoints the competent authorities of the Districts of Raigad, Sindhudurg, Dhule and Buldana as Administrative Officers to exercise the powers and perform the functions of Collectors of Stamps for the District of Thane and the competent authorities of Satara, Osmanabad, Parbhani, Bhandara and Ratnagiri as Administrative Officers of exercise the powers and perform the functions of Collectors of Stamps for the District of Pune to be borne on establishment of District Registrars, Pune and Thane (appointed under the Registration Act, 1908) respectively, for the purposes of Chapters II, III, IV, V and VIII of the said Act until further orders. [Notification dated 17.5.1995 MGG Pt. IV-B.P. 282].

<sup>1</sup>[g] “Conveyance” includes,-

(i) a conveyance on scale,

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1. Clause (g) was substituted for the original by Mah. 27 of 1985, s. 2(c),(w.e.f.10-12-1985).

(ii) every instrument, <sup>1</sup>[X]

(iii) every decree or final order of any Civil Court,

<sup>2</sup>[(iv) every order made by the High Court under section 394 of the Companies Act, 1956 in respect of amalgamation of companies;]

by which property, whether movable or immovable, or any estate or interest in any property is transferred to, or vested in, any other person, inter vivos, and which is not otherwise specifically provided for by Schedule I;

Exclamation – An instrument whereby a co-owner of any property transferred his interest to another co-owner of the property and which is not and instrument of partition, shall, for the purposes of this clause, the deemed to be an instrument by which property is transferred inter vivos;]

An actual transfer of property is necessary regard the document as a conveyance. If it merely recites a past accomplished fact of transfer it is not a conveyance; but if the intention of the parties is that the instrument should be only repository and the appropriate evidence of the transfer, it should be held as conveyance; (AIR 1932 Lah.535). A mere agreement to convey the property in further is not a conveyance; (AIR 1937 Mad.259). In order to determine the characters of a document, the whole document has to be looked and not merely one part of it; (AIR 1954, Ajmer 45). If the document in

question does not purport to transfer movable or immovable property, it would not be considered as a conveyance; (AIR 1959 SC.492). Transfer is vesting of title in 1 and divesting it from another, who gives up title. Whether there is a transfer will have to be inferred from words used in a document. If a person says in a document that he had delivered possession of property thereby constituted the property delivered as the property of the other person, and at that same time he also declares that in view of it he had divested himself of his title and he was no longer entitled to the property, the process of the transfer is complete. It was held that they constitute a transfer and a conveyance and are chargeable with stamp duty under Article 25 of the same Bombay Stamp Act, 1958; (AIR 1973 Madras 1). However see Explanation I to Article 25 which considers certain agreement for sale as deemed conveyance for the purpose of the stamp duty.

The inclusive definition of Conveyance has covered every decree or final order of any Civil Court by which property or interest therein is transfer. Before the amending Act of 1985 came into operation, parties used to obtain consent decreed from Civil Courts by filling suits for specific performance of agreements of sale of immovable property and the consent decree operated as a conveyance of the immovable property. Before the amended Act came into operation it was contended by Lawyers such consent decrees did not require any stamp duty thereon but the stamp authorities contended otherwise. Several writ petitions are pending decision. The obvious attempt therefore was

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1. Word 'and' was deleted by Mah. 17 of 1993, s. 28 (a) (i) (w.e.f, 1-5-1993).
  2. Sub – Clause (iv) was inserted by Mah. 17 of 1993, s. 28 (a) (2) (w.e.f, 1-5-1993).

to plug the loophole of parties obtaining consent decrees from Court and not pay stamp duty. This stamp duty has now become payable under the amended Act.

Similarly, by the Explanation of transfer of property from one co-owner to another, other than by an instrument of partition, will also require stamp duty as on a conveyance.

Transfer of shares of the co-operative housing society under an agreement is a conveyance and attracts stamp duty.

[Hanuman Vitamins v.State of Mah. 1289 Mah. L.J.935]

Consent Decree

Having regard to the recitals in the consent decrees that consent decree to operate as a conveyance, such consent decree is covered by the definition of conveyance under the Act. It would be liable to stamp duty under Entry 25 of Schedule I of the Act.

Maharashtra State v. M.S. Builders & others. [1992 (1) Bom. C.R. 568].

1996 (4) Bm CR 100 - Li Taka Pharmaceuticals Ltd. V. State

Amendment Act 17 of 93 added. Clause 9 (iv) to Section 2 to include every order passed under Section 394 of Companies Act regarding amalgamation.

Courts' order is an instrument.

See 1992 1-Bom-C-R-568, 1995-1-Bom-C-R-518(S.C.)

Agreement for sale or Agreement to sell

It was held that the agreement in question though describing as an agreement to sell in effect and for all purposes it is a conveyance as the right, title and interest in the writ flat stands transferable in favour of the purchaser on payment of installments as provided

therein even an agreement of sale is dutiable under the Act under Schedule I Article 25, Explanation.

[State of Maharashtra v. Mahavir Lalchand Rathod (1992 (2) Bom. C.R. 1)]

When a party contemplates purchase of an immovable property what happens is that the purchaser enters into Agreement to purchase the immovable property determining and reflecting the essential terms of the purchase such as price, area, possession and stipulates as to title, covenants and encumbrances attached to the property, payments schedule etc. Finally a stage comes when the transaction goes through in terms of interest, right and title of the seller getting extinguished and getting invested in the purchaser and it is this stage that the party is considered to be conveying property in terms of right, title and interest in it and hence called in legal parlance called conveyance. Instruments thus conveying the right, title and interest in immovable property called conveyance become chargeable as conveyance and the value many times is determined in terms of the value of the right, title, interest in the immovable property. Agreements thus are chargeable as Agreements and Conveyance in terms of value comparable to value of the property it conveys. This difference when blended Article brings in net such transaction.

Explanation – Essential element in instrument mentioned in (i) to (iv) is as regards the property being transferred or vested in another person and the transfer is inter vires. Testamentary transfers/ transmissions thus gets ruled out. Further when one co-owner's interest in immovable property is being transferred to another the interest in the immovable property of the other co-owner gets argued and it is ordinarily at a value. This therefore must be the criteria to make it covered by the conveyance as it tantamounts to a sale to a co-owner. In partition however the interest existing gets demarcated perhaps by metes and bounds and the process involves only the conversion of nature of ownership in property from joint to sole and hence seems to be the reason to exclude the same as seen in the Explanation.

Agreements entered into before 10<sup>th</sup> December 1985

The Bombay High Court in *Padma Nair v. Deputy Collector, Valuation and Stamp duty and Another* (1994) XXXII M. LJ 497 had held that in that particular case, by the agreement of sale no freehold rights have been conveyed to the purchasers; in view of section 54 of the Transfer of property Act the agreement of sale by itself did not create any interest in or charge on such property and on the strength of the said agreement the buyer could not become owner of the property; on the basis of the agreement of sale the buyer merely gets a right to obtain a sale deed in his favour but the ownership remains with the seller land therefore, the same is not conveyance. In that case the agreement was executed on 16<sup>th</sup> October, 1984, According to stamp Authorities the same attracted the provisions of Explanation to Article 25 and therefore, was a deemed conveyance and was liable to be stamped accordingly, According to the Bombay High Court the said Explanation the agreements executed prior thereto.

Stamp duty on Decree Operating as Conveyance

1. By 10<sup>th</sup> December, 1985 amendment decree of civil court was included in the definition of conveyance. The question arose before the Bombay High Court in Appeal No.2245 of 1991 arising from the order in Writ Petition No. 1568 of 1984. In the Appeal it was contended by the Government that said amendment was merely declaratory and by way of clarification and it is not a new provision and therefore, will apply to all decrees passed even prior to 10<sup>th</sup> December, 1985. According to the Government the clarification was needed to be made on this point also in order to decide whether the said provision was applicable to decrees passed prior to 10<sup>th</sup> December, 1985. this was resisted by the petitioners in several writ petitions. The Court however, did not agree with the contentions of the petitioners and came to the conclusion that amendment therefore, was applicable to all the pending petitions though the amendment came into effect subsequent to the passing of the decree.

Amendment not to be retrospective 1997-4 – Bom – C-R-536, *ITC v. State* also see 1994 -2-MH-L-J1261 *CRST Hotel v. Asst. Superintendent*.

(h) “duly stamped” 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 need affixed or used in accordance with the law for the time being in force in the state;

(i) “executed” and “execution” used with reference to instruments, means “signed” and “signature”;

(j) “Government securities” means a Government security as defined in the Public Debt Act 1944;

(j) “Government securities” means Government security as defined in the Public Debt Act, 1944;

<sup>1</sup>(ja) “immovable property” includes land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth;]

### **Stamp Duty on Agreement for Sale of Flat Between Promoter and Flat Purchaser**

1. In Appeal no. 395 of 1991 in writ petition No. 3693 of 1990 while disposing of the said Appeal and several other writ petitions the Divisions Bench of Bombay High Court has given a judgement dated 13<sup>th</sup> February, 1992. in all the matters the common question of law according to the Bombay High Court was in respect of stamp duty payable under Article 25 of schedule I of the Bombay Stamp Act, 1958 on agreement for sell of flat by Builder in favour of Flat Purchase under section 4 of the Maharashtra ownership Flats Act, 1963 and the Maharashtra Apartment Ownership Flats Act, 1970.
2. As observed by the Court the Court wanted to decide whether the document i.e. Exhibit A, is an 'agreement of sale' or 'agreement to sell' a document conveying the right title and interest in the flat in favour of the petitioner. It appears that the building in question belonged to Priyadarshini Co-Operative Housing Society, Limited and the Ownership thereof vested in the said society and M/s. Century Enterprises were the Developers.

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1. Clause (ja) was inserted, by Mah. 27 of 1985, s. 2(d), (w.e.f. 10-12--1985)

3. The Court was constructed several clauses of the said agreement. While constructing the same the Court has observed that the agreement was entered into only on 8<sup>th</sup> October, 1987 and possession was to be handed over by 30<sup>th</sup> November, 1987, a very short time.
4. The Court in para 19 of the judgement has observed that after considering the submission in the opinion of the court on construction of the agreement in question it must be held that although it has been described as an agreement to sell in effect and for all purposes it is conveyance falling under section 2(g) of the Act inasmuch as the right title and interest in the flat stands transferred in favour of the Purchaser on payment of installment provided therein.
5. the court has further observed that on careful scrutiny of the document in question it is difficult to hold that it is a mere agreement of sale and does not create and right title and interest in the petitioner. The Court further held that therefore, the said agreement in question is a conveyance and whether the possessions given on that date or not is not the relevant and decisive factor. The Court therefore, held that such a document is liable to stamp duty under Article 25 in Schedule I of the Act. Thus according to the court the agreement it self is a conveyance and not a deemed conveyance. It may be pointed out the court has not specified what right title and interest by the said agreement is created in favour of the petitioner.

#### Market Value

By Amending Act 16 to 1979 this concept was first time introduced in the Act. Prior to this amendment, the stamp duty was chargeable on the amount set forth in the instrument. Thus, the basis for determining value of the property for charging stamp duty was shifted from consideration set forth in the instrument to the marker value.

However, there is no definition of the expression “true market value.’ In order to prevent erosion of revenue as the parties began to undervalue urban immovable property to avoid proper taxes and stamp duty, this concept is being used as a weapon to get revenue to the Government.

JT 1996(6) SC 190—Smt. Prakshwati V. Chief Controlling Revenue Authority.

Under UP Stamp Rule, 1942 and SECTION 47 of Stamp Rule.

Closeness to posh colony does not of itself make it part thereof.

Approach of the authorities was highly vain, casual and unsatisfactory and dehors any constructive material from where it could be said that decision was fair and reasonable.

Factum of closeness to posh locality would not cast any reflection on the price of the property.

1. Supreme Court has given an important judgement on ready reckoner /guideline issued by the Stamp Authorities viz. Jawajee Nagnatham V. Revenue Divisional Officer, Adilabad and Others (1994) 4 SCC 595. The State of Andhra Pradesh has enacted Section 47A of the Indian Stamp Act. Similarly many states have also enacted section 47A(which is like Section 32A of Bombay Stamp Act) of the Indian Stamp Act. Such section 47A

provides as to how the instrument which is undervalued should be dealt with. Almost all States have made provision for dealing with the instrument which according to the Registering Officer is undervalued after registering such instrument and not before registering the same as is the case with Maharashtra.

2. Many States while providing Rules for deciding the market value provided that if any broad guideline that may be contained in the list prepared by the State Government falls within any of the principles referred to in section 47A and Rules, the same may be considered. Such guidelines therefore, were followed by most of the stamp authorities. Such guidelines were challenged in many States and some of the Courts had held that such guideline had no force of law and should be treated only as guidelines. The State of Andhra Pradesh had prepared the guidelines which is known as "basic valuation register" in order to enable the registering office to verify whether the true market value was truly reflected in the instrument for the purpose of stamp duty.
3. The matter arose before the Supreme Court from the judgement and order dated 29<sup>th</sup> October, 1982 of the Andhra Pradesh High Court. The High Court found that the basic valuation register had no evidential value, and that it had no statutory basis. According to the Supreme Court, Section 47A clearly shows that the exercise of power there under is with reference to a broad line covered by the instrument brought for registration and that Section 47A conferred no express power to the Government to determine the market value of the lands prevailing in a broad area, village, block, district or the region and to maintain basic valuation register for levy for stamp duty for registration of an instrument etc. After considering various judgements and provisions of Section 47A as enacted by various States, the Supreme Court held that the basic valuation Register has no statutory base.
4. Thus according to the Supreme Court the basic value register or guideline or ready reckoner by whatever name called has no statutory force and value of each immovable property comprised in the instrument has to be decided according to the Rules governing true market value.
5. The valuation department has to make valuation of each individual property according to the Rules prescribed under the Stamp Act.

The principles to determine fair market value of the property are laid down in various decisions of the Supreme Court. These Principles are adopted while determining the compensation payable in respect of property under the Land Acquisition Act.

The price has to be determined on the basis of what a hypothetical purchaser willing to purchase land from the open market and prepared to pay a reasonable price would offer. Assumption is that the vendor is willing to sell the land at a reasonable price. Normally, Authority takes into account genuine instances. The most comparable instances out of the genuine instances have to be identified on the consideration of proximity from time angle and from situs angle. After identifying the instances which provide the index of market value, the price reflected therein, may be taken as a norm

and the value of in question may be deduced by making suitable adjustments for the plus and minus factors vis-à-vis land under consideration by placing the two in juxtaposition. [ Shrichand Raheja v.S.C.Prasad and Others 1952(2)Bom.C.R.145]

6. The Bombay High Court has given a judgement on the question whether a Deed of Cancellation can amount to reconveyance and will attract stamp duty as on conveyance in *Creast Hotel Limited v. Asstt. Superintendent of Stamps*(AIR 1994 Bom 228 = 32 Mah.L. J. 1261). In that matter the Petitioner had entered into an agreement for sale on 7<sup>th</sup> September, 1986 in respect of an unconstructed flat and open car parking which was lodged for registration. On 16<sup>th</sup> October, 1988 the said agreement was cancelled by executing a deed of cancellation on stamp paper of Rs. 10/- and was lodged for registration. The registering office was of the opinion that the said document attracted the stamp duty as per provisions of Article 25 (b) i.e. as on conveyance and referred the matter to the Superintendent of Stamps who agreed with the same and determined with the same and determined the deficient stamp duty on Rs. 2,17,890 and levied penalty of Rs. 21,000. The Bombay High Court held the explanation to Article 25 of Schedule I merely creates a legal fiction for the purpose of that article and for that limited purpose it provides that even agreement for sale in the circumstances specified therein shall be deemed to be a conveyance and stamp duty shall be levied thereon accordingly. According to the Bombay High Court in respect of the cancellation executed by the petitioner the said explanation was not attracted and that the condition precedent for applicability of the deeming provision were totally absent and that in that case by the agreement of sale which had been cancelled by the Deed of Cancellation in question there was no conveyance even for the limited purpose of Article 25 of Schedule I of the Bombay Stamp Act. The Court further held that no immovable property or interest therein was conveyed to the Purchaser by the said agreement and hence there was nothing to be reconveyed by the Flat Purchasers to the Owners of the Building by Deed of Cancellation and Article 25 had no application.

Right to catch fish being profit a prendre it is benefit arising from land and is immovable property. The writing as instrument would require stamp under Article 35 (a) of Schedule 1A C/S. 1& 3  
-- 1995 1 SCC 520 – Santosh v. State of MP.

- (k) “impressed stamp” includes –
  - (i) labels affixed and impressed by the proper officer .
  - (ii) stamps embossed or engraved on stamped paper;
  - <sup>1</sup>[(iii) impression by franking machine;
  - (iv) impression by any such machine as the State Government may, by notification in the Official Gazette, specify;]
- (l) “instrument” includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended extinguished or recorded, but does not include a bill of exchange, cheque, promissory note, bill of lading,

letter of credit, policy of insurance, transfer of share, debenture, proxy and receipt;

<sup>2</sup>[(1a) “instrument of gift” includes, where the gift is of any movable <sup>3</sup>[or immovable] property but has not been made in writing, any instrument recording whether by way of declaration or otherwise the making or acceptance of such oral gift;]

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1. Sub – clauses were inserted by Mah. 20 of 1994, s.2, (w.e.f. 28.2.1994)
  2. Clause (1a) was inserted by Mah. 31 of 1962, s.2
  3. These words were inserted by Mah. 13 of 1974, s.2 (w.e.f. 1.5.1974)

(m) “instrument of partition” means any instrument whereby co-owners of any property divide or agree to divide such property in severally and includes –

- (i) a final order for effecting a partition passed by any revenue authority or any civil court,
- (ii) an award by an arbitration directing a partition, and
- (iii) when any partition is effected without executing any such instrument, any instrument or instruments signed by the co-owners and recording, whether by way of declaring of such partition or otherwise, the terms of such partition amongst the co-owners.

(n) “lease” means a lease of immovable <sup>1</sup>[or movable (or both)] property, and includes also, --

- (i) a patta;
- (ii) a Kabulayat, or other undertaking in writing not being a counterpart of a lease to cultivate, occupy or pay or deliver rent for immovable property.
- (iii) Any instrument by which tolls of any description are let;
- (iv) Any writing on an application for a lease intended to signify that the application is granted;

<sup>2</sup>[(v) a decree or final order of any Civil Court in respect of a lease : provided that, where subsequently an instrument of lease is executed in pursuance of such decree or order, the stamp duty, if any, already paid and recovered on such decree or order shall be adjusted towards the total duty leviable on such instruments;]

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1. These words are added by Mah. 17 of 1993, s.28(b) (i), (w.e.f. 1.5.1993)
  2. clause (v) was added by Mah. 17 of 1993, s.28(b) (i), (w.e.f. 1.5.1993)

### **Agreement of Lease**

In (1994) 2 SCC 497 in the case of State of Maharashtra and Others v. Atur India Pvt.Ltd. Court considered what is and agreement to lease. The Supreme Court in that matter was

considering the correspondence that had ensued between the Collector of Bombay and the Promoter Atur India Pvt. Ltd. For giving on lease one of the plots at Nariman Point. It may be pointed out that most of the plots at Nariman Point and Cuffe Parade are allotted by the Government of Maharashtra to various persons by way of correspondence wherein it is provided that ultimately lease will be executed by the Government in favour of co-operative society or the Promoter of the land building. Pending execution of such lease, the Government generally gives a licence to the Promoter or proposed lessee to enter upon the land ultimately to be given on lease for the purpose of putting up the construction. In this particular case Atur India Pvt. Ltd. Had in the correspondence specifically pointed out that they wanted the land for the benefit of a co-operative society. The government had laid down certain condition and Condition No.13 stipulated that the licensee will be put in possession of the plot on his executing the agreement to lease. The licensee was debarred from transferring assigning or encumbering or parting with his interest or benefit under the agreement to lease. Even the notice inviting offers provided that the licensee will be put in possession of the plot on his executing the agreement to lease which will be prepared by the Government Solicitor. It appears that in Nariman Point and Cuffe Parade area the Government has not executed any agreement to lease or lease and only correspondence is exchanged. After considering the facts the Supreme Court held that on facts it was an agreement to lease and not a lease; a contract for a lease is to be distinguished from a lease because a lease is actually a conveyance shall be entered into at a future date; that an agreement to lease not creating a present demise is not a lease and that Atur India Pvt. Ltd. Had sought to assign the benefit of such agreement to lease (without demise but with licence) in favour of Basant Co-operative Housing Society. According to the Supreme Court in law the benefit of such a contract can be assigned and that Division Bench of the Bombay High Court was right in holding that the demand of the Superintendent of Stamps for the stamp duty (as it was lease ) on such an agreement to lease was not proper.

Rent note containing undertaking to pay rent is lease. 1985-MH-L-J-973 instrument construed as having clause of reserved rent as absent in liable under article 36 (b) 1979-MH-L-J-172=AIR -179-Bom-140 and say that stamp is not payable on transaction but is on instrument.

#### Stamp Duty on Agreement for Sale of Flat between Promoter and Flat Purchaser

1. In Appeal No. 395 of 1991 in Writ Petition No. 3693 of 1990 while disposing of the said Appeal and several other writ petitions the Division Bench of Bombay High Court has given a Judgement dated 13<sup>th</sup> February, 1992. In all the matters the common question of law according to the Bombay High Court was in respect of Stamp duty payable under Article 25 of Schedule I of the Bombay Stamp Act. 1958 on agreement for sale of flat by Builder in favour of Flat Purchaser under Section 4 of the Maharashtra Ownership Flats Act, 1963 and the Maharashtra Apartment Ownership Flats Act, 1970.
2. As observed by the Court, the Court wanted to decide whether the document i.e.Exhibit A, is and 'agreement of sale' or 'agreement to sell' a document conveying the right title and interest in the flat

in favour of the Petitioner. It appears that the building in question belonged to Priyadarshani Co-operative Housing Society Limited and the Ownership thereof vested in the said society and M/s. Century Enterprises were the Developers.

3. The Court has construed several clauses of the said agreement. While construing the same the court has observed that the agreement was entered into only on 8<sup>th</sup> October, 1987 and possession was to be handed over by 30<sup>th</sup> November, 1987, a very short time.
4. The Court in para 19 of the judgement has observed that after considering the submissions in the opinion of the court on construction of the agreement in question it must be held that although it has been described as an agreement to sell in effect and for all purposes it is a conveyance falling under section 2(g) of the Act inasmuch as the right title and interest in the flat stands transferred in favour of the Purchaser on payment of installment provided therein.
5. The Court has further observed that on careful scrutiny of the document in question it is difficult to hold that it is a mere agreement of sale and does not create any right title and interest in the petitioner. The Court further held that therefore, and said agreement in question is a conveyance and whether the possession is given on that date or not is not the relevant and decisive factor. The Court therefore, held that such a document is liable to stamp duty under Article 25 in Schedule I of the Act. Thus according to the court the agreement itself is a conveyance and not a deemed conveyance. It may be pointed out the court has not specified what right title and interest by the said agreement is created in favour of the petitioner.

#### Market Value

1. Supreme Court has given an important judgement on ready reckoner / guideline issued by the Stamp Authorities viz. *Jawajee Nagnatham v. Revenue Divisional Office, Adilabad and Others* (1994) 4 SCC 595. The state of Andra Pradesh has enacted Section 47A of the Indian Stamp Act. Similarly many states have also enacted Section 47A (which is like Section 32A of Bombay Stamp Act) of the India Stamp Act. Such Section 47 A provides as to how the instrument which is undervalued should be dealt with. Almost all States have made provisions for dealing with the instruments which according to the Registering Officers undervalued after registering such instruments and not before registering the same as is the case with Maharashtra.
2. Many States while providing Rules for deciding the market value provided that if any broad guideline that may be contained in the list prepared by the State Government falls within any of the principles

referred to in Section 47A and Rules, the same may be considered. Such guidelines therefore, were followed by most of the stamp authorities. Such guidelines were challenged in many States and some of the Courts had held that such guideline had no force of law and should be treated only as guideline. The state of Andhra Pradesh had prepared the guidelines which is known as “basic valuation register” in order to enable the registering office to verify whether the true market value was truly reflected in the instrument for the purpose of stamp duty.

3. The matter arose before the Supreme Court from the judgement and order dated 29<sup>th</sup> October 1982 of the Andhra Pradesh High Court. The High Court found that the basic valuation register had no evidential value, and that it had no statutory basis. According to the Supreme Court Section 47A clearly shows that the exercise of power thereunder is with reference to a broad line covered by the instrument brought for registration and that Section 47A conferred to express power to the Government to determine the market value of the lands prevailing in a broad area, village, block, district or the region and to maintain basic valuation register for levy for stamp duty for registration of an instrument etc. After considering various judgements and provisions of Section 47A as enacted by various States, the Supreme Court held that the basic valuation Register has no statutory base.
4. Thus according to the Supreme Court the basic value register or guideline or ready reckoner by whatever name called has no statutory force and value of each immovable property comprised in the instrument has to be decided according to the Rules governing true market value.
5. The Valuation departments has to make valuation of each individual property according to the Rules prescribed under the Stamp Act.

The Principles to determine fair market value of the property are laid down in various decisions of the Supreme Court. These principles are adopted while determining the compensation payable in respect of property under the Land Acquisition Act.

The price has to be determined on the basis what a hypothetical purchaser willing to purchase land from the open market and prepared to pay reasonable price would offer. Assumption is that the vendor is willing to sell the land at a reasonable price. Normally, authority takes into account genuine instances. The most comparable instances out of the genuine instances have to be identified on the consideration of proximity from time angle and from situs angle. After identifying the instances which provide the index of market value, the price reflected therein, may be taken as a norm and the value of in question may be deduced by making suitable adjustments for the plus and minus factors vis-a-vis land under consideration by

placing the two in juxtaposition. [Shrichand Raheja v. S.C. Prasad and Others 1995(2) Bom .C.R. 145].

6. The Bombay High Court has given a judgement on the question whether a Deed of Cancellation can amount to reconveyance and will attract stamp duty as on conveyance in *Creast Hotel Limited v. Asst. Superintendent of Stamps* (AIR 1994 Bom 228 = Mah L.J. 1261). In that matter the petitioner had entered into an agreement for sale on 7<sup>th</sup> September, 1986 in respect of an unconstructed flat and open car parking which was lodged for registration. On 16<sup>th</sup> October, 1988 the said agreement was cancelled by executing a deed of cancellation on stamp paper of Rs. 10 and was lodged for registration. The Registration office was of the opinion that the said document attracted the stamp duty as per provisions of Article 25 (b) i.e. as on conveyance and referred the matter to the Superintendent of Stamps who agreed with the same and determined the deficient stamp duty on Rs. 2,17,8090 and levied penalty of Rs. 21,000. The Bombay High Court held that the explanation to Article 25 of Schedule I merely creates a legal fiction for the purpose of that article and for that limited purpose it provides that even agreement for sale in the circumstances specified therein shall be deemed to be a conveyance and stamp duty shall be levied thereon accordingly. According to the Bombay High Court in respect of the cancellation executed by the petitioner the said explanation was absent and that in that case by the agreement of sale which had been cancelled by the Deed of Cancellation in question there was no conveyance even for the limited purpose of Article 25 of Schedule I of the Bombay Stamp Act. The Court further held that no immovable property or interest therein was conveyed to the Purchaser by the said agreement and hence there was nothing to be reconveyed by the Flat Purchasers to the owners of the Building by Deed of Cancellation and Article 25 had no application.

<sup>1</sup>[(na) “market Value”, in relation to any property which is the subject matter of an instrument, means the price which such property would fetch if sold in open market on the date of execution of such instrument] <sup>2</sup>[for the consideration stated in the instrument whichever is higher;]

(o) “marketable security” means a security of such description as to be capable of being sold in any stock market in India. <sup>1</sup>[\* \* \* \*];

(p) “mortgage deed” includes every instrument whereby for the purpose of securing money advanced, or to be advanced, by way of loan, or as existing or future debt, or the performance of an engagement, one person transfers or creates to, or in favour of, another, a right over in respect of specified property;

(q) “paper” includes vellum, parchment or any other material on which an instrument may be written;

(r) “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 <sup>2</sup>[and

includes an instrument by which a person, not being a person who is a legal practitioners, is authorized to appear on behalf of any party in any proceeding before any court tribunal or authority];

<sup>3</sup>[(ra) “public office” means a public officer as defined in clause (17) section 2 of the Code of Civil Procedure, 1908;]

(s) “Schedule” means a Schedule appended to this Act;

(t) “settlement” means any not-testamentary disposition in writing of movable or immovable property made. –

(i) in consideration of marriage,

(ii) 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

(iv) for any religious or charitable purpose, and

includes and agreement in writing to make such a disposition and where any such disposition has not been made in writing any instrument recording by was of declaration of trust or otherwise, the terms of any such disposition;

(u) “soldier” includes any person below the rank of a non-commissioned officer who is enrolled under the Army Act, 1950

## CHAPTER II STAMP DUTIES

### (A) Of the Liability of Instruments to Duty

#### 3. Instrument chargeable with Duty.

Subject to the provisions of this Act and the exemptions contained in Schedule I, the following instruments shall be chargeable with duty of the amount indicated in Schedule as the proper duty therefore respectively, that is to say

- (a) every instrument mentioned in Schedule I, which not having been previously executed by any person, is executed in the state on or after the date commencement of this Act;
- (b) every instrument mentioned in Schedule I, which not having been previously executed by any person, is executed out of the state on or after the said date, relates to any property situate, or to any matter or thing done or to be done in this State and is received in this State;

<sup>1</sup>[Provided that a copy or extract, whether certified to be a true copy of not and whether a facsimile image or otherwise of the original instrument on which stamp duty is chargeable under the provisions of this section, shall be chargeable with full stamp duty indicated in the Schedule I if the proper duty payable on such original instrument is not paid]

<sup>2</sup>[Provided further that] no duty shall be chargeable in respect of

(1) 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 <sup>3</sup>[or where the Government has undertaken to bear the expenses towards the payment of the duty];

(2) 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 Bombay Coasting Vessels Act, 1838, or <sup>4</sup>[Merchant Shipping Act, 1958].

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1. This proviso was inserted by the Maharashtra Tax Laws (Levy and Amendment ) Act, 1998 No. 21 of 1998 s.6(a) (w.e.f. 10.12.1985)
  2. these words were substituted for the words “provided that” by the Maharashtra Tax Laws (Levy and Amendment) Act, 1998, No. 21 of 1998 s.6(6) (w.e.f. 1-5-1998)
  3. These words were added, by Mah. 27 of 1985, s 3(a), (w.e.f. 10.12.1985).
  4. These words are figures were substituted for the words and figures “India Registration of Ships Act, 1841”, by Mah. 27 of 1985, s 3(a), (w.e.f. 10.12.1985).

4. Several instruments used in single transaction of sale, mortgage or settlement.

(1) Where, in the case of any sale, mortgage or settlement, several instruments are employed for completing the transaction, the principle instrument only shall be chargeable with the duty prescribed in Schedule I for the conveyance, mortgage or settlement, and each of the other instruments shall be chargeable with a duty of <sup>1</sup>[twenty 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 of sub-section (1), be deemed to be the principal instrument.

<sup>2</sup>[(3) If the parties fail to determine the principal instrument between themselves, then the officer before whom the instrument is produced may, for the purposes of this section, determine the 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.

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1. These words were substituted, for the words “ten repees”, by Mah. 9 of 1997, s. 6 (w.e.f. 15.9.1996)
  2. sub section (3) was inserted, by Mah. 27 of 1985, s. 4(b), (w.e.f. 10.12.1985)

**5. Instrument relating to several distinct matters.**

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

**6. Instrument coming within several descriptions in Schedule I.**

Subject to the provisions of section 5, an instrument so framed as to come within two or more of the description in Schedule I shall, where the duties chargeable thereunder are different, be chargeable only with the highest of such duties:

Provided that nothing in this Act contained shall render chargeable with duty exceeding <sup>1</sup>[ten rupees] a counterpart or duplicate of any instrument chargeable with duty and in respect of which the proper duty has been paid.

**7. Payment of higher duty in respect of certain instruments.**

(1) Notwithstanding anything contained in section 4 or 6 or in any other enactment, unless it is proved that the duty chargeable under this Act has been paid, -

- (a) on the principal or original instrument, as the case may be, or
- (b) in accordance with the provisions of this section, the duty chargeable on an instrument of sale, mortgage or settlement other than a principal instrument, or on a counterpart, duplicate or copy of any instrument shall, if the principal or original instrument would, when received in this State have been chargeable under this Act with a higher rate of duty, be the duty with which the principal or original instrument would have been chargeable under section 19.

(2) Notwithstanding anything contained in any enactment for the time being in force, no instrument, counterpart, duplicate or copy chargeable with duty under this section shall be received in evidence unless the duty chargeable under this section has been paid thereon;

Provided that any Court before which any such instrument, duplicate or copy is produced may permit the duty chargeable under this section to be paid thereon and may then receive it in evidence.

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1. These words were substituted for the words "three rupees", by Mah. 27 of 1985, s.5, (w.e.f. 10.12.1985).

<sup>1</sup>[(3) The provisions of this Act and the rules made thereunder, in so far as they relate to the recovery of duties chargeable on a counterpart, duplicate or a copy on an instrument under sub-section (1).]

**8. Bonds or securities other than debentures issued on loans under Act IX of 1914 or other law.**

- (1) Notwithstanding anything in this Act, any local authority a load under the provisions of the Local Authorities Loans Act, 1914 or of any other law for the time being in force, by the issue of bonds or securities other than debentures shall, in respect of such load, be chargeable with a duty of <sup>2</sup>[two per centum] on the total amount of such bonds or securities issued by it, and such bonds or securities need not be stamped, and shall not be chargeable with any further duty on renewal, consolidation, sub-division or otherwise.
- (2) The provisions of sub-section (1) exempting certain bonds or securities from being stamped and from being chargeable with certain further duty shall apply to the bonds or securities other than debentures of all outstanding loans of the kind mentioned therein, and all such bonds or securities shall be valid, whether the same are stamped or not.
- (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 State 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 such neglect continues.

1. Sub-Section (3) was added by Mah 17 of 1993, s.29 (w.e.f. 1.5.1993).
2. These words were substituted for the words “one and half per centum” by Mah. 17 of 1993, s.30.

**9. Power to reduce, remit or compound duties.**

The State Government <sup>1</sup>[,if satisfied that it is necessary to do so in the public interest,] 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 State the duties with which any instruments 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 incorporated company or other body corporate of bonds or marketable securities other than debentures.

No. Mudrank. 1096/1484/CR-299/M-1, dated 13<sup>th</sup> September 1996 – In exercise of powers conferred by clause (a) of section of 9 of the Bombay Stamp Act, 1958 (Bom. LX of 1958) the Government of Maharashtra hereby remits the Stamp Duty chargeable under Article 4 in Schedule I depended to the Bombay Stamp Act, 1958 in respect of affidavits **required to the filed with Government authorities for obtaining caste certificates, income certificates and domicile and domicile certificates with immediate effect.**

**Procedure for Custodians of FIIs for  
Payment of Stamp duty**

**ORDER**

**Bombay Stamp Act, 1958**

No. Mudrank-1094/6/C.R. – 1M-1.- In exercise of the powers conferred by Clause (b) of section 9 of the Bombay Stamp Act, 1958 (Bom. LX of 1958), the Government of Maharashtra, on being satisfied to do so in public interest, hereby directs that, with effect from the 5<sup>th</sup> January, 1994, the stamp duty payable on the transfer of shares in respect of such transactions undertaken by the such custodians of Foreign Institutional Investors registered with Securities and Exchange Board of the India (SEBI), Public Financial Institutions as defined in section 4-A of the Companies Act, 1956 (Act No. 1 of 1956) and Mutual Funds (both domestic and off-shore ) as are specified hereunder, shall be by way of consolidation of duty and the procedure for payment thereof shall be as follows, namely :-

**Custodians -**

- (1) Stockholding Corporation of India Limited, Bombay.
- (2) Hongkong and Shanghai Banking Corporation, Bombay.
- (3) Citi Bank, Bombay
- (4) Standard Chartered Bank, Bombay.
- (5) Industrial Investment Trust Corporate Services Limited, Bombay.

**Procedure –**

- (a) The Custodians shall calculate the stamp duty as applicable for each transfer deed and pay the aggregate stamp duty by a Bankers' cheque drawn in favour of the Superintendent of Stamps, Bombay.
- (b) Each Banker's cheque shall be accomplished by a covering letter from the custodian and a schedule giving details of the name of the Company, the number of shares purchased, folio/distinctive numbers of shares and the total consideration thereof on the basis of which stamp duty has been computed together with a copy of the relevant contract note for the transaction.
- (c) The custodian shall also certify at the appropriate place on the share transfer form prescribed for the transaction of Foreign Institute Investors registered

with Securities and Exchange Board of India, public financial institutions defined under section 4-A of the Companies Act, 1956 and Mutual Funds (domestic and Off-shoe) that the requisite stamp duty has been duly paid quoting receipt number in respect of the payment and circular number in this respect to be issued by the officer of the Superintendent of Stamps, Bombay, for each Bankers' cheque.

- (d) The custodian shall maintain appropriate records for payment of stamp duty which shall be made available for inspection by the Superintendent of Stamps, Bombay, from time to time on such occasion as he may desire.

**(MANtralaya, Bombay 400 032, dated the 5<sup>th</sup> January, 1994, Mah. G.G. Part IV -Ba, P. 173-174 )**

(B) - Of Stamps and the mode of using them

### **10. Duties how to be paid**

- (1) Except as otherwise expressly provided in this Act, all duties with which any instruments are chargeable shall be paid and such payment shall be indicated on such instrument, 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 rules, direct.
- (2) The rules made under sub-section (1) may, among other matters, regulate, --
- (a) in the case of each kind of instrument, 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.

1[(2A) The chief Controlling Revenue Authority may, subject to such conditions as he may deem fit to impose, authorize use of franking machine or any other machine specified under sub-clause (iv) of clause (k) of section 2, for making impressions on instrument's chargeable with duties to indicate payment of duties payable on such instruments.

(2B) (a) Where the Chief Controlling Revenue Authority or the Superintendent of Stamps, Bombay when authorized by Chief Controlling Revenue Authority in this behalf, is satisfied that having regard to the extent of instruments executed and the duty chargeable thereon, it is necessary in public interest to authorize any person, body or organisation to such use of franking machine or any other machine, he may, by order in writing authorize such person, body or organization;

(b) Every such authorization shall be subject to such conditions, if any as the Chief Controlling Revenue Authority may, by any general or special order, specify in this behalf.

(2C) The procedure to regulate the use of franking machine or any other machine as so authorized shall be such as Chief Controlling Revenue Authority may, by order determine.]

<sup>2</sup>[(3) Notwithstanding anything contained in sub-section (1), where the State Government or the Chief Controlling Revenue Authority, in relation to any area in the State, is satisfied that on account of temporary shortage of stamps, in any area in the State, duty chargeable cannot be paid and payment of duty cannot be indicated on instruments by means of stamps, the State Government, or as the case may be, the Chief Controlling Revenue Authority, under intimation to the State Government, may, by notification in the Official Gazette, direct that, in such area and for such period as may be specified in such notification, the duty may be paid in cash <sup>3</sup>[ or by demand draft or by pay order] in any Government Treasury or Government Sub-Treasury or the General Stamp Office, Bombay, or any other place as the State Government may, by notification in the Official Gazette, appoint in this behalf and the receipt or challan shall be presented to the registering officer who charge thereof. Such receipt or challan shall be presented to the registering officer who shall after due verification that the duty has been paid in cash <sup>1</sup>[of by demand draft or by pas order] make an endorsement to that effect on the unstrument to the following effect, after canceling such receipt or challan so that it cannot be used again, namely:-

- 
1. Sub-sections (2A) to (2C) were added by Mah. 20 of 1994, s.3(1), (w.e.f. 28.2.1994)
  2. Sub-sections (2A) to (2C) were added by Mah. 20 of 1994, s.3(1), (w.e.f. 10.12.1985)
  3. These words were inserted by Mah. 9 of 1988, s.33(a), (w.e.f. 22.4.1988/1994)

“Stamp duty of Rs. .... paid in cash <sup>1</sup>[or by demand draft or by pay order] vide Receipt/Challan No. .... dated the .....  
Signature of Registering Officer. ”

Provided that, the period to be specified in the notification issued by the Chief Controlling Revenue Authority shall not exceed a period of <sup>2</sup>[three months].

<sup>3</sup>[Explanation – For the purpose of this sub-section, the expression “demand draft” and by “pay order” mean the demand draft or pay order issued by the State Bank of India constituted under the State Bank of India Act, 1955 or, a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 or, under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings ) Act, 1980 or, any other bank being a scheduled bank as defined in clause (e) of section 2 of the Reserve Bank of India Act, 1934.]

<sup>4</sup>[(4) An impression made under sub-section (2A), (2B) and (2C) or, as the case may be, an endorsement made under sub-section (3), <sup>5</sup>[or under sub-section (2) of section 32 A] On any instruments, shall have the same effect as if the duty of an amount equal to the amount indicated in the impression or, as the case may be, stated in the endorsement has been paid, in respect of, and such payment has been indicated on such instrument by means of stamps, under sub-section (1).]

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1. These words were inserted by Mah. 9 of 1988,s. 33(a), (w.e.f. 22.4.1988)

2. These words were substituted for the words “one month” by Mah. 9 of 1988,s. 33(b), (w.e.f. 22.4.1988)
  3. These explanation was added by Mah. 9 of 1988,s. 33(c), (w.e.f. 22.4.1988)
  4. Sub-Section 4 was substituted by Mah. 20 of 1994,s. 3(3), (w.e.f. 28.2.1994)
  5. These words were inserted by Mah. 9 of 1997,s. 7, (w.e.f. 15.9.1996)
10. Use of adhesive stamps.

The following instruments may be stamped with adhesive stamps, namely:-  
 (a)<sup>1</sup>[ \* \* \* \* \* ]  
 [2(b) instruments mentioned at 3[ articles 1,]5(a) to(g), 17,29,37,[411] ],  
 42,43,59(a) and 62 in Schedule I].

**11. Cancellation of adhesive stamps.**

(1) (a) Whoever affixes any adhesive stamp 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 been already cancelled in the manner aforesaid, 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 or his firm with the true date of his so writing, or in any other effectual manner.

1. This clause was deleted, by Mah. 9 of 1988,s. 34(a), (w.e.f. 22.4.1988)
2. Clause (b) was substituted for the original clauses (b) and (c) by Mah. 10 of 1965,s. 3.
3. This word and figure was substituted for the word and letter “article Nos.”, by Mah. 9 of 1988,s. 34(b), (w.e.f. 22.4.1988)
4. These figures were substituted for the figures, brackets and letter “41(a)”, by Mah. 27 of 1985,s.8.(w.e.f. 10.12.1985)

<sup>1</sup>[**13. Instruments stamped with impressed stamps how to be written.**

Every instrument for which sheet or paper stamped with impressed stamp is used shall be written in such manner that the writing may appear on the face and, if required, on the reverse of such sheet so that it cannot be used for or applied to any other instrument.

Explanation I.- Where two or more sheets of papers stamped with impressed stamps are used to make up the amount of duty chargeable in respect of any instrument, either a portion of such instrument shall be written on each sheet so use, or

the sheet on which no such portion is written shall be signed by the executants or one of the executants, with an endorsement indication that the additional sheet is attached to the sheet on which the instrument is written.

Explanation II.- Where the sheet or sheets bearing impressed stamps is or are insufficient to admit of the entire instrument being written thereon, so much plain paper may be subjoined thereto as may be necessary for completing the writing of such instrument, provided a substantial part of the instrument is written on the sheet which bears the stamp before any part is written on the plain paper so subjoined; and such plain paper may or may not be signed by the executant but where it is not so signed it shall not render the instrument not duly stamped.]

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1. Section 13 was substituted for the original by Mah. 27 of 1985, s. 9, (w.e.f. 10.12.1985)

**14. Only on e instrument to be on same stamp.**

No second instrument chargeable with duty shall be written upon a piece of stamped paper upon which an instrument chargeable with duty has already been written;

Provided that nothing in this section shall prevent any endorsement which is duly stamped or is not chargeable with duty being made upon any instrument for the receipt of any money or goods the payment or delivery of which is secured thereby.

<sup>1</sup>**[14 A. Alterations in instruments how to be charged.**

Where due to material alternations made in an instrument by a party, with or without the consent of other parties, the character of the instrument is materially or substantially altered, then such instrument shall require a fresh stamp paper according to its altered character.]

**15. Instrument written contrary to section 13, <sup>2</sup>[14 or 14A deemed not duly stamped.]**

Every instrument written in contravention of section 13 <sup>3</sup>[14 or 14A] shall be deemed to be <sup>4</sup>[not only stamped.]

**16. Denoting Duty.**

Where the duty with which an instrument is chargeable, or its exemption from duty, depends in any manner upon the duty actually paid in respect of another instrument, the payment of such last mentioned duty shall, if application is made in writing to the Collector for the purpose, and on production of both the instruments, be noted upon such first mentioned instrument by endorsement under the hand of the Collector in such other manner (if any) as the State Government may, by rules, prescribe.

(C) – of the time of stamping Instruments

**17. Instruments executed in State.**

All instruments chargeable with duty and executed by any person in this state shall be stamped before or at the time of execution <sup>1</sup>[or immediately thereafter] <sup>2</sup>[or on the next working day following the day of execution :]

<sup>3</sup>[Provided that the clearance list described in Article 19,20,21,22, or 23 of Schedule I may be stamped by an officer authorized by the State Government by rules made under this Act, if such clearance list is submitted by the clearing house of an Association in accordance with its rules and bye-laws with the requisite amount of stamp duty, within two months from the date of its execution]

1. These words were added, by Mah. 27 of 1985, s.12 (w.e.f. 10-12-1985).
2. Added, by Mah. 17 of 1993, s.31 (w.e.f. 10-12-1985).
3. This proviso was substituted for the original by Bom. 95 of 1958, s.3

**18. Instruments executed out of state.**

(1) Every instrument chargeable with duty executed only out of this State may be stamped within three months after it has been first received in this State.

(2) Where any such instrument cannot with reference, to the description of stamp prescribed therefore,

**19. Payment of duty on certain instruments <sup>1</sup>[or copies thereof] liable to increased duty in <sup>2</sup>[Maharashtra State.]**

**Where any instrument of the nature described in any article in Schedule I and relating to any property situate or to ;any matter or thing done or to be done in this State is executed out of the State and subsequently <sup>3</sup>[such instrument or a copy of the instrument is]received in the State,-**

- (a) **the amount of duty chargeable on such instrument <sup>4</sup>[or a copy of the instrument] shall be the amount of duty chargeable under Schedule I on a document of the like description executed in this State less the amount of duty, if any, already paid under any law in force in India excluding the State of Jammu and Kashmir on such instrument when it was executed;**
- (b) **and in addition to the stamps, if any, already affixed thereto such instrument <sup>4</sup>[or a copy of the instrument] shall be stamped with the stamps necessary for the payment of the duty chargeable on it under (a) of this section, in the same manner and at the same time and by the same persons as though such instrument <sup>1</sup>[or a copy of the instrument] were in instrument received in this State for the first time at the time when it became chargeable with the higher duty; and**
- (c) **the provisions contained in clause (b) of the proviso to sub-section (3) of section 32 shall apply to such instrument <sup>1</sup>[or a copy of such instrument] as is such were an instrument executed or first executed out of this State and first received in this State when it became chargeable to the higher duty aforesaid, but the provisions contained in clause (a) of the said proviso shall not apply thereto.**

**(d) Of Valuation from Duty**

**20. Conversion of amount expressed in foreign currencies.**

(1) Where an instrument is chargeable with ad valorem duty in the 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.

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1. Inserted by Mah. 17 of 1993, s.32(b) (w.e.f. 1.5.1993)

(2) The rate of exchange for the conversion of British or any forging currency into the currency of India prescribed under sub-section (2)) of section 20 of the Indian Stamp Act,1899, shall be deemed to be the current rate for the purpose of sub-section (1)

**21. Stock and marketable securities how to be valued.**

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.

**22. Effect of instrument of rate of exchange or average price.**

Where an instrument contains a statement of current rate of exchange, or average price, as the case may require, and is stamped in accordance with such statement, it shall, so far as regards the subject matter of such statement, be presented until the contrary is proved to be duly stamped.

**23. Instrument reserving interest.**

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.

**24. Certain instrument connected with mortgages of marketable securities to be chargeable as agreements.**

(1) Where an instrument –

(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 a duly stamped transfer intended as a security or 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(h) of Schedule I.

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

**<sup>1</sup>[25. How transfer in consideration of debt or subject to future payments, etc. to be charged.**

where any property is transferred to any person

- (a) in consideration, wholly or in part, of any debt due, to him; or
- (b) subject either certainly or contingently to the payment or transfer (to him or any other person) of any money stock, whether being or constituting a charge or encumbrance upon the property or not;

such debt, money or stock, shall be deemed to be the whole or part, as the case may be, of the consideration in respect whereof the transfer is chargeable with ad valorem duty:

Provided that, nothing in this section shall apply to any such certificate of sale as is mentioned in Article 16 of Schedule I.

Explanation . – Where property is sold and sale is subject to a mortgage or other encumbrance, any unpaid mortgage money of money charged, together with the interest (if any) due on the same, shall be deemed to be a part of the consideration for the sale, whether or not the purchaser expressly undertakes with the seller to pay the same or indemnify the seller if the seller has to pay the same:

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1. Section 25 was substituted for the original by Mah. 27 of 1985, s.13, (w.e.f. 10.12.1985).

Provided that, where any 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.

**Illustrations**

1. A owes B Rs. 1,000. A sells a property to B, the consideration of the property being Rs. 500 and the release of the previous debt of Rs. 1,000. Stamp duty is payable on Rs. 1,500.
2. A sells a property to B for Rs. 500. The property is subject to a mortgage to C for Rs. 1,000 and unpaid interest of Rs. 200. The sale is subject to the mortgage, Stamp duty is payable on Rs. 1,700.
3. A mortgages a house of the value of Rs. 10,000 to B for Rs. 5,000. B afterwards buys the house from A. Stamp duty is payable on Rs. 10,000 less the amount of stamp duty already paid for the mortgage.]

## 26. Valuation in case of annuity, etc. ,

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 purposes 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 terminable 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;

(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.

## **27. Stamp where value of subject-matter is indeterminate.**

Where the amount of 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, <sup>1</sup>[have been sufficient, and the instrument shall be deemed to be insufficiently stamped as respects the excess amount and the provisions of section 34 shall accordingly apply in relation to the admission of the instrument in evidence:

Provided that, for the purpose of application to section 34 to such an instrument, it shall be sufficient if the deficiency in the duty is paid, and thereupon no penalty shall be levied :]

<sup>2</sup>[Provided further that] in the case of the lease of a mine in which royalty or a share of the produce 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 the lease, or

(b) when the lease has been granted by any other person, at <sup>3</sup>[fifty thousand rupees] a year,

and the whole amount of such royalty or share, whatever it may be, shall be claimable under such lease:

1. These words were substituted for the words "have been sufficient" by Mah. 27 of 1985, s. 14 (a) (w.e.f 10.12.1985).

2. These words were substituted for the words "provided that" by Mah. 27 of 1985. s. 14 (b) (w.e! 10.12.1985).

3. Substituted for the words "twenty-thousand rupees" by Mah. 17 of 1993, s. 33 (w.e.f 1.5.1993).

Provided also that, where proceedings have been taken in respect of an instrument under section 31 or 40, the amount certified by the Collector shall be deemed to be the stamp actually used at the date of execution. , '

**28. Facts affecting duty to be set forth in instrument.**

The consideration (if any) [the market value] and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein.

**29. Direction as to duty in case of certain conveyances.**

(1) 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 <sup>2</sup>[market value] shall be apportioned in such manner as the parties think fit, provided that a distinct <sup>2</sup>[market value] 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 <sup>2</sup>[market value].

(2) 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 others, is conveyed in parts by separate instruments of the persons, by or for whom the same was purchased, for distinct parts of the consideration, the conveyance of each separate

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1. These words were inserted by Mah. 16 of 1979. s. 4.

2. These words were substituted for the words "consideration" by Mah. 16 of 1979, s. 5(a) (w.e.f. 4-7-1980)

part shall be chargeable with ad valorem duty in respect of the distinct part l[in respect of the market value of such part of the property].

(3) 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 2[in respect of the market value of the property at the time of sale] by the original purchaser to the sub-purchaser.

(4) 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 persons in parts the conveyance of each part sold to a sub-purchaser shall be chargeable with ad valorem duty 3[in respect only of the market value of the part sold to the sub-purchaser, without regard to the amount of the market value of the property conveyed by the original seller, and the conveyance of the residue (if any) of such property to the original purchaser shall be chargeable with ad valorem duty in respect of the market value of such residue:]

Provided that notwithstanding anything contained in Article 25 of Schedule I the duty on such last mentioned conveyance shall in no case be less than 4[ten rupees].

<sup>5</sup>[(5) 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 market value of the property which is the subject matter of the conveyance and is duly stamped accordingly, any conveyance to be made afterwards to him in respect 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 market value of the property which is the subject matter of the conveyance or where such duty exceeds <sup>6</sup>[fifty rupees] with a duty of 6[fifty rupees].]

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1. These words were substituted for the words "of the consideration therein specified" by Mah. 16 of 1979. s. 5(a) (w.ef 4-7-1980).

2. These words were substituted for the words "in respect of the consideration for the sale" by Mah. 16 of 1979. s. 5(c) (w.ef 4.7.1980).

3. This portion was substituted for the portion beginning with words "in respect only of the consideration paid by the such sub- purchaser" and ending with the words "considerations paid by the sub-purchaser by Mah. 16 of 1979. s. 5(d) (w.e.f. 4.7.1980).

4. These words were substituted for the words "three rupees" by Mah. 27 of 1985. s. 15(a) (w.ef. 10.12.1985).

5. Sub-section (5) was substituted for the original by Mah. 16 of 1979, s. 5(e) (w.ef. 4.7.19~0).

6. These words were substituted for the words "seven rupees and fifty paise" by Mah. 27 of 1985. s. 15(b) (w.ef. 10-12-1985).

(E) -Duty by whom payable

**30 . Duties by whom payable.**

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 (Bond), .
  - No. 14 (Bottomry Bond),
  - No. 28 (Customs Bond),
  - No. 33 (Further Charge),
  - No. 35 (Indemnity Bond),
  - No. 40 (Mortgage Deed),
  - No. 52 (Release),
  - No. 53 (Respondentia Bond),
  - No. 54 (Security Bond or Mortgage Deed),
  - No. 55 (Settlement),
- No. <sup>1</sup>[59 (a)] (Transfer of debentures, being marketable securities whether the debenture is liable to duty or not, except debentures provided for by section 8 of the Indian Stamp Act, 1899),
- No. 59 (b) (Transfer of any interest secured by a bond or mortgage deed or policy of insurance), by the person drawing or making such instrument;
- (b) in the case of a conveyance (including a conveyance of mortgaged property) by the grantee; in the case of a lease or agreement to lease by the lessee or intended lessee;

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1. These figures, brackets and letter were substituted by Mah. 27 of 1985, s. 16(a), (w.e/. 10.12.1985).

- (c) in the case of a counter part of a lease by the lessor;
- (d) in the case of an instrument of exchange by the parties in equal shares;
- (e) in the case of a certificate of sale by the purchaser of the property to which such certificate relates; <sup>1</sup>[X]
- (f) 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, JIS such Authority, Court or <sup>2</sup>[arbitrator directs; and]
- <sup>3</sup>[(g) in any other case, by the person executing the instrument].

## CHAPTER III

### ADJUDICATION AS TO STAMPS

#### 31. Adjudication as to proper stamps.

<sup>4</sup>[(1) When an instrument, whether executed or not and whether previously stamped or not, is brought to the Collector, <sup>5</sup>[by one of the parties to the instrument and such person] applies to have the opinion of that officer as to the duty (if any) with which <sup>6</sup>[or the Article of Schedule I under which] it is chargeable and pay <sup>7</sup>[a fee of one hundred rupees] the Collector shall determine the duty (if any) with which <sup>6</sup>[or the Article of Schedule I under which] in his judgement, the instrument is chargeable].

(2) For this purpose the Collector may require to be furnished with <sup>8</sup>[a true copy or] 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 the instrument with duty, or the amount of the duty with which it is chargeable, are fully and truly set forth therein and may refuse to proceed upon any such application until <sup>9</sup>[such true copy or abstract] and evidence have been furnished accordingly:

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I. The word "and" was deleted, by Mah. 27 of 1985, s. 16(b), (w.e.f 10.12.1985).

2. These words were substituted for the words "arbitrator directs" by Mah. 27 of 1985. s. 16(c), (w.e.f 10.12.1985).

3. Clause (g) was added by Mah. 27 of 1985, s. 16(d), (w.e.f 10.12.1985).

4. Sub-section (I) was substituted for the original by Mah. 13 of 1974, s. 3, (w.e.f 1-5-1974).

5. These words were substituted for the words "and the persons bringing it" by Mah. 9 of 1997, s, 8(a) (w.e.f 15.9.1996).

6. These words were inserted by Mah. 27 of 1985 s.17(a) (w.e.f. 10.12.1985).

7. These words were substituted for the words "a fee of fifty rupees" as Amended by Mah. Tax Laws (Levy and Amendment) Act, 2001, s. 2(a),

8. These words inserted by Mah. 27 of 1985. 17(b)(i), (w.e.f. 10.12.1985).

9. These words were substituted for the words "such abstract" by Mah. 27 of 1985, s. 17(b) (ii), (w.e.f. 10-12-1985).

Provided that, -

(a) no evidence furnished in pursuance of this section shall be used against any person in any civil proceeding, except in any inquiry 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.

<sup>1</sup>[(3) Where the Collector acting under sub-sections (1) and (2) is not the Collector of the District and if he has reasons to believe that the market value of the property, which is the subject matter of the instrument, received by him for adjudication, has not been truly set forth therein, <sup>2</sup>[he shall, for the purpose of assessing the stamp duty, determine the true market value of such property, as laid down in the Bombay Stamp (Determination of True Market Value of Property) Rules, 1995.]

<sup>3</sup>[(4) When an instrument is brought to the Collector for adjudication,-

(i) within one month of the execution or first execution of such instrument in the State; or  
(ii) if, such instrument is executed or first executed, out of the State, within three months from the date of first receipt of such instrument in this State,

the person liable to pay the stamp duty under section 30 shall pay the same within sixty days from the date of service of the notice of demand in respect of the stamp duty adjudicated by the Collector. If such person fails to pay the stamp duty so demanded within the said period, he shall be liable to pay a penalty at the rate of two per cent of the deficient portion of the stamp duty, for every month or part thereof, from the date of execution of such instrument, or as the case may be, date of the first receipt of such instrument in the State] :

<sup>4</sup>[Provided that, in no case, the amount of the penalty shall exceed double the deficient portion of the stamp duty.]

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1. Sub-section (3) was added by Mah. 16 of 1979, s. 6, (w.ef 4-7-1980).

2. This words were substituted for the words "he may, before assessing the stamp duty, refer the instrument to the Collector of the District for determining, after giving the parties concerned a reasonable opportunity of being heard and in accordance with the rules made by the State Government in that behalf, the true market value of such property and the proper duty payable on the instrument" by Mah. Tax Laws (Levy, Amendment and Validation) Act, 1997, Mah 30 of 1997, s. 2(a), (w.ef 15-5-1997).

3. Sub-section (4) was added by Mah. Tax Laws (Levy, Amendment and Validation) Act, 1997, Mah 30 of 1997, s. 2(b) (w.ef 15-5-1997).

4. This proviso was added as Amended by Mah. Tax Laws (Levy and Amendment) Act, 2001, s. 2(b).

### **Subjective satisfaction to be on objective factors -**

It is important to note that subjective satisfaction of authorities to reach a decision of reasonable belief has to be on objective factors. Forming of opinion by mere following of guidelines by Government is not enough as Government Guidelines cannot control quasi-judicial decision –1996 15 CC 609 State of Punjab v. Mahabir Singh. The case has arisen under Punjab Stamp Act, 1987 under section 47A as amended.

### **32. Certificate by Collector.**

(1) When an instrument brought to the Collector under section 31, 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 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 <sup>1</sup>[( stating the relevant Article of Schedule I and 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) <sup>2</sup>[Subject to the provisions of section 53-A, 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

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1. These brackets, words and figures were substituted for the brackets and words "(stating the amount)" by Mah. 27 of 1985, s. 18(a), (w.e.f 10.12.1985).

2. These words were substituted for the words " Any instrument upon which an endorsement has been made" by Mah. 27 of 1985, s. 18(b), (w.e.f 10.12.1985).

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 authorise the Collector to endorse -

(a) any instrument executed or first executed in the State and brought to him after the expiration of one month from the date of its execution or first execution as the case may be; .

(b) any instrument executed or first executed out of the State and brought to him after the expiration of three months after it has been first received in this State, or

(c) any instrument chargeable with the duty of twenty naye paise or less when brought to him, after the drawing or execution thereof, on paper not duly stamped.

### **Effective adjudication**

If the collector certifies by endorsement on the document the fact of payment of the full duty, then one adjudication becomes effective.

[C.C.R.A. v. Dr: Majunatha Rao AIR 1977 Mad. 10 (F.B.)].

### **<sup>1</sup>[32A. Instrument of conveyance, etc. undervalued how to be dealt with.**

(1) Every instrument of conveyance, exchange, gift, certificate of sale, deed of partition or power of attorney to sell immovable property when given for consideration, deed of settlement or transfer of lease by way of assignment, presented for registration under the provisions of Registration Act, 1908, shall be accompanied by a true copy thereof:

Provided that, in case of such instruments executed on or after the 4th July 1980, to the date of commencement of the Bombay Stamp (Amendment) Act, 1985, an extract of the instrument to be taken from the registration record shall be deemed to be the true copy accompanying the instrument, presented for registration for the purposes of subsection (1).

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1. Section 32A shall be deemed to have been substituted with effect from the 4th July 1980 by Mah. 27 of 1985, s. 19

<sup>1</sup>[(2) (a) If any officer registering such instrument has reason to believe, on the basis of the information available with him in this behalf, that the market value of the immovable property which is the subject matter of such instrument has not been truly set forth therein, he may, immediately after presentation of such instrument, give a notice to the person who is liable to pay the stamp duty under section 30, calling upon such person to pay the deficit amount of stamp duty and <sup>2</sup>[a penalty at the rate of 2 per cent of the deficient portion of the stamp duty, for every month or part thereof] from the date of execution of such instrument. If such person is willing to pay the amount of the deficit stamp duty and penalty thereon, the registering officer shall accept the payment. The procedure laid down in sub-section (3) of section 10 shall, mutatis mutandis, apply to such payment:

<sup>3</sup>[Provided that, in no case, the amount of the penalty shall exceed double the deficient portion of the stamp duty.]

(b) If such person does not make the payment within one month of receipt of the notice referred to in clause (a), then the registering officer shall, before registering the instrument, refer the true copy of such instrument to the Collector of the District for determination of the true market value of such property and the proper duty payable on the instrument;

(c) It shall be lawful for the registering officer to issue similar notices in respect of the instrument presented for registration before the date of commencement of the Maharashtra Tax Laws (Levy, Second Amendment and Validation) Act, 1996 where the true market value of the immovable property which is subject matter of such instrument has not been determined by the Collector of the District. On the receipt of such notice, if the person liable to pay the stamp duty makes such payment within one month from the date of such receipt, and also pays the fixed penalty of rupees 250, he shall not be liable to make any further payment of penalty at the rate <sup>4</sup>[of 2 per cent of the deficient portion of the stamp duty, for every month or part thereof] from the date of execution and on such payment being made, the reference already made to the Collector of the District shall abate]:

<sup>5</sup>[Provided that, in no case, the amount of the penalty shall exceed double the deficient portion of the stamp duty.]

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1. Sub-section (2) Was substituted by Mah. 9 of 1997. s. 9(a), (w.e.f 15.9.1996), prior to its substitution read as under:-

(2) If any Officer registering such instrument has reason to believe that the market value of the immovable property which is the subject matter of such instrument has not been duly set forth therein, he may before registering the instrument, refer the true copy of such instrument to the Collector of the District for determination of the true market value of such property and the proper duty payable on the instrument.

2. These words were substituted for the words "penalty" at the rate of 15 percent, on the deficit amount of the stamp duty for every year or part thereof by the Mah. Tax Laws (Levy, Amendment and Validation) Act, 30 of 1997. s. 3(a)(i) (w.e.f.15.5.1997).

3. This proviso was added as Amended by Mah. Tax Laws (Levy and Amendment) Act, 2001, s. 3(a)(i).

4. These words were substituted for the words "of 15 per cent of the deficit amount of the stamp duty" by Mah. Tax Laws (Levy. Amendment and Validation) Act, 30 of 1997. s. 3(a)(ii) (w.e.f. 15.5.1997).

5. This proviso was added as Amended by Mah. Tax Laws (Levy and Amendment) Act, 2001, s. 3(a)(ii).

(3) If any person referred to in section 33, before whom any such instrument is produced or comes in the performance of his functions, has reason to believe that the market value of the immovable property which is the subject matter of such instrument has not been truly set forth therein, he may, after performing his function, in respect of such instrument, refer the instrument along with a true copy of such instrument to the Collector of the District for determination of the true market value of such property and the proper duty payable on the instrument. <sup>1</sup>[Provided that if the person, before whom any such instrument is produced or comes, in performance of his functions, is an officer appointed as the Collector under clause (f) of section 2, and he has reason to believe that the market value of the immovable property which is the subject matter of such instrument has not been truly set forth therein, he shall, for the purpose of assessing the stamp duty, determine the true market value of such property in the manner laid down in the Bombay Stamp (Determination of True Market Value of Property) Rules, 1995];

(4) On receipt of the instrument or the true copy of the instrument as the case may be, under sub-section (2) or (3), the Collector of the District shall, after giving the parties concerned a reasonable opportunity of being heard and in accordance with the rules made by the State Government in that behalf, determine the true market value of the immovable property which is the subject matter of the instrument and the proper duty payable thereon.

Upon such determination, the Collector of the District shall require the party liable to pay the duty, to make the payment of the amount required to make up the difference between the amount of duty determined under this sub-section and the amount of duty already paid by him and shall also require such party to pay in addition, <sup>2</sup>[a penalty <sup>3</sup>[of 2 per cent for every month or part thereof] from the date of execution of the instrument on differential amount of stamp duty]; and on such payment, the instrument received under sub-section (2) or (3) shall be returned to the officer or person referred to therein:

Provided that, no such party shall be required to pay any amount to make up the difference or to pay any penalty under this sub-section, if the difference between the amount of the market value as set forth in the instrument and the market value as determined by the Collector of the District does not exceed ten per cent, of the market value determined by the Collector of the District:

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1, This proviso Was added by Mah. Tax Laws (Levy, Amendment and Validation) Act 30 of 1997, s, 3(b) (w.e.f. 15.5.1997),

2, These words were substituted for the words "a penalty of rupee two hundred and fifty in respect of the instruments executed upto the 28th February 1990, and rupees two hundred and fifty plus 15 per cent for each year or part of the year, on the differential amount on the instrument executed on or after the 1 st March 1990" by Mah. 9 of 1997, s. 9(b)(i), (w.e.f. 15.9.1996).

3. These words were substituted for the words "of 15 per cent for each year or part of the year" by Mah. Tax Laws (Levy, Amendment and Validation) Act, 30 of 1997, s. 3(c) (w.e.f. 15.5.1997).

<sup>1</sup>[Provided further that, in respect of references pending with the Collector of the, District, before the commencement of the Maharashtra Tax Laws (Levy Second Amendment and Validation) Act, 1996, for determination of true market value of the immovable property which is the subject matter of the instrument, the person liable to pay the stamp duty under section 30 shall not be liable to pay penalty exceeding rupees 250 if, he makes the payment of the stamp duty and penalty within one month from the date of receipt of the order of the Collector of the District, by him].

<sup>1</sup>[Provided also that, in no case, the amount of the penalty shall exceed double the deficient portion of the stamp duty.]

(5) The Collector of the District, may, suo moto or on receipt of information from any source, within 3[ten years] from the date of registration of any instrument referred to in sub-section (1), (not being the instrument upon which an endorsement has been made under section 32 or the instrument or the instruments in respect of which the proper duty has been determined by him under sub-section (4) or an instrument executed before the 4th July 1980), call for the true copy or an abstract of the instrument from the registering officer and examine it for the purpose of satisfying himself as to the correctness of the market value of the immovable property which is the subject matter. of such instrument and the duty payable thereon; and if, after such examination, .he has reason to believe that the market value of such property has not been truly and fully setforth in the instrument he shall proceed as provided in sub-section (4).

<sup>4</sup>[(6) It shall be lawful for the Chief Controlling Revenue Authority or the Collector of the District to transfer to any other Officer,,: any reference received by the Collector of the District under this section, for disposal in accordance with the Bombay Stamp (Determination of True Market Value of Property) Rules, 1995.]

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1. This proviso was substituted by Mah. 9)f 1997, s. 9(b)(ii), (w.ej 15.9.1996). Prior to substitution proviso read as under :-

Provided further that. the provisions of this sub-section, as amended by the Maharashtra Tax Laws (Levy and Amendment) Act, 1993 (Mah. 17 of 1993) in so far as they relate to the payment of penalty, shall not apply to the references finalised by the Collector before the date of commencement of .the said Act.

2. This proviso was added as Amended by M~. Tax Laws (Levy and Amendment) Act, 2001, s. 3(b). 3. These words were substituted for the words "eight years" by Mah. Tax Laws (Levy, Amendment and Validation) Act, 30 of 1997, s. 3(d) (w.e.f. 15.5.1997).

4. Sub-section (6) was substituted by Mah. Tax Laws (Levy, Amendment and Validation) Act, 30 of 1997, s. 3(e) (w.e.f.15.5.1997). Prior to substitution sub-section (6) which was inserted by Mah. 18 of 1989, w.ef.. 1.12.198p read as under :-

(6) It shall be lawful for the Collector of the District to transfer any reference received by him under sub-section (3) of section 31 or under this section for determination of the true market value of the immovable property which is the subject matter of the instrument and the property duty payable thereon, for disposal in accordance with the provision of sub-section (3) of section 31 or, as the case may be, this section, to the Additional Collector of the District, if any or any other officer in his District not below the rank of-

- (i) Tahsildar,
- (ii) Town Planner brone on the cadre of the Director of Town Planning, Maharashtra State, or
- (iii) Joint District Register appointed under the Registration Act, 1908 as the State Government may, from time to time,  
by general or special order in the Official Gazette, specify.

Notes

The section applies to eight types of deeds (i) conveyance, (ii) exchange, (iii) gift, (iv) certificate of sale, (v) partition, (vi) power of attorney with power to sell immovable property for consideration, (vii) deed of settlement, (viii) transfer of lease, being the instruments on which duty is payable on ad valorem basis on market value of the property.

### **Quasi-judicial function**

While determining market value of the property, the collector's function would be quasi-judicial function and all principles of natural justice has to be observed. His order must be reasoned order.

JT 1996 (6) SC 190 -Smt. Prakshwati v. Chief Controlling Revenue Authority

Under UP Stamp Rule, 1942 and section 47A of Stamp Rule.

Closeness to posh colony does not of itself make it part thereof.

Approach of the authorities was highly vain, casual and unsatisfactory and deters any constructive material from where it could be said that decision was fair and reasonable.

Factum of closeness to posh locality would not cast any reflection on the price of the property.

### **Guidelines are substitute for market value**

Guidelines for determining market value of land are no substitute for market value.

(Gaurang Naik v. State 1992 Orissa 232).

Basic valuation is for collecting stamp duty and guidelines cannot found basis of market value

!94-4-S-C-C-595 Jiwaji v. Revenue Officer.

### **Section 32A and Entry 25 of Schedule I**

Whether an agreement entered into between Builder-Developer and the purchasers of the flats, executed in terms of section 4 of the Maharashtra Ownership Flats (Regulation of the Promotion of the Construction, Sale, Management and Transfer) Act, 1963 can be subjected to payment of stamp duty in terms of section 32 A read with Entry 25, Schedule I of the Act, was the issue raised in State 'Maharashtra v. Mahavir Lalchand Rathod (1993 Mh L.J. 1492) Special Bench of Bombay High court was constituted for this purpose. Justice Kurdukar observed that, on construction of the agreement in question it must be held that although it has been described as an agreement to sell in effect and for all purposes it is a conveyance falling under section 2(g) of the Act in as much as the right, title and interest in the writ flat stands transferred in favour of the purchaser on payment of installments as provided therein. Even though the document in question is an agreement of sale only yet such agreement of sale is dutiable under the Act by virtue of Explanation 1 to Article 25 of schedule I of the Act. There is no clause in the agreement which requires the developer to execute any other deed at a later stage and this position militates against the contention of the petitioner. Held that the agreement in question is a conveyance and whether possession is given on that date or not is not the relevant and decisive factor. Such a document therefore is liable to stamp duty under Article 25 in Schedule I of the Act, Entry 25 in Schedule I of the Act is not ultra vires the constitution of India. It is stamp duty of State and the State Legislature is competent to legislate in that behalf. Explanation 1 to Article 25 is intended to cover such agreements of Sale.

It seems that Stamp duty is payable under Article 25(d) at a true market value at a percentage as prescribed and accordingly no stamp duty is payable in respect of transfer of residential premises in a co-operative society works out approximately to

Article 25(d) (I) to Rs. 550 to Rs. 1,250

(d) (ii) to Rs. 1,550 to Rs. 8,750

(d) (iii) to Rs. 9,350 to Rs. 23,750

(d) (iv) to Rs. 24,350 to Rs. 38,750

(d) (v) to Rs. 38,750 to 8%.

It must be noted that, registration fee is separately chargeable under The Registration Act. Stamp duty for premises other than for residential purpose attracts different duty.

### **<sup>1</sup>[32B. Appeal**

(1) Any person aggrieved by any order determining the market value under sub-section (3) of section 31 or under section 32A or any order imposing any penalty under section 32A may, within sixty days from the date of receipt of such order, by an application in writing (accompanied by such fee not exceeding three hundred rupees as the State Government may, from time to time, by notification in the Official Gazette, specify; and different rates of fees may be specified for different areas), file an appeal against such order, to the Deputy Inspector General of Registration and Deputy Controller of Stamps, who shall after considering the same, pass such order thereon as he thinks just and proper; and the order so passed shall, subject to the provisions of section 32C, be final and shall not be questioned in any Court or before any authority:

Provided that, all applications made and pending with the Collector immediately before the commencement of the Bombay Stamp (Amendment) Act, 1989 (hereinafter, in this section, referred to as "the Amendment Act"), for being referred to Courts for decision under section 32B as it existed immediately before the coming into force of the Amendment Act, shall, on the coming into force of the Amendment Act be transferred by the Collector to the Deputy Inspector General of Registration and Deputy Controller of Stamps and the applications so transferred shall be deemed to be the appeals filed and pending before the Deputy Inspector General of Registration and Deputy Controller of Stamps who shall dispose off the same in accordance with this section:

Provided further that, nothing contained in sub-section (1) and the first proviso shall affect the references already made by the Collector to the Courts and pending before the Courts immediately before the commencement of the Amendment Act; and such references shall be disposed off by the concerned Courts as if the Amendment Act has not been passed.

(2) No appeal and no application for revision shall lie against the order of the Deputy Inspector General of Registration and Deputy Controller of Stamps, passed under sub-section (1)].

### **32C. Revision.**

Subject to the provisions of section 32B and any rules which may be made in this behalf by the State Government, the Chief Controlling Revenue Authority may, suo moto, call for and examine the record of any order passed (including an order passed in appeal) under this Act or the rules made thereunder, by any officer and pass such order thereon as

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1. These Sections were substituted for section 328 by Mah. 18 of 1989, s. 3, (w.e.f. 1-2-1989).

he thinks just and proper; and the order so passed shall be final and shall not be called in question in any Court or before any authority:

Provided that, no notice calling for the record under this section shall be served by the Chief Controlling Revenue Authority after the expiry of three years from the date of communication of the order sought to be revised and no order of revision, shall be made by the said Authority hereunder after the expiry of five years from such date:

Provided further that, no order shall be passed under this section which adversely affects any person, unless such person has been given a reasonable opportunity of being heard.]

#### **CHAPTER IV INSTRUMENTS NOT DULY STAMPED**

### **33. Examination and impounding of instruments.**

(1) <sup>1</sup>[Subject to the provisions of section 32-A, every person] having by law or consent of parties authority to receive evidence and every person in charge of a public office, except an officer of police <sup>2</sup>[or any other officer, empowered by law to investigate offences under any law for the time being in force,] before whom any instrument chargeable, in his opinion, with duty, is produced or comes in the performance of his functions shall, if it appears to him that such instrument is not duly stamped, impound the same <sup>3</sup>[irrespective whether the instrument is or is not valid in law.]

(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 for the time being in force in the State 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 <sup>4</sup>[Chapter IX or Part D of Chapter X of the Code of Criminal Procedure, 1973];

(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 may appoint in this behalf.

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1. These words were substituted for the words "Every person" by Mah. 16 of 1979, s. (8). (w.e.f. 4.7.1980)

2. These words were inserted by Mah. 27 of 1985, s. 20 (a) (i), (w.e.f. 10-12-1985).

3. These words were added by Mah 27 of 1985, s. 20 (a) (ii). (w.e.f. 10-12-1985).

4. These words, figures and letters were substituted for the words and figures "Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898" by Mah. 27 of 1985, s. 20 (d), (w.e.f. 10-12-1985).

- (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.

### **Whether officer of Co-operative Societies is a Public Servant**

It may be pointed out that recently the Superintendent of Stamps has addressed letters to the co-operative societies that Officers of Co-operative Societies are public servants under section 161 of Maharashtra Co-operative Societies Act and therefore, are public servants within the meaning of section 21 of the Indian Penal Code and are bound to give necessary particulars of transfer of flats and stamp duty paid thereon. The Bombay High Court in a judgement in the case of State of Maharashtra v. Laljit Tejshi Shah (1994) XXXII Mh. LJ 452 had held that the Officers of co-operative societies as contained in section 2(20) of the Maharashtra Co-operative Societies Act would not by virtue of section 161 of the said Act become public servants within the definition of the said term under section 21 of the Indian Penal Code.

### **Section 33**

In *M/s. Deepak Corporation v. Pushpa Prahlad Nanderjog* (AIR 1994 Bom 337), J. Dr. B.P. Saraf observed that a duty has been cast on the authority on the court to impound a document under Section 33 if any such document which is inadequately stamped is produced before it to be acted upon. The powers, duties and jurisdiction of the court to pass orders on the application of the party for modification of the decree on the basis of such application and document produced therewith and the powers, functions and jurisdiction of the court under section 33 to impound the inadequately stamped document produced or coming before it are two distinct and different powers and jurisdiction. For the purpose of modification of the decree, the court might become *functus officio* on withdrawal of the application but for the purpose of taking action under section 33, it cannot become *functus officio* if all the requirements of section 33 are fulfilled.

The words 'the persons having authority to receive evidence' are intended to cover persons such as arbitrators, local commissioners etc., who are not public officers; [AIR 1932 Lah. 495].

### **<sup>1</sup>[33A. Impounding of instruments after registration.**

When through mistake or otherwise any instrument which is not duly stamped is registered under the Registration Act, 1908, the registering officer may call for the original.

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1. Section 33A was inserted by Mah. 27 of 1985, s. 21, (w.e.f. 10-12-1985).

instrument from the party and, after giving the party an opportunity of being heard and recording the reasons in writing and furnishing a copy thereof to the party, impound it. On failure to produce such original instrument by the party, a true copy of such instrument taken out from the registration record shall, for the purposes of this section, be deemed to be the original of such instrument]]:

**34. Instruments not duly stamped inadmissible in evidence, etc.**

No instrument chargeable with duty <sup>1</sup>[ \* \* \* ] 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 <sup>2</sup>[ or if the instrument is written on sheet of paper with impressed stamp <sup>3</sup>[such stamp paper is purchased in the name of one of the parties to the instrument].

Provided that, -

<sup>4</sup>[(a) any such instrument shall, subject to all just exceptions, be admitted in evidence on payment of, -

(i) the duty with which the same is chargeable, or in the case of an instrument insufficiently stamped, the amount required to make up such duty, and

<sup>5</sup>[(ii) a penalty at the rate of 2 per cent of the deficient portion of the stamp duty for every month or part thereof, from the date of execution of such instrument:

Provided that, in no case, the amount of the penalty shall exceed double the deficient portion of the stamp duty].]

(b) where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and anyone of the letters bears the proper stamp; the contract or agreement shall be deemed to be duly stamped;

(c) nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court, other than a proceeding <sup>6</sup>[under Chapter IX or Part D of Chapter X of the Code of Criminal Procedure 1973;]

(d) 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

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1. "Not being any instrument referred to in sub-section (I) of section 32A," these brackets, words, figures and letter deleted by Maharashtra Tax Laws (Levy and Amendment) Act 29 of 1994, s 2 (1), (w.e.f 1.5.1994).

2. Added by Maharashtra Tax Laws (Levy and Amendment) Act 29 of 1994, s. 2(2) (w.e.f.1.5.1994).

3. This portion was substituted for the words "and the executor or one of the executors is the person in whose name such stamp paper is purchased" by Mah. 9 of 1997, s. 10, (w.e.f, 15.9.1996).

4. Clause (a) was substituted for the original by Mah. 27 of 1985, s. 22(a), (w.e.f. 10-12-1985).

**5. Sub-clause (ii) was substituted as Amended by Mah, Tax Laws (Levy and Amendment) Act, 2001, s. 4.**

6. These words, figures and letter were substituted for the words and figures "under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898, by Mah. 27 of 1985, s.22 (b), (w.e.f. 10-12-1985).

Government or where it bears the certificate of the Collector as provided by section 32 or any other provision of this Act;

<sup>1</sup>[(e) nothing herein contained shall prevent the admission of a copy of any instrument or of an oral admission of the contents of any instrument, if the stamp duty or a deficient portion of the stamp duty and penalty as specified in clause (a) is paid.]

Merely because the award has been made on the sheet of paper with impressed stamp of Rs. 100 issued in the name of the firm of the respondent, a party to the reference, the said Award is made neither in contravention of the section 34 of the Bombay Stamp Act as amended [by Maharashtra Tax Laws (Levy and Amendment) Act, 1994] nor is inadmissible in evidence nor invalid nor bad in law. By and large it is always an obligation of either of the parties to the reference to arbitration and preferably of the party in whose favour the award is to be made to furnish the stamp paper or requisite value to: the arbitrators or umpire, as the case may be, for making the award thereon. This having been done, there is no infirmity in the procedure followed by the Arbitrator in making the said award. In any event, this cannot be a ground for setting aside the said Award under the provision of section 30 of the Act. (Municipal Corporation of Greater Bombay v. Girijashankar R. Singh AIR 1996 Born 36/).

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1. Clause (e) was added, by Mah. 27 of 1985, S 22 (c), (w.e.f 10-12-1985).

### **35. Admission of instrument where not to be questioned.**

Where an instrument has been admitted in evidence, such admission shall not, except as provided in section 58, be called in question at any stage of the same suit or proceeding. on the ground that the instrument has not been duly stamped.

#### **Section 35 & Section 58**

The First Appellate Court held that the document was a bond the Second Appellate Court had to confirm the lower court's order. [Jaikumar Shah v. Motilal 1972 Mah. LJ. 405. AIR 197 Bom. 27]

### **36. Admission of improperly stamped instruments**

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.

### **37. Instruments impounded how dealt with. .**

(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 a penalty as provided by section 34 or of duty as provided by section 36, 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.

<sup>1</sup>[(2) In every other case, a person so impounding the original instrument shall prepare an authentic copy of such instrument and where it is a true copy or an abstract referred to in section 31 or true copy referred to in section 33A, he shall send such authentic copy or, true copy or, as the case may be, an abstract to the Collector, for the purpose of taking action on the authentic copy or a true copy or, as the case may be, an abstract as if it were the original instrument and endorsing thereon a certificate with reference to the instrument under clause (a) of sub-section (1) of section 39 or under sub-section (1) of section 41, as the case may be. On receipt of the authentic copy, the true copy or, as the case may be, an abstract with the certificate as aforesaid endorsed thereon, the person who had impounded the original instrument shall copy on the original instrument the certificate endorsed on the authentic copy and shall authenticate such certificate; and where it is a true copy or an abstract on which the certificate as aforesaid is endorsed, the registering officer who had forwarded the true copy or an abstract shall make appropriate entries in respect of the instrument of which it was a true copy or an abstract, in the relevant register maintained by him and on an application made in this behalf issue under his signature a certificate to the effect 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 of that instrument, and the name and residence of the person paying such duty and penalty.]

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1. Sub-Section (2) was substitute for the original by Mah. 27 of 1985, s,23 (w.e.f. 10-12-1985)

### **38. Collector's power to refund penalty paid under section 37, sub-section (1).**

(1) When a copy of an instrument is sent to the Collector under sub-section (1) of section 37 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 12 or section 14, the Collector may refund the whole penalty so paid.

### **39. Collectors' power to stamp instruments impounded.**

(1) When the Collector impounds any instrument under section 33, or receives any instrument sent to him under sub-section (2) of section 37, not being an instrument chargeable with a duty of twenty naye paise, or less, 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 thereon 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 penalty of Iran amount equal to 2[2 per cent of the deficient portion of the stamp duty, for every month or part thereof] from the date of execution of the instrument subject to the payment of a minimum penalty of rupees one hundred]:

<sup>3</sup>[Provided that, in no case, the amount of the penalty shall exceed double the deficient portion of the stamp duty:]

<sup>4</sup>[Provided further 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) <sup>5</sup>[Subject to the provisions of section 53A, every certificate] under clause (a), of sub-section (1) shall, for the purposes of this Act, be conclusive evidence of the matters stated therein.

(3) Where an instrument has been sent to the Collector .under sub-section (2) of section 37 the Collector shall, when he has dealt with it as provided by this section return it to the impounding officer.

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1. This portion was substituted for the words "five rupees; or, if he thinks fit, an amount not exceeding ten times the amount of the property duty or of the deficient portion thereof, whether such amount exceeds or falls short of five rupees" by Mah. 9 of 1997, s. 11, (w.e.f. 15.9.1996).

2. These words were substituted for the words "twenty-four per cent of the deficit portion of the stamp duty. for every year or part thereof" by Mah. Tax Laws (Levy, Amendment and Validation) Act, 30 of 1997, s. 4, (w.e.f. 15.5.1997).

3. This proviso was inserted as Amended by Mah. Tax Laws (Levy and Amendment) Act, 2001, s. 5(a).

4. These words were substituted for the words "Provided that" as Amended by Mah. Tax Laws (Levy and Amendment) Act, 2001, s. 5(b).

5. These words, figures and letter were substituted for the words "Every Certificate" by Mah. 27 of 1985, s. 24 (w.e.f. 10-12-1985).

### **Subjective satisfaction to be on objective factors -**

It is important to note that subjective satisfaction of authorities to reach a decision to reach a reasonable belief has to be on objective factors. Forming of opinion by mere following of guidelines by Government is not enough as Government Guidelines cannot control quasi judicial decision –1996 15 CC 609 State of Punjab v. Mahabir Singh. The case has arisen under Punjab Stamp Act, 1987 under section 47A as amended.

### **40. Instruments unduly stamped by accident.**

If any instrument chargeable with duty and not duly stamped, not being an instrument chargeable with a duty of twenty naye paise or less 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 sections 33 and 39, receive such amount and proceed as next hereinafter prescribed.

### **41. Endorsement of instruments on which duty has been paid under section 34, 39 or 40.**

(1) When the duty and penalty (if any) leviable in respect of any instrument 1[(not being any instrument referred to in sub-section (1) of section 32-A)], have been paid under section 34, section 39 or section 40, the person admitting such instrument in evidence, or the

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1. These brackets, words, figures and letter were inserted by Mah. 16 of 1979, s. 10, (w.e.f 4-7-1980).

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) <sup>1</sup>[Subject to the provisions of section 53A, 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 <sup>2</sup>[on the application in this behalf, to the person who produced it, or to the person from whose possession it came into the hands of the Officer impounding it, .or to any other person according to the directions of such person:]

Provided that, -

(a) no instrument which has been admitted in evidence upon payment of duty and a penalty under section 34, 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 provisions of rule 9 of Order XIII in Schedule I of the Code of Civil Procedure, 1908.

#### **42. Prosecution for offence against stamp law.**

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:

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

#### **43. Persons paying duty or penalty may recover same in certain cases.**

(1) When any duty or penalty has been paid under section 34, section 36, section 39 or section 40, by any person in respect of an instrument, and, by agreement or under the provisions of section 30 or any other enactment in force at the time such instrument was

1. These words. figures and letter was substituted for the words "Every instrument" by Mah. 27 of 1985 s. 25 (a), (w.e.f. 10-12-1985).

2. This portion was substituted for the portion beginning with the words "on his application" and ending with the words "such person may direct," by Mah. 27 of 1985, s. 25(a), (w.e.f. 10-12-1985).

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 instrument has been tendered in evidence. If the Court does not t[for the reasons to be recorded in writing,] include the amount in such order, no further proceedings for the recovery of the amount shall be maintainable. -

#### **44. Power of Revenue Authority to refund penalty or excess duty in certain cases.**

(1) Where any penalty is paid under section 34 or section 39, 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 34 or section 39, such authority may, upon application in writing made by the party concerned within 2[one year] from the date of receipt of the order charging the same refund the excess.

#### **45. Non-liability for loss of instruments sent under section 37.**

(1) if any instrument sent to the Collector under sub-section (2) of section 37, is lost, destroyed or damaged during transmission, the person sending the same shall not be liable for such loss, destruction or damage.

(2) When any instrument is about to be so sent, the person from whose possession it came into the hands of the person impounding the same, may require a copy thereof to be made at the expense of such first-mentioned person and authenticated by the person impounding such instrument.

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1. These words were inserted by Mah. 27 of 1985. s. 26. (w.e.f. 10-12-1985).

2. These words were substituted for the words "three months," by Mah. 27 of 1985, s. 27. (w.e.f 10-12-1985).

#### **46. Recovery of duties and penalties.**

<sup>1</sup>[(1)] All duties, penalties and other sums required to be paid under this <sup>2</sup>[Act] may be recovered by the Collector by distress and sale of ' the movable property of the person from whom the same are due, or as an arrear of land revenue.

<sup>3</sup>[(2) For the purpose of effecting such recovery, as arrears of land revenue

(a) the Chief Controlling Revenue Authority shall have and exercise all the powers and perform all the duties of the Commissioner under the Maharashtra Land Revenue Code, 1966;

(b) the officer appointed as the Collector under clause (f) of section 2 shall have and exercise all the powers and perform all the duties of the Collector under the said Code.

(3) Every notice issued or order passed in exercise of the powers conferred by sub-section (2) shall, for the purposes of this Act, be deemed to be a notice issued or an order passed under this Act.]

### **CHAPTER V ALLOWANCES FOR STAMPS IN CERTAIN CASES**

#### **47. Allowance for spoiled stamps.**

Subject to such rules as may be made by the State Government as to the evidence to be required, or the inquiry to be made, the Collector may on application, made within the period prescribed in section 48, and if he is satisfied as to the facts, make allowance for impressed stamps spoiled in the cases hereinafter mentioned, namely:-

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1. Section 46 was re-numbered as sub-section (1) by Mah. Tax Laws (Levy, Amendment and Validation) Act, 30 of 1997, s. 5, (w.e.f. 15-5-1997). ,

2. These words was substituted for the word "Chapter" by Mah. 17 of 1993, s. 35, (w.e.f.1-5-1993).

3 Sub-section (2) and (3) were added by Mah. Tax Laws (Levy, Amendment and Validation) Act, 30 of 1997, s. 5, (w.e.f. 15-5-1997).

- (a) the stamp on any paper inadvertently 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) the stamp used for an instrument executed by any party thereto which-
- (1) has been afterwards found l[by the party] to be absolutely void in law from the beginning;
- <sup>2</sup>[(1A) has been afterwards found by the Court, to be absolutely void from the beginning under section 31 of the Specific Relief Act, 1963;]
- (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;
- (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 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 had been effected by some other instrument between the same parties and bearing a stamp of not less value;
- (8) is inadvertently and undesignedly 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, 3[except that falling under sub-clause (IA),]. 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 l[to be cancelled, or has been already given up to the Court to be cancelled.]

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1. These words, were inserted, by Mah. 27 of 1985, (w.e.f 10-12-1985).

2. Clause (1A) was inserted by Mah. 27 of 1985, (w.e.f. 10-12-1985).

3. These words, brackets, figures and letters were inserted by Mah. 27 of 1985 s. 28 (b) (i), (w.e.f. 10-12-1985)

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.

**48. Application for relief under section 47 when to be made.**

The application for relief under section 47 shall be made within the following period, that is to say, -

(1) in the cases mentioned in clause (c) (5), within <sup>2</sup>[six months] of the date of the instruments:

<sup>3</sup>[Provided that where an Agreement to sell immovable property, on which stamp duty is paid under Article 25 of the Schedule I, is presented for registration under the provisions of the Registration Act, 1908 and if the seller refuses to deliver possession of the immovable property which is the subject matter of such agreement the application may be made within two years of the date of the instrument;

<sup>4</sup>[(2) in the case when for unavoidable circumstances any instrument for which another instrument has been substituted cannot be given up to be cancelled, the application may be made within six months after the date of execution of the substituted instrument.

(3) in any other case, within S[six months] from the date of purchase of stamp.]

**49. Allowance in case of printed forms no longer required -by corporations.**

The Chief Controlling Revenue Authority or the Collector if empowered by the Chief Controlling Revenue Authority in this behalf may without limit of time, make allowance for stamped papers used for printed forms of instrument by any banker or by any incorporated company or other body corporate, if for any sufficient reason such forms have ceased to be required by the said banker, company or body corporate: provided that such authority is satisfied that the duty in respect of such stamped papers has been duly paid.

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1. These words were substituted for the words "to be cancelled" by Mah. 27 of 1985, s. 28 (b) (ii), (w.e.f. 10-12-1985).

2. These words were substituted for the words "two months," by Mah. 27 of 1985, s. 29 (a), (w.e.f. 10-12-1985).

3. This proviso was added by Maharashtra Tax Laws (Levy and Amendment) Act 16 of 1995, s. 2, (w.e.f. 1-9-1995).

4. Clauses (2) and (3) were substituted for the original clauses (2) and (3) and the proviso thereto by Mah. 27 of 1985, s. 29 (b), (w.e.f. 10-12-1985).

5. These words were substituted for the words "one year" by Mah. 18 of 1989, s. 4, (w.e.f.1-12-1989).

**50. Allowance for misused stamps.**

(1) 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

(2) 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 provisions of section 13;

the Collector may, on application made within <sup>1</sup>[six months] after the date of the instrument, or, if it is not dated, within <sup>1</sup>[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.

**<sup>2</sup>[51. Allowance for spoiled or misused stamps how to be made.**

In any case in which allowance is made for spoiled stamps under section 47 or misused stamps under section 50, or in respect of printed forms no longer required under section 49, the Collector may give, in lieu thereof,-

(a) the same value in money, deducting <sup>3</sup>[therefrom such amount as may be prescribed by rules made in this behalf by the State Government]; 01

(b) if the applicant so requires, other stamps of the same description and value; or

(c) if the applicant so requires, stamps of any other description of the same amount in value:

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1. These words were substituted for the words "one year" by Mah. 18 of 1989, s. 5, (w.e.f.: 1-12-1989)

2. Section 51 was substituted for the original by Mah. 27 of 1985, s.31, (w.e.f. 10-12-1985).

3. These words were substituted for the words "ten paise for each rupee or fraction of a rupee of the total value of the stamps twenty-five for each stamp whichever is less" by Mah. 18 of 1989, s. 6 (w.e.f. 1-12-1989).

Provided that, in the cases covered by clauses (b) and (c) a stationary charge as may be prescribed by rules made by the State Government shall also be recovered in respect of spoiled or misused stamp papers, surrendered].

**52. Allowance for stamps not required for use.**

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 <sup>1</sup>[therefrom such amount as may be prescribed by rules made in this behalf by the State Government], 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 bona fide intention to use them; and

(b) that he has paid the full price thereof; and

(c) that they were so purchased within the period of 2[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 vendor without any such deduction as aforesaid.

**<sup>3</sup>[52A. Allowance for duty.**

(1) Notwithstanding anything contained in sections 47, 50, 51 and 52, when payment of duty is made by stamps or in cash as provided for under sub-section (3) of section 10, and when the <sup>4</sup>[amount of duty paid,-

(i) in the Mumbai City District and Mumbai Suburban District exceeds one lakh rupees; and (ii) in any other district exceeds twenty-five thousand rupees, the Collector,]

shall not make allowance for the stamps, or the cash amount paid under the Challans, which are spoilt or misused or not required for use, but shall, after making necessary inquiries, forward the application with his remarks thereon to the Chief Controlling Authority.

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1. These words were substituted for the words "ten paise for each rupee or portion of a rupee or rupees twenty-five for each stamp whichever is less" by Mah 18 of 1989, s. 6 (w.e.f. 1.12.1989).

2. These words were substituted for the word "one year" by Mah. 18 of 1989, s. 7(2), (w.e.f. 1-12-1989).

3. Section 52A was substituted for the original by Mah. 27 of 1985, s. 33, (w.e.f. 10.12.1985).

4. These words were substituted for the words "amount of duty exceeds ten thousand rupees the collector" by Mah. Tax Laws (Levy, Amendment and Validation) Act, 30 of 1997, s. 6(a), (w.ef 15.5.1997).

(2) The Chief Controlling Revenue Authority shall thereafter decide whether allowance shall be given or not and may grant the same, if the amount does not exceed [two lakh rupees].

(3) The Chief Controlling Revenue Authority shall submit the case with his remarks thereon to the State Government when the amount exceeds [two lakh rupees].

**<sup>2</sup>[52B. Invalidation of stamps and saving**

Notwithstanding anything contained in sections 47, 50, 51 and 52,-

(a) Any stamps which have been purchased but have not been used or in respect of which no allowance has been claimed on or before the day immediately preceding the date of commencement of the Bombay Stamp (Amendment) Act, 1989 (hereinafter referred to as "the commencement date") and the period of six months from the date of purchase of such stamps has not elapsed before the commencement date, may be used before a period of six months from the date of purchase of such stamps is completed, or delivered for claiming the allowance under the relevant provision of this Act; and any stamps not so used or so delivered within the period aforesaid shall be rendered invalid.

(b) Any stamps which have been purchased on or after the commencement date but have not been used, or no allowance has been claimed in respect thereof, within a period of six months from the date of purchase thereof, shall be rendered invalid]

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1. These words were substituted for the words 'fifty thousand rupees' by Mah. Tax Laws (Levy, Amendment and Validation) Act, 30 of 1997, s. 6(b) (w.e.f 15.5.1997).

2. Section 528 was inserted by Mah. 18 of 1989, s. 8. (w.e.f. 1-12-1989).

.CHAPTER VI

<sup>1</sup>[REFERENCE, REVISION AND APPEAL]

**53. Control of and statement of case to Chief Controlling Revenue Authority.**

(1) The powers exercisable by a Collector under 2[Chapter III], Chapter IV and Chapter V and under clause (a) of 3[the second proviso] to section 27 shall in all cases be subject to the control of the Chief Controlling Revenue Authority:

<sup>4</sup>[(1A) Any person aggrieved by an order of the Collector under Chapter III, Chapter IV, Chapter V and under clause (a) of the second proviso to section 27 may, within sixty days from the date of receipt of such order, by an application in writing, accompanied by a fee of three hundred rupees, file an appeal against such order to the Chief Controlling Revenue Authority; who shall, after giving the parties a reasonable opportunity of being heard, consider the case and pass such order thereon as he thinks just and proper and the order so passed shall be final].

(2) If any Collector, acting under section 31, section 39 or section 40, 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.

<sup>5</sup>[Provided that, nothing contained in this sub-section shall apply 6[in relation to any order of the Collector of the District determining the true market value of the immovable property which is the subject matter of the instrument] referred to in sub-section (1) of section 32A].

(3) Such authority 7[after giving the parties a reasonable opportunity of being heard, 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.

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1. This heading of Chapter VI was substituted by Mah. 9 of 1997. s. 12, (w.e.f. 15.9.1996).

2. These words and figures were inserted, by Mah. 27 of 1985, s. 34 (a) (i), (w.e.f. 10-12-1985),

3, These words were substituted, for the words "the first proviso" by Mah. 27 of 1985, s. 34 (a) (ii), (w.e.f. 10-12-1985).

4. Sub-section (JA) was inserted by Mah. 9 of 1997, s. 13(b), (w.e.f. 15.9.1996).

5. This proviso was added by Mah. 16 of 1979, s. 11, (w.e.f.: 4-7-1980).

6 This portion was substituted for the words "in relation to any instrument" by Mah. 9 of 1997, s. 13(a), (w.e.f. 15.9.1996).

7. These words were inserted by Mah. 27 of 1985, s. 34 (b), (w.e.f. 10-12-1985).

Under sub-section (2) if the Collector acting under sections 31, 39 and 40 feels a doubt regarding the chargeability of an instrument, other than instrument referred to in sub-section (1) of the section 32A, he can refer it to the Chief Controlling Revenue Authority with his own opinion endorsed thereon.

The Chief Controlling Revenue Authority which is a quasi-judicial tribunal, has to decide the matter judicially and therefore must give a hearing to the parties before deciding the case .

If the CCRA decides a case without giving a hearing to the aggrieved party, the High Court can call for a reference even if there is no case pending; [AIR 1966 Mad. 36].

#### **<sup>1</sup>[53A. Revision of Collector's decision under sections 32, 39 and 41.**

(1) Notwithstanding anything contained in sub-section (3) of section 32, sub- section (2) of section 39 and sub--section (2) of section 41, when through mistake or otherwise any instrument is charged with less duty than leviable thereon, or is held not chargeable with duty, as the case may be, by the Collector, the Chief Controlling Revenue Authority may, within a period of six years from the date of certificate of the Collector under section 32, 39 or 41, as the case may be, require the concerned party to produce before him the instrument and, after giving a reasonable opportunity of being heard to the party, examine such instrument whether any duty is chargeable, or any duty is less levied. thereon and order the recovery of the deficit duty. if any, from the concerned party. An endorsement shall thereafter be made on the instrument after payment of such deficit duty.

(2) On failure to produce the original instrument by the party, the Chief Controlling Revenue Authority shall proceed under this section on the basis of the true copy or an abstract of the instrument filed with the Collector under section 31 or sub-section (2) of section 37 and such copy or abstract shall be deemed. to be the original instrument for the purposes of this section.]

#### **54. Statement of case by Chief Controlling Revenue Authority to High Court.**

<sup>2</sup>[(1) The Chief Controlling Revenue Authority may state any case -

(a) referred to it under sub-section (2) of section 53;

(b) on an application made to it by the party interested. within the period, which in the opinion of the Authority is reasonable. raising a substantial question of law for referring the same; or

(c) otherwise coming to its notice;

and refer such case formulating the precise question with its own opinion thereon, to the High Court.]

(2) Every such case shall be decided by not less than three Judges of the High Court and in case of difference, the opinion of the majority shall prevail.

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1. Section 53A was inserted by Mab. 27 of 1985, s. 35, (w.e.f. 10-12-1985).

2. Sub-section (1) was substituted for the original by Mab. 27 of 1985, s.. 36, (w.e.f.. 10-12-1985).

**55. Power of High Court to call for further particulars as to case stated.**

If the High Court is not satisfied that the statements contained in the case are sufficient to enable it to determine the questions raised thereby, the High Court may refer the case back to the Revenue Authority by which it was stated to make such additions thereto or alterations therein as the High Court may direct in that behalf.

**56. Procedure in disposing of case stated.**

(1) The High Court upon the hearing of any such case shall decide the question raised thereby, and shall deliver its judgement thereon containing the grounds on which such decision is founded.

(2) The High Court shall send to the Revenue Authority, by which the case was stated a copy of such judgement under the seal of the Court and the signature of the Registrar; and the Revenue Authority shall, on receiving such copy, <sup>1</sup>[pass such orders as are necessary for disposal of the case conformably to such judgement.]

**57. Statement of case by other Courts to High Court.**

(1) If any Court, other than the High Court, feels doubts as to the amount of duty, to be paid in respect of any instrument under clause (a) of the proviso to section 34, the Judge may draw up a statement of the case and refer it, with his own opinion thereon, for the decision of the High Court.

(2) The High Court shall deal with the case as if it had been referred under section 54, and send a copy of its judgement under the seal of the Court and the signature of the Registrar to the Chief Controlling Revenue Authority and another like copy to the Judge making the reference, who shall, on receiving such copy, dispose of the case conformably to such judgement.

(3) Reference made under sub-section (1), when made by a Court subordinate to a District Court, shall be made through the District Court, and, when made by any Subordinate Revenue Court, shall be made through the Court immediately superior.

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1. These words were substituted for the words "dispose of the case conformably to such judgement" by Mah. 27 of 1985. s. 37. (w.e.f. 10-12-1985).

<sup>1</sup>[(4) Without prejudice to the provisions of section 58, no Court shall take action under this section, -

(a) where the instrument has already been impounded or a penalty is levied in respect thereof under clause (a) of the proviso to section 34; or

(b) in the case to which section 35 applies.]

**58. Revision of certain decisions of Courts regarding the sufficiency of stamps.**

(1) When any Court in the exercise of its civil or revenue jurisdiction or any Criminal Court in any proceeding <sup>2</sup>[ under Chapter IX or Part D of Chapter X of the Code of Criminal Procedure 1973,] 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 34, 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 34, 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, <sup>3</sup>[and may require,-

(i) the party or person concerned to make the payment of the proper duty or the amount required to make up the same, together with a penalty under section 34, or payment of a higher duty and penalty than those paid, to itself or to the Collector; and

(ii) any person is 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.

<sup>4</sup>[(3A) When the duty and penalty leviable in respect of any instrument in accordance with the declaration made under sub-section (3) and required to be paid thereunder are paid to the Court or to the Collector, then the Court or, as the case may be, the Collector shall certify by endorsement thereon that the proper duty and penalty, stating the amount of each, have been le-vied in respect of such instrument, and the name and residence of the person paying the same.

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1. Sub-section (4) was added by Mah. 27 of 1985, s. 38, (w.e.f 10-12-1985).

2. These words, figures and letter were substituted for the words and figures "under Chapter XII or Chapter XXXVI of the, Code of Criminal Procedure, 1898", by Mah. 27 of 1985, s. 39(a), (w.e.f 10-12-1985).

3. This portion was substituted for the portion beginning with the words "and may require" and ending with the words "the same who produced". by Mah. 27 of 1985, s. 39(b), (w.e.f 10-12-1985).

4. Sub-section (3A) and (38) were inserted, by Mah. 27 of 1985, s. 39 (c), (w.e.f 10-12-1985).

(3B) Every instrument so endorsed shall thereupon be delivered, on an application in this behalf, to the person from whose possession the instrument came in the possession of such Court, or as such person may direct, to any other person authorised by him.]

(4) The Collector may thereupon, notwithstanding anything contained in the order admitting such instrument in evidence:, or in any certificate granted under section 41, or in section 42, 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 institute where the amount including duty and penalty, which, according to the determination of such Court, was payable in respect of the instrument under section 34, Iris paid to the Court or the Collector, unless the Collector 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 affect the validity of any order admitting any instrument in evidence or of any certificate granted under section 41.

## **CHAPTER VII OFFENCES AND PROCEDURE**

### **59. Penalty for executing etc. instrument not duly stamped.**

(1) <sup>2</sup>[Any person who, with the intention to evade the duty, executes or signs] otherwise than as a witness any instrument chargeable with duty without the same being duly stamped shall, on conviction, for every such offence <sup>3</sup>[be punished with rigorous imprisonment for a term which shall not be less than one month but which may extend to six months and with fine which may extend to five thousand rupees]:

Provided that, when any penalty has been paid in respect of any instrument under section 34, section 39 or section 58, 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 when it is issued, is the managing director or secretary or other principal officer of the company, shall, on conviction, be punished with fine which may extend to five hundred rupees.

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1. These words were substituted for the words "is paid to the Collector, unless, he thinks" by Mah. 27 of 1985, .s. 39 (c), (w.e.f. 10-12-1985)

2. These words were substituted for the words" Any person executing or signing" by Mah. 27 of 1985, s. 40, (w.e.f. 10.12.1985).

3. These words were :;ubstituted for the words "be punished with fine which may extend to five hundreti rupees" by Mah. 18 of 1989, s.9, (w.e.f. 1-12-1989).

**<sup>1</sup>[59A. No prosecution und~ section 59, if instrument admitted by Court.**

No person shall be prose(;uted under section 59, in respect of an instrument which was produced in Court and which was admitted after a decision by the .court that the said instrument was duly stamped or that no stamp was required.]

**60. Penalty for making false declaration on clearance list.**

Any person who in a clearance list makes a declaration which is false or which he either knows or believes to be false, shall, on conviction, be punished with <sup>2</sup>[rigorous imprisonment for a term which shall not be less than one month but which may extend to six months and with fine which may extend to five thousand rupees.]

**61. Penalty for failure to cancel adhesive stamp.**

Any person required by section 12 to cancel an adhesive stamp, fails to cancel such stamp in the manner prescribed by that section he shall, on conviction be punished with fine which may extend to one hundred rupees.

**62. Penalty for omission to comply with provisions of section 28.**

Any person who, with intent to defraud the Government, -

- (a) executes any instrument in which all the facts and circumstances required by section 28 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) <sup>3</sup>[makes, any false statement or does any other act] calculated to deprive the Government of any duty or penalty under this Act, shall, on conviction, be punished with a fine which may extend to five thousand rupees.

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1. Section 59A was inserted by Mah. 27 of 1985. s. 41, (w.ef 10-12-1985).

2. These words were substituted for the words "imprisonment for a term which may extend to six months or wilt fine which may extend to five hundred rupees or with both" by Mah. 18 of 1989, s.10 (w.e.f. 1.12.1989).

3. These words were substituted for the words "does any oilier Act", by Mah. 27 of 1985, s. 42, (w.e.f. 10.12.1985).