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PAYMENT OF STAMP DUTY

2.1 Provisions relating to payment of stamp duty

Indian Stamp Act makes detailed provisions relating to payment of stamp duty, valuation for payment of stamp duty, mode of payment of stamp duty etc.

2.2 Stamp Duty payable when several instruments or several matters

In some transactions, several instruments may be used in single transaction of sale, mortgage or settlement. In such cases, the provisions are as follows:

Where, in the case of any sale, mortgage or settlement, several instruments are employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed in Schedule I, for the conveyance, mortgage or settlement. Each of the other instruments shall be chargeable with a duty of one rupee instead of the duty (if any) prescribed for it in that Schedule - section 4(1) of Indian Stamp Act.

Parties free to determine which instrument is principal instrument, but stamp duty on highest value - The parties may determine for themselves which of the instruments so employed shall, for the purposes of section 4(1) of Indian Stamp Act, be deemed to be the principal instrument. However, 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 - section 4(2) of Indian Stamp Act.

Specific provision in respect of transactions in securities - *Notwithstanding anything contained in section 4(1) and 4(2) of Indian Stamp*

Act, in the case of any issue, sale or transfer of securities, the instrument on which stamp-duty is chargeable under section 9A shall be the principal instrument for the purpose of this section and no stamp-duty shall be charged on any other instruments relating to any such transaction - section 4(3) of Indian Stamp Act inserted *vide* Finance Act, 2019, w.e.f. 1-7-2020.

Thus, in such cases, payment of nominal stamp duty of Re. one on other instruments is not required.

2.2-1 Stamp duty if one instrument contains several matters

If one instrument relates to several distinct matters, stamp duty payable is aggregate amount of stamp duties payable on separate instruments [section 5 of Indian Stamp Act].

2.2-2 Stamp duty if one instrument has one matter but is covered under more than one descriptions

However, it may happen that one instrument covering only one matter can come under more than one descriptions given in Schedule I to Indian Stamp Act. In such case, highest rate specified among the different heads will prevail [section 6 of Indian Stamp Act].

2.3 Powers to reduce or remit stamp duty

Government can reduce or remit whole or part of duties payable. Such reduction or remission can be in respect of whole or part of territories and also can be for particular class of persons. Government can also compound or consolidate duties in case of issue of shares or debentures by companies [section 9(1) of Indian Stamp Act].

'Government' means Central Government in respect of stamp duties on bills of exchange, cheque, receipts etc. and 'State Government' in case of stamp duties on other documents [section 9(2) of Indian Stamp Act].

2.4 Mode of payment of stamp duty

The payment of stamp duty can be made by adhesive stamps or impressed stamps. Payment of stamp duty by endorsement is also permissible.

Composition or consolidation of duties - When stamp duty is payable in case of issues by any incorporate company or other body corporate, or of transfers (where there is a single transferee whether incorporated or not), of debentures or bonds or securities, State Government is empowered to provide for composition or consolidation of duties [section 9(2)(*a*) of Indian Stamp Act, amended w.e.f. 18-4-2006 by Finance Act, 2006].

This amendment will help State Governments to allow payment of stamp duty electronically.

2.4-1 Meaning of 'stamp'

As per section 2(26) of Indian Stamp Act [inserted w.e.f. 10-9-2004], 'stamp' means any mark, seal or endorsement by any agency or person duly authorised by the State Government, and includes an adhesive or impressed stamp, for purposes of duty chargeable under Indian Stamp Act.

Thus, there are various modes to 'stamp' a document. Even consolidated payment of stamp duty is permissible.

Consolidation of duties - Government can provide for consolidated payment of duties in following cases - * Insurance Policies * Issues by any company or body corporate of debentures, bonds or other marketable securities * Transfers of debentures, bonds or other marketable securities, where there is a single transferee [section 9(1)(*b*) of Indian Stamp Act].

Payment in Stamp Office or Bank - In view of multi-crore *Telgi* scam of bogus stamps, some State Governments have introduced system of high value stamps through stamp offices or Banks (After scam is discovered there, some other method may be adopted).

2.4-2 Mode of affixing 'stamp'

Various modes are permissible.

Payment by Adhesive stamps - Bill of exchange, promissory notes, notarial acts, entry as advocate or attorney in High Court and transfers of shares can be stamped by adhesive stamps [section 11 of Indian Stamp Act].

The adhesive stamps affixed to an instrument must be cancelled by the person affixing the stamp, so that these cannot be used again. If the person affixing the stamp does not cancel them, it can be cancelled at the time of execution by person executing the instrument [section 12(1) of Indian Stamp Act].

If the stamp is not cancelled so that it cannot be used again, the instrument is deemed to be un-stamped [section 12(2) of Indian Stamp Act].

Such cancellation may be by writing name or initials of person cancelling the same or name or initials of his firm with true date of writing. It can also be cancelled by any other effectual manner [section 12(3) of Indian Stamp Act].

Cancellation can be done by drawing lines across the adhesive stamp by pen etc. Any such cancellation must be such that the stamp cannot be used again, but value of stamp affixed must be visible.

Impressed stamps - 'Impressed Stamp' means stamp is impressed on the paper by mechanical means (these are the stamp papers we purchase from stamp vendor). Instrument should be written on the stamp paper such that the stamp may appear on the face of instrument and cannot be used or applied to any other instrument (section 13 of Indian Stamp Act).

If an instrument on stamp paper is not written as per aforesaid provisions, it is treated as un-stamped (section 15 of Indian Stamp Act).

Only one instrument on one stamp - Only one instrument chargeable to duty shall be written on a stamp paper (section 14 of Indian Stamp Act).

However, endorsement of a duly stamped instrument is permitted. Such endorsement may be (*a*) for transferring any right created or evidenced by endorsement or (*b*) acknowledging receipt of any money or goods which is secured by the instrument (section 14 of Indian Stamp Act).

If an instrument on stamp paper is not written as per aforesaid provisions, it is treated as un-stamped (section 15 of Indian Stamp Act).

Endorsement of a promissory note does not require stamp duty. - *K Chandraouli Katta* v. *Satyanarayana Reddy* AIR 2000 AP 17.

2.4-3 Timing of stamping

Instrument executed in India must be stamped before or at the time of execution (section 17 of Indian Stamp Act).

Instrument executed out of India can be stamped within three months after it is first received in India [section 18(1) of Indian Stamp Act].

However, in case of bill of exchange or promissory note made out of India, it should be stamped by first holder in India before he presents for payment or endorses or negotiates in India [section 19 of Indian Stamp Act].

2.4-4 Denoting stamp duty on instrument

If the stamp duty with which an instrument is chargeable, or its exemption from duty, depends upon the duty actually paid in respect of another instruments, the payment of such last mentioned duty can be made by Collector upon the first mentioned instrument - section 16 of Indian Stamp Act.

2.4-5 No expiry date of stamp paper

Some States have provided that the stamp paper will be valid only for six months from date of purchase. Execution of document on two stamp papers purchased by same person on different dates is not invalid - *Thiruvengada Pillai* v. *Navaneethammal* AIR 2008 SC 1541.

2.5 Valuation for stamp duty

In some cases, stamp duty is payable on *ad valorem* basis *i.e.* on basis of value of property etc. In such cases, value is decided on following basis.

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 market value of such stock or security, Provided that the market value for calculating the stamp-duty shall be, in the case of-- (i) options in any securities, the premium paid by the buyer; (*ii*) repo on corporate bonds, interest paid by the borrower; and (*iii*) swap, only the first leg of the cash flow* - section 21 of Indian Stamp Act. The words in italics inserted *vide* Finance Act, 2019, w.e.f. 1-7-2020.

"Market value", in relation to an instrument through which— (*a*) any security is traded in a stock exchange, means the price at which it is so traded; (*b*) any security which is transferred through a depository but not traded in the stock exchange, means the price or the consideration mentioned in such instrument; (*c*) any security is dealt otherwise than in the stock exchange or depository, means the price or consideration mentioned in such instrument - section 2(16B) of Indian Stamp Act inserted *vide* Finance Act, 2019, w.e.f. 1-7-2020.

2.5-1 Value if amount is expressed in foreign currency

If amount is expressed in foreign currency, rate of exchange on the date of instrument will be considered for finding value in Indian rupees for stamp duty purposes [section 20(1) of Indian Stamp Act].

Central Government may prescribe such rates from time to time for calculating stamp duty [section 20(2) of Indian Stamp Act].

Such rate will be considered for valuation and not the actual rate prevailing in the market. If the instrument indicates the current exchange rate and stamped according to exchange rate mentioned, it will be presumed (unless contrary is proved) that the instrument is duly stamped (section 22 of Indian Stamp Act).

2.5-2 Valuation of stock and marketable securities

Value of stock or security will be calculated on the basis of average price thereof on date of instrument (section 21 of Indian Stamp Act).

Thus, in case of share transfer deed, stamp duty is payable on basis of market value of the shares as on date of instrument. In case of issue of security at premium, the stamp duty is payable on the issue price and not on the face value of security.

If the instrument indicates the current market rate and the instrument is stamped according to that rate, it will be presumed (unless contrary is proved) that the instrument is duly stamped (section 22 of Indian Stamp Act).

Valuation of stamp duty on bonus issue of shares - In case of bonus issue, there is no consideration which means bonus shares are issued free to existing shareholders. Section 21 of the Amended Indian Stamp Act read with section 2(16B) of Indian Stamp Act clearly indicates that stamp duty is to be collected on market value which is based on price or consideration involved - Sr. No. 15 of FAQ released on 1-7-2020.

2.5-3 No duty on interest portion mentioned in the instrument

Even if a document mentions interest to be charged, valuation will be done without considering the interest portion (section 23 of Indian Stamp Act). [This is practical, as otherwise, valuation will be a very clumsy and impractical job].

2.5-4 Valuation of instrument connected with mortgage of marketable securities

Where an instrument is given on the occasion of deposit of any marketable security by way of security for money advanced (or to be advanced) by way of loan, it will be chargeable as rates applicable to 'Agreement or Memorandum of Agreement' appearing in Schedule I Article 5(*c*) of Indian Stamp Act. Release of the instrument will also be chargeable to same stamp duty (section 23A of Indian Stamp Act).

This provision is to facilitate obtaining loan on the security of shares, debentures, fixed deposits etc.

Really, the Schedule I Article 5(*c*) indicates rate of eight annas. This is absurd. Really, stamp duty is as per State Stamp Act.

2.5-5 Valuation in case of transfer in consideration of debt

Where any property is transferred to any person in satisfaction (consideration) of any debt due to that person, such debt will be treated as 'consideration' for valuation of *ad valorem* duty. Similarly, if property is transferred subject to payment or transfer of any money or stock, such money or stock will be considered as consideration for valuation purposes.

Further provisions are : (*a*) If the sale of property is subject to a mortgage, any unpaid mortgage together with interest due, if any, will be treated as part of consideration. (*b*) Where property transferred is subject to mortgage, duty already paid in respect of mortgage will be deducted (section 24 of Indian Stamp Act).

Illustrations given in the section will clarify the provisions : (*1*) A owes B Rs. 1,000. A sells property to B, the consideration being Rs. 500 and release of previous debt of Rs. 1,000. *The stamp duty is payable on Rs. 1,500* (*2*) A sells property to B for Rs. 500, which is subject to a mortgage to C for Rs. 1,000 and unpaid interest of Rs. 200. The 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. The stamp duty on sale deed is payable on Rs. 10,000, less the amount of stamp duty paid on mortgage deed of Rs. 5,000. *i.e.* stamp duty paid on mortgage deed will be allowed as deduction while paying duty calculated on the basis of Rs. 10,000.

2.5-6 Valuation in case of annuity

Some agreements provide for payment of annuity or periodic payments and not lump sum payment. In such case, valuation is done as follows :

(*a*) If period of annuity is definite, total amount of annuity to be paid during that period will be considered.

(*b*) If annuity is payable perpetually or for indefinite time, total amount payable within 20 years from date of first payment due will be considered for valuation. However, such indefinite period should not be based on life of a person *i.e.* the payment of annuity should not be subject to condition of living or death of any person.

(*c*) If payment of annuity is subject to living or death of a person, the valuation will be done on basis of annuity payable for 12 years from first payment becomes due [section 25 of Indian Stamp Act].

2.5-7 Valuation in case of lease of mine

In case of lease of mine where royalty or share of the produce is received as rent or part of rent, exact amount receivable annually cannot be determined. In such cases, (*a*) where the lease has been granted on behalf of Government, the amount of royalty or value of share as estimated by Collector of District will be considered for valuation (*b*) If lease has been granted by any other person, the amount will be considered as Rs. 20,000 per year - first *proviso* to section 26 of Indian Stamp Act.

If adjudication proceedings were taken under section 31 or assessment was done by Collector under section 41 when lower stamp duty was paid by accident (mistake), amount certified by Collector shall be deemed to be the stamp actually used at the date of execution - second proviso to section 26 of Indian Stamp Act.

2.5-8 Provision when value is indeterminable

When value of subject matter cannot be ascertained precisely on date of execution, stamp should be fixed on estimated basis of valuation. However, in such case, the maximum amount that can be claimed on such instrument will be only the value on which stamp duty has actually been paid, and nothing more [section 26 of Indian Stamp Act].

If adjudication proceedings were taken under section 31 or assessment was done by Collector under section 41 when lower stamp duty was paid by accident (mistake), amount certified by Collector shall be deemed to be the stamp actually used at the date of execution - second proviso to section 26 of Indian Stamp Act.

2.5-9 Requirement of disclosure on Instrument

Consideration and all other facts and circumstances affecting chargeability of stamp duty on any instrument, or the amount of duty chargeable on the instrument must be disclosed fully and truly in the instrument [section 27 of Indian Stamp Act].

2.5-10 Stamp duty when conveyances executed in parts

Where property has been contracted to be sold for one consideration as a whole, but conveyed to purchaser (*i.e.* documents executed) in separate parts, the total consideration agreed shall be apportioned in different conveyances as the parties think fit and stamp duty should be paid accordingly on each conveyance. However, distinct consideration for each part should be shown in the conveyance of that part and stamp duty should be paid on that part [section 28(1) of Indian Stamp Act].

Similar provision is applicable if two or more persons agree to purchase one property, and property is conveyed in parts by separate instrument to different persons [section 28(2) of Indian Stamp Act].

2.5-11 Stamp duty when property immediately sold to sub-purchasers

When a purchaser contracts for its sale to other person even before obtaining conveyance in case of his purchase, the stamp duty is payable on consideration paid by sub-purchaser to original purchaser e.g. assume that P purchases a property from S and contracts to sell it to P-2 even before his conveyance with S is executed. In such case, stamp duty on conveyance between S and P is payable on basis of price at which P has contracted for sale to P-2 and not on basis of price at which P purchases from S [section 28(3) of Indian Stamp Act].

This provision is probably made to ensure that proper stamp duty is paid on document executed between S and P and value has not been understated for purpose of saving in stamp duty.