CHAPTER - III
## CHAPTER -3
### INSTRUMENT IS THE FOUNDATION

<table>
<thead>
<tr>
<th>CONTENTS</th>
<th>PAGE Nos</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>A) STAMP LAW AND OTHER FISCAL LEGISLATIONS</strong></td>
<td></td>
</tr>
<tr>
<td>1) Stamp Law and the Law of Income tax</td>
<td>48</td>
</tr>
<tr>
<td>2) I.T.Act 1961 ~ Growing in clarity and receptivity to public sensibilities</td>
<td>49</td>
</tr>
<tr>
<td>3) Impact of Stamp Law on The Income Tax Act 1961</td>
<td>50</td>
</tr>
<tr>
<td>4) Specimen instances of unconscionable fiscal excesses</td>
<td>54</td>
</tr>
<tr>
<td>5) Rule of Law under siege</td>
<td>57</td>
</tr>
<tr>
<td>6) Samadhan schemes under the Stamp Act and amnesty under The Income Tax Act 1961</td>
<td>58</td>
</tr>
<tr>
<td>7) Samadhan Scheme</td>
<td>58</td>
</tr>
<tr>
<td>8) The Amnesty Scheme under Bombay Stamp Act 1958</td>
<td>59</td>
</tr>
<tr>
<td>9) Suggestions</td>
<td>60</td>
</tr>
<tr>
<td>10) Settlement under The Income Tax Act</td>
<td>60</td>
</tr>
<tr>
<td>11) Central Excise and The Salt 1944</td>
<td>60</td>
</tr>
<tr>
<td>12) Customs Duty and Stamp Law</td>
<td>61</td>
</tr>
<tr>
<td>13) Income Tax is yet to cover the majority of assessees</td>
<td>62</td>
</tr>
<tr>
<td>14) Stamp Law has effectively aided Income Tax Collection</td>
<td>62</td>
</tr>
<tr>
<td>15) Fundamental Differences</td>
<td>63</td>
</tr>
<tr>
<td>16) Stamp Act has degenerated into a tax legislation</td>
<td>64</td>
</tr>
</tbody>
</table>

| B) STRUCTURE~ LEVY ON INSTRUMENTS FALLING WITHIN ONE OF THE HEADS OF CHARGE | 65 |

<table>
<thead>
<tr>
<th>C) OCCASSIONS OF CHARGE ~ SECTIONS 4, 5 and 6</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1) Section 4</td>
<td>67</td>
</tr>
<tr>
<td>2) Section 5</td>
<td>68</td>
</tr>
<tr>
<td>3) Section 6</td>
<td>71</td>
</tr>
<tr>
<td>4) Proclivity of the revenue to exploit section 5</td>
<td>74</td>
</tr>
<tr>
<td>5) Nature of Instrument</td>
<td>74</td>
</tr>
<tr>
<td>6) Stand of the Revenue</td>
<td>75</td>
</tr>
<tr>
<td>7) Stand of the Party</td>
<td>75</td>
</tr>
<tr>
<td>8) Characteristics / Nature of the Instrument:</td>
<td></td>
</tr>
<tr>
<td>a) Not an M.W.P - Provision of Transfer of Property Act rendered inapplicable</td>
<td>75</td>
</tr>
<tr>
<td>b) Not within the purview of Section 5 of the Indian Stamp Act, 1899</td>
<td>76</td>
</tr>
<tr>
<td>c) Not de hors the definition of mortgage</td>
<td>76</td>
</tr>
<tr>
<td>d) No Transfer of ownership or title</td>
<td>77</td>
</tr>
<tr>
<td>e) Contingent covenant and appointment of Receiver</td>
<td></td>
</tr>
<tr>
<td>9) Case studies of A.G.Audit Remarks which have invoked</td>
<td>78</td>
</tr>
<tr>
<td>10) No statutory bar to an intending purchaser taking A G.P.A. and avoiding a transfer</td>
<td>80</td>
</tr>
<tr>
<td>11) Principles for levy of stamp duty</td>
<td>80</td>
</tr>
<tr>
<td>-------------------------------------</td>
<td>----</td>
</tr>
<tr>
<td>D) STAMP LAW A MATTER POSITIVI JURIS MORLEY VS HALL 1834</td>
<td>82</td>
</tr>
</tbody>
</table>
A) STAMP LAW AND OTHER FISCAL LEGISLATIONS

Stamp Law and the law of Income tax:

All fiscal legislations are aimed at and motivated by the objects of securing revenue for the state. However the basis of levy would vary from one and another. In case of duties including stamp duty the levy is on either the Article or instrument / document. Taxes are levies on transactions including those of sale. When the charge is confined to goods or Articles or instruments as in the case of stamp law it is usually known as duty and not tax. Stamp law distinguishes itself because of its cardinal feature of not spreading its tentacles beyond the sphere of the instrument.

Of all the fiscal legislations the Income Tax Act 1961 is the most reformed and just legislation in the arena of Indian Revenue Collection. Comparing the stamp law with the Income Tax Act would highlight the vices and virtues of the former. Section 2(6) of the Stamp Act and Section 4 of the Income Tax Act deal with chargeability. Under the stamp law chargeability arises in relation to and on execution of an instrument. Contrastingly income tax shall be charged in respect of the total income of the previous year. The distinction is hence apparent. The stamp levy is on an instrument and the Income Tax is on an income which arises out of any transaction or dealing.
The scope for scrutiny or examination is infinitely wide under the Income Tax Act but incisively limited to just the instrument under the stamp act.

I.T.Act 1961 ~ Growing in clarity and receptivity to public sensibilities:

Unlike the Stamp Act, the Income Tax Act is growing in every respect of its application. Due to the inbuilt mechanism for redress at every stage for both the revenue and the assessee it is interpreted often by the courts, amended frequently by the finance acts and reformed periodically to accommodate public sensibilities on its enforcement. On the other hand the Stamp act 1899 is the least evolving to keep up with modern times. If at all there is any development it will be only pro revenue amendments without any avenues for the public to exercise their say on them. The higher judiciary does not get to interpret the statute or review the revenue decisions often because of the long interval of time to reach them. The rare occasions of public dealing under this law and the pristine appellate hierarchy are the twin reasons for the stagnation of this statute. There is an overall dissatisfaction about the fundamental aspects of chargeability, classification of document and mode of stamping. When the public have dissenting feelings on these crucial aspects then one cannot help inferring that everything about stamp law requires fresh
introspection. In Tamil Nadu the State Government has addressed the vital issue of valuation by scaling down the rates of stamp duty to practically convenient levels. However to realise the fruition of its progressive measures, it has to take concomitant and complementary steps to legitimise the guideline values and the appellate system under the statute.

**Impact of Stamp Law on The Income Tax Act 1961:**

Section 50(C) of the Income Tax Act provides as follows:

1) “Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed by any authority of a State Government (hereafter in this Section referred to as the “stamp valuation authority”) for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed shall, for the purposes of Section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer.

2) Without prejudice to the provisions of sub-Section (1), where-

   a) the assessee claims before any Assessing Officer that the value adopted or assessed by the stamp valuation authority under sub-
   Section (1) exceeds the fair market value of the property as on the date of transfer.
b) the value so adopted or assessed by the stamp valuation authority
under sub—Section (1) has not been disputed in any appeal or revision
or no reference has been made before any other authority, court or the
High Court,
the Assessing Officer may refer the valuation of the capital asset to a
Valuation Officer and where any such reference is made, the provisions of
sub-Sections (2), (3), (4), (5) and (6) of Section 16(a) ., clause (i) of sub-
Section (1) and sub-Sections (6) and (7) of Section 23A, sub-Section (5) of
Section 24, Section 34AA, Section 35 and Section 37 of the Wealth Tax Act,
1957 (27 of 1957) , shall, with necessary modifications, apply in relation to
such reference as they apply in relation to a reference made by the Assessing
Officer under sub-Section (1) of Section 16A of that Act.”

Viewed in the context of the aforesaid Section it can be seen that the Income Tax
Act 1961 is grossly dependant on the legitimacy of the valuation of properties by the
stamp authorities and consequently the stamp law. The collection of capital gains will
be directly proportionate to the market value or guideline value of the Registration
Department. Owing to this stipulation under Section 50C of having to pay capital
gains on the market value as conceived by the state stamp authorities the Income
Tax Department is carelessly abetting the unjust collection of stamp duty and also
enriching itself illegally by collecting capital gains on an illusory guideline value of the department. The ensuing illustration as reported in “The Hindu”, “Property Plus Edition” dated: 3-7-2004 will prove the arbitrary pact between the two authorities.

Accordingly to Section 50 (C) if the guideline value or that determined by the Collector u/s 47A(2) is higher than the consideration as stated in the instrument the former will be deemed to be the full value of consideration received for the property sold or purchased. If the above property is sold again after three years and if the above guideline value and Section 50 (C) apply mutatis mutandis then the consequences will be as depicted in the tables hereunder:-

**Table 1:**

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Case 1 (GV =/&lt;Price)</th>
<th>Case 2 (GV &gt; Price)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sale Price (as per document)</td>
<td>50,00,000</td>
<td>50,00,000</td>
</tr>
<tr>
<td>Guide Line Value</td>
<td>50,00,000</td>
<td>60,00,000</td>
</tr>
<tr>
<td>Indexed cost of acquisition</td>
<td>25,00,000</td>
<td>25,00,000</td>
</tr>
<tr>
<td>Capital gains Tax (LT assured)</td>
<td>5,00,000</td>
<td>7,00,000</td>
</tr>
<tr>
<td>Stamp Duty Incidence</td>
<td>4,00,000</td>
<td>4,80,000</td>
</tr>
</tbody>
</table>

*Impact of Stamp Duty and Income Tax in the hands of the buyer and seller respectively is Rs.80,000/- and Rs.2,00,000/- collected in excess.*
Table 2:

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Case 1</th>
<th>Case 2</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>GV =/&lt;Price</td>
<td>GV &gt; Price</td>
</tr>
<tr>
<td>Sale Price ( as per document )</td>
<td>50,00,000</td>
<td>50,00,000</td>
</tr>
<tr>
<td>Guide Line Value</td>
<td>50,00,000</td>
<td>60,00,000</td>
</tr>
<tr>
<td>Indexed cost of acquisition</td>
<td>25,00,000</td>
<td>25,00,000</td>
</tr>
<tr>
<td>Capital gains Tax (LT assured)</td>
<td>5,00,000</td>
<td>7,00,000</td>
</tr>
<tr>
<td>Stamp Duty Incidence</td>
<td>4,00,000</td>
<td>4,80,000</td>
</tr>
<tr>
<td>Resold after 3 years at price</td>
<td>75,00,000</td>
<td>75,00,000</td>
</tr>
<tr>
<td>Guideline Value (3 years.)</td>
<td>90,00,000</td>
<td>90,00,000</td>
</tr>
<tr>
<td>Hence est)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Stamp Duty incidence</td>
<td>7,20,000</td>
<td>7,20,000</td>
</tr>
<tr>
<td>Indexed cost of acquisition (20% est)</td>
<td>60,00,000</td>
<td>60,00,000</td>
</tr>
<tr>
<td>Capital gains tax</td>
<td>6,00,000</td>
<td>6,00,000</td>
</tr>
<tr>
<td>Total tax in 2 transactions</td>
<td>11,00,000</td>
<td>13,00,000</td>
</tr>
</tbody>
</table>

Courtesy the Hindu dt: 3-7-2004

a) Sale of the same property between a period of say three years and a month will entail a tax of: Rs. 13,00,000/-
b) Cost of acquisition for the buyer will be: Rs. 50,00,000/-

c) There will be a double collection of tax amounting to: Rs.2, 40,000/-

The only remedy available against the unjust levy will be an appeal which will be referred to the valuation officer. The methods of the valuation officer are not going to be any different from the criteria of the stamp authorities.

When the Income Tax Act is committed to taxing on the truth of income and laying just claims of tax on the assessee, insisting on capital gains for the market value as per the stamp authorities by Section 50 (c) is a very sad reflection on the state of affairs. It is time the Parliament resolved this issue without any further delay. As stated already the government should collect only its dues and not those fancied as such.

Specimen instances of unconscionable fiscal excesses:

Case Study No:1

a) Document No: 5245 of 2004 registered at S.R.O.Joint ll Chingleput

b) Land situated at No: 50, Kayarambedu Village, comprised in S.Nos: 432/1 and 432/2, consisting of 4.50Acres.

c) Guideline Value as stated by the Sub-Registrar in her communication to the Collector: Rs.123/- per sq.ft.,
This is a case where land consisting of 4.50 acres is actually purchased only for Rs.28,50,000/- (Rupees Twenty eight lakhs fifty thousand only). The Sub-Registrar’s office has valued the property at Rs. 2,25,50,000/- (Rupees two crores twenty five lakhs fifty thousand only).  

This case would suffer a similar fate as illustrated above if Section 50(c) of the ___ In this case going by the present trend if Section 50 (C) is applied the following consequences will follow:

<table>
<thead>
<tr>
<th><strong>a) Sale Price</strong></th>
<th><strong>Stamp Authorities Value</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>28,50,000/- (Land Value)</td>
<td>2,18,00,000/- (Land Value)</td>
</tr>
<tr>
<td>7,50,000/- (Building Value)</td>
<td>7,50,000 (Building Value)</td>
</tr>
</tbody>
</table>

b) Indexed cost of acquisition

Rs. 18,00,000/-

c) Long-Term capital gains tax

Rs.2,25,50,000/-

(-) Rs. 18,00,000/-

Rs.2,07,50,000 x 20 / 100

= Rs. 41,50,000

---

1 S.R.O’s Communication dated: 28-9-2004 to the D.R.O Stamps, Madras-1
Catastrophic Consequences:

1. Amount actually realised by the seller on sale of his property: Rs.36,00,000/-
2. Amount to be paid as capital gains tax as per Section 50 (c): Rs. 41,50,000/-

Case Study No: II


b) Land situated at Mylapore Village, comprised in (Old R.S.Nos: 3847/12, 16, 17, 18 and 21) Re-Survey No: 3847/74, Block No: 76, consisting of 1 ground 707 sq.ft., as per document, 1 ground 750 sq.ft., as per patta,

c) Guideline Value as intimated by the Sub-Registrar to the claimant

Dr.K.P.Shamsuddeen -: Rs.3038/- per sq.ft.,

This is a case where property consisting of 1 ground 750 sq.ft., is purchased only for Rs.48,35,000/- (Rupees Forty eight lakhs thirty five thousand only). The Sub-Registrar’s office has valued the property at Rs. 1,07,50,303/- (Rupees one crore seven lakhs fifty thousand three hundred and three only). 

This case would suffer a similar fate as illustrated above if Section 50 (c) of the I.T.Act 1961 were to be involved. It will be as follows:

---

1 vide S.R.O’s Communication No: 104 of 2004, dated: 10-12-2004 to the D.R.O Stamps, Madras-1
a) **Sale Price**

Rs 37,35,000/- (Land Value)

Rs. 11,00,000/- (Building Value)

a) **Stamp Authorities Value**

95,69,700/- (Land Value)

11,80,603/- (Building Value)

b) **Indexed cost of acquisition**

Rs. 24,17,500/-

c) **Long-Term capital gains tax**

Rs. 1,07,50,303/-

(-) Rs. 24,17,500/-

Rs. 83,32,803 x 20 / 100

= Rs. 16,66,560/-

**Pecuniary Misfortune:**

1. Amount actually realised by the seller on sale of his property: Rs. 48,35,000/-

2. Amount to be paid as capital gains tax as per Section 50 (c): Rs. 16,66,560/-

**Rule of Law under siege:**

The aforesaid two cases are not stray instances constituting exceptional consequences of Section 50 (c) of the I.T.Act. There are hundreds of cases in a similar predicament. Unless Section 50 (c) is amended forthwith providing for the
actual sale value as the basis for levy of capital gains tax the Central Government will be grossly guilty of incarcerating the rule of law.

**Samadhan schemes under the Stamp Act and amnesty under The Income Tax Act 1961:**

Samadhan scheme under the Indian Stamp Act and Amnesty under the Income Tax Act 1961 do not mean the same. While the former concedes its dues the latter condones only the offence of failure to file a return.

**Samadhan Scheme:**

Tamil Nadu, Maharashtra, Karnataka and a few other states extend this hand of compromise during certain periods by which half or substantial amount of duty is waived. Certainly this is an arbitrary offer and violative of Article 14. The honest are punished with unjust levies the dodgers or delayers are rewarded with handsome waivers. This scheme is full of discrimination and pot holes. Irrespective of the individual case the entire lot of documents pending is cleared by the waiver. A cut-off date is announced and documents registered prior to that date and pending for stamp duty assessment are released on collection of just half the duty. In these schemes documents of properties which are valued **less than** the actual value are also extended the same concession. Here again there is a discrimination. Documents which are pending at appellate fora do not qualify for this deal. The
helpless public gulp these sour remedies because in India excepting the microscopic groups, the innocent and honest are not able to assert their rights. Even in these administrative moves it is the adhocism and expediency that are responsible and not individuals. The system warrants such a move. The revenue is frantic about targets. The casualty is not just the disappointed public who have to pay stamp duty on unjustly high guide line values but also the rule of law.

In a case where the Petitioner was called upon to pay 50% deficit duty under the Samadhan Scheme three years after registration the High Court struck down the impugned orders as non est in the eyes of law¹. Thus it can be seen that the Samadhan Schemes extended by G.O's in Tamil Nadu are arbitrary and devoid of any rhyme or reason in choice of the documents for waiver. The cut-off dates are more reminiscent of lucky dips in a fancy fete organised for school children.

**The Amnesty Scheme under Bombay Stamp Act 1958:**

This is a scheme providing for reduction of penalty with which an instrument is chargeable u/s 39(1)(b) of the Bombay Stamp Act. The scheme can be further liberalised to accommodate waiver of also interest on delayed payments. Interest and penalty will be justified legally and otherwise only where the stamp levy is on the

¹S.R.Sengotavelu Servampatti vs District Collector Namakkal, 2003-4-L.W 193
genuinely transacted value. In other cases they will be against the principles of natural justice.

**Suggestions:**
Samadhan (compromise) should be considered throughout for cases where the guideline value and individual properties are at loggerheads with each other. The periodical samadhan dispensation should be based on intelligible classification of documents which really deserve such a concession. Revenue expediencies and adhoc needs should not derail the legitimacy of collection under the Stamp Act.

**Settlement under The Income Tax Act:**
In a direct contrast to the stamp law the Income Tax Act has legitimate remedies to meet exigencies. However it would never compromise on payment of tax. At worst it would concede interest and penalty in specified circumstances and qualified cases. None of its compromise schemes under the act provide for waiver of tax. Amnesty, VDS, Settlement, Samadhan and other schemes under the I.T.Act 1961 provide for only waiver of penalty or interest or prosecution.

**CENTRAL EXCISE AND THE SALT 1944:**
The Central Excise law as a fiscal legislation is worthy of comparison with stamp act due to the twin reasons of its chargeability and value. Even under this act chargeability presupposes excisable goods for the law to apply or the chargeability
to arise. There should be excisable goods as specified in the schedule to the act of 1985. Now the most important feature that is analogous to the Indian Stamp Act is the levy and collection of duty. According to Section 4 of the act the duty of excise is chargeable on any excisable goods with reference to value at the normal price sold by the assessee to a buyer. At no point of time the assessing value can be fixed in excess of the manufacturing cost and manufacturing profit. Unlike the stamp act the excise law does not empower the authority concerned to value the goods as per their own criteria. At worst they can assess it only on the basis of the price at which the assessee sells the goods at the whole sale market nearest the place of manufacture. Consequently there is no scope for the revenue substituting the real market value by some thing on their own¹

**CUSTOMS DUTY AND STAMP LAW:**

According to Section 12 of the Customs Act 1962, customs duty shall be levied on those goods as notified by the Government at such rates as specified under the Custom Tariff Act 1975. The chargeability or liability under Section 12 will arise the moment goods cross the customs from the pier. Application of this fiscal provision is possible only when there is an import of dutiable goods. Valuation of goods for purpose of assessment is done according to Section 14 of the Act.

¹ AIR 1987 SC 1410.
Section 30 has been redrafted to confirm to the provisions of GATT.

**Income Tax is yet to cover the majority of assessees:**
Despite that the total revenue collected by way of Income Tax is about 1 lakh crore\(^1\) rupees and the revenue under stamp act is 1750 crores, the coverage of assessees under the Income Tax Act 1961 is incomplete. Due to the compulsion of registration all instruments affecting immovable property are bound to bear stamp duty. Almost 99.9% of the documents affecting transfer of immovable properties are charged to stamp duty. Lease deeds however get away with small amounts of duty owing to its registration being optional for periods less than one year. Contrastingly the Income Tax Act cannot claim a complete coverage of income earners. It has perhaps touched only the tip of the iceberg. While the salaried class has come under the net of assessment substantially, those falling under “Income from Business and Profession” are still at large. Obviously if Tamil Nadu alone is able to raise about two percent of the annual revenue of Income Tax, one can well imagine the potential for a geometrical increase in the revenue collection under the Income Tax Act. Lakhs of income earning public are ducking the net of the Income Tax Act.

**Stamp Law has effectively aided Income Tax Collection:**
Rightly or wrongly the guideline value has check mated the menace of black money

---

\(^1\) News Report – The Hindu dt: 21-6-2004
to a very great extent. Hitherto real estate served as an ideal godown for storing black money. The vast discrepancy between the de-facto market value and the guideline value camouflaged black money transactions. Now the trend has reversed owing to the astronomical value of the registration department. Both the extremes are bad. The assesses are suffering unjustified blows of excessive tax. Section 50 C of the Income Tax Act has stipulated that the value of property will be determined on the basis of the assessment of stamp authorities. This is an unpalatable development for the assessee under the Income Act and the seller of an immovable property under the stamp act. The stamp law is thus serving as a catalyst of Income Tax Revenue. The Income Tax Act is reciprocally abetting illegitimate guide line values. The need of the hour is to legislatively steer both the enactments towards rule of law and justice.

**Fundamental Differences:**

In case of stamp law the enforcement of collection is easier because most of the stamp collection is done in relation to sale deeds of immovable properties. Owing to the need for title deeds, the public would be forced to concede the demands of revenue however herculean it is. On the other hand demands from the Income Tax
Department will be fought tooth and nail even if they are just. The assessee would have all the time to take it up through the various echelons of the appellate ladder. Excepting in cases of Search and Seizure the assessee need not part with anything to the department. Even if one has to pay and appeal there is certainty of refund in case the levy is illegal. Further the Income Tax appellate mechanism is fair and just in contrast to that under the stamp law which is grossly unfair and one sided.

**Stamp Act has degenerated into a tax legislation:**

Under the Income Tax law transactions give rise to chargeability. They need not be tangible or borne out in a written instrument. However collection is difficult because the revenue has to prove the income. Though various methods and means have been devised to rope in as many assesseees as possible, the whole system of identifying the income earners has to go a long way to reach out to even the majority of income earners. The stamp act on the other hand is able to reach all the transactions in the name of instruments. Thanks to the various amendments, the Stamp Act has now almost become a tax act. It has acquired power enough to investigate into transactions in the name of market value. Though not countenanced
by the act as it stands today, the ill built appellate mechanism of the stamp act has succeeded in retaining the instrument as an excuse to collect duty on transactions.

In the case of Stamp Law the basis of charge according to Section 2 (6) is on the instrument. It arises on execution thereof. On the other hand the basis of charge under the Income Tax Act is on the income of the assessee concerned in the previous year.

**B) STRUCTURE~ LEVY ON INSTRUMENTS FALLING WITHIN ONE OF THE HEADS OF CHARGE**

A tangible instrument is essential to activate chargeability under stamp law. Chargeability in relation to an instrument will arise only on its execution. The person seeking to assess and levy stamp duty on the instrument should classify the same under one of the heads as contemplated between Article 1 to 65 of the schedule to the Indian Stamp Act. The quantum of assessment will depend on the occasion of charge as contemplated under Sections 4, 5 & 6 of the Stamp Act. While Section 3 mandates levy of Stamp Duty for instruments as classified under the various heads of the schedule, Sections 4, 5 & 6 decide the nature of the document. Section 4 deals with several instruments used in a single transaction of sale, mortgage and settlement. For this, the principal instrument alone is chargeable to duty and others would be levied just another Rs.5/- as additional stamp levy. Section 5 deals with

---

1 Section 2(6) r/w 17 of the Act.
instruments relating to several distinct matters and would be liable for aggregate levy. Section 6 deals with instruments susceptible to several descriptions and they will be subject to the highest levy prescribed for instruments falling under one of those descriptions.

The crucial difficulty in understanding the occasions of charge lies in interpreting the document particularly in deciding a distinct matter as different from ancillary or incidental matters. No amount of redrafting or tinkering of the statute would result in an ideal codification of the intent of the legislature. These Sections are semantically nebulous and least interpreted by Courts. This is because the Appellate system is so executive oriented that the parties lose their patience and prefer to suffer the lashes of levy than the wounds of delay. An appeal from the Sub-Registrar to the C.C.R.A. would take a couple of years and for the C.C.R.A. to decide, it would take another couple of years and from there to the High Court it will take another decade.

This long chain of inordinate delay has resulted in not many cases reaching the High Court and consequently very few opportunities have been afforded to the High Court to interpret Sections 4, 5 & 6. A digest of cases on these Sections would reveal that save the cases cited herein below, there is precious little guidance or light on the
grey areas of this Section. So much so, documents deliberately drawn into the
tangle of Section 5 at the whims and fancies of the Registering Officer or the A.G.
Audit suffer dual Stamp Duty, pendency at various courts owing to absence of
expeditious remedies.

In the case of "CCRA vs Sarojini Muthusamy and four others" the full bench
decision has been delivered after 17 years from the date of execution of the
impugned deed. In the case of "CCRA vs M.S.Dhanukodi Pillai" it has taken 22
years for the document to reach a final conclusion.

C) OCCASSIONS OF CHARGE ~ SECTIONS 4, 5 and 6

Section 4:

Section 4 is intended to facilitate completion of single transaction employing several
instruments. The Indian Stamp Act as applicable to Tamil Nadu has circumscribed
the applicability of this facility to mortgage, sale and settlement. In the case of
"Madras Refineries Ltd vs CCRA Madras", where three documents were
executed in respect of a transaction by way of loan and note purchase agreement to
deed of trust and mortgage and guarantee agreement it was held that the deed of
trust cum mortgage was the principal instrument. Similarly in a comparatively recent
case it was held by the division bench of Calcutta High Court that where two
documents are employed to complete one transaction the principal

---

1 2001 (1) CTC 410
2 2000 (IV) CTC 275
3 AIR 1977 SC 500
deed and a deed of rectification ought to be read as part of one and the same contract. Since the principal deed was liable to duty and conveyance, the deed of rectification would attract only fixed duty as in force. In “Somaiya Organics India Ltd vs CCRA” ¹. Two declarations executed subsequent to the sale deed were treated as instruments employed to complete a single transaction of sale. Section 24 was invoked on this basis.

Section 5:
This is the most difficult of all Sections in the statute. Where instruments contained several distinct matters independent of and separate from each other, they will be levied an aggregate amount of duty therefor. In the case of “Board of Revenue vs Arthur Paul Benthall (1956) 1 MLJ SC 13,” ² their lordships of the Supreme Court sifted the chaff of Sections 4, 5 and 6 and incisively distinguished one from the other. Their Lordships observed:

“The object and scope of Ss.4 to 6 are not the same. Section 4 deals with a single transaction completed in several instruments, Section 6 with a single transaction which might be viewed as falling under more than one category, whereas S.5 applies only when the instrument comprises more than one transaction, and it is immaterial for this purpose whether those transactions are of the same category or of different

¹ AIR 1986 SC 403
² AIR 1956 SC 35
categories. The topics dealt with in the three Sections being thus different, no useful purpose will be served by referring to S.5 or for determining the scope of S.5 or for construing its terms. It is not without significance that the Legislature has used three different words in relation to the three Sections, ‘transaction’ in S.4, ‘matter’ in S.5, and ‘description’ in S.6”.

Even in the aforesaid case his Lordship J. Bagawati dissented from the majority. Hence it can well be imagined as to how the registering officers who are vested with powers of Collector would be able to discern the nature of the instruments. In the aforesaid case A was the Managing Director of two companies which was acting as agent of several companies. A was also a director of a company and acted as a liquidator of some as executor or administrator of estates of a deceased person and as trustees of various estates. He executed a power of attorney by which he empowered two persons jointly and severally to act for him in its individual capacity and also as executor, administrator, trustee, managing agent, liquidator and all other capacities.

The majority judges held that the instrument comprised distinct matters in respect of the several capacities of A as mentioned in Section 5. There are several specimen
cases which have laid down the criteria for identifying matters as distinct from each other. The usual covenants in the sale deed are not chargeable separately as indemnity bonds\(^1\). A sale deed containing a clause whereby the Vendor mortgaged certain other properties as security for the due performance of its covenants need not be stamped both as sale and mortgage\(^2\).

The renewal clause in a lease deed is not a distinct matter\(^3\). An agreement between mining company and owners of several pieces of land each having distinct ownership and interested only in the piece of land mentioned against his own name in the document is an instrument comprising distinct matter\(^4\). An instrument embodying a contract by the principal and surety does not come within Section 5\(^*\). Several properties of different kinds or value would not necessarily relate to distinct matters\(^5\).

Analysed in the context of the aforesaid judicial rulings it can be seen that the honourable courts have laid down the ground rules to classify the nature of document. Still Section 5 would afford ample scope for the auditors to

---

\(^1\) 1876 1 MS 133 FB  
\(^2\) AIR 1920 MS 225 FB  
\(^3\) AIR 1987 DELHI 115  
\(^4\) 1901 24 MAD 176 (185) FB  
\(^*\) 1895 PUN RE NO 102 483 DB  
\(^5\) AIR 1933 ALL 329 FB
bully the revenue. Given the susceptibility of Section 5 to various interpretations even presumptive audit remarks cannot be easily refuted. Consequently the revenue have developed a proclivity to exploit Section 5 of the act.

Section 6:-

This Section is an exception to general rule that when there is a special provision the general rule will have no application “Secretary Board of Revenue vs Azhagappa Chettiar”. It applies to only those instruments which do not contain distinct contracts but susceptible to different descriptions and heads of classifications. This Section is relatively easy to charge an instrument with. Application of this Section will arise only in relation to a single matter. The Collector will have to decide only about the head under which he will have to charge. Though theoretically the Registering Officers will have to apply norms known to law in deciding upon the nature of the document, in practice, they simply charge the highest duty possible. To cite a self explanatory decision in “CCRA, Board of Revenue, Madras vs M.Abdullah”, it was held that where a dissolution of partnership was also susceptible to classification as partition the higher duty therefor should be levied. Similarly in the case of “Board of Revenue Madras vs Narasimhan” it was held that in the case of a document coming under a dual category of release and dissolution of partnership the duty for the latter category should be levied.

1 ILR (1937) MS 554
2 AIR 1970 Mad 2 (FB)
3 AIR 1961 Mad 504 (FB)
In the case of “CCRA, Board of Revenue Madras vs R.K.Subramaniam” it was held that a Vendor under a sale deed giving another property as indemnity against loss damages or claim in regard to property conveyed cannot be treated as executing a sale and a mortgage but only a sale containing a clause of indemnity.

Though the courts have interpreted Sections 4, 5 and 6 there are not adequate number of cases to guide the Collectors / enforcing authorities who are mostly Registrars of the registration department. While High Court decisions are very few on these Sections, Supreme Court decisions are still fewer when compared to the problems faced by the public on account of the deliberate misclassification of documents in the name of Section 5. Of course the Supreme Court has stated the circumstances under which ONE:

   a) matter could be considered distinct from the other “CCRA vs Arthur Paul Benthall”

   b) instrument could be interpreted as complementary to a principal instrument (Somaiya Organic Chemicals)

   c) instrument could be understood as susceptible to several descriptions. (Speyer vs Commisioners). Still these judgements would prove that there

---

1 AIR 1977 Mad 44 (FB)
2 (1956) 1 MLJ SC 13
3 AIR 1986 SC 403
4 (1908) AC 92 : 77 LJKB 302
cannot be a strait jacket application of any judicial precedent. Most of the Sub-
Registrars do not have the courage to develop a judicial mind or expertise to do a
discerning interpretation in the light of the principles laid down by the Courts. If at
all they do so, the audit authorities make carping remarks at their classifications
and convert the S.R’s into paranoids. Consequently justice becomes a casualty,
arbitrariness becomes the order.

To sum up in the words of their lordships of the High Court of Madhya Pradesh in the
case of "Bal Krishna vs Board of Revenue". The following principles govern the
application of the stamp act to an instrument:

1) The first rule is that duty is payable on the instrument and not on the transaction \(^2\).

2) The second rule is that the court is not bound by the apparent tenor of the

   instrument, it is the real nature of the transaction which will determine the stamp
duty\(^3\).

3) The third rule is that the court must look at the document itself as it stands and it is

   not permissible to show, by evidence, any collateral circumstances.

4) The fourth rule is that in determining stamp duty, the substance of the transaction

   as disclosed by the whole of the instrument has to be looked to and not merely the
   operative parts of the instrument.

\(^1\)AIR 1970 MP ( FB)
\(^2\)Commissioner of Inland Revenue vs Angus (1889) 25 QBD 579
\(^3\)See Mortgage Insurance Corporation vs Commissioner of Inland Revenue (1888)
21 QBD 352, Inland Revenue vs James John Oliver (1909) AC. 427 and Deddington
Steamship Company Ltd vs Commissioners of Inland Revenue (1911) 2 K.B 1001
5) The fifth rule that stamp duty is payable on an instrument according to its tenor and it does not matter that it cannot be given effect to for some independent cause.
6) The sixth rule is that there can be no objection to a device effectuating a transaction in a manner that lower rate of duty is attracted\(^1\).

**Proclivity of the revenue to exploit Section 5: CASE STUDIES**

**Case Study No:1**

This is a typical case of a document falling a victim to a charge as containing several distinct matters under Section 5 of the Act. The instrument discussed is a specimen illustration of the inclination of the revenue to exploit Section 5 even when there is only an iota of likelihood for equivocal interpretation. This general reluctance to analyse and conclude boldly on the actual nature of the document is due to audit criticism and presumptive remarks.

**Nature of Instrument:**

It is a deed of mortgage executed in favour of ICICI Ltd which has been cast into the deed as a Security Trustee for other Senior Lenders and Domestic Guarantor. The instrument is spread over fifty-five pages in print. It purports to mortgage the properties of the borrower for a reciprocal loan to be given by several other lenders through the Security Trustee. The lending by the other Senior Lenders and the arrangement of guarantee are effected under separate common agreements and

---

\(^1\)Little woods Mail Order Stores Ltd. V. I.R.C (1961) 1 Ch.210
facility agreements. However under this mortgage deed there are only two parties viz the Borrower, Mortgagor and Lender / Security Trustee.

**Stand of the Revenue:**

The impugned document is not one mortgage but six mortgages in the guise of one warranting an aggregate stamp duty for all the six mortgages.

**Stand of the Party**

The company defended the nature of the document as an innocuous deed of mortgage not warranting treatment u/s 5 of the Act. They submitted inter-alia as follows:

**Characteristics / Nature of the Instrument:**

**Not an M.W.P - Provision of Transfer of Property Act rendered inapplicable:**

a) It is an unequivocal and unmistakable deed of mortgage WITHOUT GRANT OF POSSESSION to the Mortgagee / Security Trustee or other lender vide ~ page 23 and 27 para 19 (b) and 21. Grant of possession is a standard feature of English Mortgage. This instrument has been divested of this feature under the heading non-applicability of certain provisions of T.P. Act of 1882. The document hence is only a simple mortgage with a nomenclature of English Mortgage.
b) **Not within the purview of Section 5 of the Indian Stamp Act, 1899.**

This instrument palpably contains only a single matter of mortgage with covenants/ clauses/ agreements incidental and ancillary thereto. The common agreement, facility agreement and guarantee assistance agreement are part of and subservient to the main matter of mortgage. They cannot stand independent of and separate from the main subject of mortgage.

c) **Not de hors the definition of mortgage:**

Though prolix in composition it is apparently a mortgage. A patient perusal would reveal that the substance of the document is not even a trifle beyond or de hors the definition of mortgage as contemplated under Section 58 of the T.P.Act. The ancillary clauses have been included only to guard the interests of the lenders. Any attempt to interpret these covenants (purely incidental) out of context will only lead to endless polemics without any legal conclusion. The contents of the document clearly attest the verity of its character as mortgage.

It has been held in the case of *AIR 1936 Calcutta – 814* that where the same matter contains several contracts it cannot be treated as distinct matters. A plain reading of the document would reveal its avowed character of a mortgage. Only a myopic and incomplete comprehension of the contents would suffer misinterpretation of its nature. Consequently drawing this instrument into the sphere of Section 5 of the Stamp Act, 1899 will only be a wistful exercise.
In the case of "Madras Refineries Limited, Vs CCRA Madras" the facts of which are similar to our document, the Supreme Court has held that "in order to determine whether any, and if any, what stamp duty is chargeable upon an instrument, the legal rule is that the real and true meaning of the instrument is to be ascertained; that the description of it given in the instrument itself by the parties is immaterial, even although they may have believed that its effect and operation was to create a security mentioned in the Stamp Act, and they so declare".

Similarly in the case of AIR 1952 MAD 515 the High Court has observed that "the instrument has to be read as a whole and treated as a single instrument for the purposes of stamp duty. "Distinct matter" in S.5 connotes a transaction to achieve a distinct object, but does not include a matter which is merely accessory or ancillary to such object. The entire document has to be read as a whole to find out its dominant object."

d) No Transfer of ownership or title:

It is reliably understood that the registry is obsessed with expressions of "TRANSFER" "RETRANSFER" AND "ASSIGN" as meaning a complete transfer of ownership to the mortgagee. The definition of mortgage under Section 58 of the T.P.Act, 1882 would reveal that a mortgage is a transfer of interest in a specific

\footnote{AIR 1977 SC500}
immovable property for purposes of securing a loan/debt or performance of an obligation leading to pecuniary liability. Consequently the words transfer, re-transfer refer to and purport only the transfer or retransfer of the specific interest (minus possession) in the mortgaged properties. These are standard expressions in any deed of mortgage. The word “reconvey” / “retransfer” in para 9 is only a provision for redemption of the mortgage. In the parlance of the sub-registry it only means “discharge of mortgage”

e) **Contingent covenant and appointment of Receiver:**

The contingent covenant of execution of English Mortgage and appointment of Receiver under paras 12 (c) and 20 respectively are only covenants incidental and ancillary to the main matter of mortgage. While the commitment to execute English mortgage of properties not covered by this mortgage deed is only a probability the appointment of the security trustee as receiver is only subject to 69 A of the T.P.Act, 1882. These covenants are subservient to the main subject of mortgage and would certainly not alter the apparent and unambiguous nature of the instrument or incidence of its stamp duty.

These rival contentions were examined by the government and held in favour of the party. Thus it is clear that unless there is an adjudicatory authority neutral to both revenue and public with infrastructure for expeditious disposal of cases, the abuse of Section 5 cannot be halted.
Case studies of A.G. Audit Remarks which have invoked Section 5 redundantly:

Axiomatically any incidence of loss presupposes “due” to the revenue. In the absence of any pecuniary obligation to the state no tangible loss whatsoever could be made out in any transaction. Viewed in this context the remarks of A.G. as discussed hereunder are devoid of merit or substance in as much as they have not in the least established the substratum for chargeability on account of the documents which have been indicted of having occasioned the loss to the revenue.

The inference of loss based on the Learned A.Gs’ findings, is in utter defiance of the basic tenets of chargeability under the stamp law. Time and again the Supreme Court and the High Courts have laid down the criteria for assessment of stamp duty and its loss. The impugned remarks have conspicuously departed from these guidelines and interpreted beyond the instrument.


This is a clear case of the A.G having strayed from the statutory parameters of chargeability. A loss of Rs.4.10 lakhs has been alleged owing to the Vendor having been represented by a G.P.A who had originally contracted to purchase the impugned property as per the agreement disclosed by the N.O.C accompanying the document. Apparently, the A.G. has shifted its chargeability from the basis of instruments to transaction. The sale deed read independently
of and separate from the N.O.C. which legally does not form part of the instrument, has been duly and adequately stamped.

It does not conceal any previous sale or give rise to double levy. The property is conveyed and the final consideration therefor is accepted only once.

**No statutory bar to an intending purchaser taking A G.P.A. and avoiding a transfer:**

“A Purchaser of land who proposes to resell within a reasonably short time can avoid paying stamp duty by not taking a conveyance pursuant to his purchase contract.”

**TREVOUR ALRIDGE – “Powers of Attorney.”** In fact a stamp saving of this sort is facilitated by the statute under Section 28. In the case of “**Rahimatulla Lawji Vs. Official Assignee**”¹ the High Court held that it was perfectly legitimate as per Section 28 to avoid an intermediate transfer.

**Principles for levy of stamp duty:**

The rationale behind levy of stamp duty is only the instrument and not the transaction. The audit authorities have proceeded beyond this sphere and investigated into the transaction. In the landmark cases of “**CIT Vs. Bhurangya**

¹ AIR 1935 BOM 340
Coal Co¹, "Bharpet Mohammad Hussain Sahib Vs. District Registrar ² " W.M. Cory & Sons Ltd Vs. Inland Revenue Commissioner³, "Sakharam Shankar Vs Ramachandra Baby Mohire⁴", the courts have held that the revenue have to look only into the documents and not beyond for purposes of stamp levy. In the case of "Bharpet Mohammed Hussain Sahib Vs. District Registrar, Karnool", a three judge special bench of the A.P. High Court held that (1) "in revenue cases it is the letter of the law that should be taken into account and not the spirit or substance of it that should decide the classification of a document. It is the form not the substance that is relevant. (2) It is only the instrument that is presented for registration that should be charged with stamp duty. The AUTHORITIES CANNOT LOOK INTO VARIOUS DOCUMENTS THAT ARE CONNECTED WITH IT WITH A VIEW TO JUDGE THE NATURE OF THE TRANSACTION THAT IS COVERED BY THE DOCUMENT READ IN CONJUNCTION WITH SEVERAL OTHERS." (Emphasis supplied).

In the case of "Himalaya House Co., Ltd Vs. C.C.R.A." ⁶ the Supreme Court has held that "reference to an earlier transaction" cannot bear upon the chargeability of duty for the document in question. The Supreme Court in this case has cited with approval the principles laid down in B.M. Hussain Sahibs case of A.P.

¹ AIR 1959 SC 254 ² AIR 1964 AP 43 ³ 1965 IAILER 917 ⁴ 1903 ILR 27 BOM 279 ⁵ AIR 1972 SC 899 ⁶ AIR 1964 AP 43, 45
The Delhi High Court has reinforced the ruling of the apex court in the case of Himalaya House Co. and permitted the Petitioner to avoid double duty in the case of "Hema Lata Vs. Collector of Stamps and another". Their Lordships of the Rajasthan High Court have in the case of "Bajaj Hindustan Ltd. Vs. State of Rajasthan" held that to make a proper valuation "what was really sought to be conveyed through deeds are to be looked into and no fishing exploration is to be made about other items."

Thus it is perfectly clear from the foregoing discussion that the earlier agreement cannot constitute the base for chargeability and it is perfectly legitimate to avoid double duty. Even if the Power of Attorney were to be read in conjunction one cannot interpret a P.O.A. as being synonymous with a sale. If appointment of the transferee as P.O.A. of the transferor is objected to, it is going to be an equally facile task to have the benami of the transferee appointed as such. The learned A.G auditors have mistaken avoidance for evasion of stamp duty.

(D) STAMP LAW A MATTER POSITIVI JURIS MORLEY VS HALL 1834

WHITE moved for a role to show cause why the judgement signed in this case on a cognovit given by the defendant to the plaintiff, should not be set aside for

1 AIR 1997 Delhi 63
2 AIR 1997 Rajasthan 218
irregularity, and the defendant discharged out of the custody. The grounds of the application were two:—first, that no declaration had been either filed or delivered by the plaintiff; and, secondly, that the cognovit ought to have been stamped, it containing words of agreement. On the first point, he cited Walker vs Woolley, mentioned in a note to Davies vs Hughes (a), where judgement had been signed upon a cognovit without first filing a bill, which was holden to be irregular; but it having been done at the request of the defendant to save expense, the Court granted leave to file the bill nunc pro tune, and directed the plaintiff to pay all the costs.

TAUNTON, J.- That was a case of an attorney defendant. There, no action was in existence against him until the bill was filed. Here, however, a writ had been issued, and, therefore, there was no action existing against the defendant. Besides, the Master (Chapman) informs me that it is the universal long established practice to sign judgement without filing or delivering a declaration.

White then proceeded to state the grounds on which the second objection depended; and on it Taunton, J., granted him a rule nisi.

Rule nisi granted

----------

Plait afterwards showed cause against this rule.—The facts stated in the affidavit, and which were admitted, were, that the defendant, being sued for a certain
amount, agreed to give a cognovit for the debt and costs. It was accordingly given,
and at the time the defendant paid a sum of 5l on account, stating also, that he
should be prepared to pay the whole amount in a fortnight. At his request the
plaintiff’s attorney gave him a memorandum in these words:—“The cognovit given
by Mr. Hall this day in the action at the suit of Mr. Morley is not to be put in
execution for a fortnight, Mr. Hall having paid 5l. on account”. This memorandum
was on a separate piece on paper. It was contended, however, on the other side,
that with the cognovit, it formed an agreement, and therefore there should be a
stamp upon the cognovit. The memorandum however, did not constitute with it an
agreement. It was not a condition engrafted on the cognovit, but a mere
independent promise on the part of the plaintiff that he would not put the cognovit
in force for a fortnight. It might as well be said that the holder of a bill of exchange
could not sue on it unless it had an agreement stamp, because a promise had
been given to defendant that it should not be put in force for a certain period. The
present rule must, therefore, be discharged.
White, in support of the rule, contended, that, as the agreement between the parties was that the cognovit should not be put in force for a fortnight, that agreement ought to have been embodied in the cognovit, or it might have been written at the bottom of the instrument. It was given at the time of executing the cognovit, and therefore must be considered as part of an agreement made between the parties. He cited the case of Reardon vs Swabey (a). There, on a motion to set aside proceedings for irregularity, one of the irregularities stated was, that the cognovit, on which the judgement had been signed and execution issued, was not stamped, which was contended on the other side not to be an irregularity; but the Court thought otherwise, and made the rule absolute, it appearing that the cognovit, contained an agreement to take the debt by instalments, which, therefore, ought to have been stamped, upon the authority of Ames vs Hill (b); though a mere cognovit without any matter of agreement did not require a stamp. The present case, in point of principle, was not distinguishable from the one last cited. The case here might be compared to that of a number of letters, which, being taken altogether, formed an agreement. There it was necessary that one of the letters should be stamped. So here, the memorandum and the cognovit together formed
an agreement which required a stamp. It ought, indeed, to have been filed, and the plaintiff, by not having done so, was guilty of a fraud on the defendant and the Court.

TAUNTON, J., - I am of the opinion that the objection to this cognovit, on account of its not being stamped, ought not to prevail. The law upon the subject of stamps is altogether a matter positivi juris. It involves nothing of principle or of reason, but depends altogether on the language of the legislature. There is no stamp applicable to a cognovit, considered merely as a cognovit, it not being included in the schedule to the Stamp Act; but the Courts have said, that, if the cognovit contains any matter of agreement or stipulation, it shall be stamped, not as a cognovit, but as an agreement. Now this, which is said to constitute with the cognovit an agreement, is in truth nothing more than a memorandum given by the plaintiff's attorney, at the same time as the cognovit was executed on a separate piece of paper: and it is in these words, “The cognovit given by Mr. Hall this day, in the action at the suit of Mr. Morley, is not to be put in execution for a fortnight,
Mr. Hall having paid 5l on account. The memorandum is given by the plaintiff's attorney after the cognovit is executed, the defendant having paid 5l on account. I do not see, therefore, that this cognovit is, in point of fact or on inspection of the paper itself, any agreement between the parties, but a mere memorandum, altogether separate, I do not think it can be so connected with the cognovit as to make it bad for want of a stamp. It does not, therefore, come within that class of cases in which it has been decided that a cognovit with words of agreement requires a stamp. The present rule must, therefore, be discharged, but without costs, but some allowances must be made for a man struggling to certain liberty.

Rule discharged, without costs

This landmark decision has ruled that stamp law involves nothing of principle or reason but depends altogether on the language of the legislature. The Act is notorious for producing anomalies. In the construction of taxing acts the hardships should not be considered and the statute should be followed strictly. On the other hand when a instrument falls prima facie within the general provisions of the stamp act, the onus is on the party to prove that it is exempted from duty. In some cases the onus is on the tax payer to specify that a certain state of affairs exists.