Types of stamps and some concepts of stamp duty

Stamp duty means a tax payable on certain legal documents specified by statute;
the duty may be fixed or ad valorem, meaning that
- the tax paid as a stamp duty may be a fixed amount or
- an amount which varies based on the value of the products, services or property on which it is levied.

Briefly, the scheme relating to stamp duties, provided for in the Constitution is as follows:-

- Stamp duties on documents specified in Entry 91 of the Union List
  -(viz. Bills of Exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts)
  - are levied by the Union.
- Under Article 268, the State in which the Stamp duty is collected retains the proceeds, except in the case of Union Territories in which case the proceeds form part of the Consolidated Fund of India.

Where does the revenue provided for paying stamp duty go?

The considerable amount of the revenue from stamp duty goes to the State and with regard to some non commercial instruments, it goes to Union Legislature.

Some Definitions and concepts:

Instrument V/s Document

Document: It is one which is written, presented or recorded statement or condition agreed as per the parties involved which may be evidentially used.

Instrument: As per Sec 2(14), it is document by which any right or liability, is, or purported to be created, transferred, limited, extended, extinguished or recorded.

Judicial V/s Non Judicial Stamp

Judicial Stamp (Court fee Stamp): Stamps used in courts i.e. for applications, petitions, etc. are judicial stamp papers.

Non Judicial Stamp: Stamp papers which would be used for execution of documents are called non judicial stamp papers.

Types of Stamp

A. Impressed Stamps

1. Labels affixed and impressed by proper officer
2. Stamps embossed or engraved on stamp paper (done by government printing press)
3. Impressions by franking machines generally done by the bank by depositing the necessary amount of stamp duty with the banks. This kind of stamping is mostly preferred on instruments

(other than commercial instruments) as at times it becomes difficult to obtain stamps embossed on stamp paper of a higher value.

B. Adhesive Stamps

These stamps are those which are to be stuck on the instrument.
These are again categorised as Postal Stamps and Non Postal Stamps.

Postal Stamps: These are used only for transactions with post office and related functions. Postal Stamps perform multiple roles as being paper ambassadors representing their country of origin, thus promoting its national heritage.

Non Postal Stamps: They are of many types-

1. **Revenue Stamp** – are used for money related transactions (receipts).
2. **Notarial Stamp -** used by the officer of Notary to certify, attest under his official seal along with notary stamp.
3. **Foreign Bill Stamp** – Generally used for bills of exchange or promissory notes drawn out of India.
4. **Broker's Stamp** – Used for transactions through brokers or agent to his principal for purchase or sale.

There are many types of such non postal adhesive stamps like court fee stamp, insurance policy stamps, fiscal stamps, share transfer stamp, etc.

Some new stamps which are released in 2015-

1. **Swachh Bharat** : Release of a set of these stamps and a miniature sheet on the theme Swachh Bharat is a part of an effort to achieve the vision of Clean and Healthy India.
2. **Beti Bachao Beti Padhao Stamp**: This stamp is released to highlight and recognize important socio-economic and welfare initiatives in the country.
3. **Project Rukmani** : It is a multi band communication satellite, a project by the Indian Navy and the Indian Space Research Organisation that allowed the Indian Navy to join the elite group of Navies that possess the capability to conduct operations using dedicated communication satellites.

Several instrument used in single transaction of sale, mortgage or settlement :

When one single transactions is made for executing sale and/or mortgage and/or settlement, stamp duty as prescribed in Schedule 1-B will be applicable for any 1 instrument. It should be noted that amongst the instruments used, the one having highest stamp duty should be paid as per the prescribed Schedule. For other instruments duty of five rupees will have to be paid (instead of that prescribed in the schedule).

Instruments that are not related to the same matter (i.e. for several distinct matters):

Instruments which are related to several distinct matters shall be charged with full duty as specified in Schedule under the Stamp Duty Act.

Charging of Duty:

- **Bonds, debentures or other securities** which are issued as a loan are chargeable to duty of 1% on total amount of bonds, debentures or debentures issued. Such duty will not be chargeable on further renewal of loan. These bonds, debentures or securities need not be stamped.
- If any instrument (not being a promissory note) or bill of exchange, is given as security,
  - for money advanced or to be advanced by way of loan, or for an existing or future debt,
  - or redeems a duly stamped transfer, intended as a security,

  it shall be chargeable with duty as if it were an agreement or memorandum of an agreement chargeable with duty.

How to pay the Stamp Duty?

All duties on instruments can be paid as mentioned below:

i) Payment of duty shall be indicated on such instruments, by means of stamps (sec 10 of The Stamp Duty Act)

ii) In cash (sec 10A of The Act)

By means of Stamps:

How can the payment be made by means of Stamps?

By purchasing the stamps, duty will be paid to the government. Which stamps are required is mentioned below:

TYPE OF INSTRUMENT	TYPE OF STAMPS REQUIRED TO PAY STAMP DUTY
For each kind of instrument	the description of stamps which may be used will denote stamp duty paid.
For instrument stamped with impressed stamps	the numbers of stamps which may be used will denote the stamp duty paid.
in the case of bills of exchange or promissory notes written in any Original Language	the size of the paper on which they are written.

Payment by cash

-When there is temporary shortage of stamps in the district or

-if stamps of required denominations are not available, cash payment can be done to authorized officer-in-charge by producing a challan evidencing payment of duty to government treasury.

Some points for stamps:

1. Impressed stamp may appear on face of instrument written on paper and cannot be used for or applied to any other instrument.
2. Only one stamp is to be affixed on a single instrument, not more than one.

Allowances for Spoiled Stamps

The Collector may on application, make allowance for impressed spoiled stamps under some conditions. If the stamp on any paper gets spoiled,
-by error in writing or any other means,
-document on which is written but not signed,
-promissory note which has not been used in any manner,
-bills of exchange signed but not accepted,
-instrument executed which later became void,
The certificate of Collector u/s 32 is to be obtained to claim allowance.

Case Law:

This is case of **Munsif of Ghaziabad**. His case is as follows:
Case: The question of law of stamp duty arose before him while executing a decree. A simple money decree had been put in execution and certain movable property of the assessee was ordered to be attached. The property was attached and the amin (person appointed by court) handed the document to the supurddar (with whom the security is kept) who executed the document.
Terms of the Document: Terms stated that the supurddar acknowledged the attached property from the amin and agreed to produce the same whenever demanded by the Court of the amin. Also, in case of failure the Court would be at liberty to realise the price thereof from his person and property.
Question : Whether the document is exempt from duty or whether it is chargeable with duty as an agreement or as a security bond?
Issue: The supurddar was not paid any remuneration for his offering to take charge of the property. Hence, it may be difficult to be said that the document was as good as agreement. The language of the document brings it within the scope of the security bond (as given in Schedule I-B, Article 57 of Stamp Act).
Schedule I-B, Article 57 of Stamp Act states: If Security Bond, executed by way of security for the execution, to account for money or other property, received by virtue thereof or executed by a surety to secure the due performance of a contract or the due discharge of a liability, then Stamp Duty is attracted.

But, there is exemption to the above article 57-

Exemption: Bond or other instrument, when executed- by officers of the Government or their sureties to secure the due accounting for money or other property received by virtue thereof are exempted from the payment of stamp duty.]

The point for consideration is whether this document comes under this exemption.

Held: The property to be attached is the moveable property in the possession of assessee, thus it is to be attached by actual seizure, and the attaching officer is to keep the property in his own custody and "shall be responsible for the due custody thereof". Hence, the legal responsibility for the due custody of the attached property lies on the attaching officer. However, the supurddar who keeps the property in his own custody on behalf of the amin, is a surety for the amin and undertakes to restore the goods or pay their price if not produced before the Court. It was laid down there that although the amin ceases to be liable after the Court has approved of the arrangement or given him permission to make the arrangement, the supurddar was liable as a surety. The position of the supurddar was therefore that of a surety for the amin; undertaking duly to account for the property received from the amin by virtue of the document executed by the supurddar and is covered by Exemption (e).

Therefore, the document was not liable to duty because it was exempted under Exemption (e) to Article 57.

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