**(1998) 09 SC CK 0128**

**In the Supreme Court Of India**

**Case No :** Civil Appeal No. 5315 of 1995

Salim and Co. APPELLANT

Vs

State of Orissa RESPONDENT

**Date of Decision :** 16-09-1998

**Acts Referred:**

**Citation :** (2001) 9 SCC 376

**Hon'ble Judges :** V. N. Khare, J;S. P. Bharucha, J

**Bench :** Division Bench

**Final Decision :** Dismissed

## Judgement

1. The appellant is aggrieved by the judgment and order of a Division Bench of the High Court of Orissa. The High Court answered in the affirmative and in favour of the Revenue the following question:

"WHETHER on the facts and in the circumstances of the case, the Tribunal was justified in holding that the sale of dal was not tax free when the pulses from which the said dal was procured was purchased by the dealer free of tax on furnishing declaration in Form I as proprietor of a new small-scale industry."

2. The assessee purchases pulses and produces dal therefrom, which it sells. The assessee enjoys exemption from tax on the purchase of pulses. The question is whether the assessee is entitled to the benefit of an exemption notification issued under the provisions of the Orissa Sales Tax Act, the relevant item of which reads thus: "S. No. Description of Conditions and exceptions subject to which _____________goods___________exemption has been allowed________ (1)_________(2)____________________(3]______________ Having regard to the fact that, admittedly, no tax was paid under the said Act in respect of the pulses from which the dal was obtained can it be said that these pulses "have met tax" under the said Act.

3. In State of M.P. v. Indore Iron & Steel Mills (P) Ltd. this Court construed an exemption notification, one of the conditions wherein was "and subject to the

 

further condition that the goods referred to in column 1 had suffered entry tax" (SCC p. 418, para 2) under the particular statue. It was held that the words of the notification were so clear that they left no doubt whatsoever and could not be subjected to any construction but one, namely, that only goods upon which entry tax under the particular statute had been paid were entitled to exemption thereunder. There had to be actual payment. The impact of the entry tax upon the goods for which the exemption was sought had to be felt; only then was the exemption available. The use of the word "suffered" made this plain.

4. In the instant case the exemption in favour of dal is available when the pulses from which the dal is obtained have "met tax" under the said Act. We think that there is no substantial difference between the words of the present notification and the notification with which we were concerned in the case of Indore Iron & Steel Mills (P) Ltd. Here also the dal to qualify for exemption, would have to be obtained from pulses which had felt the impact of tax under the said Act. There had to be actual payment of that tax. This would be the import of the words "had met tax".

5. The High Court, therefore, must be upheld.

6. It was next contended by learned counsel for the appellants that dal was a different commercial commodity that was obtained from pulses and, therefore, in the single point levy under the said Act, dal was, in any event, not liable to tax thereunder. This contention was not advanced before the authorities below or the High Court. It is, basically a question of fact which this Court will not answer.

7. The appeal is dismissed. No order as to costs.

 