**(1989) 11 SC CK 0027**

**In the Supreme Court Of India**

**Case No :** Civil Appeal No. 4197 Of 1986

Collector of Central Excise, Madras — APPELLANT

Vs

Newman Press and Others — RESPONDENT

**Date of Decision :** 09-11-1989

**Acts Referred:**
Central Excises and Salt Act, 1944 — Section 35L

**Citation :** (1990) 48 ELT 626 : (1990) SCC 112 Supp : (1990) 1 SCC 112 Supp

**Hon'ble Judges :** S. Ranganathan, J;J. S. Verma, J;D. N. Ojha, J

**Bench :** Full Bench

**Final Decision :** Allowed

## Judgement

1. These are appeals u/s 35L(b) of the Central Excises and Salt Act ('the Act') from an order of the Customs, Excise and Gold (Control) Appellate Tribunal dated 30th July, 1986. The question before the Tribunal was as to whether the excise duty in respect of cartons manufactured by the respondents was leviable under the Act. These cartons had been exempted from payment of duty upto 27-2-1982 under Notification No. 105/80. However, the Finance Act of 1982 made these cartons eligible to duty under the Tariff Item 17(4) with effect from 28-2-1982. The plea of the assessee was that the cartons, the levy of duty on which was under challenge, had been manufactured before 28-2-1982 and were in stock on that date and the levy cannot attach to them merely because they were cleared after 28-2-1982. The Tribunal accepted the contention raised on behalf of the assessee and, following certain earlier judgments of the Tribunal, held that the pre-budget stocks of cartons which were cleared after the introduction of the new budget would not be chargeable to excise duty. The Collector, Central Excise has preferred this appeal. The appeal was admitted by this Court on 16-11-1987.

2. Learned Counsel for the appellant invited our attention to the decision of this Court in Wallace Flour Mills Co. Ltd. Vs. Collector of Central Excise, Bombay, Division III, :1989-4 Judgments Today 184. This Court has held that, having

regard to the scheme of the Act as well as the terms of Rule 9A of the Central Excise Rules, the Central Excise Authorities are competent to apply the rate prevailing on the date of removal of goods even though the production or manufacture may have been completed at a point of time when the goods were exempt from tax.

3. Following the above decision of this Court, this appeal is allowed. The order of the Appellate Tribunal will stand set aside and the order of the Assistant Collector, Central Excise will stand restored, subject to such other contentions or objections as may be available to the assessee in law. We make no order as to costs.

 