CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Friday, January 25, 1991

Appeal No. 3082

IN THE MATTER OF an appeal heard on November 27, 1990, under section 81.19 of the *Excise Tax Act*, R.S.C., 1985, c. E-15;

AND IN THE MATTER OF a notice of decision by the Minister of National Revenue dated July 27, 1988, with respect to a notice of objection filed under section 81.17 of the *Excise Tax Act*.

BETWEEN

GENERAL METAL SYSTEMS LIMITED **Appellant**

AND

THE MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Robert J. Bertrand, Q.C.
Robert J. Bertrand, Q.C.
Presiding Member

W. Roy Hines
W. Roy Hines
Member

Charles A. Gracey
Charles A. Gracey
Member

Robert J. Martin
Robert J. Martin
Secretary

365 Laurier Avenue West
Ottawa, Ontario K1A 0G7
(613) 990-2452 Fax (613) 990-2439

365, avenue Laurier ouest
Ottawa (Ontario) K1A 0G7
(613) 990-2452 Téléc. (613) 990-2439

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UNOFFICIAL SUMMARY

Appeal No. 3082

GENERAL METAL SYSTEMS LIMITED **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

Excise Tax Act - The issue in this appeal is whether the appellant is entitled to a refund of sales tax that was initially calculated using the sale price set forth in subsection 50(1) of the Excise Tax Act (the Act) when the use of determined values under Memorandum ET 202 to recalculate the amount of tax payable results in a lesser amount of tax to be paid.

This is an appeal pursuant to section 51.19 (now 81.19) of the Act of Notice of Decision No. 80256AE by the Minister, dated July 27, 1988, with respect to a notice of objection filed on April 28, 1988, under section 51.17 (now 81.17) of the Act.

The appellant is requesting that the Tribunal dismiss the assessment and allow the refund.

The appellant argued that the respondent erred by not informing the appellant of an alternative method of tax computation based on the determined value outlined in Memorandum ET 202.

The evidence has demonstrated that Memorandum ET 202 is not applicable in the instant matter.

HELD: *The appeal is not allowed.*

Place of Hearing:	*Ottawa, Ontario*
Date of Hearing:	*November 27, 1990*
Date of Decision:	*January 25, 1991*
Tribunal Members:	*Robert J. Bertrand, Q.C., Presiding Member* *W. Roy Hines, Member* *Charles A. Gracey, Member*
Clerk of the Tribunal:	*Jos. LaRose*
Appearances:	*E.R. Reid, for the appellant* *Joseph de Pencier, for the respondent*
***Statute Cited**:*	*Excise Tax Act, R.S.C., 1970, c. E-13, as amended.*
***Memorandum**:*	*Memorandum ET 202.*

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal No. 3082

GENERAL METAL SYSTEMS LIMITED **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

TRIBUNAL: ROBERT J. BERTRAND, Q.C., Presiding Member
W. ROY HINES, Member
CHARLES A. GRACEY, Member

REASONS FOR DECISION

This is an appeal under section 51.19 (now 81.19) of the *Excise Tax Act* (the Act) of Notice of Decision No. 80256AE by the Minister, dated July 27, 1988, with respect to a notice of objection filed on April 28, 1988, under section 51.17 (now 81.17) of the Act.

FACTS

The appellant is a licensed manufacturer of thermally broken, roll formed, precoated steel window systems that commenced business in 1985 and paid federal sales tax based on the sale price of its goods.

Further to an audit of the appellant's operations for the period of July 5, 1985, to December 31, 1987, the respondent issued Notice of Assesment No. SWO 2539, dated March 11, 1988, showing a credit of $54,515.03 for the overpayment of taxes, due to a clerical error.

Notice of Assesment No. SWO 2549 was issued on March 25, 1988, cancelling the previous notice of assesment by reassessing the appellant for the amount previously shown as a credit for the overpayment of taxes. The reason given for this reassesment was that retroactive adjustments under determined values are not permitted.

On April 28, 1988, the appellant filed a notice of objection to the new notice of assessment, pursuant to section 51.17 of the Act. Notice of Decision No. 80256AE, dated July 27, 1988, confirmed the new notice of assessment.

On October 24, 1988, the appellant filed an appeal from the Minister's decision with the Tariff Board, pursuant to section 51.19 of the Act.

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The appeal was taken up and continued by the Canadian International Trade Tribunal (the Tribunal) pursuant to section 60 of the *Canadian International Trade Tribunal Act*.[1]

The notice of appeal was published in Part I of the October 6, 1990, issue of the Canada Gazette and the hearing was held in Ottawa on November 27, 1990.

LEGISLATION

The relevant provisions of the Act, as they read at the time, are as follows :

26(1) In this Part,

...

"sale price", for the purpose of determining the consumption or sales tax, means

(a) except in the case of wines, the aggregate of

(i) the amount charged as price before any amount payable in respect of any other tax under this Act is added thereto,

(ii) any amount that the purchaser is liable to pay to the vendor by reason of or in respect of the sale in addition to the amount charged as price (whether payable at the same or some other time) including, without limiting the generality of the foregoing, any amount charged for, or to make provision for, advertising, financing, servicing, warranty, commission or any other matter, and

(iii) the amount of the excise duties payable under the Excise Act whether the goods are sold in bond or not,

...

27(1) There shall be imposed, levied and collected a consumption or sales tax at the rate specified in subsection (1.1) on the sale price of all goods

(a) produced or manufactured in Canada

...

51.1(1) The Minister may, in respect of any matter, assess a person for any tax, penalty, interest or other sum payable by that person under this Act and may, notwithstanding any previous assessment covering, in whole or in part, the same matter, make such additional assessments as the circumstances require.

MEMORANDUM

The relevant provision of Memorandum ET 202 read at the time as follows :

2. Use of determined values for tax computation purposes is conditional upon compliance with all of the requirements of this Part and of the memorandum or letter authorizing a ***determined value*** *for the specific goods.* (Emphasis added)

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1. S.C., 1988, c. 56.

ISSUE

The issue in this appeal is whether the appellant is entitled to a refund of sales tax that was initially calculated using the sale price set forth in subsection 50(1) of the Act, when the use of determined values, pursuant to Memorandum ET 202, to recalculate the amount of tax payable results in a lesser amount of tax to be paid.

ARGUMENTS

The main argument of the appellant was that the respondent, when asked by the appellant upon the beginning of its business operations to advise it as to its federal sales tax liability, failed to inform it of its entitlement to use determined values to calculate the tax payable. The appellant alleged that, as a result, it overpaid by error the tax payable and argued that it should be allowed to use an alternative method of tax computation as outlined in Exhibits A-1 (ruling card from Revenue Canada) and A-2 (Memorandum ET 202 dated December 1, 1975) for the period of July 5, 1985, to December 31, 1987.

Counsel for the respondent argued that the appellant had paid the federal sales tax in accordance with the Act, that the Minister was empowered under the Act to correct a notice of assessment issued in error by issuing a new notice of assessment, that the Minister had done so without delay and that the appellant had been reassessed in accordance with the Act. Counsel also argued that, as the appellant was a manufacturer of windows made of steel, the respondent had not failed to inform the appellant of its entitlements because the value determined by the Minister in accordance with Memorandum ET 202 (Exhibit A-2) applied only, as shown by the September 22, 1983, ruling card from Revenue Canada (Exhibit A-1), to the sale of doors and windows made of wood, aluminum or polyvinyl chloride.

Counsel for the appellant argued that it was unreasonable for the respondent to determine a value for doors and windows that did not apply to doors and windows made of steel.

CONSIDERATION OF THE EVIDENCE AND ARGUMENTS

The appellant is a licensed manufacturer of thermally broken, roll formed, pre-coated steel window systems.

The use of determined values for tax computation purposes is, as stated in section 2 of Memorandum ET 202, conditional upon compliance with all the requirements of the memorandum and of the letter authorizing a determined value for the specific goods. The evidence has shown that the respondent has specifically stipulated in Exhibit A-1 and in the letter of August 15, 1988, sent by the respondent to the appellant (filed by the appellant as Exhibit 7 of its brief) that the value for tax computation of doors and windows, determined in accordance with section 2 of Memorandum ET 202, applied to doors and windows made of wood, aluminum or polyvinyl chloride steel.

As to whether it was unreasonable for the respondent to determine a value for doors and windows that did not apply to doors and windows made of steel, no evidence was submitted to the Tribunal to support that argument.

CONCLUSION

The appeal should be dismissed.

Robert J. Bertrand, Q.C.
Robert J. Bertrand, Q.C.
Presiding Member

W. Roy Hines
W. Roy Hines
Member

Charles A. Gracey
Charles A. Gracey
Member