Docket: 2017-2825(GST)G

BETWEEN:

MEDICLEAN INCORPORATED,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on November 8, 2021, at Toronto, Ontario

Before: The Honourable Justice John R. Owen

Appearances:

Counsel for the Appellant:	Louise R. Summerhill Monica Carinci
Counsel for the Respondent:	Andrée-Anne Lavoie

JUDGMENT

UPON hearing the evidence and submissions of counsel for the Appellant and counsel for the Respondent;

IN ACCORDANCE with the attached Reasons for Judgment, the appeal from the reassessments under Part IX of the *Excise Tax Act* (the "GST Act") of each of the Appellant's quarterly reporting periods ending in the period from January 1, 2009 through June 30, 2015 ("Reporting Periods") is allowed and the reassessments are referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that:

1. the penalties assessed under section 285 of the GST Act shall be cancelled;

2. $76,291.61 shall be allowed as input tax credits on the basis that one-quarter of the total of the amounts identified for a year in Appendix H to the Partial

Agreed Statement of Facts is an input tax credit for each of the four quarterly reporting periods of the Appellant ending in that year; and

3. the Disputed Payments (defined in paragraph 87 of the Reasons for Judgment) shall be applied to reduce the net tax of the Appellant for the Reporting Periods in which the Disputed Payments were paid.

The Appellant shall have 30 days from the date of this judgment to submit written submissions on costs. The Respondent shall have a further 30 days to provide written submissions in response to the Appellant's submissions. The written submissions of each party are not to exceed ten pages.

Signed at Ottawa, Canada, this 17th day of March 2022.

"J.R. Owen"

Owen J.

Citation: 2022 TCC 37
Date: 20220317
Docket: 2017-2825(GST)G

BETWEEN:

MEDICLEAN INCORPORATED,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Owen J.

I. Introduction

[1] Mediclean Incorporated (the "Appellant") is appealing the reassessment under Part IX of the *Excise Tax Act* (the "GST Act")[1] by notice dated May 5, 2016 (collectively, the "Reassessments") of each of its quarterly reporting periods ending in the period from January 1, 2009 through June 30, 2015 (collectively, the "Reporting Periods" and, individually, a "Reporting Period").

[2] For each of the Reporting Periods, the Reassessments denied input tax credits ("ITCs") claimed by the Appellant for payments to independent contractors that provided cleaning services to the Appellant during the Reporting Period (collectively, the "Subcontractors" and, individually, a "Subcontractor") and imposed penalties under section 285.

[3] The total of the ITCs denied by the Reassessments of the Reporting Periods ending in 2009 (the "2009 Reporting Periods") is $94,034.76 and the total of the ITCs denied by the Reassessments of the Reporting Periods ending in the period from January 1, 2010 through June 30, 2015 (the "2010–2015 Reporting Periods") is $747,655.15. I will refer to the Reassessments of the 2009 Reporting Periods as

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[1] Unless otherwise stated, all statutory references are to the *Excise Tax Act*.

the "2009 Reassessments" and to the Reassessments of the 2010–2015 Reporting Periods as the "2010–2015 Reassessments".

[4] The Reassessments of the Reporting Periods ending in the period from January 1, 2010 through March 31, 2012 (the "2010–2012 Reporting Periods") were issued after the expiry of the four-year limitation period set out in paragraph 298(1)(a). I will refer to these Reassessments as the "2010–2012 Reassessments".

[5] The Appellant previously conceded that the 2009 Reassessments were issued within the four-year limitation period because the Appellant filed the returns for the 2009 Reporting Periods on January 20, 2016.[2]

[6] The Respondent previously conceded that the Appellant was entitled to ITCs totalling $76,291.61 for payments made in the 2010–2015 Reporting Periods to the Subcontractors that were registered under the GST Act.[3]

[7] At the commencement of argument, counsel for the Respondent conceded that the penalties under section 285 did not apply to the 2010–2015 Reporting Periods.

[8] Consequently, the issues to be addressed are as follows:

1. Is the Appellant entitled to ITCs, or the deduction of a rebate in computing net tax, in the amount of $94,034.76 for the 2009 Reporting Periods?

2. Is the Appellant entitled to ITCs, or the deduction of a rebate in computing net tax, in the amount of $671,363.54[4] for the 2010–2015 Reporting Periods?

3. Are the 2010–2012 Reassessments statute-barred and therefore void?

4. Is the Appellant liable for penalties under section 285 for the 2009 Reporting Periods?

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[2] See the Partial Agreed Statement of Facts reproduced in paragraph 9.
[3] Ibid.
[4] This is $747,655.15 minus the $76,291.61 of ITCs conceded by the Respondent.

II. The Facts

[9] The parties filed a Partial Agreed Statement of Facts (the "PASF"). The PASF states:

> 1. The Appellant is a corporation created under the laws of Ontario with its registered office address in Thornhill, Ontario.
>
> 2. The Appellant is engaged in the business of providing professional cleaning services to businesses including hotels, medical offices and commercial properties.
>
> 3. In order to provide services to its clients, the Appellant engages workers to provide cleaning services.
>
> 4. In a prior Tax Court of Canada appeal (2008 [*sic*] TCC 340[5]), the Court held that workers engaged by the Appellant were subcontractors. The decision is attached hereto as Appendix A.
>
> 5. In 2009, following the decision in the Tax Court of Canada appeal, the Appellant prepared and entered into a subcontractor agreement with each subcontractor engaged by the Appellant. Samples of these agreements are attached hereto as Appendix B.
>
> 6. The Appellant received master business licences from some of the subcontractors. Samples of these licences are attached hereto as Appendix C.
>
> 7. Also in 2009, the Appellant set up a payment system through its third-party provider Desjardins to effect payment to all of the subcontractors. The payroll records for the reporting periods January 1, 2010 to June 30, 2015 are attached hereto as Appendix D. The payroll records are representative of the payments made to the subcontractors in the referenced periods.
>
> 8. The subcontractors did not invoice the Appellant.
>
> 9. Each subcontractor received a pay stub. A sample paystub is attached hereto as Appendix E. The sample paystub is representative of the paystubs issued to all subcontractors at issue in this Appeal.
>
> 10. The Appellant filed GST/HST returns for the reporting periods between January 1, 2009 and June 30, 2015 (the "Relevant Periods") on the dates set out in Schedule "A" of the Respondent's Reply. In the returns, the Appellant claimed Input tax credits ("ITCs") in respect of the subcontractors listed in the payroll records at Appendix D, and in the consolidated list at Appendix F.

[5] The correct cite is 2009 TCC 340.

> 11. On May 5, 2016, the Minister issued a Notice of Reassessment (the "Reassessment") for the Relevant Periods. The Reassessment is attached hereto as Appendix G.
>
> 12. The Appellant claimed ITCs in the amount of $94,034.76 for the year 2009.
>
> 13. The total amount of disallowed ITCs that relate to the Appellant's subcontractors [*sic*] expense in reporting periods between January 1, 2010 and June 30, 2015 is $747,655.15.[6]
>
> 14. The Respondent has conceded to allow ITCs in the amount of $76,291.61, which were claimed in respect of payments made to subcontractors that were registered at the time of payment. The registration numbers of these subcontractors and a breakdown of the amount conceded by subcontractor is attached hereto as Appendix H.
>
> 15. The Appellant has conceded that the reporting periods between January 1, 2009 and December 31, 2009 are not statute-barred because the return for those periods was late-filed on January 20, 2016.

[10] Two witnesses testified for the Appellant: John Procopoudis, the President of the Appellant; and David Burkes, CPA, the Appellant's long-time accountant. I find that both witnesses were credible. No witness was called by the Respondent.

[11] On July 17, 2009, the Tax Court of Canada released its judgment in *Mediclean Incorporated v. MNR*, 2009 TCC 340. The Court held that workers of the Appellant that were determined by the Minister of National Revenue (the "Minister") to be engaged in insurable and pensionable employment for the purposes of the *Employment Insurance Act* and the *Canada Pension Plan* were independent contractors.

[12] Following this decision, the Appellant took steps in 2009 to formalize its relationship with its independent contractors by preparing and entering into a written agreement with each independent contractor.[7] Samples of written agreements executed in 2012, 2013, 2014 and 2015 are attached to the PASF as Appendix B (Exhibit A-3).

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[6] The Minister's Reply states in paragraph 5 that a total of $747,655 of ITCs were disallowed for the Reporting Periods. I assume the PASF provides the correct numbers of $94,034.76 for the 2009 Reporting Periods and $747,655.15 for the 2010-2015 Reporting Periods.

[7] Paragraphs 4 and 5 of the PASF.

[13] The Appellant entered into the same written agreement with employees who chose to become independent contractors and with all future independent contractors.

[14] Paragraph 4 of the written agreement states:

> The Company will pay you bi-weekly for services performed under this agreement a(n) hourly fee of $*[8] plus H.S.T. if applicable during the term of this agreement (the "Subcontractor fee"). The subcontractor [*sic*] fee will be paid within 15 days after you submit an invoice or on-site record for such services.

[15] Also in 2009, the Appellant set up a payment system through a payroll company called Desjardins to effect payments to each Subcontractor.[9] A 250-page printout with Desjardins's name at the bottom left of each page is attached to the PASF as Appendix D (Exhibit A-1). Exhibit A-1 is representative of the payments made by Desjardins to the Appellant's independent contractors during the 2010–2015 Reporting Periods.[10]

[16] Exhibit A-1 shows the payments made to independent contractors, and to employees of the Appellant,[11] for the pay periods ending December 15, 2010, December 15, 2011, December 15, 2012, December 15, 2013, December 15, 2014, and December 15, 2015.[12] Mr. Procopoudis testified that the records for 2009 were not available because Desjardins had deleted those records because of the passage of time.

[17] Exhibit A-1 shows for each payment to a Subcontractor the Subcontractor's name, address, hourly rate, hours worked, earnings paid and GST/HST paid to the Subcontractor.

[18] Each Subcontractor received a pay stub.[13] A sample pay stub with Desjardins's name at the bottom right is attached as Appendix E to the PASF (Exhibit A-2). The sample pay stub includes the name of the Appellant, the name and address of the payee, the function of the payee,[14] the hours worked, the hourly rate, the total

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[8] I have omitted the number of dollars as it is not relevant.
[9] Paragraph 7 of the PASF.
[10] Paragraph 7 of the PASF.
[11] Exhibit A-1 identifies employees of the Appellant as "cleaners" and independent contractors as "subcontractors". Exhibit A-1 indicates that Desjardins did not pay GST/HST to cleaners but rather deducted amounts on account of income tax, EI and CPP from the gross amount payable.
[12] Paragraph 7 and Appendix D of the PASF.
[13] Paragraph 9 and Appendix E of the PASF.
[14] The function of independent contractors is listed as "subcontractor".

payment for services provided during the period covered by the stub, the amount of GST paid, the period to which the payment relates and the date on which the amount stated on the stub became payable.

[19] In August or September 2009, Mr. Procopoudis retrieved information from the Canada Revenue Agency ("CRA") website regarding the information needed to claim an ITC for GST/HST paid under a contractual arrangement.

[20] In May 2015, the CRA commenced an audit of the Appellant under the GST Act (the "CRA Audit"). Mr. Procopoudis testified that he had his own position but that the CRA auditor had his own procedure and that after the CRA auditor presented the CRA position early in the audit, Mr. Procopoudis went to the CRA website to print the CRA guidance for his records.[15]

[21] Two pages of information were entered as Exhibit A-4. The first page addresses contractual arrangements and the second page addresses small suppliers.

[22] Mr. Procopoudis testified that the information on page 1 of Exhibit A-4 regarding the information requirements for contractual arrangements was the same as he had retrieved in 2009.

[23] Mr. Procopoudis's understanding from reviewing the CRA website in August or September 2009 was that for the Appellant to claim ITCs for payments of GST/HST under a contractual arrangement, the books and records and related documents had to show:

> a) The name or trading name and address of the supplier.
>
> b) The supplier's business number.
>
> c) The reporting period when the HST was paid or became payable and the amount of HST paid or payable.
>
> d) The type of supply.
>
> e) The name or trading name and address of the recipient of the supply.

[24] In cross-examination, Mr. Procopoudis stated that when the contract with the Subcontractors was developed in 2009, he did not seek professional advice regarding

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[15] Line 2 to 22 of page 31 of the transcript of the hearing of this appeal on November 8, 2021 (the "Transcript").

the Appellant's entitlement to ITCs because he believed that the position of the CRA regarding contractual arrangements was clear-cut.

[25] Mr. Procopoudis was asked about the information regarding small suppliers on page 2 of Exhibit A-4 and he replied that he did not refer to that information in 2009 and only became aware of the small supplier issue in 2015 when it was raised by the CRA auditor. I infer from this that the document was printed by Mr. Procopoudis in response to the comments of the CRA auditor.

[26] Mr. Procopoudis repeated his understanding that the small supplier rule was not relevant because the contracts between the Appellant and the Subcontractors provided for the payment of GST/HST on taxable supplies and the services provided by the Subcontractors were taxable supplies.[16]

[27] When asked about the words "if applicable" in paragraph 4 of the sample contracts, Mr. Procopoudis stated that it was his understanding that those words addressed whether the services provided by the Subcontractors were taxable supplies.

[28] In a meeting to review the Appellant's 2014 financial statements in the first week of May 2015, Mr. Burkes advised Mr. Procopoudis that the CRA was looking into unregistered contractors that were collecting GST/HST. Mr. Burkes suggested that the Appellant request HST numbers before paying HST to the Subcontractors. In June 2015, the CRA auditor advised Mr. Procopoudis of the CRA's position that the Appellant should obtain an HST number before paying HST.

[29] On July 1, 2015, the Appellant sent a letter to all the Subcontractors stating that they had to be registered under the GST Act by July 30, 2015, to continue to receive HST. A sample copy of the letter was entered into evidence as Exhibit A-6. At the same time, the Appellant amended its contract with the Subcontractors.

[30] In October or November 2015, the CRA auditor advised Mr. Procopoudis that the Appellant had not filed GST returns for the 2009 Reporting Periods.[17] Mr. Procopoudis investigated the missing returns and discovered them with the 2009 financial statements of the Appellant. He signed and filed the returns together

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[16] Line 20 of page 44 to line 2 of page 45 of the Transcript.
[17] In 2009, persons in Ontario were subject to GST and provincial sales tax, not HST.

with a payment that included an additional $4,000 to address penalties and interest.[18] Mr. Procopoudis did not consult with Mr. Burkes prior to filing these returns.

[31] Mr. Procopoudis testified that the GST/HST returns of the Appellant for the Reporting Periods were prepared by Mr. Burkes based on the information provided by the Appellant. Mr. Burkes testified that prior to the commencement of the CRA audit in May 2015 he was not asked to give advice regarding the Appellant's entitlement to ITCs, that he had assumed in preparing the Appellant's GST/HST returns for the Reporting Periods that GST/HST had to be paid to all the Subcontractors and that in May 2015, when preparing for the audit, he discovered that some of the Subcontractors should not have been paid GST/HST because they were unregistered small suppliers.

III. The Positions of the Parties

A. The Appellant

[32] The Appellant submits that it is entitled to ITCs for all the GST/HST paid to the Subcontractors in the Reporting Periods. Furthermore, even if the Appellant is not entitled to such ITCs, for each of the Reporting Periods the Minister must apply the amount of GST/HST paid by the Appellant to the Subcontractors in error during the Reporting Period to reduce the net tax owing by the Appellant for the Reporting Period.

[33] In support of the latter position, the Appellant cites subsections 261(1) and 296(2.1) and *Société en Commandite Sigma-Lamaque v. R.*, 2010 TCC 415 at paragraphs 26 and 28 and *United Parcel Service Canada Ltd. v. R.*, 2009 SCC 20, [2009] 1 SCR 657 ("*UPS*") at paragraphs 23, 29 and 30.

[34] With respect to each of the 2010–2012 Reassessments, the Appellant submits that the Minister has the burden of proving the facts that establish that the Appellant made a misrepresentation in respect of its claim for ITCs in the GST/HST return for the Reporting Period to which the assessment applies and that such misrepresentation was attributable to the Appellant's neglect, carelessness, or wilful default.

[35] The Appellant submits that while the standard of behaviour expected of taxpayers in filing returns is that of a wise and prudent person, the standard is not

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[18] Paragraph 15 of the PASF states that the returns were filed on January 20, 2016.

one of perfection. A misrepresentation does not exist if the Appellant has thoughtfully, deliberately and carefully assessed the situation and filed on what is *bona fide* believed to be the correct basis. The Appellant cites *The Queen v. Regina Shoppers Mall Ltd.*, 91 DTC 5101 at page 5105 and *Salloum v. R.*, 2014 TCC 366 (Informal Procedure) affirmed, 2016 FCA 85, which in turn cites *Johnson v. R.*, 2012 FCA 253 at paragraph 55.

[36] With respect to the assessment of penalties for the 2009 Reporting Periods, the Appellant submits that the Minister has the burden of proving the facts that support the imposition of a penalty under section 285. The Appellant submits that the Minister has provided no evidence that would establish that the Appellant knowingly or in circumstances amounting to gross negligence made a false statement in the returns filed for the 2009 Reporting Periods. The Appellant submits that it is not grossly negligent to overpay tax and then seek to have that tax refunded.

B. The Respondent

[37] The Respondent submits that the Appellant is not entitled to ITCs for amounts paid to unregistered small suppliers because, contrary to paragraph 169(4)(a), the Appellant failed to obtain sufficient evidence to enable the amount of the ITCs to be determined, including the information prescribed by the *Input Tax Credit Information (GST/HST) Regulations* (the “Information Regulations”).

[38] In particular, the Respondent submits that the Appellant did not obtain a GST/HST registration number from the Subcontractors contrary to paragraphs 3(b) and 3(c) of the Information Regulations. In support of its position that a registration number is required for the Appellant to claim ITCs, the Respondent cites *Systematix Technology Consultants Inc. v. R.*, 2006 TCC 277 (Informal Procedure) (“*Systematix*”), affirmed 2007 FCA 226 and paragraph 79 of *SNF L.P. v. R.*, 2016 TCC 12 (“*SNF*”).

[39] In addition, for the 2009 Reporting Periods, the Respondent submits that the Appellant claimed ITCs for those periods after the expiry of the limitation period in subsection 225(4) and therefore is not entitled to claim those ITCs.

[40] The Respondent submits that the Appellant is not entitled to a rebate for tax paid in error under section 261 and subsection 292(2.1).

[41] The Respondent cites paragraph 20 of *Systematix* for the proposition that the GST Act must be strictly applied and cannot be stretched to address GST/HST paid

in good faith even if there is perceived unfairness. The Respondent cites paragraph 28 of *Systematix* for the proposition that the Appellant has not proven that GST/HST was paid in error because there is no evidence that the Subcontractors were small suppliers.

[42] Alternatively, the Respondent cites paragraph 84 of *SNF* for the proposition that the amounts paid by the Appellant to the Subcontractors were paid because of the Appellant's own negligence, or inattention and carelessness, and that the Appellant is not entitled to a rebate caused by such behaviour. Since the Appellant was not entitled to a rebate if it had been claimed in time, subsection 292(2.1) is not applicable.

[43] The Respondent cites paragraphs 33 to 36 of *Reluxicorp Inc. v. R.*, 2011 TCC 336, in support of her position that the 2010–2012 Reassessments are valid because the Appellant made a misrepresentation in its returns for the 2010–2012 Reporting Periods that was attributable to neglect, carelessness or wilful default.

[44] The Appellant did not comply with the information requirements in section 169 and therefore made a misrepresentation when it claimed entitlement to ITCs. The Appellant did not obtain any professional advice regarding the documentation required to claim ITCs or regarding its obligation to pay GST/HST to the Subcontractors. The Appellant also did not undertake a thoughtful, deliberate and careful analysis of whether to pay GST/HST to the Subcontractors. Consequently, the misrepresentations by the Appellant were due to neglect or carelessness.

[45] The Respondent submits that the Appellant is liable for the penalty assessed under subsection 285 for the 2009 Reporting Periods because the Appellant filed the GST/HST returns for those periods and claimed ITCs for payments of GST/HST to Subcontractors notwithstanding the issues raised by the CRA audit. Consequently, the Appellant was either wilfully blind to the issue concerning the application of GST/HST to the payments made to unregistered Subcontractors or was grossly negligent in failing to properly consider that issue.

IV. Statutory Provisions

[46] The statutory provisions relevant to this appeal are cited in the footnotes in the Analysis section of these reasons and where appropriate are reproduced in that section.

V. Analysis

[47] I will first address the Appellant's claim for ITCs and the Appellant's alternative claim for the application of an "allowable rebate"[19] to reduce the net tax owed by the Appellant for the Reporting Periods. The Appellant's alternative positions require an understanding of the applicable regime in the GST Act, which is simple in concept but complex in its execution.

A. Summary of the Relevant Tax, ITC and Rebate Provisions

[48] Rather than addressing a few disparate statutory provisions in isolation, I will first summarize the extensive list of provisions that govern the imposition of tax and eligibility for ITCs and rebates in the circumstances of this case. This summary provides a complete statutory context for the issues raised in this appeal.

[49] The GST Act imposes tax under four divisions: Division II, Division III, Division IV and Division IV.1. This appeal is concerned only with tax imposed under Division II.

[50] Every recipient of a taxable supply made in Canada is required to pay to Her Majesty in right of Canada tax in respect of the supply calculated on the value of the consideration for the supply.[20] The general rule[21] is that the tax is payable by the recipient of the taxable supply on the earlier of the day the consideration for the supply is paid and the day the consideration for the supply becomes due.

[51] The imposition of tax under subsections 165(1) and (2) is "Subject to this Part". Since "this Part" is the whole GST Act, each exception or qualification elsewhere in the GST Act must be taken into consideration in determining a person's liability for the tax imposed by these subsections.

[52] The term "supply" means "the provision of property or a service in any manner, including sale, transfer, barter, exchange, licence, rental, lease, gift or disposition".[22]

[53] The definitions of "property" and "service" are in turn extremely broad.[23] However, the definition of service excludes "anything that is supplied to an employer by a person who is or agrees to become an employee of the employer in

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[19] Defined in subsection 296(2.1).
[20] Subsections 165(1) and (2).
[21] Subsection 168(1). The rules in subsections 168(2) through (9) address special circumstances such as consideration that is paid or becomes due on more than one day.
[22] Subsection 123(1). This meaning is subject to the rules in sections 133 and 134.
[23] Subsection 123(1).

the course of or in relation to the office or employment of that person”.[24] Consequently, a supply includes the services provided by an independent contractor to a client but not the services provided by an employee to his or her employer.

[54] A “taxable supply” is a supply made in the course of a “commercial activity”.[25]

[55] A “commercial activity” of a person means a business of the person, an adventure or concern of the person in the nature of trade (an “ANT”) and the making of a supply by the person of real property.[26] A “business” includes a profession, calling, trade, manufacture or undertaking of any kind whatever, whether the activity or undertaking is engaged in for profit.[27]

[56] The definition of “commercial activity” excludes a business or ANT that involves the making of exempt supplies by the person, an exempt supply by the person of real property and, in the case of an individual, a personal trust or a partnership of individuals, a business or ANT carried on or engaged in without a reasonable expectation of profit.

[57] Where the taxable supply is made in a non-participating province, the tax is called goods and services tax (GST).[28] Where the taxable supply is made in a participating province such as Ontario, the tax is called harmonized sales tax (HST).[29] The rate of tax is 5% plus a prescribed provincial percentage if the supply is made in a participating province.[30] For taxable supplies made in Ontario before July 1, 2010, the rate of tax (GST) is 5% and for taxable supplies made in Ontario after June 30, 2010, the rate of tax (HST) is 13%.[31]

[58] The Minister may assess any tax payable by a person under Division II (as well as IV or IV.1).[32] However, if the tax is paid by the recipient of the taxable supply to the person making that supply, then tax is no longer payable by the recipient of the supply provided the transactions are *bona fide*.[33]

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[24] Ibid.
[25] Both terms are defined in subsection 123(1).
[26] Subsection 123(1).
[27] Subsection 123(1).
[28] Subsection 165(1).
[29] Subsection 165(2).
[30] Subsections 165(1), (2) and (4) and the definitions of “participating province” and “tax rate” in subsection 123(1).
[31] Prior to July 1, 2010, GST applied to taxable supplies made in Ontario.
[32] Paragraph 296(1)(b).
[33] *Airport Auto Limited v. The Queen*, 2003 TCC 683.

[59] Subject to three exceptions,[34] if a person makes a taxable supply and the consideration for that supply becomes due when that person is a small supplier that is not a registrant, the consideration is not included in computing the tax payable in respect of the supply.[35] Consequently, there is no tax payable on a taxable supply by a small supplier that is not a registrant.

[60] A person is a small supplier throughout a calendar quarter if the total consideration for taxable supplies made by that person that became due in the previous four calendar quarters does not exceed $30,000. A person ceases to be a small supplier at the time the $30,000 limit is exceeded.

[61] A person is a "registrant" if that person is registered, or is required to be registered, under Subdivision D of Division V of the GST Act.[36] Subject to three exceptions, every person that makes a taxable supply in Canada in the course of a commercial activity engaged in by the person in Canada is required to be registered.[37]

[62] One of the three exceptions is for a small supplier that does not carry on a taxi business.[38] Notwithstanding this exception, a small supplier engaged in a commercial activity in Canada may register so as to be entitled to ITCs for tax paid.[39] If a small supplier is registered, then tax is payable on any taxable supply made by that small supplier.

[63] A supply included in Schedule VI to the GST Act is a "zero-rated supply". A taxable supply that is a zero-rated supply is subject to tax but at a zero rate of tax.[40] Groceries are a common example of a zero-rated supply.

[64] A supply included in Schedule V of the ETA is an "exempt supply". An exempt supply is not subject to tax under the GST Act.[41]

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[34] The exceptions are in paragraphs 166(a), (b) and (c) and are for a supply by way of sale of real property and for specified supplies by a municipality or a body designated as a municipality for the purposes of section 259.
[35] Section 166.
[36] Subsection 123(1).
[37] Subsection 240(1). The three exceptions are in paragraphs 240(1)(a), (b) and (c).
[38] Paragraph 240(1)(a) and subsection 240(1.1).
[39] Paragraph 240(3)(a).
[40] Subsections 165(1) and (3).
[41] Subsection 165(1) and the definitions of "commercial activity" and "taxable supply" in subsection 123(1).

[65] A recipient of a zero-rated supply may be entitled to ITCs in respect of that supply, for example, if there is tax on a delivery charge for the zero-rated supply.[42] A recipient of an exempt supply is not entitled to ITCs in respect of the supply.[43]

[66] A person that makes a taxable supply must collect the tax that is payable by the recipient in respect of the supply.[44] This general rule does not apply to a taxable supply by a small supplier that is not a registrant because the consideration for such a supply is not included in calculating the tax payable on the supply and therefore the tax payable is nil.[45] This general rule does apply to a taxable supply by a small supplier if the small supplier is a registrant or one of the exceptions in paragraph 166(a), (b) or (c) applies to the supply.

[67] Every registrant must file a return for each reporting period of the registrant.[46]

[68] The reporting period of a registrant may be a fiscal year, a fiscal quarter or a fiscal month of the registrant depending on the threshold amount of the registrant.[47]

[69] Special rules apply where a person becomes or ceases to be a registrant,[48] where a person becomes or ceases to be bankrupt[49] or where a person enters or leaves a receivership.[50]

[70] If the reporting period of the registrant is a fiscal year, then the registrant's return is due three months after the end of the reporting period.[51] However, where the registrant is an individual whose fiscal year is the calendar year, the due date is the following June 15 if that is the individual's filing due date under the *Income Tax Act* (the "ITA").[52]

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[42] Subsection 169(1).
[43] Item B of the formula in subsection 169(1) and the definition of "commercial activity" in subsection 123(1).
[44] Subsection 221(1).
[45] Section 166.
[46] Subsection 238(1).
[47] Section 245. The threshold amount of a person is determined under section 249. The default rules are subject to the elections available in sections 246 to 248.
[48] Section 251.
[49] Paragraph 265(1)(g).
[50] Paragraph 266(2)(e).
[51] Subparagraph 238(1)(a)(iii). A different rule applies to certain listed financial institutions: subparagraph 238(1)(a)(i).
[52] Subparagraph 238(1)(a)(ii).

[71] If the reporting period of the registrant is other than a fiscal year, then the registrant's return is due one month after the end of the reporting period.[53]

[72] Every person who is not a registrant must file a return for a reporting period for which net tax is remittable by the person. The filing deadline for the return is one month after the end of the reporting period.[54] The reporting period for a person who is not a registrant is a calendar month.[55]

[73] Every person who is required to file a return under Division II must calculate in the return the person's net tax for the reporting period for which the return is filed.[56]

[74] A person is required to remit to the Minister that person's net tax for a reporting period on or before the day the return for the reporting period is due.[57] However, if the return of an individual is due on June 15 under subparagraph 238(1)(a)(ii) as described above, the due date for remittance is April 30.[58]

[75] Subject to the rules in Subdivision B, a person's net tax is the sum of all amounts collectible or collected in the reporting period as or on account of tax under Division II plus all other amounts required by the GST Act to be added to net tax for the reporting period less the sum of ITCs for the reporting period or a prior reporting period claimed by the person in a return under Division II filed for the reporting period and all amounts that may be deducted from net tax under the GST Act for the reporting period.[59]

[76] Where a person acquires or imports a good or service during a reporting period of the person during which the person is a registrant and tax becomes payable by the person or is paid by the person without having become payable, an amount determined by formula is an ITC of the person.[60] If the acquisition or importation of a good or service is not solely for consumption, use or supply in the course of commercial activities, B of the formula limits the ITC to a percentage of the tax

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[53] Paragraph 238(1)(b).
[54] Subsection 238(2).
[55] Subsection 245(1).
[56] Subsection 228(1).
[57] Paragraph 228(2)(b).
[58] Paragraph 228(2)(a). There are also special rules for selected listed financial institutions in subsections 228(2.1) and (2.3).
[59] Subsection 225(1).
[60] Subsection 169(1).

payable based on the extent to which the acquisition or importation is for such a purpose.

[77] A registrant may deduct ITCs in computing net tax only if the registrant has obtained sufficient evidence in such form containing such information as will enable the amount of the input tax credit to be determined including any information required by the Information Regulations.[61] The Minister has a discretionary power to waive this requirement.[62]

[78] A registrant that is not a specified person must claim an ITC on or before the filing due date for the return for the last reporting period that ends within four years of the end of the reporting period in which the ITC arose.[63]

[79] A person may not deduct in computing net tax an amount included or claimed as an ITC or deduction in a preceding reporting period. If, however, the person was not entitled to claim the amount in determining that person's net tax for the preceding reporting period solely because the person did not satisfy the information requirements in subsection 169(4) before the return for that preceding reporting period was filed, then this general prohibition does not apply.[64]

[80] In addition, if specified conditions are satisfied, when assessing net tax for a particular reporting period, the Minister must allow certain ITCs even if the four-year limitation for claiming the ITCs has expired.[65] The conditions are:

1. An amount in respect of the ITC would have been allowed if the ITC had been claimed in a timely filed return for the particular reporting period and the information requirements in subsection 169(4) had been met.

2. The ITC was not claimed in a return filed before the notice of assessment for the particular reporting period was sent to the person claiming the ITC, or if it was so claimed it was disallowed by the Minister.

3. The ITC would be allowed for a reporting period of the person if it were claimed in a return filed on the day the notice of assessment for the

[61] Subsection 169(4) and the Information Regulations.
[62] Subsection 169(5).
[63] Subsection 225(4). The term "specified person" is defined in subsection 225(4.1).
[64] Paragraph 225(3)(a). Paragraph 225(3)(b) imposes additional conditions if the Minister allowed the ITC in assessing net tax for the prior reporting period.
[65] Subsection 296(2).

particular reporting period is sent assuming the four-year limitation period is ignored.

[81] Subject to two limitations, a person that has, whether by mistake or otherwise, paid an amount as or on account of tax, net tax, penalty, interest or other obligation under the GST Act, in circumstances where the amount was not payable or remittable by the person, is entitled to a rebate of the amount so paid.[66]

[82] Under the first limitation, a rebate shall not be paid if any one of three circumstances exist:

1. The amount was taken into account as tax or net tax for a reporting period of the person and the Minister has assessed the person for the period under section 296.[67]

2. The amount paid was tax, net tax, penalty, interest or any other amount assessed under section 296.[68]

3. A rebate of the amount is payable under subsection 215.1(1) or (2) or 216(6) or a refund of the amount is payable under section 69, 73, 74 or 76 of the *Customs Act* because of subsection 215.1(3) or 216(7).[69]

[83] Under the second limitation, a rebate shall be paid only if the person has filed an application for the rebate within two years after the day the amount was paid or remitted by the person.[70]

[84] Notwithstanding this second limitation, the Minister is required, in assessing the net tax of a person for a reporting period, to deduct the rebate if the Minister determines that an amount (the "allowable rebate") would have been payable to the person as a rebate if:

1. the rebate had been claimed in an application filed on the day on or before which the return for the period was required to be filed and the person had paid or remitted that amount,

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[66] Subsection 261(1).
[67] Paragraph 261(2)(a).
[68] Paragraph 261(2)(b).
[69] Paragraph 261(2)(c).
[70] Subsection 261(3).

2. the allowable rebate was not claimed by the person in an application filed before the day notice of the assessment is sent to the person, and

3. the allowable rebate would be payable to the person if it were claimed in an application filed on the day notice of the assessment is sent to the person or would be disallowed if it were claimed in that application only because the period for claiming the allowable rebate expired before that day.[71]

B. Analysis of the Appellant's Claim for ITCs or a Rebate

[85] Counsel for the Appellant submits that either the Appellant is entitled to ITCs under subsection 169(1) for the amounts paid to the Subcontractors as tax under Division II of the GST Act, or the Appellant is entitled either to the payment of a rebate under subsection 261(1) for tax paid in error, or to the application of such a rebate to reduce its net tax under subsection 296(2.1).

[86] The Respondent has conceded the Appellant's claim for ITCs in respect of tax paid (the "Allowed Payments") to Subcontractors that were registrants at the time of payment (the "Registered Subcontractors"). The Allowed Payments are listed on an annual basis in tab H to the PASF and total $76,291.61. Counsel for the Respondent advised the Court that the ITCs allowed for each of the quarterly reporting periods ending in a year identified in this summary would be one quarter of the annual amount stated for that year.[72]

[87] The Respondent does not concede the Appellant's claim for ITCs for amounts totalling $765,398.30 identified by the Appellant as tax paid (the "Disputed Payments") to Subcontractors that were not registrants at the time of payment (the "Unregistered Subcontractors").

[88] The basis for the Respondent's disallowance of the Disputed Payments is that the Appellant did not meet the information requirements imposed by subsection 169(4), in particular, the requirement to obtain a registration number from each Subcontractor that was paid tax. In addition, the Respondent submits that the Appellant's claims for ITCs in respect of the 2009 Reporting Periods were filed after the expiry of the four-year limitation period in subsection 225(4).

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[71] Subsection 296(2.1).
[72] Since I have no evidence to suggest otherwise, I assume that one quarter of the annual amounts coincidentally equals the Allowed Payments for each of the 2010–2015 Reporting Periods.

[89] Exhibit A-1 indicates that Subcontractors were paid amounts periodically and that these amounts were each in excess of $30. The PASF states that Exhibit A-1 is representative of the payments made by the Appellant to Subcontractors during the 2010–2015 Reporting Periods. There is no evidence to suggest that the magnitude of the individual payments was different for the 2009 Reporting Periods.

[90] In such circumstances, for the purposes of paragraph 169(4)(a), the following information is prescribed by subparagraph 3(b)(i) of the Information Regulations:

> 3. For the purposes of paragraph 169(4)(a) of the Act, the following information is prescribed information:
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> . . .
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> (b) where the total amount paid or payable shown on the supporting documentation in respect of the supply or, if the supporting documentation is in respect of more than one supply, the supplies, is $30 or more and less than $150,
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> (i) the name of the supplier or the intermediary in respect of the supply, or the name under which the supplier or the intermediary does business, **and the registration number assigned under section 241 of the Act to the supplier or the intermediary, as the case may be**, ...

[Emphasis added.]

[91] If a payment exceeds $150, paragraph 3(c) of the Information Regulations imposes requirements in addition to those in paragraph 3(b).

[92] Mr. Procopoudis relied on information on the CRA website addressing contractual arrangements to determine the information obtained by the Appellant from Subcontractors. This information makes no reference to the need to obtain a registration number from a payee. Instead, the information refers to a business number, which the Appellant did obtain when one was available.

[93] The Appellant retained Desjardins to manage payments to Subcontractors and employees of the Appellant and Desjardins recorded for each payment to a Subcontractor the Subcontractor's name, address, hourly rate, hours worked, earnings paid and GST/HST paid to the Subcontractor. The information provided by

Desjardins to the Appellant for each payment to the Subcontractors is more than sufficient evidence to support the quantum of ITCs claimed by the Appellant.[73]

[94] However, subsection 169(4) and the Information Regulations require that for taxable supplies with a value greater than $30 a registrant obtain the registration number of the payee in order to be entitled to an ITC for tax paid to that payee. As stated by the Federal Court of Appeal in *Systematix Technology Consulting Inc. v. The Queen*[74]:

> We are of the view that the legislation is mandatory in that it requires persons who have paid GST to suppliers to have valid GST registration numbers from those suppliers when claiming input tax credits.[75]

[95] The Appellant failed to obtain the prescribed information and therefore is not entitled to ITCs for the Disputed Payments. Given this conclusion, I need not address the Respondent's additional position on ITCs for the 2009 Reporting Periods.

[96] The alternative position of the Appellant is that it is entitled to the payment of a rebate under subsection 261(1) for tax paid in error or to the application of such a rebate to reduce its net tax under subsection 296(2.1).

[97] Subsection 261(1) states:

> 261. (1) Where a person has paid an amount
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> > (a) as or on account of, or
> >
> > (b) that was taken into account as,
>
> tax, net tax, penalty, interest or other obligation under this Part in circumstances where the amount was not payable or remittable by the person, whether the amount was paid by mistake or otherwise, the Minister shall, subject to subsections (2) to (3), pay a rebate of that amount to the person.

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[73] The technical notes accompanying the introduction of subsection 169(4) state:

> This subsection provides that a registrant is not permitted to claim an input tax credit unless, prior to claiming the credit, the registrant has sufficient evidence to support the claim. Sufficient evidence for this purpose would include an invoice issued by a supplier to a registrant containing sufficient information to determine the amount of the credit.

[74] 2007 FCA 226.

[75] Ibid., paragraph 4.

[98] Before I address subsection 261(1), it is important to consider why the GST Act allows a person to claim a rebate for amounts paid in error to a small supplier that is not a registrant.

[99] A person that is not a registrant but that receives an amount in a calendar month as or on account of tax under the GST Act is required to file a return under the GST Act within one month after the end of that calendar month, to report the amount in the return as net tax and to remit that amount to the Minister by that same deadline.[76] In addition, the Minister is entitled to assess the person for the net tax whether or not a return is filed.[77]

[100] In short, the applicable provisions ensure that the Minister can collect amounts paid in error to persons who are not registrants such as the Unregistered Subcontractors.

[101] Returning to subsection 261(1), in *UPS*, Rothstein J. for a unanimous Supreme Court of Canada reproduced subsection 261(1) and stated:

> On its face, subject to subss. (2) and (3), s. 261(1) would appear to support UPS's claim that it was entitled to a rebate of the GST overpayment. UPS paid an amount on account of GST on imported goods in circumstances where the amount was not payable or remittable because it was an overpayment. The overpayment resulted from mistakes by UPS and its customers. In these circumstances, s. 261(1) provides that the Minister shall pay a rebate of the amount of the overpayment.[78]

[102] In *UPS*, the Minister argued that because United Parcel Service acted as an agent, it was not the person that paid the amount on account of tax under the GST Act. Rothstein J. rejected this argument, stating that actual liability was not relevant because "there is no liability to pay tax that was paid in error".[79] Rothstein J. goes on to state:

> It cannot have been the intention of Parliament that persons who were not liable for GST but paid GST in error could not obtain a rebate.[80]
>
> . . .

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[76] Subsections 225(1), 238(2), 245(1) and paragraph 228(2)(b).
[77] Paragraph 296(1)(a) and subsection 299(1). See, also, subsection 299(2) and (3).
[78] Ibid., paragraph 15.
[79] Ibid., paragraph 17.
[80] Ibid.

> Section 261(1) is worded broadly. There is no limitation of the kind argued for by the Minister in the language of the provision. Nothing in the context of s. 261(1) supports such a limitation, nor has the Minister pointed to any other provision of the *Excise Tax Act* or *Customs Act*, R.S.C. 1985, c. 1 (2nd Supp.), to support such a limitation. It would not be in accordance with the ordinary and grammatical meaning of the provision to read s. 261(1) in such a way as to preclude persons who have paid or overpaid GST in error from obtaining a rebate from the Minister.[81]

[103] The Respondent submits that there is no evidence that the Unregistered Subcontractors were small suppliers and therefore that the Disputed Payments were paid in error.

[104] Alternatively, the Respondent submits that if the Disputed Payments were paid in error then the payments resulted from the Appellant's inattention and carelessness and for that reason the Appellant is not entitled to a rebate under subsection 261(1). The Respondent cites paragraph 84 of *SNF*, where the Tax Court judge states:

> The appellant's alternate [*sic*] submission, put forward as the appeal unfolded, that it is entitled to a rebate since it paid GST in error to Mr. Dubé Vanier and Ms. Bergeron, must fail. Any amount paid to Mr. Dubé Vanier as of September 17, 2010 was not paid as GST since he was no longer authorized to collect GST. He had ceased to be an agent of the Crown. The amounts paid to Ms. Bergeron were paid by error but by error due to SNF's own negligence. I cannot view section 261 of the *ETA* as contemplating a rebate on an error caused by the author's own inattention and carelessness. Entitlement to a rebate in either situation would open a Pandora's box of dubious and baseless claims, claims the legislator never heard of, much less contemplated.

[105] Finally, the Respondent cites the Tax Court decision in *Systematix* for the proposition that subsection 296(2.1) does not apply to an amount paid to a supplier that is not a registrant. I will address *Systematix* in my review of subsection 296(2.1) below.

[106] With respect to the Respondent's submission that there is no evidence that the Unregistered Subcontractors were small suppliers, in the Amended Reply at paragraph 8h) the Respondent states the following as an assumption of fact by the Minister:

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[81] Ibid., paragraph 20.

h) the appellant knew or ought to have known that most of the subcontractors were small suppliers and not required to be registered;

[107] This assumption of fact contains two statements of fact. The first statement addresses the knowledge of the Appellant regarding the status of the Subcontractors. Mr. Procopoudis testified that until mid-2015 he was not aware of the small supplier exception in the GST Act, from which I infer that he did not turn his mind to the status of the Subcontractors as small suppliers.

[108] The second statement addresses the status of most of the Subcontractors as small suppliers who were not required to be registered. This statement of fact was not questioned or contested by the Appellant.

[109] An assumption of fact in the Amended Reply is to be taken as true by this Court unless "questioned by the appellant".[82] The Respondent is not required to lead evidence to support an assumption of fact although the Respondent may choose to do so.

[110] The Appellant may choose to contest the Minister's assumptions of fact but may also choose to accept as true certain of those facts. It would be grossly unfair to the Appellant if without notice that the assumption of fact in paragraph 8h) of the Amended Reply has been withdrawn, I held against the Appellant because it failed to lead evidence to prove that fact.[83]

[111] In addition, the Respondent's concession regarding ITCs for the Allowed Payments is consistent with the conclusion that the Unregistered Subcontractors are small suppliers.

[112] In particular, the Respondent has conceded the Appellant's claim for ITCs in respect of the Allowed Payments but has disallowed the Appellant's claim for ITCs in respect of the Disputed Payments. Since the evidence is that the Appellant did not obtain a registration number from any Subcontractor, I infer from this concession that the Minister has exercised her authority under subsection 169(5) to waive the information requirements in subsection 169(4) and the Information Regulations for the Allowed Payments.

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[82] *Johnston v. MNR*, [1948] SCR 486 at 489. To "question" an assumption of fact, the Appellant must point to evidence on the record that shows the fact to be wrong or non-existent.
[83] The GST Act does not require the Appellant to ascertain whether or not a supplier is a small supplier and it is unclear to me how the Appellant would be able to prove that a supplier is a small supplier many years after the fact.

[113] A “registrant” includes a person that is required to be registered under Subdivision D of Division V of the GST Act.[84] Subject to three exceptions, every person that makes a taxable supply in Canada in the course of a commercial activity engaged in by the person in Canada is required to be registered.[85]

[114] A small supplier that does not carry on a taxi business is not required to be registered[86] but if engaged in a commercial activity in Canada may choose to be registered.[87]

[115] The clear implication of the Respondent’s concession is that the Unregistered Subcontractors were small suppliers that chose not to register under the GST Act. If these Subcontractors were not small suppliers, they would be registrants because they made taxable supplies in the course of a commercial activity engaged in by the Subcontractors in Canada. If that were the case, there would be no principled basis on which the Minister could distinguish the Unregistered Subcontractors from the Registered Subcontractors in applying subsection 169(5).

[116] In conclusion, I reject the Respondent’s first submission on the ground that there is an assumption of fact that most of the Subcontractors are small suppliers that are not registered under the GST Act. I also infer based on the Minister’s concession regarding ITCs that the Unregistered Subcontractors are small suppliers that are not registrants.

[117] Turning to the Respondent’s reliance on paragraph 84 of *SNF* for the proposition that subsection 261(1) does not apply to a mistake resulting from the Appellant’s negligence, or inattention and carelessness, it appears from the Tax Court judge’s description of the argument and the fact that only one paragraph of *SNF* is devoted to subsection 261(1) that the judge did not have the benefit of full argument on the point. It is particularly telling that no mention is made in *SNF* of the decision of the Supreme Court of Canada in *UPS*.

[118] Subsection 261(1) applies to an amount paid “as or on account of, or that was taken into account as, tax, net tax, penalty, interest or other obligation under” the GST Act “where the amount was not payable or remittable by the person, whether the amount was paid by mistake or otherwise”.

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[84] Subsection 123(1).
[85] Subsection 240(1).
[86] Paragraph 240(1)(a) and subsection 240(1.1).
[87] Paragraph 240(3)(a).

[119] As observed by Rothstein J. in *UPS*, subsection 261(1) is broadly worded. It covers a broad range of amounts paid by a person "whether the amount was paid by mistake or otherwise".

[120] While it is permissible for a court to interpret a broadly worded provision to give effect to an unexpressed exception or limitation that is implicit in the legislation, it is not permissible for a court to change legislation to add a limitation that is not implicit.

[121] For a limitation to be implicit there must be some indication in the text, context and/or purpose of the provision that the limitation was intended by Parliament, otherwise the court is impermissibly usurping the role of Parliament. While the existence of Parliamentary intention is not always clear,[88] in my view there is nothing in the text, context or purpose of section 261 that suggests that Parliament intended the limitations suggested in paragraph 84 of *SNF*.

[122] As was the case for the limitation asserted by the Minister in *UPS*, the text of subsection 261(1) does not support the limitation suggested by the Respondent and it would be contrary to the ordinary and grammatical meaning of the text of subsection 261(1) to infer such a limitation.

[123] To give effect to the Respondent's submission, the words "whether the amount was paid by mistake or otherwise" would have to be read as "whether the amount was paid by mistake (other than a mistake resulting from the [negligence] or [inattention and carelessness] of the person) or otherwise". This is a completely different meaning from that expressed by the actual text.

[124] Subsections 261(2) to (3) explicitly limit the circumstances in which a person may obtain payment of a rebate under subsection 261(1). These subsections make no mention of the reason for the mistake. Parliament could have added an exception that addressed the reason for the mistake but did not do so. The Respondent did not identify any other provision in the GST Act that supports the conclusion that Parliament intended a limitation based on the reason for the mistake made by the Appellant.

[125] The technical notes that accompanied the introduction of section 261 and that accompanied a minor amendment of the section in 2018 state, respectively:

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[88] See, for example the majority and minority reasons in *The Queen v. McIntosh*, [1995] 1 SCR 686.

> Under this section, where a person pays or remits an amount of tax, net tax, penalty or interest that is later found not to be payable or remittable, the person may claim a rebate of that amount within four years from the day the amount was paid or remitted. However, where the amount has been included in an assessment under section 296, or relates to a determination of value under the Customs Act, the person must follow the applicable assessment and appeal procedures to recover the amount. A person may not make more than one application per month under this section.
>
> And
>
> Section 261 provides that if a person pays or remits an amount of tax, net tax, penalty or interest that is later found not to be payable or remittable, the person may claim a rebate of that amount if the applicable conditions are met.

[126] Consistent with these technical notes and the text and context of the provision, the purpose of section 261 is to provide a rebate to persons who have paid an amount as or on account of tax if the conditions in section 261 are met. The applicable conditions include the requirement that the amount be paid by mistake or otherwise. The reason for the mistake is simply not a consideration in the application of the section.

[127] The omission in section 261 of any reference to the reason for the mistake is consistent with the scheme of the GST Act applicable to the recipient of such a payment. That scheme treats any amount collected "as or on account of tax under Division II" as net tax of the recipient and allows the Minister to assess and collect that net tax.[89] Notably, the Minister may assess and collect the net tax regardless of the reason the amount was collected by the recipient.

[128] For the foregoing reasons, I decline to impose a limitation on subsection 261(1) based on the alleged negligence, or inattention and carelessness, of the Appellant.

[129] Subsection 261(3) denies payment of a rebate under subsection 261(1) if the application for the rebate was not filed within two years after the day the amount was paid or remitted. The Appellant did not apply for a rebate of the Disputed Payments under subsection 261(1) and the two-year limitation period has long passed for all of the Disputed Payments.

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[89] Subsections 225(1), 238(2), 245(1) and paragraphs 228(2)(b) and 296(1)(a).

[130] However, subsection 296(2.1) requires the Minister to assess a person to deduct a rebate under subsection 261(1) in computing the net tax of that person if specified conditions are met. In *UPS*, Rothstein J. summarized subsection 296(2.1) as follows:

> Further, s. 296(2.1) provides that in the assessment process, if the Minister determines that a rebate would have been payable had it been claimed in an application, that it was not so claimed and that the period for claiming the rebate has expired, the Minister shall, unless otherwise requested, apply the rebate against the net tax of the person.

[131] After reciting the subsection, Rothstein J. stated:

> As I read s. 296(2.1), even if no application for a rebate was made within the applicable limitation period, the rebate shall be applied by the Minister against the net tax owed by the taxpayer in the reassessment process if the Minister determines that a rebate would have been payable had it been claimed. The section refers to "allowable rebate". Allowable rebate must mean a rebate that would have been allowable had the applicable procedure been followed. In other words, where these procedures have not been followed, it is not fatal to the rebate claim.

[132] The Respondent submits that subsection 296(2.1) does not apply because the Appellant would not have been entitled to payment of the rebate under subsection 261(1) even if it had filed an application for that rebate in a timely manner.

[133] The Respondent cites a solitary comment by the Tax Court judge in *Systematix* that ". . . counsel's argument that the GST paid to an unregistered supplier could be refunded as a rebate is ill-founded" as authority for the proposition that the rebate does not apply to the Disputed Payments.[90]

[134] The Tax Court judge in *Systematix* is addressing a circumstance in which the collection rule in subsection 221(1) applied to the recipient of a payment even though the recipient was not a registrant.[91] The Tax Court judge reproduces the charging and collection provisions[92] and then concludes that "the charging and the collection provisions have nothing to do with the supplier's status as a registrant".

[135] The Tax Court judge in *Systematix* expressly states there was no evidence in that case that the persons making the taxable supplies were small suppliers.

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[90] *Systematix*, paragraph 28.
[91] Ibid., paragraphs 26 and 27.
[92] Subsections 165(1) and 221(1).

Consequently, the Tax Court judge was not addressing a circumstance in which tax was not payable or collectible because the payee was a small supplier that was not a registrant. The Federal Court of Appeal affirmed the Tax Court judge's finding that the taxpayer was not entitled to ITCs but did not address the rebate in subsection 261(1), or subsection 296(2.1).

[136] Apart from the positions that I have already addressed, the Respondent did not otherwise dispute that the conditions for the application of subsection 261(1) and 296(2.1) to the Reporting Periods had been met by the Appellant and there is no evidence to suggest otherwise. Consequently, I find that the Appellant is entitled to have the Minister apply the Disputed Payments as a deduction in computing the net tax of the Appellant for the Reported Periods.

C. Are the 2010-2012 Reassessments Statute-Barred?

[137] My conclusion regarding the application of subsections 261(1) and 296(2.1) to the Reporting Periods renders the question of whether the 2010–2012 Reassessments are statute-barred moot. Nevertheless, to be complete, I will address that question.

[138] The Appellant claimed ITCs for the 2010–2012 Reporting Periods based on Mr. Procopoudis' understanding that the Appellant was entitled to recover "tax" paid to the Subcontractors under the terms of the contracts with those Subcontractors. Mr. Procopoudis believed that tax was payable because of paragraph 4 of the contracts.

[139] In cross-examination, Mr. Procopoudis provided a perfectly reasonable interpretation of the words "if applicable" in paragraph 4 of the contracts, which accords with the distinction in the GST Act between taxable supplies that are subject to tax and exempt supplies that are not subject to tax.

[140] Mr. Procopoudis also conceded that he did not ask his professional advisers about the Appellant's entitlement to ITCs for tax paid to the Subcontractors under the contracts.

[141] Mr. Procopoudis did however seek out information about the Appellant's entitlement to ITCs and relied upon information he retrieved from the CRA website regarding tax paid under contractual arrangements. Mr. Procopoudis identified the first page of Exhibit A-4 as identical to the information he retrieved from the CRA

website in 2009. Mr. Procopoudis quite reasonably described the CRA position as clear cut.

[142] The information that Mr. Procopoudis retrieved from the CRA website in 2009 is titled “Exceptions to invoice requirements” and states: “registrants are required to keep the necessary documentation to support their claim for ITCs and rebates. In certain circumstances the documentation requirements have been reduced” and “[f]or contractual arrangements, the contractual agreement, the books and records and related documents must capture” specified information. The specified information does not mention the registration number of a payee.

[143] The Appellant retained a payroll company that collected and itemized the information specified in the CRA information addressing contractual arrangements. Unfortunately for the Appellant, the technical requirement in paragraphs 3(b) and 3(c) of the Information Regulations to obtain a registration number from the payee was not met.

[144] The question is whether in the circumstances the Appellant made a misrepresentation in its returns for the 2010–2012 Reporting Periods attributable to carelessness, neglect or wilful default.

[145] The standard for finding a misrepresentation is not high. Although an honestly held belief with a reasonable foundation may not be a misrepresentation, the courts have held that, in general, any erroneous statement in a return is a misrepresentation. In *Nesbitt v. The Queen*,[93] the Federal Court of Appeal stated at paragraph 8:

> A misrepresentation has occurred if there is an incorrect statement on the return form, at least one that is material to the purposes of the return and to any future reassessment. It remains a misrepresentation even if the Minister could or does, by a careful analysis of the supporting material, perceive the error on the return form.

[146] As for neglect, in *Venne v. The Queen*,[94] the court held that neglect is similar to negligence and that carelessness or wilful default are higher standards. The Court states at paragraph 16:

> . . . negligence is established if it is shown that the taxpayer has not exercised reasonable care.

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[93] 206 N.R. 188 (FCA).
[94] 84 DTC 6247 (FCTD).

[147] In *Regina Shoppers Mall Ltd. v. M.N.R.*,[95] the Federal Court of Appeal indicated that the standard of care imposed by the word 'neglect' where the statute is unclear, or the characterization of the facts is doubtful, is that of a wise and prudent person.[96]

[148] The Respondent submits that the Appellant exhibited carelessness or neglect because it did not seek professional advice regarding the documentation required to claim ITCs or regarding its obligation to pay GST/HST to the Subcontractors.

[149] However, the Appellant did retain lawyers to review the contracts with the Subcontractors, an accountant to prepare its quarterly returns under the GST Act and a payroll company to manage payments to the Subcontractors.

[150] One might reasonably expect that if there was an obvious issue regarding the Appellant's requirement to pay tax to the Subcontractors or with the Appellant's entitlement to ITCs resulting from such payments, one or more of these persons would raise that issue with the Appellant when the arrangements were conceived and implemented.

[151] The Respondent further submits that the Appellant did not undertake a thoughtful, deliberate and careful analysis of whether to pay GST/HST to the Subcontractors.

[152] The payment of tax to the Subcontractors is provided for in the contracts with the Subcontractors. These contracts were vetted by the Appellant's lawyers in 2009.

[153] Mr. Procopoudis quite reasonably focussed on whether the Appellant was entitled to ITCs for tax paid under the contracts and retrieved information from the CRA website that appeared on its face to be directly on point. The Appellant's claim for ITCs was tripped up by a technicality in the Information Regulations not reflected in the information on contractual arrangements retrieved from the CRA website by Mr. Procopoudis.

[154] Mr. Procopoudis made a *bona fide* effort to ascertain the Appellant's entitlement to the ITCs claimed on the Appellant's returns for the 2010–2012

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[95] (1991), 126 N.R. 141 (FCA).

[96] It is unclear to me how a "wise and prudent person" standard can be applied if as *Venne* suggests the word "neglect" in paragraph 298(4)(a) refers to negligence. The negligence standard is always based on a reasonable person in the same circumstances.

Reporting Periods. Mr. Procopoudis made an innocent and understandable mistake in relying on information that he retrieved from the CRA website.

[155] The standard imposed by paragraph 298(4)(a) is not one of perfection. In the circumstances, the mistake made by Mr. Procopoudis regarding the Appellant's entitlement to ITCs cannot be attributed to his carelessness, neglect or wilful default.

[156] Consequently, if I am wrong in my conclusion regarding the application of subsection 261(1) and 296(2.1) to the 2010–2012 Reporting Periods, I find that the 2010–2012 Reassessments are statute-barred and therefore void.

D. The Assessment of Penalties under Section 285

[157] The opening words of section 285 state:

> Every person who knowingly, or under circumstances amounting to gross negligence, makes or participates in, assents to or acquiesces in the making of a false statement or omission in a return, application, form, certificate, statement, invoice or answer (each of which is in this section referred to as a "return") made in respect of a reporting period or transaction is liable to a penalty . . .

[158] The introductory words identify two conditions that must be satisfied if the assessment by the Minister of a penalty under section 285 is to be maintained.

[159] First, the Appellant must have made, participated in, assented to or acquiesced in the making of a false statement or omission in a return, application, form, certificate, statement, invoice or answer, referred to collectively as a "return".

[160] The terms "false statement" and "omission" do not identify the mental requirement for the penalty, which is instead identified in the second requirement. Accordingly, for the purposes of section 285, a "false statement" is a statement in a return that is untrue and an "omission" is something that is left out of a return.

[161] Second, the false statement or omission must have been made by the Appellant knowingly or under circumstances amounting to gross negligence, or the Appellant must have participated in, assented to or acquiesced in the making of the false statement or omission knowingly or under circumstances amounting to gross negligence.

[162] Since the Appellant is a corporation, the standards in section 285 are applied to the individual giving effect to the Appellant's actions—in this case, Mr. Procopoudis.

[163] In *Wynter v. The Queen*,[97] the Federal Court of Appeal stated the following about the two standards in subsection 163(2) of the ITA, which expresses these two standards in essentially the same language as section 285:

> [11] When Parliament uses alternative terms, it is assumed that it intended them to have different meanings. Put otherwise, Parliament does not repeat itself: see Ruth Sullivan, *Statutory Interpretation*, 3rd ed. (Toronto: Irwin Law Inc., 2016) at 43. Section 163 allows the imposition of penalties where the taxpayer has knowledge *or* in circumstances amounting to gross negligence. The section is not conjunctive, and presumptively, these two terms differ in their meaning and content.
>
> [12] The distinction between gross negligence — determined by an objective assessment of the comportment of the taxpayer — and wilful blindness — determined by reference to the taxpayer's subjective state of mind — has a long history. Admittedly, it is, on occasion, a fine distinction and one that is not always clearly drawn. Nonetheless, Parliament is taken to have been cognizant of the distinction.

[164] In *Peck v. The Queen*,[98] I reproduced these two paragraphs from *Wynter* and then described the two standards as follows:

> [44] As suggested in *Wynter*, the word "knowingly" requires a determination of whether the Appellant had subjective knowledge that he was making a false statement in the Return or the Request when he signed those documents. The burden is on the Respondent to present evidence that establishes on a balance of probabilities that the Appellant knew he was making a false statement when he signed the Return and the Request.
>
> [45] As also suggested in *Wynter*, the subjective knowledge of the Appellant may be proven by evidence establishing on a balance of probabilities that the Appellant was wilfully blind as to whether the statements in the Return and the Request were false. This is a helpful clarification of the point that wilful blindness is used to attribute subjective knowledge to the Appellant and that wilful blindness and gross negligence are different legal concepts.
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> [46] To establish wilful blindness, the evidence must prove on a balance of probabilities that the Appellant subjectively knew that the false statements in the Return and the Request were probably false but deliberately chose not to make

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[97] 2017 FCA 195 ("*Wynter*").
[98] 2018 TCC 52 ("*Peck*").

further inquiries because he subjectively knew or strongly suspected that the inquiries would provide him with the knowledge that the statements were indeed false (see *Sansregret v. The Queen*, [1985] 1 S.C.R. 570 at 584, *R. v. Jorgensen*, [1995] 4 S.C.R. 55 at paragraphs 102 and 103 and *Briscoe v. The Queen*, 2010 SCC 13, [2010] 1 S.C.R. 411 at paragraphs 21 to 23). The wilful blindness test is summarized in *Wynter* as follows:

> [13] A taxpayer is wilfully blind in circumstances where the taxpayer becomes aware of the need for inquiry but declines to make the inquiry because the taxpayer does not want to know, or studiously avoids, the truth. The concept is one of deliberate ignorance: *R. v. Briscoe*, 2010 SCC 13 at paras. 23-24, [2010] 1 S.C.R. 411 (*Briscoe*); *Sansregret* at para. 24. In these circumstances, the doctrine of wilful blindness imputes knowledge to a taxpayer: *Briscoe* at para. 21. . . .

[47] The subjective knowledge required for a finding of actual knowledge or wilful blindness refers to the actual or subjective knowledge of the person committing the prohibited act and not the objective or constructive knowledge of a reasonable person in the same circumstances (see, generally, *Shand v. The Queen*, 2011 ONCA 5 at paragraph 188 and *Roks v. The Queen*, 2011 ONCA 526 at paragraph 132).

[48] Actual subjective knowledge and wilful blindness may be proven by direct evidence, by circumstantial evidence or by a combination of the two. The determination of whether there is actual subjective knowledge or wilful blindness must be made in light of all the circumstances.

[49] The subjective nature of the wilful blindness standard versus the objective nature of the gross negligence standard means that conduct that contributes to a finding of wilful blindness may support a finding of gross negligence, but the converse is not necessarily true. For example, the fact that a reasonable person in the same circumstances would have made inquiries does not support a finding of wilful blindness but can support a finding of gross negligence. In *Briscoe*, the Supreme Court of Canada explains this distinction as follows:

> [24] Professor Don Stuart makes the useful observation that the expression “deliberate ignorance” seems more descriptive than “wilful blindness”, as it connotes “an actual process of suppressing a suspicion”. Properly understood in this way, “the concept of wilful blindness is of narrow scope and involves no departure from the subjective focus on the workings of the accused’s mind” (*Canadian Criminal Law: A Treatise* (5th ed. 2007), at p. 241). While a failure to inquire may be evidence of recklessness or criminal negligence, as for example, where a failure to inquire is a marked departure from the conduct expected of a reasonable person, wilful blindness is not

> simply a failure to inquire but, to repeat Professor Stuart's words, "deliberate ignorance".

[50] The subjective nature of the wilful blindness standard also means that the personal attributes of the individual may be considered in determining whether the individual is wilfully blind.

[51] In contrast, the objective nature of the gross negligence standard means that the personal attributes of the individual are not relevant unless the individual establishes that he or she is incapable of understanding the risk the individual has failed to avoid (see *R. v. Beatty*, 2008 SCC 5, [2008] 1 S.C.R. 49 at paragraph 40). In *R. v. Roy*, 2012 SCC 26, [2012] 2 S.C.R. 60 at paragraph 38 the Court refers to this as the modified objective standard:

> . . . The modified objective standard means that, while the reasonable person is placed in the accused's circumstances, evidence of the accused's personal attributes (such as age, experience and education) is irrelevant unless it goes to the accused's incapacity to appreciate or to avoid the risk . . . .

[52] Although *Roy* addresses the criminal law standard of negligence, I see no reason to approach "gross negligence" under subsection 163(2) differently since the test under any negligence standard is whether the conduct in question departs from the objective standard of the reasonable person. *Roy* simply emphasizes that the relevant objective standard is that of the reasonable person in the same circumstances as the person whose conduct is in issue.

[53] The risk that the Appellant must be capable of understanding in order for gross negligence to be established is the risk of failing to meet the obligation imposed on all taxpayers under Canada's self-assessment system to prepare their income tax returns with honesty and integrity; in short, the risk of failing to meet the obligation not to commit a prohibited act. In *R. v. Jarvis*, 2002 SCC 73, [2002] 3 S.C. R. 757 the Supreme Court of Canada stated at paragraph 49:

> Every person resident in Canada during a given taxation year is obligated to pay tax on his or her taxable income, as computed under rules prescribed by the Act . . . . The process of tax collection relies primarily upon taxpayer self-assessment and self-reporting: taxpayers are obliged to estimate their annual income tax payable . . . and to disclose this estimate to the CCRA in the income return that they are required to file . . . .
>
> [See also: *(Canada) National Revenue v. Thompson*, 2016 SCC 21 at paragraph 31, [2016] 1 S.C.R. 381]

> [54] Accordingly, short of evidence establishing that the Appellant could not understand the obligation placed on him by Canada's self-assessment income tax system not to commit a prohibited act, the words "under circumstances amounting to gross negligence" require a determination of whether the conduct of the Appellant represented a marked and substantial departure from the expected conduct of a reasonable person in the same circumstances as the Appellant. For there to be a finding of gross negligence, the conduct of the Appellant must reflect a high degree of negligence (*Venne v. The Queen*, 84 DTC 6247).
>
> [55] Importantly, the objective standard against which the conduct of the Appellant is measured does not vary according to the personal attributes of the Appellant or the actual knowledge of the Appellant. In all cases, the standard is the expected conduct of a reasonable person in the same circumstances as the Appellant. The question that must be addressed is this: To what degree, if any, has the conduct of the Appellant deviated from that objective standard?
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> [56] A helpful albeit brief summary of the necessary departure from the objective standard of the reasonable person required for a finding of gross negligence is found in the recent judgment of the Supreme Court of Canada in *Guindon v. Canada*, 2015 SCC 41, [2015] 3 S.C.R. 3 where, at paragraph 60, the Court, in discussing the gross negligence standard described in *Venne*, adopts the following statement of the Tax Court of Canada from paragraph 23 of *Sidhu v. The Queen*, 2004 TCC 174:
>
>> The burden here is not to prove, beyond a reasonable doubt, *mens rea* to evade taxes. The burden is to prove on a balance of probability such an indifference to appropriate and reasonable diligence in a self-assessing system as belies or offends common sense.

[165] In my view, these comments are equally applicable to section 285.

[166] The Respondent submits that because the Appellant filed returns for the 2009 Reporting Periods claiming ITCs after the CRA had raised an issue regarding the ITCs during an audit of the Appellant, the Appellant made a false statement in the 2009 Returns that was made knowingly or in circumstances amounting to gross negligence.

[167] The majority of the Supreme Court of Canada recognized in *Guindon v. The Queen*[99] that penalty provisions in the ITA, which are very similar to section 285, are intended to address situations in which a taxpayer deliberately disregards the law

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[99] 2015 SCC 41.

or demonstrates such an indifference to appropriate and reasonable diligence in a self-assessing system as belies or offends common sense.[100]

[168] The Appellant paid to its Subcontractors amounts as or on account of tax on the taxable supplies provided by those Subcontractors during the 2009 Reporting Periods. Mr. Procopoudis filed the 2009 Returns so the Appellant could recover the amounts so paid in the form of ITCs for the 2009 Reporting Periods.

[169] There is no question that the Appellant paid the Subcontractors an amount believed to be GST and each payment was fully documented.[101] The Appellant is not entitled to the ITCs claimed because it did not obtain the registration numbers of the Subcontractors as required by subsection 169(4) and the Information Regulations.

[170] Mr. Procopoudis believed that the registration numbers were not required because the Appellant had contracts with the Subcontractors that required the payment of GST and the information he retrieved from the CRA website on contractual arrangements did not mention registration numbers—only business numbers, which the Appellant did obtain when available. Mr. Procopoudis retained Desjardins to ensure that all payments to Subcontractors were made and documented.

[171] Although Mr. Procopoudis was wrong in his understanding of why the Appellant should receive ITCs for the tax paid to Subcontractors, he was not wrong about the general scheme in the GST Act that clearly points to the conclusion that the Appellant should not be out of pocket for amounts paid as or on account of tax to small suppliers that are not registrants.

[172] Specifically, as the discussion above reveals, subsections 261(1) and 296(2.1) provide two mechanisms by which an amount paid as or on account of tax may be recovered: either as the payment of a rebate or as the application of the rebate to reduce net tax.

[173] Mr. Procopoudis's mistake in the 2009 Returns was that he relied on the wrong mechanism in the GST Act, not that the Appellant was not entitled to recover or be credited the Disputed Payments made in 2009.

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[100] Ibid., paragraph 60.

[101] I have no reason to conclude that Desjardins recorded the payments in 2009 any differently from later payments shown in Exhibit A-1.

[174] Mr. Procopoudis acknowledged that he was alerted to the registration number issue by the CRA auditor and by Mr. Burkes and the evidence demonstrates that he immediately took steps to ensure that the Appellant obtained registration numbers from the Subcontractors on a going forward basis. I infer from Mr. Procopoudis's actions and from the description of the issue by Mr. Burkes in May 2015 that Mr. Procopoudis understood the issue to be that the Appellant should not pay tax to Unregistered Subcontractors, not that the Appellant was not entitled to ITCs.

[175] Mr. Procopoudis testified that he believed that the CRA auditor was mistaken and that the CRA's position on contractual arrangements applied to the Appellant. Mr. Procopoudis took a position in the 2009 Returns based on his *bona fide* but erroneous understanding that the Appellant had complied with the law regarding its eligibility for ITCs and alerted the CRA auditor to the fact that he had filed the 2009 Returns on that basis. Mr. Procopoudis's conduct falls far short of the sort of intentional or indifferent conduct contemplated by section 285.

[176] However, to be complete I will address the two standards in section 285.

[177] There is no evidence that Mr. Procopoudis knowingly made a false statement in the 2009 Returns. Mr. Procopoudis earnestly believed that the Appellant was entitled to the ITCs claimed in the 2009 Returns.

[178] Nor is there any evidence that Mr. Procopoudis was wilfully blind to the Appellant's entitlement to ITCs. The evidence is that Mr. Procopoudis was aware of the CRA auditor's position but believed the auditor was mistaken because of the information on contractual arrangements. In 2015, Mr. Procopoudis retrieved information on both contractual arrangements and small suppliers but believed that the information on contractual arrangements governed in the Appellant's circumstances. There is no evidence that Mr. Procopoudis was deliberately ignorant.[102]

[179] There is also no evidence that Mr. Procopoudis was grossly negligent in filing the 2009 Returns.

[180] Mr. Procopoudis could have asked the CRA auditor to apply subsection 296(2.1) in assessing all the Reporting Periods, but he did not. Mr. Procopoudis's error in pursuing the wrong remedy for the Appellant in the

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[102] *Peck* at paragraph 49, citing *The Queen v. Briscoe*, 2010 SCC 13 at paragraph 24.

2009 Returns hardly amounts to a marked and substantial departure from the conduct of a reasonable person in the same circumstances.

[181] Mr. Procopoudis made an error of law or an error of mixed law and fact. His belief that the Appellant should be entitled to recover the tax paid to Subcontractors was not unreasonable given that the Appellant paid "tax" in accordance with the contracts with Subcontractors and given the scheme of the GST Act.

[182] The Respondent asserts that Mr. Procopoudis's failure to obtain professional advice before filing the 2009 Returns supports a finding of gross negligence. I accept that it may have been prudent for Mr. Procopoudis to ask Mr. Burkes about his proposed course of action. I do not accept that Mr. Procopoudis's failure to do so represents gross negligence.

[183] There was nothing unusual or extraordinary about the Appellant's position—the Appellant was a registrant that paid amounts as or on account of tax to its Subcontractors under the terms of written contracts and was attempting to recover those amounts as ITCs. A reasonable person in the same circumstances as Mr. Procopoudis may well have concluded that the position of the Appellant was clear-cut, that the position of the CRA auditor was incorrect and that professional advice was not required.

[184] Even if a reasonable person may have taken a different course of action from that of Mr. Procopoudis, I find that Mr. Procopoudis's conduct did not depart from the conduct of a reasonable person in the same circumstances to the degree contemplated by section 285.

[185] For the foregoing reasons, the Appellant is not liable for the penalty under section 285 imposed by the 2009 Reassessments.

VI. Conclusion

[186] For the foregoing reasons, the appeal of the Reassessments is allowed with costs to the Appellant and the Reassessments are referred back to the Minister for reconsideration and reassessment on the basis that:

1. the penalties under section 285 shall be cancelled,

2. $76,291.61 shall be allowed as input tax credits on the basis that one-quarter of the total of the amounts identified for a year in Appendix H to the PASF

is an input tax credit for each of the four quarterly reporting periods of the Appellant ending in that year, and

3. the Disputed Payments shall be applied to reduce the net tax of the Appellant for the Reporting Periods in which the Disputed Payments were paid.

[187] The Appellant has 30 days from the date of this judgment to provide written submissions on costs in the appeal not to exceed ten pages. The Respondent has a further 30 days to provide written submissions in response to the Appellant's submissions.

Signed at Ottawa, Canada, this 17th day of March 2022.

"J.R. Owen"

Owen J.

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