Docket: 2022-86(GST)I

BETWEEN:

AMITH NAGENDRA,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard on February 17, 2026, at Toronto, Ontario

Before: Associate Judge Andrew Miller

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Julia Kim (Student at Law) Vameesha Patel

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JUDGMENT

The appeal of the assessment dated November 3, 2020, in respect of the Appellant's application for a GST/HST New Residential Rental Property Rebate under section 256.2 of the *Excise Tax Act* is dismissed, without costs.

Signed this 10th day of March 2026.

"Andrew Miller"

Miller A.J.

Citation: 2026 TCC 46
Date: 20260310
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BETWEEN:

AMITH NAGENDRA,

Appellant,

and

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Respondent.

REASONS FOR JUDGMENT

Miller A.J.

A – Introduction

[1] The Appellant appeals an assessment disallowing his application for a GST/HST New Residential Rental Property Rebate (the "NRRPR"). The Minister of National Revenue disallowed the application on the basis that the Appellant failed to file it on or before the two-year limit for such an application as required by the *Excise Tax Act* (the "ETA"). The Appellant argues, among other things, that subsection 296(2.1) of the ETA compels the Minister to accept his application despite being late.

B - Facts

[2] In May of 2016, the Appellant entered into an agreement of purchase and sale with McClung Estates Ltd. (the "Builder") to purchase a property located in Caledonia, Ontario (the "Property").[1] The Appellant took possession and ownership of the Property on July 11, 2018.[2] Neither the Appellant nor a relation of the Appellant were the first to occupy the Property. Instead, the Appellant leased the Property to tenants beginning on August 1, 2018.[3]

[1] Exhibit A-3 – GST/HST New Residential Rental Property Rebate Application.
[2] Reply to the Notice of Appeal, para. 10b).
[3] Reply to the Notice of Appeal at paras. 10d) and 10f); Exhibit A-3 – GST/HST New Residential Rental Property Rebate Application.

[3] On August 16, 2018, the Appellant applied for a GST/HST New Housing Rebate (the "NHR") in respect of the Property.[4] By notice of assessment dated November 5, 2019 (the "NHR Assessment"), the Minister disallowed the NHR on the basis that neither the Appellant nor a relation of the Appellant were the first to occupy the Property, and assessed the Appellant for an amount owing of $29,410.10, which included arrears interest.[5]

[4] The Appellant never objected to the NHR Assessment. Instead, in September of 2020, the Appellant applied for a NRRPR in respect of the Property.

[5] By notice of assessment dated November 3, 2020 (the "NRRPR Assessment"), the Minister disallowed the NRRPR on the basis that the Appellant did not apply for the NRRPR within two years after the end of the month in which tax first became payable or was deemed to have been paid in respect of the purchase of the Property.

[6] The Appellant objected to the NRRPR Assessment and then appealed the NRRPR Assessment to this Court.

C - Issue

[7] The issue in this appeal is whether the Appellant is entitled to a NRRPR in respect of the Property.

D - Analysis

[8] There is no dispute between the parties on the facts leading to the conclusion that the Appellant's NRRPR application was filed beyond the two-year limit provided in subsection 256.2(7) of the ETA. Under subsection 168(5) of ETA, tax in respect of the Property became payable on July 11, 2018, the date the Appellant took possession and ownership. The Appellant filed his NRRPR application in September of 2020, when, under subparagraph 256.2(7)(a)(iii), the application for the NRRPR was due on or before July 31, 2020.

[9] The Appellant's argument is that while his NRRPR application was late, his appeal should be allowed because the Minister, pursuant to subsection 296(2.1) of

[4] Reply to the Notice of Appeal, para. 4.
[5] Exhibit A-4 – Notice of Assessment dated November 5, 2019.

the ETA, should have accepted his application and granted the NRRPR despite the two-year limit in subsection 256.7(2) of the ETA.

1. Subsection 296(2.1) of the ETA

[10] Subsection 296(2.1) of the ETA provides the following:

> **(2.1)** Where, in assessing the net tax of a person for a reporting period of the person or an amount (in this subsection referred to as the "overdue amount") that became payable by a person under this Part, the Minister determines that
>
> > **(a)** an amount (in this subsection referred to as the "allowable rebate") would have been payable to the person as a rebate if it had been claimed in an application under this Part filed on the particular day that is
> >
> > > **(i)** if the assessment is in respect of net tax for the reporting period, the day on or before which the return under Division V for the period was required to be filed, or
> >
> > > **(ii)** if the assessment is in respect of an overdue amount, the day on which the overdue amount became payable by the person,
> >
> > and, where the rebate is in respect of an amount that is being assessed, if the person had paid or remitted that amount,
> >
> > **(b)** 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
> >
> > **(c)** the allowable rebate would be payable to the person if it were claimed in an application under this Part 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,
>
> the Minister shall apply all or part of the allowable rebate against that net tax or overdue amount as if the person had, on the particular day, paid or remitted the amount so applied on account of that net tax or overdue amount.
>
> [Emphasis added.]

[11] As summarized by this Court in *A OK Payday Loans Inc.*, subsection 296(2.1) requires the Minister, in certain circumstances, to apply a rebate that a person is entitled to under Part IX of the ETA, and has yet to claim, against the net tax of the person or against an amount that became payable by the person under Part IX of the

ETA. The Minister is compelled to do so even if the period for applying for the rebate has expired.[6] This is the thrust of the Appellant's appeal of the NRRPR Assessment, who argues that subsection 296(2.1) applies to remedy the lateness of this NRRPR application. However, for subsection 296(2.1) to apply for the purposes of this appeal, the NRRPR Assessment must have either assessed a person's net tax for a reporting period, or assessed an amount that became payable by the person under Part IX of the ETA.

[12] There can be no dispute that the NRRPR Assessment is not an assessment of net tax. This is self evident from the NRRPR Assessment. It is also evident given that rebates such as the NHR and the NRRPR form no part of the calculation of the net tax of a person for a reporting period and thus are not part of assessments made under paragraph 296(1)(a) of the ETA.[7]

[13] Therefore, subsection 296(2.1) can only apply to the Appellant's NRRPR Assessment if it involves the assessment of an amount that had become payable by the Appellant under Part IX of the ETA.

2. Did the NRRPR Assessment assess an amount that had become payable under Part IX of the ETA

[14] Section 297 of the ETA is the assessing provision for the Minister for the purposes of NHR applications and NRRPR applications. The relevant subsections are the following:

> **297 (1)** On receipt of an application made by a person for a rebate under section 215.1 or Division VI, the Minister shall, with all due dispatch, consider the application and assess the amount of the rebate, if any, payable to the person.
>
> …
>
> **(2.1)** The Minister may assess, reassess or make an additional assessment of an amount payable by a person under section 264, notwithstanding any previous assessment of the amount.
>
> [Emphasis added.]

[15] For the purposes of deciding whether or not subsection 296(2.1) of the ETA applies, I need to determine whether the NRRPR Assessment is an assessment under

[6] *A OK Payday Loans Inc. v Her Majesty the Queen*, 2010 TCC 469, at para. 10.
[7] *Zdzieblowska v. Her Majesty the Queen*, 2019 TCC 40, at paras. 23–24.

subsection 297(1) or subsection 297(2.1) of the ETA. This is because subsection 297(2.1) provides for assessments that include an amount payable by a person. If such an assessment is made under subsection 297(2.1), subsection 296(2.1) may be engaged, as it would be an assessment of an amount payable under Part IX of the ETA. If the assessment is made under subsection 297(1) that simply denies the rebate, there is no amount being assessed as payable under Part IX of the ETA, and subsection 296(2.1) is not engaged.[8]

[16] To determine if the NRRPR Assessment was an assessment under subsection 297(2.1), I must turn to subsection 264(1) of the ETA, which is the charging provision for an amount payable and assessed under subsection 297(2.1). Subsection 264(1) states the following:

> **264 (1)** Where an amount is paid to, or applied to a liability of, a person as a rebate under section 215.1, subsection 216(6) or this Division (other than section 253) or as interest under section 297 and the person is not entitled to the rebate or interest, as the case may be, or the amount paid or applied exceeds the rebate or interest, as the case may be, to which the person is entitled, the person shall pay to the Receiver General an amount equal to the rebate, interest or excess, as the case may be, on the day the amount is paid to, or applied to a liability of, the person.

[17] Subsection 264(1) will apply when the Minister has paid to a person a rebate amount such as a NHR or a NRRPR and the Minister subsequently determines that either the person was not entitled to the rebate, or an excess amount was paid to the person. Where this occurs, the Minister assesses under subsection 297(2.1) for the amount of the rebate or the excess amount.[9]

[18] The facts of this appeal reveal that the Appellant was assessed under subsection 297(2.1) of the ETA, but that assessment was not the NRRPR Assessment. Instead, it was the NHR Assessment that was assessed under subsection 297(2.1) of the ETA. This is so because the Builder had credited the Appellant with a NHR of $27,169.95 in respect of the Property.[10]

[19] Following the credit by the Builder to the Appellant, the Minister determined that the Appellant was not entitled to the NHR. Accordingly, an amount was owing to the Minister by virtue of subsection 264(1) of the ETA.[11] To recover this amount, the Minister must assess under subsection 297(2.1), which is exactly what took place

[8] *Zdzieblowska v. Her Majesty the Queen*, 2019 TCC 40, at paras. 3 to 5.
[9] *Zdzieblowska v. Her Majesty the Queen*, 2019 TCC 40, at paras. 28 and 29.
[10] Reply to the Notice of Appeal, para. 10b); see subsection 254(4) of the ETA.
[11] *Zdzieblowska v. Her Majesty the Queen*, 2019 TCC 40, at para. 31.

on November 5, 2019, by way of the NHR Assessment.[12] The NHR Assessment is not the assessment under appeal.

[20] The Appellant argues that the NRRPR Assessment does assess an amount payable under Part IX of the ETA and therefore engages subsection 296(2.1) by virtue of there being a "Total Balance" amount of $30,631.10 appearing in the NRRPR Assessment.[13] That amount is comprised of a "Prior Balance" of $30,547.53 and "arrears interest" of $83.57.

[21] The evidence shows that the "Prior Balance" is the amount owing from the NHR Assessment. Based on the well-established explanation of what constitutes an assessment found in the *Pure Spring Co. Ltd.* decision, that "Prior Balance" amount was not assessed at the time of the NRRPR Assessment but rather at the time of the NHR Assessment.[14] It follows that the "Prior Balance" amount is not an amount that became payable under Part IX of the ETA by virtue of the NRRPR Assessment as required by subsection 296(2.1).

[22] As for the amount of $83.57 in "arrears interest" that appears on the NRRPR Assessment, that amount is simply reflecting the interest that had accrued since being assessed under section 280 of the ETA as a result of the amount assessed at the time of the NHR Assessment. Similar to the fact pattern in this Court's decision in *McFadyen*, where it was found that the daily accrual of interest on an unpaid amount cannot create a right of appeal that otherwise had expired, the amount of $83.57 in "arrears interest" appearing on the NRRPR Assessment is not an assessment arising by virtue of the NRRPR Assessment.[15] Because the amount of $83.57 is not a separate assessment, it is therefore not an amount that became payable under Part IX of the ETA by virtue of the NRRPR Assessment as required by subsection 296(2.1) of the ETA.

[23] There was no amount paid to the Appellant in respect of the NRRPR. Accordingly, the NRRPR Assessment is not an assessment of an amount payable by the Appellant under Part IX of the ETA. It follows that the NRRPR Assessment is an assessment under subsection 297(1) that simply denied the Appellant's NRRPR application. As a result, subsection 296(2.1) does not apply to the NRRPR

[12] Exhibit A-4 – Notice of Assessment dated November 5, 2019.
[13] Exhibit R-2 – Notice of Assessment dated November 3, 2020.
[14] *Pure Spring Co. Ltd v. Minister of National Revenue*, [1946] Ex. C.J. No. 6, at paras. 64 and 65.
[15] *McFadyen v. Her Majesty the Queen*, 2008 TCC 441, at paras. 16–21.

Assessment and cannot remedy the lateness of the NRRPR application by compelling or even permitting the Minister to accept it.

3. Was the Minister estopped from relying on the two-year limit in subsection 256.2(7) of the ETA

[24] The Appellant argues that the Minister invoked subsection 296(2.1) of the ETA during the review of his NHR application and that the NRRPR application he filed is simply the completion of that review. Accordingly, the Minister should not be allowed to invoke the two-year limit with respect to the Appellant's NRRPR application.

[25] The evidence reveals that, on September 25, 2019, the Minister, having completed the review of the Appellant's NHR application, wrote to the Appellant to advise him that he did not qualify under section 254 of the ETA for that rebate. As is required under subsection 296(2.1), due to the fact that the NHR Assessment would assess an amount payable by the Appellant under Part IX of the ETA, the Minister highlighted the Appellant's possible eligibility for the NRRPR under section 256.2 of the ETA and invited him to submit a list of information to determine his eligibility.[16]

[26] On November 1, 2019, the Minister wrote to the Appellant advising him that the NHR Assessment would be sent under separate cover and that, due to the lack of response from the Appellant in respect of the information sought to determine his eligibility for the NRRPR, no amount would be applied against the NHR Assessment. Nevertheless, the Minister advised the Appellant that he might still be eligible for the NRRPR, provided that an application was made within the time limit.[17] The Appellant did not file his NRRPR application until September 2020, after the two-year time limit.[18]

[27] I agree with the Appellant that the Minister initiated a subsection 296(2.1) ETA review. But this review was in respect of the NHR application and, indeed, the Minister was required to do so.[19] However, before

[16] Exhibit A-1 – Letter from CRA dated September 25, 2019.
[17] Exhibit A-2 – Letter from CRA dated November 1, 2019.
[18] Reply to the Notice of Appeal, para. 10i); Exhibit A-3 – GST/HST New Residential Rental Property Rebate Application.
[19] *A OK Payday Loans Inc. v. Her Majesty the Queen*, 2010 TCC 469, at para. 10; *Zdzieblowska v. Her Majesty the Queen*, 2019 TCC 40, at para. 32.

applying subsection 296(2.1), the Minister must ensure that the "allowable rebate" would have been payable to the Appellant.

[28] As noted by this Court in *Zdzieblowska*, applications for a NHR and a NRRPR must be made in prescribed form containing prescribed information and filed with the Minister in prescribed manner. Each form requires different information, and the form for the NRRPR requires a significant amount of information that is not requested in the NHR application.[20] The Minister was not required to blindly allow the NRRPR for the purposes of the NHR Assessment.

[29] The evidence is that the Minister was unable to determine if the Appellant was eligible for a NRRPR when the Minister was reviewing the Appellant's NHR application.[21] The Minister was not required to wait forever for the Appellant to file a NRRPR application or at the very least submit the listed information. The Appellant's argument that the Minister is barred from relying on the two-year limit in paragraph 256.2(7)(a) by virtue of subsection 296(2.1) would effectively read out that limitation period for the purposes of these all-too-frequent scenarios. There is no support for such an interpretation of subsection 296(2.1) of the ETA.

[30] Had the Appellant objected to and appealed from the NHR Assessment, perhaps he would have been entitled to raise subsection 296(2.1) of the ETA as a basis for reducing the NHR Assessment based on the NRRPR. However, the Appellant did not. The only assessment before this Court is the NRRPR Assessment.

4. No discretion to extend the two-year limit

[31] Under subsection 256.2(7) of the ETA, the Appellant's NRRPR application was due on or before July 31, 2020. The Appellant was two months late. While I have no reason to doubt the Appellant's explanation of how the COVID-19 pandemic impacted his ability to file the NRRPR application on time, Parliament chose, pursuant to the *Time Limits and Other Periods Act (COVID-19)* and the *Order Respecting Time Limits under the Excise Tax Act (COVID-19)*, not to extend the deadline under subsection 256.2(7) of the ETA.[22] This is unfortunate for the

[20] *Zdzieblowska v. Her Majesty the Queen*, 2019 TCC 40, at paras. 16–18.
[21] Exhibit A-2 – Letter from CRA dated November 1, 2019.
[22] *Goldthorpe v. Canada (Attorney General)*, 2024 FC 1012, at para. 25.

Appellant, but it remains what Parliament intended, and I have no discretion to change that.[23]

E - Conclusion

[32] The appeal is dismissed, without costs. The NRRPR was filed beyond the two-year period provided in subsection 256.2(7) of the ETA. Subsection 296(2.1) cannot remedy the Appellant's failure, as the NRRPR Assessment is an assessment under subsection 297(1) denying the NRRPR application.

Signed this 10th day of March 2026.

"Andrew Miller"

Miller A.J.

[23] *Lalwani v. Her Majesty the Queen*, 2019 TCC 180, at paras. 12, 13 and 24.

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DATE OF HEARING:	February 17, 2026
REASONS FOR JUDGMENT BY:	Associate Judge Andrew Miller
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APPEARANCES:

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