

**Read :-** Application dated 29<sup>th</sup> August, 2005 by M/s. Panama Marketing Co. holder of R.C. No. 400 005/S/1749 & 400 005/C/1351.

**Heard :-** Shri. C.B.Thakkar (C.A) and Shri. Hemant Shah (C.A) on behalf of the applicant.

## **PROCEEDINGS**

**(under section 56(1)(e) of the Maharashtra Value Added Tax Act, 2002)**

No. DDQ-11/2005/Adm-3/102/B-02

Mumbai, Date :- 29.3.08

The application is filed by M/s. Panama Marketing Co. having address as 9, Kamal Mansion, Ground Floor, Arthur Bunder Road, Colaba, Mumbai-400 005 requesting determination on the rate of tax on the following products, the details of which are given below:

| <b>Sr. no</b> | <b>Description</b>            | <b>Date and invoice no.</b> |
|---------------|-------------------------------|-----------------------------|
| 1             | Bagrry's Oatmeal              | OR 121 dt 20.5.2005         |
| 2             | Bagrry's White Oats           | S/1013 dt. 22.7.2005        |
| 3             | Bagrry's Crunchy Muesli       | S/1013 dt. 22.7.2005        |
| 4             | Bagrry's Fruit & Fibre Muesli | S/569 dt. 28.5.2005.        |
| 5             | Harnik Caramel Pudding Mix    | 54 dt.14.7.05               |
| 6             | Kamwah Chinese Noodles        | S/1035 dt. 25.7.2005        |
| 7             | Bagrry's Wheat Bran           | S/570 dt. 28.5.2005         |

### **02. FACTS OF THE CASE**

The applicant is registered under MVAT Act, 2002 and CST Act, 1956 holding R.C. No. 400 005/S/1749 & 400 005/C/1351. They are re-sellers and importers dealing in consumer products. The printed empty cartons of all the above products are enclosed by the applicant. The applicant has stated that he effects purchases of consumer products locally as well as out of Maharashtra. He has stated that according to their information, some traders are charging 'NIL' rate of tax while some suppliers are

charging 12.5% tax under VAT on above commodities. They are confused about the rate of tax that should be charged on above items. The applicant has stated that he has charged 12.5% on some of the items and on some items NIL rate of tax is charged.

### 03. HEARING

The case was fixed on 15.1.08. Shri. C.B.Thakkar (C.A) and Shri. Hemant Shah (C.A) attended on behalf of the applicant. They stated that the products should be classified under schedule entry C-107(11)(f). As per their contention, Muesli and noodles are not ready-to-serve food. They also contended that wheat bran should be classified under schedule entry A-4 as a Bran of cereal. As for oat bran and white oats, it is contended by them that they are cereals covered by schedule entry A-9 and therefore tax-free.

### 04. DECISION

The applicant has put forth for determination various products which are items of food. The applicant has not made any contention in the written submission. However, in the course of hearing the applicant submitted that the products would be covered by schedule entry C-107(11)(f). The applicant has also placed a claim for coverage under schedule entry A-4 for 'wheat bran' and under schedule entry A-9 for white oats and oat meal. The schedule entries under consideration are reproduced below:

Schedule entry C-107 (11)(f)-

|                     |                                                                                                                                                                                     |              |                              |
|---------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|------------------------------|
| <b>C-107(11)(f)</b> | <i>Food stuffs and food provisions of all kinds including Raw, semi cooked or Semi-processed foods, Ready to mix and ready to cook preparations excluding ready to serve foods.</i> | <b>4%</b>    | <b>1.2.2006 to 31.1.2008</b> |
|                     | <i>Explanation- The items referred to in clause (a) to (f) will not be covered by the scope of this entry when those are served for consumption.</i>                                | <b>12.5%</b> | <b>1.2.2008 till date</b>    |

Schedule entry A-4-

| <i>Schedule entry</i> | <i>Description</i>                                                                                                                                                                                                                                                               | <i>Rate of tax</i> | <i>Date of effect</i>        |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|------------------------------|
| <b>A-4</b>            | <i>Aquatic feed, cattle feed, poultry feed, their concentrates, animal feed supplements and animal feed additives, grass, hay, straw, cotton seed oil cakes excluding-</i>                                                                                                       | <b>Nil</b>         | <b>1.4.2005 to 30.4.2005</b> |
|                       | <i>(a) other oil cakes,</i><br><i>(b) all varieties of de-oiled cakes</i>                                                                                                                                                                                                        |                    |                              |
| <b>A-4</b>            | <i>(a) Aquatic feed, cattle feed, poultry feed, their concentrates, additive and supplements;</i><br><i>(b) Grass, hay, straw;</i><br><i>(c) Husk and bran of cereals and pulses, and de-oiled cakes, but excluding-</i><br><i>(i) other oil cakes,</i><br><i>(ii) rice bran</i> | <b>NIL</b>         | <b>1.5.2005 onwards</b>      |

The products submitted for determination are Caramel Pudding Mix, Kam-Wah Best Chinese Hakka Noodles, Hi Fibre White Oats, Germinated Wheat Bran, Crunchy Muesli, Hi Fibre Oat Meal, Fruit & Fibre Muesli.

**a) Caramel Pudding Mix:-**

The cover of the product shows that the product is called as 'Caramel Pudding Mix'. The ingredients of the product are sugar and permitted additives, edible gums, added food flavours and permitted colours. The product also contains a sachet of Caramel Topping which consists of glucose Syrup and Caramelised sugar. The packet also gives the directions as to how the Caramel Pudding Mix is to be used.

The directions say that first the Caramel Topping is to be poured into a mould

and then the pudding mix is to be dissolved in half litre of milk. The boiled mix is then to be poured on the topping and refrigerated before it is served. The Caramel Pudding Mix is used as a ready-mix and will result into a Caramel pudding only after the addition of milk. Milk needs to be added to the pudding mix to make a 'ready pudding'.

The applicant has maintained that the product is covered by the schedule entry C-107(11)(f). The schedule entry C-107(11)(f) excludes ready to serve food. The meaning of 'ready to serve food' in the context of the entry is explained in the successive determination orders passed in the case of Parampara (No.DDQ-11-2005/Adm-5/76/B-3 dt. 31/05/2007), M/s. Monginis (No-DDQ-11-2007/Adm-2/25/B-1 and No-DDQ-11-2007/Adm-2/26/B-1 dt 6.11.07) and Shrikrishna foods (No-DDQ-11/2007/Adm-5/2-3/B-5 dt.30.11.07). The foods which are ready to eat and foods which require no further processing stand excluded from the schedule entry. Caramel Pudding Mix is not a ready to serve food. It cannot be eaten as it is. The directions make it clear that certain ingredients need to be added to make the food ready-to-serve. In the DDQ in the case of M/s. Parampara (cited supra) ready to mix food was held to be covered by schedule entry C-107(11)(f). The schedule entry C-107(11)(f) specifically covers the category of 'ready to mix' food. Therefore, Caramel Pudding Mix, being a ready-to-mix food is covered by schedule entry C-107(11)(f) from 1/2/2006 to 31/1/2008.

The entry C-107(11)(f) was deleted from the schedule w.e.f. 1/2/2008. Therefore, with effect from 1/2/2008 the product would be taxable @ 12.5% being covered by the residuary entry.

**b) Kam-Wah's Chinese Noodles:**

These are noodles made out of maida and oil. The Kam-Wah Noodles are not ready-to-serve noodles. In order to become 'ready to serve', the noodles need to be first cooked in water. The noodles cannot be eaten as they are. For added taste, the noodles have to be garnished with spices and vegetables. Like Caramel Pudding Mix, the noodles are also not ready to serve food. They would therefore be covered by schedule entry C-107(11)(f) from 1/2/2006 to 31/1/2008. From 1.2.2008 onwards, they would be taxable @ 12.5% as the entry C-107(11)(f) has been deleted.

**c) Fruit & Fibre Muesli:**

Muesli is a breakfast cereal and it is prepared from rolled oats and fruits. It is available in the form of a pre-packaged mix. The ingredients of the products are Rolled Oats, Wheat Flakes, invert syrup, raisins, almonds, Liquid flakes, Wheat bran, oat bran, wheat germ, Soya Lecithin. The serving suggestions given on the covering of the product describe the following.

"Bagrry's Fruit and Fibre muesli is delicious when served with milk at breakfast or anytime of the day. Try Bagrry's Fruit and Fibre muesli with curds, yogurt cream or **eat it as snacks** for topping ice-cream etc. **You can also enjoy the wonderful testy sensation of Bagrry's Fruit and Fibre muesli as it is\***. In order to increase your daily intake of fibre, plan your diet to include Bagrry's Fruit and Fibre muesli as often as possible".

*\*Emphasis added*

The highlighted portion in the above paragraph makes it obvious that Muesli can be eaten as it is as a snack. Though Muesli is a dish which is best served with milk, yogurt and fruits for better taste, it can also be eaten as a ready snack. The cover of the products itself claims that the product is a 'great as a snack' and it is also apparent that it is the presence of dry fruits, fruits and honey which make the product 'great as a snack'. The ingredients which go into the making of the product lend a crunchy, crispy nature to the product. Therefore, the product is 'ready to serve food' – firstly and more importantly, because it can be eaten as it is as a ready snack and secondly, milk needs to be added to it only to make it more delicious. The addition of milk does not make a difference as far as its readiness for eating is concerned. Though milks needs to be added, the addition of milk does not amount to any processing. The "Muesli' with or without milk is a 'ready-to-serve' food. It is therefore excluded from schedule entry C-107(11)(f).

#### **d) Crunchy Muesli:**

This product is also similar to the product described at No.3. The only difference is that it does not contain fruit concentrate. This product consists of oats, wheat flakes, dry fruits, honey, bran etc. The cover of the product says the following:

“Enjoy the wonderful test sensation of Crunchy Muesli as it is”.

This product serves as a breakfast cereal and is cherished for its high nutritive value. The cover instructs that for best results it should be eaten with milk and fruits. However, like the ‘Fruit and Fibre muesli’, it also can be eaten as it is. It is also proclaimed to be ‘great as a snack’. The products like milk, curd, cream are only to be added to make the best of it. This ‘Crunchy muesli’, like the ‘Fruit and Fibre muesli’, is a ‘ready-to-serve food’ and therefore would be excluded from C-107(11)(f).

#### **e) Wheat Bran**

In the context of ‘Wheat Bran’ the applicant has canvassed the proposition that it would be covered by schedule entry A-4(c). Schedule entry A-4(c) covers all the bran of cereals and pulses excluding rice bran. The applicant was asked in the course of hearing to produce the process of manufacture of the product. However, he did not produce any such information. Therefore, I have no alternative but to proceed on the basis of the material on record.

Most grains, like wheat and oats, have a hard outer layer. When they are processed, this layer becomes a byproduct, and is called bran. In the case of processing wheat to make wheat flour, one gets miller’s or wheat bran. Wheat bran is packed with nutrition, and offers many dietary benefits. Bran is used as a supplement in foods meant for human beings and it is also extensively used as animal food.

The schedule entry ‘A-4(c)’ is divided into three sub entry (a),(b),(c) & (d). The entry (a) covers aquatic feed, cattle feed, (b) covers grass, hay and straw while (c) covers bran of cereals and pulses. The way the products are grouped together show that there is a common element in them which has led to such grouping. The common element is that all the products are meant for consumption for animals. However, the product before me is not meant for consumption for animals but is intended for human consumption. The construction of the schedule entry is such that only food fit for animal consumption are covered by it. This probability was brought to the notice of the applicant during the course of hearing and the applicant was quick to rebut it. He contended that such a conclusion is erroneous as the entry is not use-based.

However, it is seen that the product is ‘germinated wheat bran’. It is not plain

wheat bran. The meaning of the entry is plain in the sense that it covers only 'bran' and not 'germinated bran.'" Therefore, I do not agree that the product would be covered by schedule entry A-4(d). Germinated wheat bran i.e wheat bran obtained from wheat that is soaked and germinated , is different from plain, ordinary wheat bran. The product therefore does not befall schedule entry A-4(c)but would be covered by the schedule entry C-107(11)(f) from 1.2.06 to 31.1.08 and by schedule entry E-1 thereafter.

#### **f) White oats**

The product is described as 'Hi Fibre White Oats'. It is derived from oats and the oats is further enriched with oat bran. The packet contains cooking directions in which it is informed that the white oats can be used to make Porridge, soup and health drinks. The porridge can be made by mixing the 'White Oats' in boiling water and adding sugar, cream and milk to it. Soup can be prepared by adding it to soups to make soups thicker and nutritious. The applicant has contended that the product is covered by schedule entry A-9.In the alternative it is contended that it is covered by schedule entry C-107(11)(f).

|     |                                                                                                                                       |                       |
|-----|---------------------------------------------------------------------------------------------------------------------------------------|-----------------------|
| A-9 | Cereals (other than paddy, rice and wheat) in whole grain, split or broken form and their flour whether sold singly or in mixed form. | 1.5.2005 to 31.3.2006 |
|-----|---------------------------------------------------------------------------------------------------------------------------------------|-----------------------|

The applicant was requested to produce the manufacturing process of the product. He produced the same on 14.2.2008. It is informed that white oats are derived from the de-husked form of oats and then the oats are subjected to the processes of breaking, sieving, steaming, flaking and drying. From the process it is clear that the White oats are not simply oat flour. The oat cereal undergoes certain extensive processing in order to result in what the applicant calls 'White oats'. Also, the White oats is not in flour form. It is grainy in texture.

The schedule entry A-8 exempts cereals in whole grain, split , broken form and exempts cereal flour as well.

- White Oats is not whole grain- it is not oats in whole.
- It is also not oats in split, broken form.
- It is not plain oat flour. It is processed oats.

The cereal flour exempted from schedule entry A-9 is plain flour. I would explain this with an example. Jowar(millet) is a cereal which, unlike wheat, rice and paddy, is not excluded from the heading. The expression 'cereal in flour form' in schedule entry A-9 would cover 'plain jowar flour.' This 'jowar flour' is obtained by cleaning the jowar of all impurities and then grinding them. Oat flour obtained by grinding oats would be covered by this entry. But white oats is not plain oat flour. This is evident from the manufacturing process of the product.

The applicant has described the process of making 'White Oats' very briefly. But the process in some detail is obtained from the 'net' from the 'Wikipedia' site.

#### *Cleaning and sifting*

- The oats are loaded onto moving trays and washed under a high-intensity water [spray](#). Often the trays are perforated so that foreign material is discarded underneath.

#### *Steaming*

- The cleaned oats then move to a large [steamer](#) where they are subjected to [moist](#) heat for a [predetermined](#) length of time.

#### *Rolling or cutting*

- Standard oats are those that have been steel-cut. The oats are run through a machine with razor-sharp knife blades. Quick-cooking oats are rolled between cylinders to produce a [flatter](#), lighter [flake](#). These processes are usually repeated several times to produce the type of oat flake that is desired. In both processes, the hull is separated from the grain. The hulls are sifted out and used for other purposes.

#### *Roasting*

- The hulled oats are then placed into a roaster where they are [toasted](#) at a [preset](#) temperature for a pre-determined amount of time.

Generally, oats are either crushed or rolled or ground into flour. White oats are obtained from rolled oats and is a popular breakfast cereal. Breakfast cereals are cereal products- they are not plain cereals. The product "White Oats" is not plain oat flour and therefore it would not come in schedule entry A-9. It would be covered by schedule



entry C-107(11)(f) being food which cannot be eaten as it is and is therefore not 'ready-to-serve' food. It would be covered by the residual entry E-1 from 1.2.2008 onwards.

#### **g) Oat meal**

The product 'Bagrry's Oatmeal' is oatmeal enriched with oat bran. The information submitted by the applicant is that oat meal and oat bran is obtained by the sieving. The process is not very clear and therefore the process as described on the Net is obtained and reproduced:

" The oat, like some other cereals, has a hard, inedible outer hull that must be removed before the grain can be eaten. After the hulls have been removed from the bran-covered oat grains, the remainder is called oat groats. Oat groats can be used as cereal, but since the bran layer makes the grains tough to chew and contains an enzyme that can cause the oats to go rancid, oat groats are usually steam-treated to soften them and denature the enzymes. Rolled oats that are sold as oatmeal have often been lightly baked or pressure-cooked. Thick-rolled oats are large whole flakes, and thin-rolled oats are smaller, fragmented flakes. Oat flakes that have simply had the bran removed can be cooked and eaten as "old-fashioned" oatmeal, *but more highly fragmented rolled oats absorb water much more easily and therefore cook faster, so they are sometimes called "quick" or "instant" oatmeal*. Oatmeal can be further processed into coarse powder, which, when cooked, becomes a thick broth. Finer oatmeal powder is often used as baby food.

In the United States and Canada, 'oatmeal' means any crushed oats, rolled oats, or cut oats used in recipes such as oatmeal cookies. *Oatmeal is a product made by processing* oats. Oatmeal is coarsely ground unsifted oats. Rolled oats and steel-cut oats are also called oatmeal. The porridge made from this is also called oatmeal or oatmeal cereal. However in other parts of the English-speaking world, 'oatmeal' means coarsely ground groats (i.e. oat-meal, cf. cornmeal, peasmeal, etc.). The groats are coarsely ground to make oatmeal, or cut into small pieces to make steel-cut oats, or steamed and rolled to make rolled oats. The quick-cooking rolled oats are cut

into small pieces before being steamed and rolled. Oatmeal porridge contains more B vitamins and calories than other kinds of porridges.[1] Oatmeal is used in some alcoholic drinks, cosmetics, soaps, external medical treatments, and is sometimes an added flavour in canned animal products.

The above extract shows that 'Oatmeal' is obtained in two forms and by two different processes:

1. The oat groats obtained after the oats are hulled are simply crushed to make oatmeal.
2. Rolled oats and steel cut oats are also called oatmeal. **Rolled oats** are oat groats that have been rolled into flat flakes under heavy rollers. The oat, like some other cereals, has a hard, inedible outer hull that must be removed before the grain can be eaten. After the hulls have been removed from the bran-covered oat grains, the remainder is called oat groats. Oat groats can be used as cereal, but since the bran layer makes the grains tough to chew and contains an enzyme that can cause the oats to go rancid,. Such oat groats are usually steam-treated to soften them and denature the enzymes. Steel-cut oats are oat groats that have been chopped into smaller pieces and retain bits of the bran layer. .

In the first process, the oat groats are just coarsely crushed to make oatmeal. This is oat cereal in primary form and 'oatmeal' obtained by such a process would be covered by the schedule entry A-9. However, the oatmeal obtained as 'rolled oats' is not oats in plain, cereal form. The rolled oats are obtained by a different process of hulling, steaming and cutting. It is 'rolled oats-oatmeal' which would not be covered by schedule entry A-9. In the instant case, the process of preparing oatmeal as submitted by the applicant is not clear. Therefore, no determination could be done given the lack of facts on this issue. However, it is felt that the broad guidelines are adequate enough to arrive at a conclusion .

05. In view of the aforesaid discussion, I pass the order as follows:-

# O R D E R

(Under Section 56(1) (e) of the Maharashtra Value Added Tax Act, 2002)

No. DDQ-11/2005/Adm-3/102/B- 02

Mumbai, Date :- 29.3.08

| Sr. no | Description                   | Date and invoice no. | Schedule entry                                               | Rate of tax | Period            |
|--------|-------------------------------|----------------------|--------------------------------------------------------------|-------------|-------------------|
| 1      | Bagrry's Oatmeal              | OR 121 dt. 20.5.2005 | No determination can be given on the issue as facts unclear. |             |                   |
| 2      | Bagrry's White Oats           | S/1013 dt. 22.7.2005 | E-1                                                          | 12.5%       | 1.4.05 to 31.1.06 |
|        |                               |                      | C-107(11)(f)                                                 | 4%          | 1.2.06 to 31.1.08 |
|        |                               |                      | E-1                                                          | 12.5%       | 1.2.08 onwards    |
| 3      | Bagrry's Crunchy Muesli       | S/1013 dt. 22.7.2005 | E-1                                                          | 12.5%       | 1.4.05 till date  |
| 4      | Bagrry's Fruit & Fibre Muesli | S/569 dt. 28.5.2005  | E-1                                                          | 12.5%       | 1.4.05 till date  |
| 5      | Harnik Caramel Pudding Mix    | No invoice on record | E-1                                                          | 12.5%       | 1.4.05 to 31.1.06 |
|        |                               |                      | C-107(11)(f)                                                 | 4%          | 1.2.06 to 31.1.08 |
|        |                               |                      | E-1                                                          | 12.5%       | 1.2.08 onwards    |
| 6      | Kamwah                        | S/1035               | E-1                                                          | 12.5%       | 1.4.05 to 31.1.06 |

|   |                     |                        |              |       |                      |
|---|---------------------|------------------------|--------------|-------|----------------------|
|   | Chinese Noodles     | dt.<br>25.7.2005       | C-107(11)(f) | 4%    | 1.2.06 to<br>31.1.08 |
|   |                     |                        | E-1          | 12.5% | 1.2.08<br>onwards    |
| 7 | Bagrry's Wheat Bran | S/570 dt.<br>28.5.2005 | E-1          | 12.5% | 1.4.05 to<br>31.1.06 |
|   |                     |                        | C-107(11)(f) | 4%    | 1.2.06 to<br>31.1.08 |
|   |                     |                        | E-1          | 12.5% | 1.2.08<br>onwards    |

**SANJAY BHATIA**  
**Commissioner of Sales Tax,**  
**Maharashtra State, Mumbai**