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F. NO. CUS/SIIB/INT/491/2024-SIIB-O/o COMMR-CUS-EXP-ZONE-I-MUMBAI

Date: 11.04.2025

**Show Cause Notice issued under Section 124 of the Customs Act, 1962 read with
Section 114 and Section 114AA of the Customs Act, 1962**

1. Brief facts of the case

1.1 An intelligence was received vide which it was informed that M/s. ATLEK INFRACON PRIVATE LIMITED (IEC- AAQCA6928A) has filed one Shipping Bill dated 11.10.2024 at INBOM1, Mumbai which appears to be risky. The commodity being exported has been declared as two "*Mobile Screening Mining Machine 250 TPH*" under RITC 84741090 (hereinafter referred to as the "impugned goods") and is consigned to M/s. PALISO MINING LTD. with the declared destination being Somaliland. The intelligence indicated, *inter-alia*, that the impugned goods under export may be of poor quality and procured improperly without proper tax payment and the intent of the exporter is to avail undue export benefits. It also indicated that the impugned goods may be overvalued.

1.2 The relevant Shipping Bill No. 4765768 dated 11.10.2024 (**RUD-1**) was perused and it was observed that the said Shipping Bill was filed for Export of two Nos. "*Mobile Screening Mining Machine 250 TPH*" having FOB value of INR 1,30,69,137/-. The Shipping Bill No. No. 4765768 dated 11.10.2024 was filed for

export under LUT, without payment of IGST. The export under LUT enables the exporter to claim refund of accumulated Input Tax Credit in terms of Rule 89 of the CGST Rules 2017. The Shipping Bill No. No. 4765768 dated 11.10.2024 covered two invoices i.e. AIPL/E/24-25/04 and AIPL/E/24-25/03 dated 05.10.2024. As per the invoices AIPL/E/24-25/04 and AIPL/E/24-25/03 **(RUD-2)**, the exporter has stated that they intended to claim Rewards Under (RoDTEP) Remission of Duty and Tax on Export Product from India Scheme.

1.3 A team of officials of *SIIB (Exports), Mumbai Customs Zone-I* (hereinafter referred to as “SIIB (X)”) comprising, Deputy Commissioner of Customs, SIIB (X), Appraiser, SIIB (X) and Tax Assistant, SIIB (X) examined the impugned goods and found them as being two big sized green colored machines with the marking “POWERSCREEN, A TEREX COMPANY, DUNGANNON, NORTHERN IRELAND”. On physical examination of the goods, the marking “POWERSCREEN, A TEREX COMPANY, DUNGANNON, NORTHERN IRELAND” was found on both the machines. Further, one of the two aforesaid green colored machines had a marking “04/2011”. In visual appearance, both the machines appeared to be old and used. Hence, based on the reasonable belief that the impugned goods have been mis-declared in order to take undue benefits of various export-based incentives and therefore they are liable for confiscation under Section 113(i) of the Customs Act, 1962, the impugned goods were seized under Section 110(1) of the Customs Act, 1962 vide seizure memo dated 18.10.2024 **(RUD-3)**.

1.4 Since the impugned goods appeared to be old and used in nature and the Exporter had not declared this fact of the goods being old and used in the Shipping Bill, it became necessary to ascertain the actual condition of the goods

and the present assessable value of the same. To determine the condition of the goods, assessable value and other technical aspects related to the impugned goods, M/s. S. D. Deshpande was appointed from the list of empaneled Chartered Engineers.

1.5 Shri S. D. Deshpande, the empaneled Chartered Engineer inspected the impugned goods on 25.10.2024 and submitted his report Ref. No. SDD/CEC/SIIB/EXP/MBPT/01/24-25 dated 29.10.2024 **(RUD-4)** wherein it was certified that the subject goods are **old and used capital goods** having **Assessable Value USD 42500 and USD 48500** respectively against the **declared value of USD 79735 and USD 79735** respectively, which is approximately 75% higher, on an average, than the Assessable value.

1.6 The valuation of export goods is determined using the Customs Valuation (Determination of Value of Export Goods) Rules, 2007. The **Rule 8, Customs Valuation (Determination of Value of Export Goods) Rules, 2007**, provides as under:

"8. Rejection of declared value. -

(1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any export goods, he may ask the exporter of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such exporter, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, the transaction value shall be deemed to have not been determined in accordance with sub-rule (1) of rule 3.

2) At the request of an exporter, the proper officer shall intimate the exporter in writing the ground for doubting the truth or accuracy of the value declared in relation to the export goods by such exporter and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

Explanation. - (1) For the removal of doubts, it is hereby declared that-

(i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; **where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 6.**

(ii) The declared value shall be accepted where the proper officer is satisfied about the truth or accuracy of the declared value after the said enquiry in consultation with the exporter.

(iii) The proper officer shall have the powers to raise doubts on the declared value based on certain reasons which may include -

(a) the significant variation in value at which goods of like kind and quality exported at or about the same time in comparable quantities in a comparable commercial transaction were assessed.

(b) the significantly higher value compared to the market value of goods of like kind and quality at the time of export.

(c) the misdeclaration of goods in parameters such as description, quality, quantity, year of manufacture or production.”

Thus, from the above, it is evident that the declared value should be rejected due to apparent mis-declaration regarding the old and used condition of the goods, as observed in the panchnama (**RUD-6**) drawn during the seizure of the said goods, as well as stated in the Chartered Engineer Certificate.

Further, **the Rule 3** of the ***Customs Valuation (Determination of Value of Export Goods) Rules, 2007*** provides as under:

“Rule 3. Determination of the method of valuation. -

(1) Subject to rule 8, the value of export goods shall be the transaction value.

(2) The transaction value shall be accepted even where the buyer and seller are related, provided that the relationship has not influenced the price.

(3) If the value cannot be determined under the provisions of sub-rule (1) and sub-rule (2), the value shall be determined by proceeding sequentially through rules 4 to 6.”

It is evident that by virtue of Rule 3 read with Rule 8 and the facts stated above, since the declared value of the impugned goods is being rejected under the Rule 8, the value of the export goods needs to be determined by proceeding sequentially through rules 4 to 6.

In this regard, **Rule 4** of the ***Customs Valuation (Determination of Value of Export Goods) Rules, 2007***, is as under:

“4. Determination of export value by comparison. -

(1) The value of the export goods shall be based on the transaction value of goods of like kind and quality exported at or about the same time to other buyers in the same destination country of importation or in its absence another destination country of importation adjusted in accordance with the provisions of sub-rule (2).

(2) In determining the value of export goods under sub-rule (1), the proper officer shall make such adjustments as appear to him reasonable, taking into consideration the relevant factors, including-

- (i) difference in the dates of exportation,***
- (ii) difference in commercial levels and quantity levels,***
- (iii) difference in composition, quality and design between the goods to be assessed and the goods with which they are being compared,***
- (iv) difference in domestic freight and insurance charges depending on the place of exportation”***

The export data available for the period 01.06.2024 to 31.12.2024, having the same HS Code as that of the impugned goods, was examined by the investigating officers to find out the valuation of the goods of like kind and quality exported at or about the same time. Since the impugned goods are old and used machinery whose valuation intricately depends upon their present condition and their residual life, they could not be compared to other machinery, even if of similar specification. Therefore, Rule 4 could not be applied in determining the valuation of the impugned goods.

Subsequently **Rule 5** of the ***Customs Valuation (Determination of Value of Export Goods) Rules, 2007*** was applied, which provides as under:

“5. Computed value method. -

If the value cannot be determined under rule 4, it shall be based on a computed value, which shall include the following: -

- (a) cost of production, manufacture or processing of export goods;***
- (b) charges, if any, for the design or brand;***
- (c) an amount towards profit.”***

However, the said goods have not been produced/manufactured or processed by the exporter. In fact, they have been purchased from a supplier, which is evident from the purchase invoice issued by M/s Rashmi Cement Ltd. (RUD-5) Further, as stated in the Punchnama dtd. 18.10.2024, one of the machines bears markings of “*Dungannon, Northern Ireland*”. Thus, it appears that the machines may have been manufactured outside India, and may have changed hands multiple times, before being exported in the instant case. Therefore, the cost of production, manufacture or processing of export goods is not available and Rule 5 could not be applied for valuation of the impugned goods.

Consequently, **Rule 6** of the ***Customs Valuation (Determination of Value of Export Goods) Rules, 2007*** was applied, which provides as under:

“6. Residual method. -

(1) Subject to the provisions of rule 3, where the value of the export goods cannot be determined under the provisions of rules 4 and 5, the value shall be determined using reasonable means consistent with the principles

and general provisions of these rules provided that local market price of the export goods may not be the only basis for determining the value of export goods”

From the above Rule 6, it appears that the value shall be determined using reasonable means consistent with the principles and general provisions of these rules. Therefore, the valuation was got done by the empaneled Chartered Engineer who is an expert in this field. The Chartered Engineer in his report Ref. No. SDD/CEC/SIIB/EXP/MBPT/01/24-25 dated 29.10.2024 has certified that the subject goods have **Assessable Value USD 42500 and USD 48500** respectively against the **declared invoice value of USD 79735 and USD 79735** respectively. This certification appears to be considerable as the export value of the said goods in terms of Rule 6 and the export value appears to be taken as **USD 42500 and USD 48500** respectively against the **declared invoice value of USD 79735 and USD 79735** respectively. Since the determined value of the export goods is **approximately 75% higher**, on an average, than the Assessable value as declared by the exporter, it appears that the impugned goods have been “overvalued”, in addition to having been misdeclared as discussed *supra*.

1.7 The Shipping Bill No. 4765768 dated 11.10.2024 was filed for export under LUT, without payment of IGST. The export under LUT enables the exporter to claim refund of accumulated Input Tax Credit in terms of Rule 89 of the CGST Rules 2017. Further, as per the invoices AIPL/E/24-25/04 and AIPL/E/24-25/03, the exporter has stated that they intended to claim Rewards Under (RoDTEP) Remission of Duty and Tax on Export Product from India Scheme. From this, it appears that the Exporter has misdeclared and overvalued the impugned Goods

with an intent to fraudulently avail export benefits such as RoDTEP and GST Refund for export under Bond/LUT, and these goods are Second Hand machinery.

1.8 Considering the above facts, it appears that the Exporter has tried to hide the actual condition of the impugned goods by not declaring it as old and used. Also the impugned Goods appeared to be overvalued with an intent to fraudulently avail export benefits such as RoDTEP and GST Refund for export under Bond/LUT, considering the Chartered Engineer's Report dated 29.10.2024.

2. Further investigation and Statements of the concerned persons recorded under Summon as per Section 108 of the Customs Act, 1962.

2.1 Statements of **Shri Rajesh Ghosal**, Director of M/s. Atlek Infracon Pvt. Ltd. were recorded by the proper officer on 07.11.2024 and 08.11.2024 under Section 108 of the Customs Act, 1962. **(RUD-7)**

2.1.1 In these statements, he stated that the supplier firm, i.e, M/s. Rashmi Cement Limited in any manner is not related to M/s. Atlek Infracon Private Limited. M/s. Atlek Infracon Pvt. Ltd. is an independent Company and not a part of any group of Companies. Also no employee, and/or member(s) of management, and/or owners of shares of M/s. Atlek Infracon Pvt. Ltd. in any way associated with the supplier firm. He further stated that Shri Chiraag Patodia, Chartered Accountant who works as a consultant in M/s. Atlek Infracon Private Limited, takes decisions on behalf of the company in the matter related to the export and its clearance from the Customs. Further, as regards to the FOB value of the subject goods, intention of claiming any benefit under Government Scheme such RODTEP, Drawback, Refund of accumulated ITC on account of Exports etc., he stated that Shri Chirag Patodia, Chartered Accountant may have idea about

this. He also stated that the foreign buyer was introduced to them by the supplier Company, M/s. Rashmi Cement Ltd.

2.1.2 As regards the questioning on not mentioning the subject goods as “old and used”, he stated there is no specific reason for not mentioning the same. It has been done inadvertently while issuing the invoices and packing lists. He further stated that Shri Chiraag Patodia, Chartered Accountant may know about the reason of supplying old and used machines to the foreign buyer even though the purchase order from the foreign buyer mentions that the material supplied shall be brand new.

2.1.3 He further stated that he has no idea about the number of employees working in the M/s. Atlek Infracon Private Limited and their functions/responsibilities. He also stated that He is also employed in other 07-08 firms as Director or Additional Director. However, he does not recollect/remember the names of these companies. He was also unaware of the fact that there are 28 other companies registered at the address of “56, Metcalfe Street 2nd floor, Room No.2C, Kolkata, West Bengal 700013”, the registered address of M/s. Atlek Infracon Private Limited.

2.1.4 He also stated that Shri Alok Pattanayak is the other director in M/s. Atlek Infracon Pvt. Ltd. Shri Chirag Patodia, the Chartered Accountant, invited him to join M/s. Atlek Infracon Pvt. Limited as a Director and he also created the DIN on his (Shri Rajesh Ghosal) behalf. However, Shri Chirag Patodia did not inform him regarding the purpose for creation of DIN. An amount of salary/remuneration was paid Rs. 20,000/- which was paid physically in currency notes. Sometimes it was

paid by Shri Chirag Patodia, Chartered Accountant or he sends some other person to hand over the cash.

In view of the above statements, it appears that Shri Ghoshal was evasive/ unable to answer many relevant questions regarding the firm M/s. Atlek Infracon Pvt. Ltd., such as finalisation of FOB Value of the subject consignment, old & used condition of the machinery, the nature of business conducted by M/s. Atlek Infracon Pvt. Limited, the number of employees of the company and their role, etc. Further, documents, mainly, GST Returns, Bank Statement, balance sheet of previous 03 years etc. were called vide summon dated 05.11.2024, however he failed to submit these requisite documents to this department.

Further, during the recording of the statement, the responses of Shri Rajesh Ghosal, the Director of M/s. Atlek Infracon Private Limited appeared to be dubious and the credentials of M/s. Atlek Infracon Pvt. Ltd. appeared to be doubtful. Shri Rajesh Ghosal appeared to be a dummy director who was not well aware about the functioning of M/s. Atlek Infracon Pvt. Ltd.

Hence, to investigate the case further and to arrive at the right conclusion, the Summons were issued by the proper officer to Shri Alok Pattanayak, the other Director of M/s. Atlek Infracon Pvt. Ltd. and Shri Chirag Patodia, Chartered Accountant. It is also pertinent to note that after seizure of the subject export consignment, M/s. Atlek Infracon Private Limited authorised Shri Uday Chand Kungilwar, Company Secretary, M/s. Rashmi Cement Limited to make submission and plead the case on behalf of M/s. Rashmi Cement Limited (**RUD-8**). Hence, the role of M/s Rashmi Cement in the subject consignment needed to be also investigated. Therefore, Shri Uday Chand Kungilwar, Company Secretary of M/s.

Rashmi Cement and Shri Subhendu Biswas, Whole time Director of M/s. Rashmi Cement were summoned by the proper officer.

2.2 Statements of **Shri Subhendu Biswas**, Whole-time Director of M/s. Rashmi Cement Ltd. were recorded by the proper officer on 18.11.2024 and 19.11.2024 under Section 108 of the Customs Act, 1962. **(RUD-9)** He submitted that he is holding the position of Whole-time Director in M/s. Rashmi Cement Ltd. since 14.07.2010 having DIN 03114508. He is working only for M/s. Rashmi Cement Limited. He doesn't know M/s. Atlek Infracon Limited personally. He came to know about this Company as the sales team of M/s. Rashmi Cement Ltd. brought the proposal from M/s. Atlek Infracon Pvt. Limited regarding purchase of these machineries in question. Other than that he doesn't have much idea about M/s. Atlek Infracon Pvt. Limited. Shri Tapan Kumar Samantray, a sales person from their company introduced M/s. Atlek Infracon Pvt. Ltd. as buyer. The Buyer Firm, M/s. Atlek Infracon Pvt. Ltd., in any manner is not related to M/s. Rashmi Cement Limited. He knows Shri Chirag Patodia, Chartered Accountant as GST Consultant, for the last 02 years. They had purchased the "old and used" machines from M/s. Universal Enterprises in May 2024.

2.3 Statement of **Shri Uday Chand Kungilwar**, Company Secretary of M/s. Rashmi Cement Ltd. was recorded by the proper officer on 19.11.2024 under Section 108 of the Customs Act, 1962. **(RUD-10)** He submitted that he is holding the position of Company Secretary in M/s. Rashmi Cement Limited since 01.03.2016. He doesn't know M/s. Atlek Infracon Pvt. Ltd. personally. He was brought into the picture when this consignment was held by SIIB. It was directed by Shri Tapan Kumar Samantaray who is the purchase head of M/s. Rashmi

Cement Ltd. to visit the office of SIIB Export, Mumbai Port to check what was the reason to hold the consignment. He has only heard of Shri Alok Pattanayak, the Director of M/s. Atlek Infracon Pvt. Limited and he has never met him. He met Shri Rajesh Ghosal, the other Director of M/s. Atlek Infracon Pvt. Ltd. one or two days before coming to Mumbai for his statement as he was informed that he will be going for recording his statement. The Buyer Firm, M/s. Atlek Infracon Pvt. Ltd., in any manner is not related to M/s. Rashmi Cement Limited. He knows Shri Chirag Patodia, Chartered Accountant as GST Consultant, and for the last 04-05 years.

2.4 Statement of **Shri Tapan Kumar Samantaray**, Vice President Purchase & Project of M/s. Rashmi Cement Ltd. recorded by the proper officer on 28.11.2024 under Section 108 of the Customs Act, 1962. **(RUD-11)** He submitted that he is holding the position of Vice President Purchase & Project in M/s. Rashmi Cement Ltd. since July 2021. M/s. Atlek Infracon Pvt. Limited approached them directly for the purchase of these Machines after receiving information from the market that M/s. Rashmi Cement Ltd. is in possession of such old and used machinery. Shri Alok Pattanayak personally visited their plant in Jhargram and met him for the purchase of these two machines and physically examined the machine. He never had any information about Shri Alok Pattanayak or about the existence of M/s. Atlek Infracon Pvt. Limited prior to this transaction. Shri Alok Pattanayak informed him telephonically that their consignment has been held for investigation by Customs and asked for help as they do not have any expert to deal with customs related matters. Shri Subhendu Biswas, the Director of M/s. Rashmi Cement Ltd. and he jointly decided to help M/s. Atlek Infracon Limited as helping them will help us to secure the payment for the sale of these machines early and close the

deal. He approached Shri Alok Pattanayak, Director of M/s. Atlek Infracon Limited for getting Shri Uday Chand Kungilwar authorised as representative. They had purchased the old and used machineries from M/s. Universal Enterprises in May 2024. Since these machineries were not useful to them any longer, it was decided to sell these machines. It was a mistake that the Commercial Invoice or Tax Invoice were raised without mentioning "old & used". But there was no malafide intention behind it. It was a typographical mistake with no hidden purpose.

2.5 Statement of **Shri Chirag Patodia**, Chartered Accountant, GST Consultant was recorded by the proper officer on 03.12.2024 under Section 108 of the Customs Act, 1962. **(RUD-12)** He submitted that he knows M/s. Atlek Infracon Private Limited for the last one and half months after their export consignment was held for investigation by Mumbai Customs. He was introduced to M/s. Atlek Infracon Private Limited by M/s. Rashmi Cement Limited through Shri Uday Chand Kungilwar who is the Company Secretary in M/s. Rashmi Cement Limited. He met with Shri Alok Patnaik, the Director of M/s. Atlek Infracon Private Limited at the office of M/s. Rashmi Cement Limited but does not remember exactly where he met Shri Rajesh Ghosal. He only guided M/s. Atlek Infracon Private limited by vetting their documents and transactions as per the applicable GST and Customs Law. Further, he consulted them if they could save on freight of the vessel in case the export is not made. M/s. Rashmi Cement Limited asked him to help them and his fee will be finalised later on. He earlier used to work with M/s. KPMG and M/s. Rashmi Cement Limited was one of their clients and he used to overlook the GST returns for them as an employee of KPMG.

Shri Rajesh Ghosal, the Director of M/s. Atlek Infracon Limited on 07.11.2024 & 08.11.2024 has stated that Shri Chirag Patodia, the Chartered Accountant, invited him to join M/s. Atlek Infracon Pvt. Limited as a Director and he also created the DIN on his (Shri Rajesh Ghosal) behalf. Further, Shri Chirag Patodia takes the decision takes decisions on behalf of the company in the matter related to the export and its clearance from the Customs and that he may know the details of the subject export consignment as regards the value, the actual condition of the subject goods, benefits to be availed etc. Shri Chirag Patodia completely denied the above statements made by Shri Rajesh Ghosal, the Director of M/s. Atlek Infracon Pvt. Ltd.

2.6 Statements of **Shri Alok Pattanayak**, Director of M/s. Atlek Infracon Private Limited were recorded by the proper officer on 04.12.2024 & 05.12.2024 under Section 108 of the Customs Act, 1962. **(RUD-13)**

2.6.1 He submitted that he is holding the position of Director in M/s. Atlek Infracon Pvt. Ltd. since March 2018. But he did not receive an appointment letter for being appointed as the Director in M/s. Atlek Infracon Pvt. Limited. Shri Dipanjan Mahata from M/s. Rashmi Cement Limited made him the Director of M/s. Atlek Infracon Private Limited and all the documents are with M/s. Rashmi Cement Limited. Shri Dipanjan Mahata is the Director of M/s. Rashmi Cement Limited and he told Shri Alok Pattanayak that he will pay him (Shri Alok Pattanayak) Rs. 2000 per month for working as the Director of M/s. Atlek Infracon Pvt. Limited but did not tell him anything about any work related to M/s. Atlek Infracon Pvt. Limited.

2.6.2 He is working as an electrician in M/s. Rashmi Cement Limited for approximately 12-13 years. He receives Rs.2000/- per month for working as the Director of M/s. Atlek Infracon Pvt. Limited in his bank account in addition to his salary of Rs.19000/- per month that he receives from M/s. Rashmi Cement Limited. He is also employed in other firms as Director. But he cannot remember the names and numbers of these companies. He was appointed as Director in other companies by M/s. Rashmi Cement Limited only. At present, there are only 02 Directors in M/s. Atlek Infracon Pvt. Limited, one is himself and another is Shri Rajesh Ghosal. There used to be another Director in the past, who has left now, Shri Alok Mandal, who is also an employee of M/s. Rashmi Cement Limited.

2.6.3 M/s. Rashmi Cement is related to M/s. Atlek Infracon Pvt. Limited. The work done by M/s. Atlek Infracon Pvt. Ltd. is led by M/s. Rashmi Cement Limited and the decisions are taken by Shri Dipanjan Mahata. The documents related to M/s. Atlek Infracon Pvt. Ltd. are provided to him at the Jhargram unit of M/s. Rashmi Cement Limited and these documents are marked so he understands where he is to sign. Different people bring these documents at different occasions and ask him to sign as he is the Director of M/s. Atlek Infracon Pvt. Limited. Thus, he appeared to be a dummy director who was working on instructions given by Shri Dipanjan Mahata, Director of M/s. Rashmi Cement Limited and other employees of M/s. Rashmi Cement Limited.

2.6.4 He has known Shri Uday Kungilwar since the export goods were seized by SIIB for investigation. Shri Uday Kungilwar told him that machines which were being exported by M/s. Atlek Infracon Private Limited have been held for investigation by SIIB. Shri Uday Kungilwar provided him with some documents,

the address of the office of SIIB and also gave the plane ticket to Mumbai from Kolkata. Shri Uday Kungilwar told him to take all these documents with him to the office of SIIB and do as the SIIB officers told him.

2.6.5 He does not have the knowledge about the ownership of the goods. They may either be owned by M/s. Rashmi Cement Limited or M/s. Atlek Infracon Pvt. Ltd.

2.7 Statement of Shri Naveen Marshal D'souza, Custom Broker of the consignment covered by the Shipping Bill No.4765768 dated 11.10.2024, was recorded by the proper officer on 21.01.2025, under Section 108 of the Customs Act, 1962. **(RUD-14)**

2.7.1 He stated that he is a full-time Custom Broker and operates M/s. Online Sea & Air Services, a firm registered under GST and holding a PAN-based IEC number AEBPD9653F. He has held a Custom Broker License since 2012. He was first introduced to M/s. Atlek Infracon Pvt. Ltd. during an export operation by Shri Mayur Visharia, National Sales Manager of M/s. Prolog India Pvt. Ltd. The documents related to Atlek Infracon were provided to him by Shri Mayur Visharia, who had obtained them from Rashmi Group, as confirmed through email communication provided as documentary evidence. He further stated that he has never directly interacted with anyone from Atlek Infracon Pvt. Ltd. or Rashmi Group and has not received any fees from them. Instead, he is expecting payment from Shri Mayur Visharia, though no amount has been received yet since the consignment is on hold. The agreed fee for the service is approximately Rs. 15,000 per shipment, as per a quotation issued to Prolog India Pvt. Ltd.

2.7.2 The transportation and shipping arrangements for the consignment were handled by Prolog India Pvt. Ltd., with Shri Mayur Visharia as the authorized contact. The Custom Broker firm's authorized personnel managed the gate pass for dock entry using a Shipping Bill. Vehicle details used for transportation were submitted.

2.8 Statement of Shri Mayur Visharia, National Sales Manager at Prolog India Private Limited, was recorded by the proper officer on 23.01.2025, under Section 108 of the Customs Act, 1962. **(RUD-15)**

2.8.1 Shri Mayur Visharia confirmed that he provided documents related to the consignment covered by invoices AIPL/E/24-25/04 and AIPL/E/24-25/03 for M/s Atlek Infracon Pvt. Ltd. (IEC-AAQCA6928A), as stated by Mr. Naveen Marshal D'souza. He explained that Prolog India Pvt. Ltd. came to know about M/s Atlek Infracon through Rashmi Group, a regular client. During a meeting with Mr. Prasenjit Baksi of Rashmi Group in September 2024, the export of a shipment to Berbera, Somaliland, was discussed, though the consignor was initially believed to be Orissa Metaliks. Later, Mr. Prasenjit informed Prolog India that the consignor was M/s Atlek Infracon, and further details would be provided by Mr. Jayram Ray. A fixture note was prepared and exchanged via email, with Prolog India's director countersigning it. **Shri Visharia submitted email communications with Mr. Prasenjit Baksi, Deputy General Manager, Logistic & Shipping, M/s. Rashmi Cement Ltd.; Mr. Tapan Kumar Samantaray, Vice President Purchase & Project of M/s. Rashmi Cement Ltd. and Mr. Jayram Ray as evidence (RUD-16) that the decisions and communications regarding the impugned consignment were being taken by the employees of M/s. Rashmi Cement Ltd.**

2.8.2 Shri Visharia stated that this was the first import-export activity involving M/s Atlek Infracon through Prolog India. The contract was entered into with M/s Atlek Infracon through Rashmi Group, supported by the fixture note. Mr. Prasenjit Baksi, Deputy General Manager of Shipping & Logistics at Rashmi Group, was the authorized contact person for the consignment. Shri Visharia explained that the shipment was routed through Mumbai instead of Kolkata due to vessel availability and provided details of the transporter, Quick Trans Solutions. He confirmed that no advance payments were received, and invoices were raised in the name of M/s Atlek Infracon as instructed by Mr. Prasenjit Baksi. As of the statement date, no payments had been received from either M/s Atlek Infracon or Rashmi Group.

2.9 Statement of Shri Prasenjit Baksi, Deputy General Manager, Logistic & Shipping, M/s. Rashmi Cement Ltd. was recorded by the proper officer on 13.02.2025 under Section 108 of the Customs Act, 1962. **(RUD-17)**

2.9.1 He stated that he is the Deputy General Manager of Shipping & Logistics at Rashmi Cement Limited, having joined the company in April 2020 as an Assistant General Manager before being promoted in April 2024. His primary responsibilities involve handling the sea shipment of import and export consignments for Rashmi Cement Limited and other companies within Rashmi Group, such as Orissa Metaliks Pvt. Ltd. and Orissa Alloy & Steel Pvt. Ltd. He is not employed by any other company, does not own any business, and has not engaged in shipping work outside Rashmi Group. However, he coordinated the export consignment of M/s. Atlek Infracon Pvt. Ltd. at the request of Shri Dipanjan Mahata, Director of Rashmi Cement Ltd., and believes Atlek Infracon to

be part of Rashmi Group based on the preparation of shipping documents at Rashmi Cement's office.

2.9.2 Regarding the Atlek Infracon shipment, he stated that he arranged logistics and negotiated pricing with Prolog India Pvt. Ltd. He further stated that the decision to export from Mumbai instead of Kolkata was based on lower freight costs. He stated that the total transportation cost was USD 75,000 for shipping and INR 12,42,540/- for logistics. Payment for the shipment is to be made by M/s. Atlek Infracon Pvt. Ltd., and supporting documentation, including a fixture note, was promised for submission. He stated that he has no knowledge of any guarantor in the transaction. He further stated that he has no knowledge regarding the directors of Atlek Infracon Pvt Ltd. Communication related to the consignment was conducted via email, with document transmission handled by Jayram Ray from Rashmi Cement's documentation department.

2.10 Statement of Shri Jay Ram Ray, Accounts Manager, M/s. Orissa Metaliks Private Limited was recorded by the proper officer on 03.03.2025 recorded under Section 108 of the Customs Act, 1962. **(RUD-18)**

2.10.1 He stated that he is an Accounts Manager in M/s. Orissa Metaliks Private Limited having joined the company on 12.06.2017 as an Officer Accounts before being promoted in 2020. His primary responsibilities involve Accounts work in respect of Bill entry and data feeding relating to accounts work. He also handles the import related work pertaining to M/s. Orissa Metaliks Private Limited and other companies of Rashmi Group. He is not employed by any other company in any position. He is associated with his family business of dairy

products, mainly milk, which is handled by his father and brother. The said business is operational in Jharkhand.

2.10.2 Regarding the Atlek Infracon shipment, he stated that he came to know about M/s. Atlek Infracon Pvt. Ltd. from Shri Dipanjan Mahata, Director of M/s. Rashmi Cement Limited. Shri Dipanjan Mahata told him that M/s. Atlek Infracon Pvt. Ltd. is a part of Rashmi Group. He assigned the work of preparation of export documents in respect of consignment covered by invoices AIPL/E/24-25/04 and AIPLK/E/24-25/03 (both dated 05.10.2024) for M/s. Atlek Infracon Pvt. Ltd. The goods required to be exported were 02 Nos. Mobile Screening Mining Machine 250 TPH. Shri Dipanjan Mahata, Director had provided the copies of IEC details, PAN card and GSTN details of M/s. Atlek Infracon Pvt. Ltd. Shri Mahata also provided the copy of the Purchase order from M/s. Atlek Infracon Pvt. Ltd. to M/s. Rashmi Cement Limited for the subject goods, sales invoice of the subject goods issued by M/s. Rashmi Cement Limited to M/s. Atlek Infracon Pvt. Limited, and corresponding Purchase Order from the foreign buyer, viz. M/s. Paliso Metaliks to M/s. Atlek Infracon Pvt. Ltd. On the basis of these documents, he had prepared the Export Documents in the name of M/s. Atlek Infracon Pvt. Ltd. Export Pricing of the subject goods were prepared by him and the same was got approved and finalized by Shri Dipanjan Mahata, Director of Rashmi Cement Limited. He was aware of the fact that the subject machines were "old and Used". Shri Dipanjan Mahata, Director of M/s. Rashmi Cement Limited informed him while assigning the said job work to him. However, he forgot to mention the same in the export documents. This was the first time, he heard about M/s. Atlek Infracon Pvt. Ltd. He never did any other work pertaining to the shipment of import or export consignment related to M/s. Atlek Infracon Pvt. Ltd. before this.

2.11 Statement of Shri Dipanjan Mahata, Director, M/s. Rashmi Cement Limited was recorded by the proper officer on 07.03.2025 under Section 108 of the Customs Act, 1962. Further, M/s. Rashmi Cement Limited had also authorised Shri Dipanjan Mahata to appear on behalf of M/s. Rashmi Cement Limited in the subject matter to make submissions, statements and depositions for the company and to sign all the documents for reference on behalf of M/s. Rashmi Cement Limited. **(RUD-19)**

2.11.1 Shri Dipanjan Mahata stated that he is presently working as Director in M/s. Rashmi Cement Limited since 2011. He is getting a salary from M/s. Rashmi Cement Limited. He mainly deals with the procurement of Iron ore and also with the logistics work of the same. He also handles the liasoning work of steel manufacturing factories based at Orissa. Day to day procurement and transportation of material/iron-ore from Barbil to Kharagpur, procuring various permission from the different departments of Government of Orissa. He is presently working as Director in 04 companies, viz., M/s. Rashmi Cement Limited and Orissa Mineral & Steel Pvt. Ltd. however, he could not recollect the name of the other companies.

2.11.2 Regarding the Atlek Infracon shipment, he stated that he knows M/s. Atlek Infracon Pvt. Ltd. At the time of formation, i.e., in the year 2018, he came to know about M/s. Atlek Infracon Pvt. Ltd. in the Board meeting of the Directors of the group companies of the Rashmi Group, i.e., M/s. Rashmi Cement Ltd. and M/s. Orissa Metaliks Pvt. Ltd. Some of the shareholders of M/s. Atlek Infracon Pvt. Ltd. are various companies of Rashmi Group like Rashmi Cement Ltd., Orissa Metaliks Pvt. Ltd. etc. He had approached Shri Alok Pattanayak to appoint him as

the Director of M/s. Atlek Infracon Pvt. Ltd. as a result of a decision made during the Board meeting of M/s. Rashmi Cement Limited and M/s. Orissa Metaliks Pvt. Ltd. He also confirmed that Shri Alok Pattanayak had been working in M/s. Rashmi Cement Limited. He further stated that at the time of formation of M/s. Atlek Infracon Private Limited, the major shareholders were M/s. Rashmi Cement Limited and M/s. Orissa Metaliks Pvt. Limited. But now they are not holding any stake in M/s. Atlek Infracon Pvt. Limited.

2.11.3 However, he does not have any idea about the working of M/s. Atlek Infracon Pvt. Ltd. He has no idea about the person from M/s. Atlek Infracon Pvt. Ltd. who is dealing with the said export consignment. He is dealing with the said export consignment from M/s. Rashmi Cement Limited. He is the only person who takes the decision in respect of the said export consignment.

2.11.4 As regards to the foreign buyer of the said export consignment, M/s. Paliso Metaliks DMCC, he stated that M/s. Paliso Metaliks DMCC is the foreign buyer in the subject export consignment. They are the regular buyers of M/s. Rashmi Cement Limited and other companies of the Rashmi Group. Their officials normally visited the plants or factories which are located in Barbil, Kharagpur or Orissa etc. in respect of procurement of billets, pellets, pig-iron etc. and checking of quality thereof. In the month of February/March 2024, on their visit to India, they expressed their requirement for 02 Mobile Screening Mining Machines to him as a representative of Rashmi Group and issued a Purchase Order No.PO/PALISO/MOBILE SCREEN/009 DATED 01.03.2024 to M/s. Atlek Infracon Pvt. Ltd. On the requirement, M/s. Rashmi Cement Ltd. purchased 02 Nos. of Used Mobile Screens in the month of May 2024 from M/s. Universal Enterprises,

Barbil, Orissa. It was decided by him (Shri Dipanjan Mahata) to export these subject mobile machines on behalf of M/s. Atlek Infracon Pvt. Ltd. to M/s. Paliso Metaliks DMCC. Thereafter, M/s. Rashmi Cement Ltd. sold these machines to M/s. Atlek Infracon Pvt. Ltd. in the month of June 2024.

2.11.5 Accordingly, on his instructions only, Shri Jaya Ram Ray prepared the export documents such as Commercial Invoice, Packing List etc. for the consignment covered by invoices AIPL/E/24-25/04 and AIPL/E/24-25/03 (both dated 05.10.2024) for M/s. Atlek Infracon Pvt. Limited. He also confirmed that he had directed the team at the Kolkata Office to provide the documents such as copies of IEC details, PAN card and GSTN details of M/s. Atlek Infracon Pvt. Limited. He also confirmed that he had provided the copy of the Purchase order from M/s. Atlek Infracon Pvt. Ltd. to M/s. Rashmi Cement Limited for the subject goods, sales invoice of the subject goods issued by M/s. Rashmi Cement Limited to M/s. Atlek Infracon Pvt. Limited, and corresponding Purchase Order from the foreign buyer, viz. M/s. Paliso Metaliks to M/s. Atlek Infracon Pvt. Ltd. to Shri Jaya Ram Ray at the Kharagpur Office of M/s. Rashmi Cement Ltd. A decision to export the subject goods on behalf of M/s. Atlek Infracon Pvt. Ltd. was taken by him (Shri Dipanjan Mahata). However, the export pricing of the subject goods was arrived at by the members of the export team, viz., Shri Uday Chand Kungliwar, Shri Prasenjit Baksi etc. They have finalised the same and informed him verbally. Shri Jaya Ram Ray prepared the Export Documents on behalf of M/s. Atlek Infracon Pvt. Ltd. and Shri Prasenjit Baksi handled the work related to logistics, shipping and transportation of the subject goods, on his instructions. He was aware of the fact that the subject machines were "old and used". However, this fact was

inadvertently not mentioned in the export documents by Shri Jaya Ram Ray who prepared the export documents.

3. A reference was made to the Central GST, Kolkata North Commissionerate for verification of genuineness & authenticity of M/s. Atlek Infracon Private Limited (GSTIN-19AAQCA6928A1ZI). A reply dated 09.12.2024 was received from the office of HQ Anti-Evasion, CGST & CX, Kolkata North Commissionerate wherein it was submitted that:

3.1 On the basis of the information received from this office, a search under Section 67 (2) of CGST Act, 2017 was conducted at the PPOB and APOB of the said entity and it was found existence at their place of business.

3.2 The observation made during the search in respect of export consignment dated 11.10.2024 at INBOM1, Mumbai is furnished below: -

From the scrutiny of records and documents, it has been revealed that M/s. Atlek Infracon Private Limited (GSTIN-19AAQCA6928A1ZI) purchased one "MOBILE SCREEN 200 TPH" from M/s. Rashmi Cement Limited. However, in the invoice of inward supply of "MOBILE SCREEN 200 TPH" received from M/s. Rashmi Cement Limited, the supplier mentioned HSN-85059000. However, in the invoice of outward supply to M/s. Paliso Metaliks DMCC, the taxpayer mentioned HSN-84741090.

On being asked about the same Shri Chirag Patodia, Authorised Person of the said taxpayer in his statement recorded under Section 70 of the CGST Act, 2017 clarified that *"the HSN code mentioned in the tax invoice was inadvertently mentioned as 85059000 due to clerical mistake. The same should have have been mentioned as 84741090."* They also submitted a

clarification received from M/s. Rashmi Cement Limited. Further the transaction details and the movements of goods from E-way bill portal were found in order.

3.3 There are 29 companies which mentioned the address of their offices at Room No.2 C (2nd floor), 56, Metcalf Street, Kolkata, West Bengal, 700013, however, only 04 companies are found registered under the GST regime including the instant RTP. During search, it has been found that the names of five entities were pasted on the door of the said address. On investigation it appears that there are common directors in three companies, i.e., 1. M/s. Atlek Infracon Private Limited, 2.M/s. Unileen Properties Pvt. Ltd., 3. M/s. Chainroop Realtors Pvt. Ltd. No trading activity has been carried out in the last two entities except few invoices of commission for facilitating trade between union parties. the PPOB of the said taxpayer, M/s. Atlek Infracon Pvt. Limited is a rented property. The taxpayer has rented table space in the said room to run its office.

3.4 As requested, the GST Returns, E-way Bill, Bank Account data have been verified and found to be in order in respect of instant transaction of the said taxpayer. The Supply Chain of the item i.e., "MOBILE SCREEN 200 TPH" has also been verified and found to be in order.

4. Submissions made by M/s. Atlek Infracon Pvt. Ltd. and M/s. Rashmi Cement Ltd. through the legal firm, M/s. Khaitan & Co.

4.1 Meanwhile, M/s. Khaitan & Co., Advocates vide letter dated 06.12.2024 (**RUD-20**) submitted that they are representing M/s. Rashmi Cement Ltd. and M/s. Atlek Infratech Pvt. Ltd. The said legal firm vide said letter requested

for provisional release in pursuance of the CBIC Circular No.30/2013-Cus. dated 05.08.2013. Further in Para 1 of the said letter, the legal firm also submitted **that M/s. Rashmi Cement Limited and M/s. Atlek Infracon Pvt. Limited are the parts of Rashmi Group.** It was further submitted **that Atlek is a company of the Rashmi group for nominal purpose to probe and test trade opportunities emerging from new geographic, trade or areas.** Such an approach is intentionally taken to ring fence potential risks which may or may not devolve from probing and testing of new trade opportunities. **The Directors of M/s. Atlek Infracon Pvt. Ltd. are employees of the various companies of the Group.** Furthermore, the appointment of M/s. Khaitan & Co. has been done by Shri Uday Chand Kungilwar, Company Secretary of M/s. Rashmi Cement Limited and Shri Rajesh Ghosal, Director of M/s. Atlek Infracon Pvt. Limited.

4.2 However, during the investigation proceedings, neither Shri Uday Chand Kungilwar nor Shri Rajesh Ghosal has revealed the said facts in their statements recorded under Section 108 of the Customs Act, 1962. Hence, a letter dated 16.12.2024 was issued to the Managing Director/Chief Executive Officer/Promoter(S) of Rashmi Group, Kolkata to confirm the genuineness and authenticity of letter dated 06.12.2024 of M/s. Khaitan & Co. and also for the acceptance or otherwise of the said submission made in their letter dated 06.12.2024 which was confirmed by Shri Rajesh Ghosal, Director of M/s. Atlek Infracon Pvt. Ltd., vide his letter dated 16.01.2025 and also by Shri Uday Kungilwar, Company Secretary, M/s. Rashmi Cement Limited vide letter dated 15.01.2025.

4.3 M/s. Atlek Infracon Pvt. Ltd. vide letter dated 16.01.2025 and M/s. Rashmi Cement Limited vide letter dated 15.01.2025 informed that they have appointed M/s. Khaitan & Co., One Forbes, 3rd & 4th Floors, No.1, Dr. V.B. Gandhi Marg, Fort, Mumbai – 400 001, to appear and plead in respect of the investigation. Further, they have also reiterated the submissions made by M/s. Khaitan & Co. vide their letter dated 06.12.2024 to this office.

4.4 M/s. Khaitan & Co. vide the said letter dated 06.12.2024 has submitted that M/s. Atlek Infracon Pvt. Limited is part of Rashmi Group and the Directors of M/s. Atlek Infracon Private Limited are employees of the *various companies of the Group*. However, in this context, no corroborative documentary evidence was provided supporting their claims regarding M/s. Atlek Infracon Pvt. Limited being a part of the Rashmi Group and the directors of M/s. Atlek Infracon Pvt. Limited being employees of the *various companies of the Group*.

4.5 Further, clarification was sought from M/s. Atlek Infracon and the Rashmi Group regarding the relationship of M/s. Atlek Infracon Pvt. Limited with the companies of the Rashmi Group. The corroborative documentary evidences regarding their claims were also asked for. In reply to the same, Khaitan & Co. Advocates submitted the reply vide letter dated 17.02.2025 **(RUD-21)** on behalf of M/s. Atlek Infracon Pvt. Ltd. and Rashmi Group.

4.6 Khaitan & Co., Advocates vide letter dated 17.02.2025 submitted that Rashmi Group comprises a number of companies which are directly or indirectly controlled/ operated by the Group. Atlek was incorporated on 21.12.2018 to probe and test trade opportunities emerging from new geographic, trade or areas. Share holding pattern of Atlek is given below:

Sr. No.	Name of the Shareholder	% of Shareholding as on 31.03.2024
1	Newera Commotrade Private Limited	65.60%
2.	Kaypee Mercantiles Private Limited	17.398%
3.	Viewpoint Properties Private Limited	15.998%
4.	Richiline Projects Private Limited	1.00%
5.	Alok Pattanayak	0.004%

It was submitted that **all the four shareholders listed above at Sr.No.1 to 4 are also group companies which are directly or indirectly controlled /managed/operated by the Rashmi Group. Further, Alok Pattanayak is an employee of RCL since April 2011.**

4.7 They further submitted that said two units of “Mobile Screening Mining Machine 250 TPH’ sought to be exported vide Shipping No.4765768 dated 11.10.2024 were destined to Somaliland. Somaliland is an unrecognized country in the Horn of Africa. Due to ongoing armed conflict and political instability, trade risk involved in the transaction are unknown, and therefore, **to ring fence RCL from any direct exposure, a little-known group company was used to undertake export.**

4.8 With respect to this office query on “what is being referred to by the term “various companies of the Group”, Khaitan & Co. has submitted that in the course of business, group floats many entities and ventures which are directly or

indirectly financed by the group or managed/operated by the group. All such entities and ventures which are directly or indirectly controlled/managed/operated by the Rashmi group form part of the Rashmi Group. At this stage, it is pertinent to mention that as Rashmi Group comprises a number of entities and ventures and employs more than 5000 employees, relationship between various group entities are known to employees only on “need to know” basis.

4.9 Khaitan & Co. Advocates has also submitted that as per Section 2 (20) of the Customs Act, 1962, “exporter’ in relation to any goods at any time between their entry for export and the time when they are exported, includes any owner, beneficial owner or any person holding himself out to be the exporter. It was also submitted that as Atlek is a group company of Rashmi Group and therefore, Rashmi Group may be considered as beneficial owner of Atlek.

5. REPLY REGARDING PROVISIONAL RELEASE

5.1 The Legal Firm, M/s. Khaitan & Co., Advocates vide their letter dated 17.02.2025 had requested for provisional release of the goods covered by the Shipping Bill No. 4765768 dated 11.10.2024. In this regard, the letter dated 27.02.2025 issued under F.No.CUS/SIIB/INT/491/2024-SIIB O/o.COMMR- CUS-EXP-Zone-I-Mumbai dated 27.02.2025 (**RUD-22**) to M/s. Rashmi Cement Limited, wherein it was informed that since the impugned goods had been sold to M/s. Atlek Infracon Pvt. Limited (GSTIN: 19AAQCA6928A1ZI) by Rashmi Cements Ltd. therefore Rashmi Cements Ltd. cannot be considered to be the owner of the said goods and they were requested to give reasons as to why the said goods should

be released to M/s. Rashmi Cement Limited. M/s. Rashmi Cement Limited did not submit any reply regarding the same.

5.2 Also, the letter dated 27.02.2025 issued under F.No.CUS/SIIB/INT/491/2024-SIIB O/o.COMMR-CUS-EXP-Zone-I-Mumbai dated 27.02.2025 **(RUD-23)** to M/s. Atlek Infracon Private Limited, wherein it was informed that it appears that M/s. Atlek Infracon Pvt. Ltd. has been acting on behalf and on directions of M/s. Rashmi Cement Ltd and that it appears that the ownership of the impugned goods is disputed between M/s. Atlek Infracon Pvt. Ltd. & M/s. Rashmi Cement Ltd./Rashmi Group. It was requested to give reasons as to why the said goods should be released to M/s. Atlek Infracon Pvt. Ltd. however M/s. Atlek Infracon Pvt. Ltd. did not submit any reply regarding the same.

6. Legal Provisions:

6.1 Section 50 in The Customs Act, 1962

50. Entry of goods for exportation.

(1) The exporter of any goods shall make entry thereof by presenting to the proper officer in the case of goods to be exported in a vessel or aircraft, a shipping bill, and in the case of goods to be exported by land, a bill of export [in such form and manner as may be prescribed] [Substituted 'in the prescribed form' by Finance Act, 2018 (Act No. 13 of 2018), dated 29.3.2018.].

(2) The exporter of any goods, while presenting a shipping bill or bill of export, shall at the foot thereof make and subscribe to a declaration as to the truth of its contents.

(3) [*The exporter who presents a shipping bill or bill of export under this section shall ensure the following, namely: -*

- (a) *the accuracy and completeness of the information given therein;*
- (b) *the authenticity and validity of any document supporting it; and*
- (c) *compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.]*

6.2 Section 113 in The Customs Act, 1962

113. Confiscation of goods attempted to be improperly exported, etc.

The following export goods shall be liable to confiscation: -

- (a) *any goods attempted to be exported by sea or air from any place other than a customs port or a customs airport appointed for the loading of such goods;*
- (b) *any goods attempted to be exported by land or inland water through any route other than a route specified in a notification issued under clause (c) of section 7 for the export of such goods;*
- (c) *any goods brought near the land frontier or the coast of India or near any bay, gulf, creek or tidal river for the purpose of being exported from a place other than a land customs station or a customs port appointed for the loading of such goods;*
- (d) *any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;*

(e) any goods found concealed in a package which is brought within the limits of a customs area for the purpose of exportation;

(f) any goods which are loaded or attempted to be loaded in contravention of the provisions of section 33 or section 34;

(g) any goods loaded or attempted to be loaded on any conveyance, or water-borne, or attempted to be water-borne for being loaded on any vessel, the eventual destination of which is a place outside India, without the permission of the proper officer;

(h) any goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;

(i) any goods entered for exportation which do not correspond in respect of value or in any material particular with the entry made under this Act or in the case of baggage with the declaration made under section 77;

(ia) any goods entered for exportation under claim for drawback which do not correspond in any material particular with any information furnished by the exporter or manufacturer under this Act in relation to the fixation of rate of drawback under section 75;

(j) any goods on which import duty has not been paid and which are entered for exportation under a claim for drawback under section 74;

(ja) any goods entered for exportation under claim of remission or refund of any duty or tax or levy to make a wrongful claim in contravention of the provisions of this Act or any other law for the time being in force;

(k) any goods cleared for exportation which are not loaded for exportation on account of any wilful act, negligence or default of the exporter, his agent or employee, or which after having been loaded for exportation are unloaded without the permission of the proper officer;

(l) any specified goods in relation to which any provisions of Chapter IVB or of any rule made under this Act for carrying out the purposes of that Chapter have been contravened.

6.3 Section 114 in The Customs Act, 1962

114. Penalty for attempt to export goods improperly, etc.

- Any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 113, or abets the doing or omission of such an act, shall be liable,-

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty [not exceeding three times the value of the goods as declared by the exporter or the value as determined under this Act, whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, to a penalty [not exceeding the duty sought to be evaded or five thousand rupees, whichever is the greater;

(iii) in the case of any other goods, to a penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under this Act, whichever is the greater.

6.4 Section 114AA in The Customs Act, 1962

114AA. *Penalty for use of false and incorrect material.*

- If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.

7. Analysis of the facts revealed in the proceedings of investigation in the present case:

7.1 Examination & seizure of the Export Consignment:

7.1.1 M/s. Atlek Infracon Pvt. Ltd. (IEC- AAQCA6928A) filed the Shipping Bill No.4765768 dated 11.10.2024 for Export of two Nos. "Mobile Screening Mining Machine 250 TPH" declaring FOB value of INR 1,30,69,137/-.

7.1.2 Based on an intelligence, SIIB(X) officials examined the said consignment. On physical examination of the subject export consignment, the marking "POWERSCREEN, A TEREX COMPANY, DUNGANNON, NORTHERN IRELAND" was found on both the machines. Further, one of the two aforesaid green coloured machines had a marking "04/2011". In visual appearance, both the machines appeared to be old and used. Hence, on the reasonable belief that the Exporter has misdeclared the subject goods with an intent to fraudulently avail export

benefits such as RoDTEP and GST Refund for export under Bond/LUT, making them liable for confiscation under Section 113(i) of the Customs Act, these goods were seized under Section 110(1) of the Customs Act.

7.1.3 Since the impugned goods appeared to be old and used in nature and the Exporter had not declared this fact in the Shipping Bill, services of M/s. S.D.Deshpande, empaneled Chartered Engineers were availed to ascertain and confirm the condition of the goods, assessable value and other technical aspect related to the impugned goods.

7.1.4 The ***Customs Valuation (Determination of Value of Export Goods) Rules, 2007*** were applied to determine the value of the said goods. The declared value of the said goods was rejected as per the provision of Rule 8 (Rejection of Declared Value), due to misdeclaration of the goods being “old and used”. The Rule 4 of the Valuation Rules became inapplicable due to absence of comparable export data. Further, Rule 5 became inapplicable due to the said goods having not been produced/manufactured or processed by the exporter and the required data regarding the cost of production, manufacture or processing of export goods being not available. Therefore, **value of the said goods was determined in terms of Rule 6 (Residual method)**. In this regard, the Chartered Engineer inspected the impugned goods on 25.10.2024 and submitted his report Ref. No. SDD/CEC/SIIB/EXP/MBPT/01/24-25 dated 29.10.2024 wherein it is certified that the imported goods are old and used goods having **Assessable Value USD 42500 and USD 48500** respectively against the **declared invoice value of USD 79735 and USD 79735** respectively, which is approximately 75% higher, on an average, than the Assessable value. Therefore, it appears that the value of the export goods

should be taken as **USD 42500 and USD 48500** respectively. The Shipping Bill No. No. 4765768 dated 11.10.2024 was filed for export under LUT, without payment of IGST. The export under LUT enables the exporter to claim refund of accumulated Input Tax Credit in terms of Rule 89 of the CGST Rules 2017. The Shipping Bill No. No. 4765768 dated 11.10.2024 covered two invoices i.e. AIPL/E/24-25/04 and AIPL/E/24-25/03 dated 05.10.2024. As per the invoices AIPL/E/24-25/04 and AIPL/E/24-25/03, the exporter has stated that they intended to claim Rewards Under (RoDTEP) Remission of Duty and Tax on Export Product From India Scheme. From this, it appears that the Exporter has misdeclared and overvalued the impugned Goods with an intent to fraudulently avail export benefits such as RoDTEP and GST Refund for export under Bond/LUT.

7.1.5 Considering the above facts, it appears that the Exporter has tried to hide the actual condition of the impugned goods by not declaring it as old and used. Also the subject goods appear to be overvalued with an intent to fraudulently avail export benefits such as RoDTEP and GST Refund for export under Bond/LUT. The goods appeared to have been mis-declared w.r.t. the material particulars regarding their status of being old and used and also did not correspond in respect of value with the declaration made in the impugned shipping bill. Hence, they appear to be liable for confiscation under Section 113 (i) of the Customs Act.

7.2 M/s. Atlek Infracon Pvt. Ltd. (IEC- AAQCA6928A):

7.2.1 M/s. Atlek Infracon Pvt. Ltd. (IEC- AAQCA6928A) filed the Shipping Bill No.4765768 dated 11.10.2024 for Export of two Nos. "Mobile Screening Mining Machine 250 TPH" declaring FOB value of INR 1,30,69,137/-.

7.2.2 Based on an intelligence, SIIB(X) officials examined the said consignment. On physical examination of the subject export consignment, the marking “POWERSCREEN, A TEREX COMPANY, DUNGANNON, NORTHERN IRELAND” was found on both the machines. Further, one of the two aforesaid green coloured machines had a marking “04/2011”. In visual appearance, both the machines appeared to be old and used. Hence, on the reasonable belief that the Exporter has misdeclared the subject goods with an intent to fraudulently avail export benefits such as RoDTEP and GST Refund for export under Bond/LUT, making them liable for confiscation under Section 113(i) of the Customs Act, these goods were seized under Section 110(1) of the Customs Act.

7.2.3 Further, the documents submitted by the authorised representatives of the Custom Broker are also thoroughly scrutinized. It is observed that **the fact that the impugned goods to be exported are old and used, is nowhere mentioned in these export documents, such as, Shipping Bill, Packing List, Commercial Invoice etc.**

7.2.4 Considering the above facts, it appears that the M/s. Atlek Infracon Pvt. Limited had intentionally tried to suppress the actual condition of the subject capital goods by not declaring it as old and used. Also the subject Capital Goods appears to be overvalued with an intent to fraudulently avail export benefits such as RoDTEP and GST Refund for export under Bond/LUT, considering the Chartered Engineer’s Report dated 29.10.2024. The exporter should have declared complete and accurate information of the goods. By not declaring complete and accurate information, M/s. Atlek Infracon Pvt. Ltd. has violated the conditions of exports. They have not made the truthfully declaration in the Shipping Bill No. 4765768

dated 11.10.2024. So, they appeared to have violated the conditions of the Section 50 of the Customs Act, 1962. In view of the above, it appears that there is a deliberate misstatement and suppression of facts regarding condition and value of the impugned goods in violation of the provisions of the Section 50 of the Customs Act, 1962.

7.2.5 In view of the above, it appears that M/s. Atlek Infracon Private Limited has actively and intentionally suppressed the actual condition and value of the subject export goods covered under the Shipping Bill No. 4765768 dated 11.10.2024 which rendered the said goods liable for confiscation under the provisions of Section 113(i) of the Customs Act, 1962. Thus, M/s. Atlek Infracon Private Limited have rendered themselves liable for penalty under Section 114 (iii) of the Customs Act, 1962.

7.3 Shri Rajesh Ghosal, Director of M/s. Atlek Infracon Private Limited:

7.3.1 On the basis of his statements dated 07.11.2024 and 08.11.2024 recorded under Section 108 of the Customs Act, 1962, and other rely upon documents, it appears that:

(a) In his statement dated 07.11.2024 & 08.11.2024, Shri Rajesh Ghosal has stated that M/s. Atlek Infracon Pvt. Ltd. issued a Purchase Order dated 15.06.2024 to M/s. Rashmi Cement Limited and accordingly, 02 Nos. of Mobile Screening Mining Machines were purchased. However, he has no much idea about the subject export consignment. Even, the foreign buyer was also introduced to them by the supplier Company, M/s. Rashmi Cement Ltd. He also stated that since, the supplier company, i.e. M/s. Rashmi Cement Limited is a big

company, they have been authorised to export the subject goods on behalf of M/s. Rashmi Cement Limited.

(b) He submitted that Shri Alok Pattanayak is the other director in M/s. Atlek Infracon Pvt. Ltd. Shri Ghosal mentioned the name of Shri Chirag Patodia, Chartered Accountant to answer the various questions related to the export activity, the appointment of Shri Ghosal as Director, financial activity of the company etc. It is pertinent to mention here that he failed to answer many of the questions asked during the recording of his statement and also failed to submit the requisite documents to the department as demanded under summon dated 05.11.2024.

(c) During recording of the statement, the behaviour of Shri Rajesh Ghosal, appears to be dubious and from the statement also, it appears that M/s. Atlek Infracon Pvt. Ltd. may be a fake company. Shri Rajesh Ghosal appeared to be a dummy director who was not well aware about the functioning of M/s. Atlek Infracon Pvt. Ltd.

7.3.2 Meanwhile, M/s. Khaitan & Co., Advocates vide letter dated 06.12.2024 has submitted that they are representing M/s. Rashmi Cement Ltd. and M/s. Atlek Infratech Pvt. Ltd. Further in Para 1 of the said letter dated 06.12.2024, the Advocate firm has also submitted that M/s. Rashmi Cement Limited and M/s. Atlek Infracon Pvt. Limited are the parts of Rashmi Group. Furthermore, the appointment of M/s. Khaitan & Co. has been done by Shri Uday Chand Kungilwar, Company Secretary of M/s. Rashmi Cement Limited and Shri Rajesh Ghosal, Director of M/s. Atlek Infracon Pvt. Limited.

7.3.3 However, during the investigation proceedings, both Shri Uday Chand Kungilwar and Shri Rajesh Ghosal mis-stated that M/s. Atlek Infracon Pvt. Ltd. and M/s Rashmi Cement Ltd. are not related to each other. Hence, a letter dated 16.12.2024 was issued to the Director of M/s. Atlek Infracon Pvt. Ltd. and also to Managing Director/Chief Executive Officer/Promoter(S) of Rashmi Group, Kolkata to confirm the genuineness and authenticity of appointment of M/s. Khaitan & Co. and also for the acceptance or otherwise of the said submission made in their letter dated 06.12.2024 which was confirmed by Shri Rajesh Ghosal, Director of M/s. Atlek Infracon Pvt. Ltd., vide his letter dated 16.01.2025 and also by Shri Uday Kungilwar, Company Secretary, M/s. Rashmi Cement Limited vide letter dated 15.01.2025.

7.3.4 The above cited letter dated 16.01.2025 of Shri Rajesh Ghosal, is very much contrary to the statements dated 07.11.2024 and 08.11.2024 recorded under Section 108 of the Customs Act, 1962 by the SIIB officials.

7.3.5 In view of the above, it appears that during the investigation, Shri Rajesh Ghosal, the Director of M/s. Atlek Infracon Private Limited has tried to mislead the investigation proceedings by providing incorrect information to the department about the subject export consignment and the relationship with the supplier Company, M/s. Rashmi Cement Limited. He actively and intentionally mis-stated in his statements dated 07.11.2024 & 08.11.2024 about the relationship of M/s. Atlek Infracon Pvt. Ltd. with M/s. Rashmi Cement Limited. He was well aware that the impugned goods were old and used. He, being the director of M/s. Atlek Infracon Pvt. Ltd. was responsible for ensuring that correct entries are made in the export invoices, packing list and shipping bills however he

did not do so and the impugned goods were mis-declared and overvalued in the Shipping Bill, with an intent to cause fraudulent availment of export benefits such as RoDTEP and GST Refund for export under Bond/LUT. His omission/ commission has played an important role in rendering the impugned goods liable for confiscation under the provisions of Section 113 of the Customs Act, 1962. Thus, Shri Rajesh Ghosal has rendered himself liable for imposition of penalty under Section 114 (iii) and Section 114 AA of the Customs Act, 1962.

7.4 Shri Subhendu Biswas, Whole-time Director of M/s. Rashmi Cement Ltd.:

7.4.1 On the basis of his statements dated on 18.11.2024 and 19.11.2024, recorded under Section 108 of the Customs Act, 1962, and other rely upon documents, it appears that:

(a) Shri Subhendu Biswas, the Whole-Time Director of M/s. Rashmi Cement, has stated that he is holding the position of Whole-time Director in M/s. Rashmi Cement Ltd. since 14.07.2010 having DIN 03114508 and is working only for M/s. Rashmi Cement Limited. He don't know M/s. Atlek Infracon Limited personally. He came to know about this Company as the sales team of M/s. Rashmi Cement Ltd. brought the proposal from M/s. Atlek Infracon Pvt. Limited regarding purchase of these machineries in question. Other than that, he doesn't have much idea about M/s. Atlek Infracon Pvt. Limited. The Buyer Firm, M/s. Atlek Infracon Pvt. Ltd., in any manner is not related to M/s. Rashmi Cement Limited.

(b) However, while scrutinizing the records available on the official website of the Ministry of Corporate Affairs, it is observed that Shri Shubhendu Biswas was the authorized signatory of M/s. Atlek Infracon Pvt. Limited at the time of formation of the company.

(c) Furthermore, it is admitted by both the companies, viz. M/s. Atlek Infracon Pvt. Ltd. and M/s. Rashmi Cement Limited. vide their letter dated 16.01.2025 and 15.01.2025 respectively that M/s. Rashmi Cement Limited and M/s. Atlek Infracon Pvt. Limited are the part of Rashmi Group. Furthermore, the appointment of M/s. Khaitan & Co. has been done by Shri Uday Chand Kungilwar, Company Secretary of M/s. Rashmi Cement Limited and Shri Rajesh Ghosal, Director of M/s. Atlek Infracon Pvt. Limited.

7.4.2 In view of the above, it appears that during the investigation, Shri Subhendu Biswas, the Whole time Director of M/s. Rashmi Cement Limited has tried to mislead the investigation proceedings by providing incorrect information to the department about the subject export consignment and the relationship with M/s. Atlek Infracon Private Limited. He actively and intentionally mis-stated in his statements dated 18.11.2024 and 19.11.2024 about the relationship of M/s. Atlek Infracon Pvt. Ltd. with M/s. Rashmi Cement Limited with an intent to cause fraudulent availment of export benefits such as RoDTEP and GST Refund for export under Bond/LUT. Thus, Shri Subhendu Biswas has rendered himself liable for imposition of penalty under Section 114 AA of the Customs Act, 1962.

7.5 Shri Uday Chand Kungilwar, Company Secretary of M/s. Rashmi Cement Ltd.

7.5.1 On the basis of his statement dated 19.11.2024 recorded under Section 108 of the Customs Act, 1962 and other rely upon documents, it is observed that:

(a) At the time of recording of his statement, Shri Uday Chand Kungilwar, the Company Secretary of M/s. Rashmi Cement stated that he is holding the position of Company Secretary in M/s. Rashmi Cement Limited since 01.03.2016 and

doesn't know M/s. Atlek Infracon Pvt. Ltd. personally. He was brought into the picture when this consignment was held by SIIB. He was directed by Shri Tapan Kumar Samantaray who is the purchase head of M/s. Rashmi Cement Ltd. to visit the office of SIIB Export, Mumbai Port to check what was the reason to hold the consignment. He has only heard of Shri Alok Pattanayak, the Director of M/s. Atlek Infracon Pvt. Limited and he has never met him. He met Shri Rajesh Ghosal, the other Director of M/s. Atlek Infracon Pvt. Ltd. one or two days before coming to Mumbai for his statement as he informed that he will be going for recording his statement. The Buyer Firm, M/s. Atlek Infracon Pvt. Ltd., in any manner is not related to M/s. Rashmi Cement Limited.

(b) Meanwhile, M/s. Khaitan & Co., Advocates vide letter dated 06.12.2024 has submitted that they are representing M/s. Rashmi Cement Ltd. and M/s. Atlek Infratech Pvt. Ltd. The said Advocate firm vide said letter has requested for provisional release in pursuance of the CBIC Circular No.30/2013-Cus. dated 05.08.2013. Further in Para 1 of the said letter, the Advocate firm has also submitted that M/s. Rashmi Cement Limited and M/s. Atlek Infracon Pvt. Limited are the part of Rashmi Group. Furthermore, the appointment of M/s. Khaitan & Co. has been done by Shri Uday Chand Kungilwar, Company Secretary of M/s. Rashmi Cement Limited and Shri Rajesh Ghosal, Director of M/s. Atlek Infracon Pvt. Limited.

(c) However, during the investigation proceedings, both Shri Uday Chand Kungilwar and Shri Rajesh Ghosal mis-stated regarding the relationship of M/s. Atlek Infracon Pvt. Limited with M/s Rashmi Cement Limited. Hence, a letter dated 16.12.2024 was issued to the Director of M/s. Atlek Infracon Pvt. Ltd. and

also to Managing Director/Chief Executive Officer/Promoter(S) of Rashmi Group, Kolkata to confirm the genuineness and authenticity of appointment of M/s. Khaitan & Co. and also for the acceptance or otherwise of the said submission made in their letter dated 06.12.2024 which was confirmed by Shri Rajesh Ghosal, Director of M/s. Atlek Infracon Pvt. Ltd., vide his letter dated 16.01.2025 and also by Shri Uday Kungilwar, Company Secretary, M/s. Rashmi Cement Limited vide letter dated 15.01.2025.

(d) The above cited letter dated 15.01.2025 of Shri Uday Chand Kungilwar, is very much contrary to his statement dated 19.11.2024 recorded under Section 108 of the Customs Act, 1962 by the SIIB officials.

(e) Furthermore, Shri Dipanjan Mahata, the Director of M/s. Rashmi Cement Limited has admitted that M/s. Atlek Infracon Pvt. Ltd. was formed in the year 2018, in the Board meeting of the Directors of the group companies of the Rashmi Group, i.e., M/s. Rashmi Cement Ltd. and M/s. Orissa Metaliks Pvt. Ltd. Some of the shareholders of M/s. Atlek Infracon Pvt. Ltd. are various companies of Rashmi Group like Rashmi Cement Ltd., Orissa Metaliks Pvt. Ltd. etc. He also confirmed that Shri Alok Pattanayak, one of the Director of M/s. Atlek Infracon Pvt. Ltd., had been working in M/s. Rashmi Cement Limited. He further stated that at the time of formation of M/s. Atlek Infracon Private Limited, the major shareholders were M/s. Rashmi Cement Limited and M/s. Orissa Metaliks Pvt. Limited. But now they are not holding any stake in M/s. Atlek Infracon Pvt. Limited.

(f) Shri Dipanjan Mahata, also admitted that a decision to export the subject goods on behalf of M/s. Atlek Infracon Pvt. Ltd. was taken by him (Shri Dipanjan Mahata). However, the export pricing of the subject goods was arrived at by the

members of export team, viz., Shri Uday Chand Kungliwar, Shri Prasenjit Baksi etc. They have finalised the same and informed him verbally.

7.5.2 In view of the above, it appears that during the investigation, Shri Uday Chand Kungilwar, the Company Secretary of Ms/ Rashmi Cement Limited has tried to mislead the investigation proceedings by providing incorrect information to the department about the subject export consignment and the relationship with the M/s. Atlek Infracon Private Limited. He actively and intentionally mis-stated in his statements dated 19.11.2024 about the relationship of M/s. Atlek Infracon Pvt. Ltd. with M/s. Rashmi Cement Limited. He was instrumental in over-valuation of the impugned goods with an intent to cause fraudulent availment of export benefits such as RoDTEP and GST Refund for export under Bond/LUT, which rendered them liable for confiscation under the provisions of Section 113(i) of the Customs Act, 1962. Thus, Shri Uday Chand Kungilwar has committed a violation which have rendered himself liable for imposition of penalty under Section 114 (iii) and Section 114 AA of the Customs Act, 1962.

7.6 Shri Alok Pattanayak, Director of M/s. Atlek Infracon Private Limited

7.6.1 On the basis of his statements recorded on 04.12.2024 and 05.12.2024 under Section 108 of the Customs Act, 1962 and other relied upon documents, it is observed that:

(a) Shri Alok Pattanayak, Director of M/s. Atlek Infracon Private Limited in his statements submitted that he is holding the position of Director in M/s. Atlek Infracon Pvt. Ltd. since March 2018. But he did not receive an appointment letter for being appointed as the Director in M/s. Atlek Infracon Pvt. Limited. Shri Dipanjan Mahata from M/s. Rashmi Cement Limited made him the Director of

M/s. Atlek Infracon Private Limited and all the documents are with M/s. Rashmi Cement Limited only. Shri Dipanjan Mahata is the Director of M/s. Rashmi Cement Limited. He told Shri Alok Pattanayak that they will pay him Rs.2000 per month for working as the Director of M/s. Atlek Infracon Pvt. Limited but did not tell him anything about any work related to M/s. Atlek Infracon Pvt. Limited. He is working as an electrician in M/s. Rashmi Cement Limited for approximately 12-13 years. He receives Rs.2000/- per month for working as the Director of M/s. Atlek Infracon Pvt. Limited in his bank account in addition to his salary of Rs.19000/- per month that he receives from M/s. Rashmi Cement Limited. He is also employed in other firms as Director. But he cannot remember the names and number of these companies. He was appointed as Director in other companies by M/s. Rashmi Cement Limited only.

(b) He also admitted that M/s. Rashmi Cement is related to M/s. Atlek Infracon Pvt. Limited. The work done by M/s. Atlek Infracon Pvt. Ltd. is led by M/s. Rashmi Cement Limited and the decisions are taken by Shri Dipanjan Mahata. The documents are everytime provided to me at the Jhargram unit of M/s. Rashmi Cement Limited and these documents are marked so he understands where he to sign. Different people bring these documents at the different occasions and ask him to sign as he is the Director of M/s. Atlek Infracon Pvt. Limited.

(c) He has known Shri Uday Kungilwar since the export goods were seized by SIIB for investigation. Shri Uday Kungilwar told him that machines which were being exported by M/s. Atlek Infracon Private Limited have been held for investigation by SIIB. He (Shri Uday Kungilwar) provided him (Shri Alok Pattanayak) with some documents, address of the office of SIIB and also gave the

plane ticket to Mumbai from Kolkata. He (Shri Uday Kungilwar) also instructed to take all these documents with him to the office of SIIB and do as the officers will tell you.

(d) He does not have the knowledge about the ownership of the goods. They may either be owned by M/s. Rashmi Cement Limited or M/s. Atlek Infracon Pvt. Ltd.

7.6.2 It is pertinent to mention that during the investigation, for the first time it is revealed from the statement of Shri Alok Pattanayak, the Director of M/s. Atlek Infracon Pvt. Limited that M/s. Rashmi Cement is related to M/s. Atlek Infracon Pvt. Limited and the work done by M/s. Atlek Infracon Pvt. Ltd. is led by M/s. Rashmi Cement Limited and the decisions are taken by Shri Dipanjan Mahata. This fact was accepted by both the companies, viz. M/s. Atlek Infracon Pvt. Ltd. and M/s. Rashmi Cement Limited, vide their letter dated 16.01.2025 and 15.01.2025 respectively that M/s. Rashmi Cement Limited and M/s. Atlek Infracon Pvt. Limited are the part of Rashmi Group. Furthermore, the appointment of M/s. Khaitan & Co. has been done by Shri Uday Chand Kungilwar, Company Secretary of M/s. Rashmi Cement Limited and Shri Rajesh Ghosal, Director of M/s. Atlek Infracon Pvt. Limited.

7.6.3 In view of the above, during the investigation, Shri Alok Pattanayak, the Director of M/s. Atlek Infracon Private Limited, has revealed and confirmed the relationship of M/s. Atlek Infracon Private Limited and M/s. Rashmi Cement Limited. He also admitted that he has signed various documents related to M/s. Atlek Infracon Private Limited on different occasions. Thus, he appeared to be a dummy director who was working on instructions given by Shri Dipanjan Mahata,

Director of M/s. Rashmi Cement Limited and other employees of M/s. Rashmi Cement Limited.

7.6.4 However, he, being the director of M/s. Atlek Infracon Pvt. Ltd., was responsible for ensuring that correct entries are made in the export invoices, packing list and shipping bills however he did not do so and the impugned goods were mis-declared and overvalued in the Shipping Bill with an intent to cause fraudulent availment of export benefits such as RoDTEP and GST Refund for export under Bond/LUT. His omission/ commission has played an important role in rendering the impugned goods liable for confiscation under the provisions of Section 113(i) of the Customs Act, 1962. Thus, Shri Alok Pattanayak has rendered himself liable for imposition of penalty under Section 114 (iii).

7.7 Shri Jay Ram Ray, Accounts Manager, M/s. Orissa Metaliks Private Limited:

7.7.1 On the basis of his statement dated 03.03.2025 recorded under Section 108 of the Customs Act, 1965 and other relied upon documents, it is observed that:

(a) Shri Jay Ram Ray, Accounts Manager, M/s. Orissa Metaliks Private Limited stated that he is an Accounts Manager in M/s. Orissa Metaliks Private Limited. He came to know about M/s. Atlek Infracon Pvt. Ltd. from Shri Dipanjan Mahata, Director of M/s. Rashmi Cement Limited. Shri Dipanjan Mahata told him that M/s. Atlek Infracon Pvt. Ltd. is a part of Rashmi Group. He assigned the work of preparation of export documents in respect of consignment covered by invoices AIPL/E/24-25/04 abd AIPLK/E/24-25/03 (both dated 05.10.2024) for M/s. Atlek Infracon Pvt. Ltd. The goods required to be exported were 02 Nos. Mobile Screening Mining Machine 250 TPH.

(b) Shri Dipanjan Mahata, Director had provided the copies of IEC details, PAN card and GSTN details of M/s. Atlek Infracon Pvt. Ltd. Shri Mahata also provided the copy of the Purchase order from M/s. Atlek Infracon Pvt. Ltd. to M/s. Rashmi Cement Limited for the subject goods, sales invoice of the subject goods issued by M/s. Rashmi Cement Limited to M/s. Atlek Infracon Pvt. Limited, and corresponding Purchase Order from the foreign buyer, viz. M/s. Paliso Metaliks to M/s. Atlek Infracon Pvt. Ltd. On the basis of these documents, he had prepared the Export Documents in the name of M/s. Atlek Infracon Pvt. Ltd. This was the first time, he heard about M/s. Atlek Infracon Pvt. Ltd. He never did any other work pertaining to the shipment of import or export consignment related to M/s. Atlek Infracon Pvt. Ltd. before this. He admitted that Shri Dipanjan Mahata had informed him that the impugned goods were old and used however he forgot to mention the same in the export documents.

7.7.2 In view of the above, it appears that Shri Jay Ram Ray, Accounts Manager, M/s. Orissa Metaliks Private Limited, is involved in the mis-declaration of the impugned consignment of M/s. Atlek Infracon Private Limited with an intent to cause fraudulent availment of export benefits such as RoDTEP and GST Refund for export under Bond/LUT. He failed to declare that the impugned goods were old and used even though he was well aware of this fact. This eventually rendered the goods liable confiscation under the provisions of Section 113(i) of the Customs Act, 1962. Thus, Shri Jay Ram Ray, Accounts Manager, M/s. Orissa Metaliks Private Limited has rendered himself liable for imposition of penalty under Section 114 (iii).

7.8 Shri Dipanjan Mahata, Director, M/s. Rashmi Cement Limited:

7.8.1 On the basis of his statement recorded on 07.03.2025 under Section 108 of the Customs Act, 1962 and the other relied upon documents, it is observed that

(a) M/s. Rashmi Cement Limited has also authorised Shri Dipanjan Mahata to appear on behalf of M/s. Rashmi Cement Limited in the subject matter to make submissions, statements and deposition for the company and to sign all the documents for reference on behalf of M/s. Rashmi Cement Limited. Shri Dipanjan Mahata, Director, M/s. Rashmi Cement Limited. Accordingly, the statement of Shri Dipanjan Mahata, was also recorded on 07.03.2025 in the capacity of authorised person of M/s. Rashmi Cement Limited, under Section 108 of the Customs Act, 1962.

(b) Shri Dipanjan Mahata stated that he is presently working as Director in M/s. Rashmi Cement Limited since 2011. He is presently working as Director in 04 other companies of Rashmi Group including M/s. Rashmi Cement Limited. He admitted that he knows about M/s. Atlek Infracon Pvt. Ltd. since its formation. In the Board meeting of the Directors of the group companies of the Rashmi Group, i.e., M/s. Rashmi Cement Ltd. and M/s. Orissa Metaliks Pvt. Ltd., the said company (M/s. Atlek Infracon Private Limited) was formed. Some of the shareholders of M/s. Atlek Infracon Pvt. Ltd. are various companies of Rashmi Group like Rashmi Cement Ltd., Orissa Metaliks Pvt. Ltd. etc. He had approached Shri Alok Pattanayak to appoint him as the Director of M/s. Atlek Infracon Pvt. Ltd. as a result of a decision made during the Board meeting of M/s. Rashmi Cement Limited and M/s. Orissa Metaliks Pvt. Ltd. He also confirmed that Shri Alok Pattanayak had been working in M/s. Rashmi Cement Limited. He further stated that at the time of formation of M/s. Atlek Infracon Private Limited, the

major shareholders were M/s. Rashmi Cement Limited and M/s. Orissa Metaliks Pvt. Limited. But now they are not holding any stake in M/s. Atlek Infracon Pvt. Limited.

(c) He also admitted that he is dealing with the said export consignment from M/s. Rashmi Cement Limited. He takes the decision in respect of the said export consignment. He further stated that M/s. Paliso Metaliks DMCC is the foreign buyer in the subject export consignment. They are the regular buyers of M/s. Rashmi Cement Limited and other companies of the Rashmi Group. On the requirement of M/s. Paliso Metaliks DMCC, M/s. Rashmi Cement Ltd. purchased 02 Nos. of Used Mobile Screens in the month of May 2024 from M/s. Universal Enterprises, Barbil, Orissa. It was decided by him (Shri Dipanjan Mahata) to export these subject mobile machines on behalf of M/s. Atlek Infracon Pvt. Ltd. to M/s. Paliso Metaliks DMCC.

(d) Thereafter, M/s. Rashmi Cement Ltd. sold these machines to M/s. Atlek Infracon Pvt. Ltd. in the month of June 2024. Accordingly, on his instructions only, Shri Jaya Ram Ray prepared the export documents such as Commercial Invoice, Packing List etc. for the consignment covered by invoices AIPL/E/24-25/04 and AIPL/E/24-25/03 (both dated 05.10.2024) for M/s. Atlek Infracon Pvt. Limited. He also confirmed that he had directed the team at the Kolkata Office to provide the documents such as copies of IEC details, PAN card and GSTN details of M/s. Atlek Infracon Pvt. Limited. He also confirmed that he had provided the copy of the Purchase order from M/s. Atlek Infracon Pvt. Ltd. to M/s. Rashmi Cement Limited for the subject goods, sales invoice of the subject goods issued by M/s. Rashmi Cement Limited to M/s. Atlek Infracon Pvt. Limited, and corresponding Purchase

Order from the foreign buyer, viz. M/s. Paliso Metaliks to M/s. Atlek Infracon Pvt. Ltd. to Shri Jaya Ram Ray at the Kharagpur Office of M/s. Rashmi Cement Ltd.

(e) He again admitted that a decision to export the subject goods on behalf of M/s. Atlek Infracon Pvt. Ltd. was taken by him (Shri Dipanjan Mahata). However, the export pricing of the subject goods was arrived at by the members of export team, viz., Shri Uday Chand Kungliwar, Shri Prasenjit Baksi etc. They have finalised the same and informed him verbally. Shri Jaya Ram Ray prepared the Export Documents on behalf of M/s. Atlek Infracon Pvt. Ltd. and Shri Prasenjit Baksi handled the work related to logistics, shipping and transportation of the subject goods, on his instructions.

(f) He was aware of the fact that the subject machines were “old and used”. However, this fact was inadvertently not mentioned in the export documents by Shri Jaya Ram Ray who prepared the export documents. On questioning on the Purchase order No.PO/PALISO/MOBILE SCREEN/009 dated 01.03.2024 issued by M/s. Paliso Metaliks DMCC to M/s. Atlek Infracon Pvt. Ltd. wherein the term “old and used” or “second-hand” was not mentioned against the ordered goods, i.e. “02 Nos. Mobile Screening Mining Machine 250 TPH”, he (Shri Dipanjan Mahata) stated that he does not have any reason for supplying the old and used machines to the foreign buyer.

7.8.2 It is pertinent to mention here that Shri Alok Pattanayak, the Director of M/s. Atlek Infracon Private Limited has also confirmed that his appointment as Director in M/s. Atlek Infracon Private Limited has been done by Shri Dipanjan Mahata. Further, it is also confirmed by Shri Jaya Ram Ray that he prepared the Export Documents on behalf of M/s. Atlek Infracon Pvt. Ltd., on the instructions of

Shri Dipanjan Mahata. Further, Shri Prasenjit Baksi also confirmed that he handled the work related to logistics, shipping and transportation of the subject goods, on the instructions of Shri Dipanjan Mahata.

7.8.3 In view of the above, it appears that on requirement of the foreign buyer, M/s. Paliso Metaliks DMCC, Shri Dipanjan Mahata, the Director of M/s. Rashmi Cement Limited purchased 02 Nos. "Old & Used Mobile Screening Mining Machines" from M/s. Universal Enterprises, Barbil, Orissa in the name of M/s. Rashmi Cement Limited and thereafter, these machines were sold to M/s. Atlek Infracon Private Limited for the purpose of exporting them to the foreign Buyer, M/s. Paliso Metaliks DMCC as per the Purchase order raised by the foreign buyer to M/s. Atlek Infracon Private Limited. Shri Dipanjan Mahata instructed Shri Jayaram Ray and Shri Prasenjit Baksi to prepare the Export Documents and to handle the shipping & logistic work, respectively, on behalf of M/s. Atlek Infracon Private Limited.

7.8.4 However, doing so, Shri Dipanjan Mahata, ignored the fact that the foreign buyer has specifically focused on the quality of the goods to be exported in their Purchase Order issued to M/s. Atlek Infracon Private Limited. The term "old & used", "Second hand" or "Refurbished or Repaired" was nowhere mentioned in the said Purchase Order. During the investigation proceedings, Shri Dipanjan Mahata stated that it may be a typographical error. He failed to justify his act of exporting the old and used machinery to the foreign country inspite of the clear instruction of the foreign buyer. Shri Dipanjan Mahata submitted in his statement dated 07.03.2025 that he had instructed Shri Jay Ram Ray to prepare the export documents such as commercial invoice, packing list etc. Therefore, Shri Dipanjan

Mahta was actively involved in preparation of all the export related documents and he has purposely not declared the actual condition of the subject export consignment as “old and used” in these documents which has a bearing on the value of the goods.

7.8.5 Considering the above facts, it appears that Shri Dipanjan Mahata, the Director of M/s. Rashmi Cement Limited was actively involved in the mis-declaration and over-valuation of the subject consignment with an intent to cause fraudulent availment of export benefits such as RoDTEP and GST Refund for export under Bond/LUT. This rendered the said goods liable for confiscation under Section 113(i) of the Customs Act. Thus, Shri Dipanjan Mahata, the Director of M/s. Rashmi Cement Limited has rendered himself liable for imposition of penalty under Section 114 (iii) of the Customs Act, 1962.

7.9 M/s. Rashmi Cement Limited:

7.9.1 On the basis of the statements of Shri Uday Chand Kungilwar, Company Secretary, Shri Subhendu Biswas, Whole Time Director and Shri Dipanjan Mahata, Director of M/s. Rashmi Cement Limited and facts revealed from the statements of the other employees of M/s. Rashmi Cement Limited, it is observed that:

(a) At the initial stage of the investigation proceedings, Shri Uday Chand Kungilwar, Company Secretary and Shri Subhendu Biswas, Whole Time Director (both from M/s. Rashmi Cement Limited) have tried to mislead the investigation by stating that M/s. Atlek Infracon Private Limited has no relation with the Rashmi Cement.

(b) While scrutinizing the records available on the official website of the Ministry of Corporate Affairs, it is observed that Shri Shubhendu Biswas was the

authorized signatory of M/s. Atlek Infracon Pvt. Limited at the time of formation of the company.

(b) Meanwhile, M/s. Khaitan & Co., Advocates vide letter dated 06.12.2024 has submitted that they are representing M/s. Rashmi Cement Ltd. and M/s. Atlek Infratech Pvt. Ltd. The said Advocate firm vide the Para 1 of the said letter dated 06.12.2024, has also submitted that M/s. Rashmi Cement Limited and M/s. Atlek Infracon Pvt. Limited are the part of Rashmi Group. Furthermore, the appointment of M/s. Khaitan & Co. has been done by Shri Uday Chand Kungilwar, Company Secretary of M/s. Rashmi Cement Limited and Shri Rajesh Ghosal, Director of M/s. Atlek Infracon Pvt. Limited.

(c) However, during the investigation proceedings, neither Shri Uday Chand Kungilwar nor Shri Rajesh Ghosal has revealed the said facts in their statements recorded under Section 108 of the Customs Act, 1962. Hence, a letter dated 16.12.2024 was issued to the Director of M/s. Atlek Infracon Pvt. Ltd. and also to Managing Director/Chief Executive Officer/Promoter(S) of Rashmi Group, Kolkata to confirm the genuineness and authenticity of appointment of M/s. Khaitan & Co. and also for the acceptance or otherwise of the said submission made in their letter dated 06.12.2024 which was confirmed by Shri Rajesh Ghosal, Director of M/s. Atlek Infracon Pvt. Ltd., vide his letter dated 16.01.2025 and also by Shri Uday Kungilwar, Company Secretary, M/s. Rashmi Cement Limited vide letter dated 15.01.2025.

(d) Shri Dipanjan Mahata, Director of M/s. Rashmi Cement Limited, has also confirmed that M/s. Rashmi Cement Limited and M/s. Atlek Infracon Pvt. Limited are the part of Rashmi Group. Furthermore, he also accepted that the decision as

regards to the subject export consignment was also initiated or finalised by Shri Dipanjan Mahata in consultation with Shri Uday Chand Kungilwar, Company Secretary and also instructed the other staff of M/s. Rashmi Cement Ltd. to handle the export related work such as preparation of export documents, shipping & logistics of subject export consignment, appointment of one of the employee of M/s. Rashmi Cement Limited as Director of M/s. Atlek Infracon Private Limited.

7.9.2 M/s. Rashmi Cement Limited has used M/s. Atlek Infracon Private Limited as a face for exporting a mis-declared and over-valued consignment covered under the Shipping Bill No. 4765768 dated 11.10.2024, with an intent to cause fraudulent availment of export benefits such as RoDTEP and GST Refund for export under Bond/LUT, which were seized under Section 110 of the Customs Act, 1962 being liable for confiscation under the provisions of Section 113 of the Customs Act, 1962. M/s Rashmi Cement Ltd. set up M/s. Atlek Infracon Private Limited as a dummy firm having Shri Rajesh Ghosal and Shri Alok Pattanayak as dummy directors and controlled the same through Shri Dipanjan Mahata, Director of M/s. Rashmi Cement Limited and other employees of M/s. Rashmi Cement Limited. M/s Rashmi Cement Ltd. through Shri Dipanjan Mahata, Director of M/s. Rashmi Cement Limited and other employees of M/s. Rashmi Cement Limited was instrumental in attempting to export the impugned mis-declared and over-valued consignment with an intent to cause fraudulent availment of export benefits such as RoDTEP and GST Refund for export under Bond/LUT. This rendered the said goods liable for confiscation under Section 113 (i) of the Customs Act. Therefore, M/s Rashmi Group have rendered themselves liable for imposition of penalty under Section 114 (iii) of the Customs Act, 1962.

8. Findings:

8.1 M/s. Atlek Infracon Pvt. Ltd. (IEC- AAQCA6928A) filed the Shipping Bill No.4765768 dated 11.10.2024 for Export of two Nos. "Mobile Screening Mining Machine 250 TPH" having FOB value of INR 1,30,69,137/-. On the basis of an intelligence, the goods were physically examined and it was found that in visual appearance, both the machines appear to be old and used which was not declared in the impugned Shipping Bill. Since the impugned goods appeared to be old and used in nature, the impugned goods were got inspected by the empaneled Chartered Engineer who inspected the impugned goods and submitted his report wherein he certified that the imported goods are old and used goods having **Assessable Value USD 42500 and USD 48500** respectively against the **declared invoice value of USD 79735 and USD 79735** respectively, which is approximately 75% higher, on an average, than the Assessable value. The valuation of the goods appears to be properly determined as **USD 42500 and USD 48500** respectively as discussed *supra*. The Shipping Bill No. No. 4765768 dated 11.10.2024 was filed for export under LUT, without payment of IGST. The export under LUT enables the exporter to claim refund of accumulated Input Tax Credit in terms of Rule 89 of the CGST Rules 2017. The Shipping Bill No. No. 4765768 dated 11.10.2024 covered two invoices i.e. AIPL/E/24-25/04 and AIPL/E/24-25/03 dated 05.10.2024. As per the invoices AIPL/E/24-25/04 and AIPL/E/24-25/03, the exporter has stated that they intended to claim Rewards Under (RoDTEP) Remission of Duty and Tax on Export Product From India Scheme. From this, it appears that the impugned goods are old & used and Exporter inflated the value of the impugned Capital Goods.

8.2 Considering the above facts, it appears that the impugned goods appeared to have been mis-declared with respect to the material particulars regarding their status of being old and used and also did not correspond in respect of value with the declaration made in the impugned shipping bill. This was done with an intent to cause fraudulent availment of export benefits such as RoDTEP and GST Refund for export under Bond/LUT. Hence, they appeared to be liable for confiscation under Section 113(i) of the Customs Act. Therefore, the case was taken up for further detailed investigation.

8.3 During the investigation proceedings, the statements of the dealing persons were recorded under Section 108 of the Customs Act, 1962 and considering their oral as well as written submissions, documents on record and facts of the case as elaborated above, it appears that:

8.3.1 M/s. Atlek Infracon Pvt. Ltd. (IEC- AAQCA6928A) had intentionally tried to suppress the actual condition of the subject capital goods by not declaring it as old and used and also overvalued the impugned goods with an intent to fraudulently avail export benefits such as RoDTEP and GST Refund for export under Bond/LUT, which rendered them liable for confiscation.

8.3.2 Shri Rajesh Ghosal, Director of M/s. Atlek Infracon Private Limited was acting as a dummy director of M/s. Atlek Infracon Private Limited and he actively and intentionally mis-stated in his statements about the relationship of M/s. Atlek Infracon Pvt. Ltd. with M/s. Rashmi Cement Limited with an intent to cause fraudulent availment of export benefits such as RoDTEP and GST Refund for export under Bond/LUT. Also, he was well aware of the fact that the impugned goods were old and used however he failed to ensure that correct entries are

made in the export invoices, packing list and shipping bills, which was his responsibility as a director of the company. This was done with an intent to cause fraudulent availment of export benefits such as RoDTEP and GST Refund for export under Bond/LUT, which rendered them liable for confiscation.

8.3.3 Shri Subhendu Biswas, Whole-time Director of M/s. Rashmi Cement Ltd.

actively and intentionally mis-stated in his statements about the relationship of M/s. Atlek Infracon Pvt. Ltd. with M/s. Rashmi Cement Limited with an intent to cause fraudulent availment of export benefits such as RoDTEP and GST Refund for export under Bond/LUT, which rendered them liable for confiscation.

8.3.4 Shri Uday Chand Kungilwar, Company Secretary of M/s. Rashmi Cement Ltd.

actively and intentionally mis-stated in his statements about the relationship of M/s. Atlek Infracon Pvt. Ltd. with M/s. Rashmi Cement Limited. He was instrumental in over-valuation of the impugned goods with an intent to cause fraudulent availment of export benefits such as RoDTEP and GST Refund for export under Bond/LUT, which rendered them liable for confiscation.

8.3.5 Shri Alok Pattanayak, Director of M/s. Atlek Infracon Private Limited

was acting as a dummy director of M/s. Atlek Infracon Private Limited and he failed to ensure that correct entries are made in the export invoices, packing list and shipping bills, which was his responsibility as a director of the company. This eventually rendered the impugned goods liable for confiscation.

8.3.6 Shri Jay Ram Ray, Accounts Manager, M/s. Orissa Metaliks Private Limited

mis-declared the impugned goods with an intent to cause fraudulent availment of export benefits such as RoDTEP and GST Refund for export under Bond/LUT, by

not declaring them as old and used even though he was well aware of this fact. This rendered the goods liable for confiscation.

8.3.7 Shri Dipanjan Mahata, Director, M/s. Rashmi Cement Limited was actively involved in the mis-declaration and over-valuation of the subject consignment with an intent to cause fraudulent availment of export benefits such as RoDTEP and GST Refund for export under Bond/LUT, which rendered them liable for confiscation.

8.3.8 M/s. Rashmi Cement Limited used M/s. Atlek Infracon Private Limited as a face for exporting the mis-declared and over-valued consignment with an intent to cause fraudulent availment of export benefits such as RoDTEP and GST Refund for export under Bond/LUT. M/s Rashmi Cement Ltd. set up M/s. Atlek Infracon Private Limited as a dummy firm having Shri Rajesh Ghosal and Shri Alok Pattanayak as dummy directors and controlled the same through Shri Dipanjan Mahata, Director of M/s. Rashmi Cement Limited and other employees of M/s. Rashmi Cement Limited. M/s. Rashmi Cement Limited was instrumental in attempting to export the impugned mis-declared and over-valued consignment with an intent to cause fraudulent availment of export benefits such as RoDTEP and GST Refund for export under Bond/LUT, which rendered them liable for confiscation.

9. Discussion on the Roles of the persons/Companies in respect of contravention/ violation of the relevant provisions of the Customs Act, 1962:

Considering the above facts, statements of the involved persons recorded under Section 108 of the Customs Act, 1962, submissions made by them at various occasions and other documentary evidence, it appears that M/s. Atlek

Infracon Pvt. Ltd. (IEC- AAQCA6928A) has filed the Shipping Bill No.4765768 dated 11.10.2024 for Export of two Nos. "Mobile Screening Mining Machine 250 TPH" having declared value of INR 1,30,69,137/-. These goods were subsequently found to be mis-declared and over-valued with an intent to fraudulently avail export benefits such as RoDTEP and GST Refund for export under Bond/LUT, and liable for confiscation u/s 113(i) of the Customs Act. During the investigation it was revealed that the exporter M/s. Atlek Infratech Pvt. Ltd. is a company of the Rashmi group and the impugned consignment was actually pertaining to M/s. Rashmi Cement Limited who tried to export the same using the face of M/s. Atlek Infratech Pvt. Ltd. M/s Rashmi Cement Ltd. set up M/s. Atlek Infracon Private Limited as a dummy firm having Shri Rajesh Ghosal and Shri Alok Pattanayak as dummy directors and controlled the same through Shri Dipanjan Mahata, Director of M/s. Rashmi Cement Limited and other employees of M/s. Rashmi Cement Limited. The investigation revealed the following roles and violations of the various individuals/ companies: -

(i) M/s. Atlek Infracon Private Limited: actively and intentionally suppressed and mis-stated the actual condition and value of the subject export goods covered under the Shipping Bill No. 4765768 dated 11.10.2024 with an intent to fraudulently avail export benefits such as RoDTEP and GST Refund for export under Bond/LUT, which rendered the subject goods liable for confiscation under section 113 (i) of the Customs Act, 1962 and thus, M/s. Atlek Infracon Private Limited has rendered himself liable for imposition of penalty under Section 114 (iii) of the Customs Act, 1962.

(ii) Shri Rajesh Ghosal, the Director of M/s. Atlek Infracon Private Limited: actively and intentionally mis-stated in his statements dated 07.11.2024 & 08.11.2024 about the relationship of M/s. Atlek Infracon Pvt. Ltd. with M/s. Rashmi Cement Limited. He was well aware that the impugned goods were old and used. He, being the director of M/s. Atlek Infracon Pvt. Ltd., was responsible for ensuring that correct entries are made in the export invoices, packing list and shipping bills however he did not do so and the impugned goods were mis-declared and overvalued in the Shipping Bill. This was done with an intent to cause fraudulent availment of export benefits such as RoDTEP and GST Refund for export under Bond/LUT. His omission/ commission has played an important role in rendering the impugned goods liable for confiscation under the provisions of Section 113(i) of the Customs Act, 1962. Thus, Shri Rajesh Ghosal has committed a violation which have rendered himself liable for imposition of penalty under Section 114 (iii) and Section 114 AA of the Customs Act, 1962.

(iii) Shri Subhendu Biswas, the Whole Time Director of M/s. Rashmi Cement Limited: actively and intentionally mis-stated in his statements dated 18.11.2024 and 19.11.2024 about the relationship of M/s. Atlek Infracon Pvt. Ltd. with M/s. Rashmi Cement Limited with an intent to cause fraudulent availment of export benefits such as RoDTEP and GST Refund for export under Bond/LUT, which rendered them liable for confiscation. Thus, Shri Subhendu Biswas has rendered himself liable for imposition of penalty under Section 114 AA of the Customs Act, 1962.

(iv) Shri Uday Chand Kungilwar, Company Secretary of M/s. Rashmi Cement Limited: actively and intentionally mis-stated in his statement dated 19.11.2024

about the relationship of M/s. Atlek Infracon Pvt. Ltd. with M/s. Rashmi Cement Limited. He was instrumental in over-valuation of the impugned goods. This was done with an intent to cause fraudulent availment of export benefits such as RoDTEP and GST Refund for export under Bond/LUT, which rendered them liable for confiscation under the provisions of Section 113(i) of the Customs Act, 1962. Thus, Shri Uday Chand Kungilwar has rendered himself liable for imposition of penalty under Section 114 (iii) and Section 114 AA of the Customs Act, 1962.

(v) Shri Alok Pattanayak, the Director of M/s. Atlek Infracon Private Limited: admitted the relationship of M/s. Atlek Infracon Private Limited and M/s. Rashmi Cement Limited. He also admitted that he has signed various documents related to M/s. Atlek Infracon Private Limited on different occasions. He, being the director of M/s. Atlek Infracon Pvt. Ltd., was responsible for ensuring that correct entries are made in the export invoices, packing list and shipping bills however he did not do so and the impugned goods were mis-declared and overvalued in the Shipping Bill. This was done with an intent to cause fraudulent availment of export benefits such as RoDTEP and GST Refund for export under Bond/LUT. His omission/ commission has played an important role in rendering the impugned goods liable for confiscation under the provisions of Section 113 of the Customs Act, 1962. Thus, Shri Alok Pattanayak has rendered himself liable for imposition of penalty under Section 114 (iii).

(vi) Shri Jay Ram Ray, Accounts Manager, M/s. Orissa Metaliks Private Limited: involved in the mis-declaration of the impugned consignment of M/s. Atlek Infracon Private Limited as he failed to declare that the impugned goods were old and used even though he was aware of this fact. This was done with an intent to

cause fraudulent availment of export benefits such as RoDTEP and GST Refund for export under Bond/LUT which eventually rendered the goods liable confiscation under the provisions of Section 113 (i) of the Customs Act, 1962. Thus, Shri Jay Ram Ray, Accounts Manager, M/s. Orissa Metaliks Private Limited has rendered himself liable for imposition of penalty under Section 114 (iii) of the Customs Act, 1962.

(vii) Shri Dipanjan Mahata, the Director of M/s. Rashmi Cement Limited: actively involved in the said transaction of export of the subject consignment which involved mis-declaration and over-valuation. This was done with an intent to cause fraudulent availment of export benefits such as RoDTEP and GST Refund for export under Bond/LUT, thereby rendering it liable for confiscation under the provisions of Section 113 (i) of the Customs Act, 1962. Thus, Shri Dipanjan Mahata, the Director of M/s. Rashmi Cement Limited has rendered himself liable for imposition of penalty under Section 114 (iii) of the Customs Act, 1962.

(viii) M/s. Rashmi Cement Limited: used M/s. Atlek Infracon Private Limited as a face for exporting a mis-declared and over-valued consignment covered under the Shipping Bill No. 4765768 dated 11.10.2024 with an intent to cause fraudulent availment of export benefits such as RoDTEP and GST Refund for export under Bond/LUT, which were seized under Section 110 of the Customs Act, 1962 being liable for confiscation under the provisions of Section 113(i) of the Customs Act, 1962. M/s Rashmi Cement Ltd. set up M/s. Atlek Infracon Private Limited as a dummy firm having Shri Rajesh Ghosal and Shri Alok Pattanayak as dummy directors and controlled the same through Shri Dipanjan Mahata, Director of M/s. Rashmi Cement Limited and other employees of M/s. Rashmi Cement Limited.

M/s Rashmi Cement Ltd. through Shri Dipanjan Mahata, Director of M/s. Rashmi Cement Limited and other employees of M/s. Rashmi Cement Limited was instrumental in attempting to export the impugned mis-declared and over-valued consignment with an intent to cause fraudulent availment of export benefits such as RoDTEP and GST Refund for export under Bond/LUT, which rendered them liable for confiscation. Therefore, M/s Rashmi Group have committed a violation which have rendered themselves liable for imposition of penalty under Section 114 (iii) of the Customs Act, 1962.

10.1 Now therefore, M/s. Atlek Infracon Private Limited (IEC- AAQCA6928A), having address at 56, Metcalfe Street, 2nd floor, Room No.2C, Kolkata, WB 700013, is hereby called upon to show cause to the Joint/ Additional Commissioner of Customs (Export Assessment), New Custom House, Ballard Estate, Mumbai-400001 as to why:

(a) The declared value for the impugned goods covered under Shipping Bill No. 4765768 dated 11.10.2024 should not be rejected, and the export value be appropriately determined as **USD 42500 and USD 48500**, respectively (as FOB value on the date of filing of the impugned Shipping Bill) for 02 “Mobile Screening Mining Machine 250 TPH” under the provisions of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 as discussed *supra*.

(b) The impugned goods covered under Shipping Bill No. 4765768 dated 11.10.2024 having declared FOB value of **Rs.1,30,69,137/- (Rupees One Crore Thirty Lac Sixty-Nine Thousand One Hundred & Thirty-Seven only)** should not be confiscated under the Section 113 (i) of the Customs Act, 1962 for mis-declaration of the actual condition and value of the impugned goods in the Shipping Bill filed

under Section 50 of the Customs Act and for willful mis-statement of facts before the Department to defraud Revenue.

(c) Penalty should not be imposed on them under Section 114 (iii) of the Customs Act, 1962 for mis-declaration of the actual condition and value of the impugned goods covered under the Shipping Bill No. 4765768 dated 11.10.2024 with an intent to fraudulently avail export benefits such as RoDTEP and GST Refund for export under Bond/LUT, which rendered the subject goods liable for confiscation under section 113 (i) of the Customs Act, 1962.

10.2 Now therefore, Shri Rajesh Ghosal, the Director of M/s. Atlek Infracon Private Limited, is hereby called upon to show cause to the Joint/ Additional Commissioner of Customs (Export Assessment), New Custom House, Ballard Estate, Mumbai-400001 as to why:

Penalty should not be imposed on him under Section 114 (iii) of the Customs Act, 1962 for his role in mis-declaration of the actual condition and value of the impugned goods covered under the Shipping Bill No. 4765768 dated 11.10.2024 with an intent to fraudulently avail export benefits such as RoDTEP and GST Refund for export under Bond/LUT, which rendered the subject goods liable for confiscation under section 113 (i) of the Customs Act, 1962, and under Section 114AA of the Customs Act, 1962 for wilful mis-statement of facts before the Department to defraud Revenue.

10.3 Now therefore, Shri Subhendu Biswas, the Whole-time Director of M/s. Rashmi Cement Limited, is hereby called upon to show cause to the Joint/

Additional Commissioner of Customs (Export Assessment), New Custom House, Ballard Estate, Mumbai-400001 as to why:

Penalty should not be imposed on under Section 114 AA of the Customs Act, 1962 for wilful mis-statement of facts before the Department with an intent to defraud Revenue.

10.4 Now therefore, Shri Uday Chand Kungilwar, Company Secretary of M/s. Rashmi Cement Limited, is hereby called upon to show cause to the Joint/ Additional Commissioner of Customs (Export Assessment), New Custom House, Ballard Estate, Mumbai-400001 as to why:

Penalty should not be imposed on him under Section 114 (iii) of the Customs Act, 1962 for his role in mis-declaration of the actual condition and value of the impugned goods covered under the Shipping Bill No. 4765768 dated 11.10.2024 with an intent to fraudulently avail export benefits such as RoDTEP and GST Refund for export under Bond/LUT, which rendered the subject goods liable for confiscation under section 113(i) of the Customs Act, 1962, and under Section 114AA of the Customs Act, 1962 for wilful mis-statement of facts before the Department with an intent to defraud Revenue.

10.5 Now therefore, Shri Alok Pattanayak, the Director of M/s. Atlek Infracon Private Limited, is hereby called upon to show cause to the Joint/ Additional Commissioner of Customs (Export Assessment), New Custom House, Ballard Estate, Mumbai-400001 as to why:

Penalty should not be imposed on him under Section 114 (iii) of the Customs Act, 1962 for his role in mis-declaration of the actual condition and value of the impugned goods covered under the Shipping Bill No. 4765768 dated 11.10.2024 with an intent to fraudulently avail export benefits such as RoDTEP

and GST Refund for export under Bond/LUT, which rendered the subject goods liable for confiscation under section 113 (i) of the Customs Act, 1962.

10.6 Now therefore, Shri Jay Ram Ray, Accounts Manager, M/s. Orissa Metaliks Private Limited, is hereby called upon to show cause to the Joint/ Additional Commissioner of Customs (Export Assessment), New Custom House, Ballard Estate, Mumbai-400001 as to why:

Penalty should not be imposed on him under Section 114 (iii) of the Customs Act, 1962 for his role in mis-declaration of the actual condition and value of the impugned goods covered under the Shipping Bill No. 4765768 dated 11.10.2024 with an intent to fraudulently avail export benefits such as RoDTEP and GST Refund for export under Bond/LUT, which rendered the subject goods liable for confiscation under section 113 (i) of the Customs Act, 1962.

10.7 Now therefore, Shri Dipanjan Mahata, the Director of M/s. Rashmi Cement Limited, is hereby called upon to show cause to the Joint/ Additional Commissioner of Customs (Export Assessment), New Custom House, Ballard Estate, Mumbai-400001 as to why:

Penalty should not be imposed on him under Section 114 (iii) of the Customs Act, 1962 for his role in mis-declaration of the actual condition and value of the impugned goods covered under the Shipping Bill No. 4765768 dated 11.10.2024 with an intent to fraudulently avail export benefits such as RoDTEP and GST Refund for export under Bond/LUT, which rendered the subject goods liable for confiscation under section 113 (i) of the Customs Act, 1962.

10.8 Now therefore, M/s. Rashmi Cement Limited, is hereby called upon to show cause to the Joint/ Additional Commissioner of Customs (Export Assessment), New Custom House, Ballard Estate, Mumbai-400001 as to why:

Penalty should not be imposed on them under Section 114 (iii) of the Customs Act, 1962 for their role in mis-declaration of the actual condition and value of the impugned goods covered under the Shipping Bill No. 4765768 dated 11.10.2024 with an intent to fraudulently avail export benefits such as RoDTEP and GST Refund for export under Bond/LUT, which rendered the subject goods liable for confiscation under section 113 (i) of the Customs Act, 1962.

11. The Noticees are hereby required to produce all references upon which they intend to rely in support of their defence.

12. The Noticees are further required to indicate in their written reply as to whether they intend to be heard in person before the case is adjudicated failing which it will be presumed that they do not desire a personal hearing.

13. If no reply is received within 30 days of receipt of this Notice and the Noticees do not appear before the adjudicating authority when the case is scheduled for hearing, the case will be decided ex-parte on the basis of material available on record.

14. This Notice is issued without prejudice to any other action that has been or may be taken under the Customs Act, 1962 or under any other law for the time being in force in the Republic of India.

(AMIT SHARMA)
ADDITIONAL COMMISSIONER OF CUSTOMS (EXPORT)
NEW CUSTOM HOUSE, MUMBAI -I

Encl: As per List of RUDs below.

To:

1. M/s. Atlek Infracon Private Limited (IEC- AAQCA6928A), 2ND FLOOR, ROOM NO. 2C, 56, Metcalfe Street, 2nd floor, Room No.2C, Kolkata, WB-700013.
Email: atlek.infracon@gmail.com
2. Shri Rajesh Ghosal, Director of M/s. Atlek Infracon Private Limited, 56, Metcalfe Street, 2nd floor, Room No.2C, Kolkata, WB 700013.
&
Shri Rajesh Ghosal, Address: Harihar, Debkhanda, Hooghly, West Bengal - 712614
Email: rajeshghosal92@gmail.com
3. Shri Alok Pattanayak, Director of M/s. Atlek Infracon Private Limited, 56, Metcalfe Street, 2nd floor, Room No.2C, Kolkata, WB 700013.
&
Shri Alok Pattanayak, SHALIKADAMODARPUR, Haridaspur, Purba MediniPur, WB 721653.
Email: atlek.infracon@gmail.com
4. Shri Subhendu Biswas, the Whole-time Director of M/s. Rashmi Cement Limited, Premlata Building, 39, Shakespeare Sarani, Kolkata – 700017.
Email: inforashmi@rashmigroup.com
&
Shri Subhendu Biswas, Address: Raghunathpur, Jhargram, Jhargram, West Midnapore, West Bengal - 721507.
Email: sbiswas@rashmigroup.com
5. Shri Uday Chand Kungilwar, Company Secretary M/s.Rashmi Cement Limited, Premlata Building, 39, Shakespeare Sarani, Kolkata – 700017

Email: inforashmi@rashmigroup.com

&

Shri Uday Chand Kungilwar, Address: 2/1, Khanpur Road, Abhinandan Apartments, Bansdrani, Kolkata, West Bengal - 700047.

Email: udaychand.kungilwar@rashmigroup.com

6. Shri Jay Ram Ray, Accounts Manager, M/s. Orissa Metaliks Private Limited, 1, Garstin Place, 'Orbit House', 3rd Floor, Room No. 3B, Kolkata, West Bengal – 700017.

Email: sc_ompl@orissametaliks.com.

&

Shri Jay Ram Ray, Address: Tantipara Back of NBT-103, Panchberia Inda, Kharagpur (M), Kharagpur -I, Medinipur West, West Bengal 721305.

Email: ca_accounts_kgp@rashmigroup.com

&

Shri Jay Ram Ray, Permanent Address: S/O Hari Krishna Ray, Bangali Tola, PS. Ramgarh, Ramgarh Cantt., Jharkhand - 829122

7. Shri Dipanjan Mahata, the Director of M/s. Rashmi Cement Limited, Premlata Building, 39, Shakespeare Sarani, Kolkata – 700017.

Email: inforashmi@rashmigroup.com

&

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8. M/s. Rashmi Cement Limited, Premlata Building, 39, Shakespeare Sarani, Kolkata – 700017.

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Copy To:

1. Commissioner of Customs (Export), Mumbai Zone-I, New Custom House, Ballard Estate, Mumbai- 400 001

2. Additional/Joint Commissioner of Customs (Export Assessment), Mumbai Zone-I, New Custom House, Ballard Estate, Mumbai 400 001 for the purpose of adjudication of the Show Cause Notice.
3. Deputy/Assistant Commissioner of Customs (Export Assessment), Mumbai Zone-I, New Custom House, Ballard Estate, Mumbai – 400 001
4. Office Copy.

List of RUDs

Sr.No.	Subject of the document	No. of pages
RUD 1	Shipping Bill No. 4765768 dated 11.10.2024	Pages- 8
RUD 2	Invoices No. AIPL/E/24-25/04 and AIPL/E/24-25/03 dated 05.10.2024	
RUD 3	Seizure Memo dated 18.10.2024	Page- 1
RUD 4	Empaneled Chartered Engineer's report Ref. No. SDD/CEC/SIIB/EXP/MBPT/01/24-25 dated 29.10.2024	Pages- 5
RUD 5	Purchase invoices issued by M/s Rashmi Cement Ltd. to M/s. Atlek Infracon Pvt. Ltd.	Pages- 2
RUD 6	Panchnama dtd. 18.10.2024	Pages- 2
RUD 7	Statement dated 07.11.2024 and 08.11.2024 of Shri Rajesh Ghosal , Director of M/s. Atlek Infracon Pvt. Ltd.	Pages- 17
RUD 8	Authorisation of Shri Uday Chand Kungilwar letter dated 21.10.2024 issued by M/s. Atlek Infracon Pvt. Ltd.	Pages- 1

RUD 9	Statement dated 18.11.2024 and 19.11.2024 of Shri Subhendu Biswas , Whole-time Director of M/s. Rashmi Cement Ltd.	Pages- 11
RUD 10	Statement dated 19.11.2024 of Shri Uday Chand Kungilwar , Company Secretary of M/s. Rashmi Cement Ltd.	Pages- 10
RUD 11	Statement dated 28.11.2024 of Shri Tapan Kumar Samantaray , Vice President Purchase & Project of M/s. Rashmi Cement Ltd.	Pages- 13
RUD 12	Statement dated 03.12.2024 of Shri Chirag Patodia , Chartered Accountant, GST Consultant	Pages- 10
RUD 13	Statement dated 04.12.2024 and 05.12.2024 of Shri Alok Pattanayak , Director of M/s. Atlek Infracon Private Limited	Pages- 31
RUD 14	Statement dated 21.01.2025 of Shri Naveen Marshal D'souza , Custom Broker of the consignment covered by the Shipping Bill No.4765768 dated 11.10.2024	Pages- 4
RUD 15	Statement dated 23.01.2025 of Shri Mayur Visharia , National Sales Manager at Prolog India Private Limited	Pages - 9
RUD 16	Email communications of Prolog India Pvt. Ltd. with Mr. Prasenjit Bakshi, Deputy General Manager, Logistic & Shipping, M/s. Rashmi Cement Ltd.; Mr. Tapan Kumar Samantaray, Vice President Purchase & Project of M/s. Rashmi Cement Ltd. and Mr. Jayram Ray	Pages- 7
RUD 17	Statement dated 13.02.2025 of Shri Prasenjit Bakshi , Deputy General Manager, Logistic & Shipping, M/s. Rashmi Cement Ltd.	Pages- 5
RUD 18	Statement dated 03.03.2025 of Shri Jay Ram Ray , Accounts Manager, M/s. Orissa Metaliks Private Limited	Pages- 7

RUD 19	Statement dated 07.03.2025 of Shri Dipanjan Mahata, Director, M/s. Rashmi Cement Limited	Pages- 11
RUD 20	Letter dated 06.12.2024 of M/s. Khaitan & Co., Advocates	Pages- 6
RUD 21	Letter dated 17.02.2025 of M/s. Khaitan & Co., Advocates	Pages-24
RUD 22	Letter dated 27.02.2025 issued under F.No.CUS/SIIB/INT/491/2024-SIIB O/o. COMMR - CUS-EXP-Zone-I-Mumbai to M/s. Rashmi Cement Limited	Pages- 2
RUD 23	Letter dated 27.02.2025 issued under F.No.CUS/SIIB/INT/491/2024-SIIB O/o. COMMR - CUS-EXP-Zone-I-Mumbai to M/s. Atlek Infracon Pvt. Limited	Pages- 1